



Louisiana Law
Community Property
&
Covenant Marriage

Things You Should Know Before You Get Married!



Louisiana Department of Justice
Civil Division

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“This pamphlet summarizing the law on Louisiana’s ‘Community Property Law’ and ‘The Covenant Marriage Act’ that is provided by my office in accordance with Louisiana’s Revised Statute 9:237, in order to provide you with a summary of the Community Property Law in Louisiana and a full explanation of the Covenant Marriage laws, prior to your actual marriage. I hope this pamphlet is a helpful resource tool, and I extend my congratulations and best wishes to you!”



R.S. 9:237 has empowered the attorney general to prepare, for the local officers who issue marriage licenses, a summary of the community property laws and the covenant marriage laws of this state, with the mandate to these local officers to deliver this summary to each prospective spouse when they receive their license to marry. This pamphlet contains the summary of these laws.

It should be understood at the outset that this pamphlet only briefly summarizes the law so that the prospective spouses can have a general idea of what the Louisiana law on these topics contains. This summary should provoke thought among prospective spouses, who, before they enter into marriage, should consider some of the options opened up by these laws, what the situation will be if the prospective spouses do nothing, and the consequences of exercising an option or doing nothing. For a more detailed analysis on precisely how these laws affect their individual circumstances and what may be the best way to maneuver through this legal pathway, prospective spouses should consult their private attorneys. If you are a prospective spouse and do not have an attorney, this pamphlet, in its appendix, will also contain some of the referral programs available through the state and local bar associations.



LOUISIANA'S COMMUNITY PROPERTY LAW AND HOW TO CHANGE ITS EFFECTS BY CONTRACT

This part of the pamphlet is designed to explain how Louisiana's community property law establishes the property rights of husbands and wives and how the effects of the community property system can be altered by contract.

In Louisiana, marriage affects the property rights of both men and women. The rights of married people to buy, sell, or control their property, to borrow money, and to get credit are all regulated by law. "Property" includes almost everything: house, land, bank accounts, stock, pension plans, wages and other income and things of value.

A married couple becomes subject to Louisiana's community property law automatically upon marrying, unless they have made a special contract providing different rules to govern their property.

What is Community Property?

The community property laws provide rules on who may incur debts, how those debts are to be paid, and how debts and assets are to be divided between the husband and wife if their community ends.

Marriage Contracts

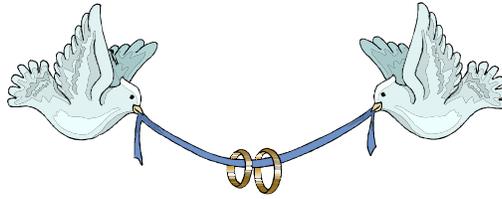
A couple may make a written marriage contract before the wedding which sets out how they want their property owned and controlled. A marriage contract written before marriage does not need court approval for its provisions that are in accordance with Louisiana law to be enforceable. Married people from another state who move into Louisiana, and who do not wish to have their property become community property, have one year after they move to Louisiana to make a marriage contract to that effect without a judge's approval. Their contract is also governed by the Louisiana law on separation of property, so the contract is valid if it is in accordance with relevant Louisiana law. Of course, after the first year, they too may enter a separation of property agreement with court approval.



If you need further help in understanding the community property laws, or if you are thinking about making a marriage contract, you should consult an attorney.

Remember these things:

- By law, marriage changes your property rights.
- The community property law will apply to you if you do not make a special marriage contract.
- You may make this special contract before or after you are married, but some contracts written after marriage require a judge's approval to be legal.
- If you were married outside of Louisiana, moving here has changed your property rights. You have one year from the date you moved to make a marriage contract without a judge's approval.
- The contract must be signed by the man and woman in the presence of a Notary Public and two witnesses or executed by a private signature duly acknowledged.
- You should see a lawyer so that you will know how the taxes on your property and the inheritance of your property may be changed by your marriage.
- If you do not know a lawyer, the Lawyer Referral Service can help you find one. In large cities, call your Legal Aid office for assistance if you cannot afford a lawyer.
- There will be a listing of some legal resources, in the appendix, at the end of this pamphlet.



THE COVENANT MARRIAGE ACT

What is Covenant Marriage?

Legal commentaries have noted that recent developments in social and legal history have substantially contributed to the weakening of marriage. Social history has lately witnessed the sexual revolution, the therapeutic revolution, and the feminist revolution. The law has played part in these developments by making it easier and easier for an individual person to obtain a divorce and, therefore, to abandon his or her marriage and family. Newer social science studies have revealed that divorce has a profound and lifelong ill effects on the children and perhaps that, as one legal commentary suggested, “a father and a mother committed to each other through lifelong marriage represents the ideal environment for the rearing of responsible, prosperous, and well-adjusted citizens”.

The Louisiana Legislature decided that it was time for the law to strengthen marriage and stabilize family life. However, it did not decide to do so by changing the existing law on what is now the “standard” marriage of law. Rather, it enacted a new, stronger, alternative form of marriage, called the covenant marriage. Katherine Shaw Spaht, a Law Professor, explains, “The covenant marriage and its legal consequences more closely resemble the promises made by each spouse in the wedding ceremony. The children of the marriage are third party beneficiaries of the promises made by their parents and benefit in both tangible and intangible ways- economically, physically, psychologically, and emotionally”.

In short, the law describes a covenant marriage as a marriage entered into by one male and one female who understand and agree that the marriage between them is a lifelong relationship.



How Does a Couple enter into a Covenant Marriage?

If a couple does not take additional steps to confect other special contracts or file special documents but merely go through the usual steps simply to get married, they do not enter into a covenant marriage. By simply getting married, they enter into what is now a “standard” marriage in Louisiana law. In order to enter into a covenant marriage, the couple must take special steps and execute and record special documents on the public record.

The law provides that a man and woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license and executing a declaration of intent to contract a covenant marriage and then, of course, actually getting married accordingly. The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

The declaration of intent to contract a covenant marriage shall contain all of the following:

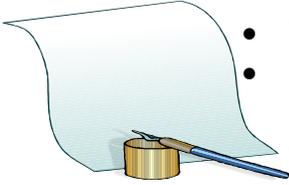
- A recitation signed by both parties to the following effect:

A COVENANT MARRIAGE

“We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage. We have received premarital counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling.”

“With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Louisiana law on Covenant Marriages and we promise to love, honor, and care for one another as husband and wife

- An affidavit by the parties attesting they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a professional marriage counselor. The seriousness of covenant marriage shall be included in the discussion during counseling.
- An attestation signed by the counselor and attached to or included in the parties’ affidavit, confirming that the parties were counseled as to the nature and purpose of the marriage.



- The signature of both parties witnessed by a notary.
- If one or both of the parties are minors, the written consent or authorization of those persons required under the Children’s Code to consent to or authorize the marriage of minors.

Thus, the declaration shall contain two separate documents, the recitation and the affidavit of the parties to the marriage, the latter of which shall include the attestation of the premarital counselor, either included therein or attached thereto. The recitation of the parties shall be prepared in duplicate originals, one of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed with the official who issues the marriage license.

The law also stipulates a method by which already married couples may convert their marriage from a “standard” marriage into a covenant marriage by designating it so. This method is very similar to the method by which covenant marriage is entered into in the first instance, but, in this declaration of intent, the two spouses renew their original marriage promise to love, honor, and care for one another as husband and wife for the rest of their lives and, of course, instead of “premarital counseling,” they simply undergo the covenant marriage counseling prior to designating their marriage as a covenant marriage. The declaration of intent and other documents are filed with the state officer who issued their original marriage license and who maintains the record of their marriage certificate. If they were originally married out of state, they file a copy of their marriage certificate from the other state, which does not have to be certified, together with the covenant marriage documents, with the officer who issues marriage licenses in the parish in which they are domiciled. The officer will then make a notation on the copy of the out-of-state marriage certificate that a declaration of intent has been filed by the couple to designate their marriage as a covenant marriage.

What are some of the Special Incidents and Effects of a Covenant Marriage?

The law provides that the spouses to a covenant marriage owe to each other the same legal obligations as couples in a “standard” marriage, but it also provides, in addition, some special rules. Essentially, these special rules include the following: Spouses owe each other love and respect and they commit to a community of living. Spouses are bound to live together, unless there is a good cause otherwise. The spouses determine the family residence by mutual consent, according to their requirements and those of the family. The management of the household shall be the right and the duty of both spouses. Spouses by mutual consent after collaboration should make decisions relating to family life in the best interest of the family.



An extremely important and special incident and effect of a covenant marriage is that each of the parties to the covenant marriage has voluntarily declared, "If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marriage counseling". According to legal commentaries, this declaration is a legally binding obligation to which they have stipulated. It should be noted that not only formal marital counseling, if needed, be undertaken by the spouses in times of marital difficulties but also all other reasonable steps as well be observed. These steps could include a myriad of other religious and non-religious assistance to the preservation of the marriage. Whether any one step or effort is "reasonable" will depend on all the circumstances. If the circumstances warrant, counseling programs may be undertaken for each spouse separately, or separate counseling programs be given to each spouse separately.

How does a Covenant Marriage strengthen marriage through new and different divorce/separation laws?

As one legal commentary explained, "the covenant marriage legislation represents the first time, as a general trend, in two hundred years in any Western country that divorce has become more difficult rather than easier". In a "standard" marriage, even though there are two spouses to a marriage, one of those acting alone can effectively abandon the other spouse with a divorce in six (6) months or twelve (12) months if there are minor children.; even when the other spouse would like to try reasonable efforts, including marital counseling, to preserve their marriage. In a covenant marriage, both spouses have voluntarily stipulated that when marital difficulties arise, they will make all reasonable efforts to preserve the marriage, including marital counseling. The law provides that the counseling or other such reasonable steps taken by the spouses to preserve the marriage, as required by the Declaration of Intent signed by the spouses, shall occur once the parties experience marital difficulties and, further, that if the spouses begin living separate and apart, the counseling or other intervention should continue until the rendition of a judgment of divorce.

The grounds from a Covenant Marriage divorce are as follows:

- The other spouse has committed adultery.
- The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.
- The other spouse has abandoned the matrimonial domicile for a period of one year and constantly refuses to return.
- The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses.
- The spouses have been living separate and apart continuously without reconciliation for a period of two years.



- The spouses have been living separate and apart continuously without reconciliation for a period of one year from the date of the judgment of separation from bed and board was signed.
- If there is a minor child or children of the marriage, the spouses have been living separate and apart continuously without reconciliation for a period of one year and six months from the date the judgment of separation from bed and board was signed; however, if abuse of a child of the marriage or a child of one of the spouses is the basis for which the judgment of separation from bed and board was obtained, then a judgment of divorce may be obtained if the spouses have been living separate and apart continuously without reconciliation for a period of one year from the date the judgment of separation from bed and board was signed.

Instead of an immediate divorce, a separation from bed and board may be obtained; the grounds for a judgment of separation from bed board are as follows:

- The other spouse has committed adultery.
- The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.
- The other spouse has abandoned the matrimonial domicile for a period of one year and constantly refuses to return.
- The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses.
- The spouses have been living separate and apart continuously without reconciliation for a period of two years.
- On account of habitual intemperance of the other spouse, or excesses, cruel treatment, or outrages of the other spouse, if such habitual intemperance, or such ill-treatment is of such a nature as to render their living together insupportable.



Sample Covenant Marriage Forms

The law suggests some sample forms for couples about to enter into a covenant marriage. The law says that the Declaration of Intent shall consist of two documents- namely, the recitation and the affidavit, the latter of which shall include the attestation of the premarital counselor either included therein or attached thereto. The recitation shall be prepared in duplicate originals, one of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed with the officer who issues marriage licenses, and the marriage license itself should reflect the intent to contract a covenant marriage.

(a) Recitation:

DECLARATION OF INTENT

We do solemnly declare that marriage is a covenant between a man and woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter this marriage. We have received premarital counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling.

With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Louisiana law on Covenant Marriages and we promise to love, honor, and care for one another as husband and wife for the rest of our lives.

Signed:

(Name of prospective spouse)

(Name of prospective spouse)

b) Affidavit:

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN THAT on this ____ day of _____, _____, before me the undersigned notary, personally came and appeared:

And

(Insert names of prospective spouses)

Who after being duly sworn by me, Notary, deposed and stated that:

Affiants acknowledge that they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a professional marriage counselor, which marriage counseling included:



- A discussion of the seriousness of Covenant Marriage;
- Communication of the fact that a Covenant Marriage is a commitment for life;
- The Obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if martial difficulties arise, and

That the affiants both read the pamphlet entitled "The Covenant Marriage Act" developed and promulgated by the office of the attorney general, which provides a full explanation of a Covenant Marriage, including the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a Covenant Marriage by divorce or divorce after a judgment of separation from bed or board.

(Name of prospective spouse)

(Name of prospective spouse)

SWORN TO AND SUBSCRIBED, before me, this ____ day of _____, _____.

NOTARY PUBLIC

(c) Attestation:

ATTESTATION

The undersigned does hereby attest that the affiants did receive counseling from me as to the nature and purpose of marriage, which included a discussion of the seriousness of Covenant Marriage, communication of the fact that a Covenant Marriage is for life, and the obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if marital difficulties arise.

Counselor



The sample forms suggested by law for couples who are already married and desire to designate their marriage as a covenant marriage vary only slightly.

(a) Recitation:

DECLARATION OF INTENT

We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We understand the nature, purpose, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take reasonable efforts to preserve our marriage, including marital counseling.

With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Louisiana law on Covenant Marriage, and we renew our promise to love, honor, and care for one another as husband and wife for the rest of our lives.

Signed:

(Name of spouse)

(Name of spouse)

(b) Affidavit:

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN THAT on this ____ day of _____, _____, before me the undersigned notary, personally came and appeared:

And

(Insert names of spouses)



Who after being sworn by me, Notary, deposed and stated that:

Affiants acknowledge that they have received counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, and clergymen of any religious sect, or a professional marriage counselor, which counseling included:

A discussion of the seriousness of Covenant Marriage;

Communication of the fact that a Covenant Marriage is a commitment for life;

The obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if martial difficulties arise, and

That the affiants both read the pamphlet entitled "The Covenant Marriage Act" developed and promulgated by the office of the attorney general, which provides a full explanation of a Covenant Marriage, including the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a Covenant Marriage by divorce or divorce after a judgment of separation from bed or board.

(Name of spouse)

(Name of spouse)

SWORN TO AND SUBSCRIBED, before me, this ____ day of _____, _____.

Notary Public

(c) Attestation:

ATTESTATION

The undersigned does hereby attest that the affiants did receive counseling from me as to the nature and purpose of marriage, which included a discussion of the seriousness of Covenant Marriage, communication of the fact that a Covenant Marriage is for life, and the obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if marital difficulties arise.

Counselor



Appendix

Contact Information:

Charles C. Foti, Jr.
Attorney General
Louisiana Attorney General's Office- (main no.) 225-326-6000
Web Address: www.ladoj.ag.state.la.us

Legal Resources:

Statewide Lawyer Referral and Information Service
Toll Free (888) 503-LRIS (5747)

Local Bar Services:

Baton Rouge: (225) 344-9926
Lafayette: (337) 237-4700
Lake Charles: (337) 436-2914
New Orleans: (504) 561-8828
Shreveport: (318) 222-0720
Southwest Louisiana: (337) 436-3308

Louisiana State Bar Association web site: <http://www.lsba.org/>



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