

LOUISIANA'S COMMUNITY PROPERTY LAW

Matrimonial Regimes

Louisiana's community property law establishes a system of principles and rules governing the ownership and management of the property of married persons as between themselves and toward third parties. Louisiana law governing these rights, known as Matrimonial Regimes, is found in the Louisiana Civil Code at articles 2325-2376.

Marriage impacts property rights of both spouses. The rights of married people when buying or selling property, borrowing money, or obtaining credit are all regulated by law. Property includes, but is not limited to the following: vehicles, houses, land, bank accounts, stocks, pension plans, wages, income, and other things of value.

Property of married persons is either community or separate. If a couple marries in Louisiana or moves to the State of Louisiana, they become subject to Louisiana's community property law automatically. Married couples can modify or opt out of the community property regime by entering into a special contract known as a matrimonial agreement/prenuptial agreement, which can set forth different rules to govern their property. *See* La. Civ. Code art. 2334, *et seq.*

Community Property

The default rule in Louisiana is that property owned by married persons is community property. Among other things, community property includes the following:

- Property acquired during the existence of the marriage through the effort, skill, or industry of both or either spouse;
- Property acquired with community things;
- Property acquired with community and separate property when the value of the separate property is inconsequential to the value of the community property;
- Property donated to the spouses jointly;
- Natural and civil fruits of community property;
- Damages for loss or injury to a thing belonging to the community; and
- All other property not classified as separate property.

La. Civ. Code art. 2338.

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 spouses if the marriage or community ends. It also governs a married person's ability to buy, sell, and control property.

Separate Property

The separate property of a spouse is his exclusively. It includes, but is not limited to, the following:

- Property acquired by a spouse prior to marriage;
- Property acquired by a spouse with separate things;
- Property acquired with separate and community things when the value of the community things is inconsequential to the value of the separate property;
- Property acquired by a spouse by inheritance or donation to him individually;
- Certain damages awarded a spouse; and
- Things acquired by a spouse as a result of a voluntary partition of community property during the community property regime.

La. Civ. Code art. 2341.

Commonly Misunderstood Facts about Property

The way an asset is titled does not always control whether property is separate or community. It is necessary to look at the source of the funds used to purchase the asset. If community funds were used, it is usually community property, even if titled in only one spouse's name.

Marriage alone does not automatically convert existing separate property into community property.

It is possible for separate property to lose its identity as separate property by commingling that property with community property.

Marriage Contracts/Matrimonial Agreements/Prenuptial Agreements

Matrimonial agreements allow for the renunciation, termination or modification of community property. Spouses may enter into a matrimonial agreement before or during marriage as to all matters that are not prohibited by law or public policy; however, the timing of when the contract is entered into determines whether court approval is required.

Prior to marriage, court approval is not required to enter into a matrimonial agreement, and a couple may set forth how they want their property owned and controlled.

After marriage, spouses may enter into a matrimonial agreement that modifies or terminates community property only by filing a joint petition with the court. Then, the court must make a determination that the agreement serves the best interests of the parties and that spouses understand the law and rules.

Married persons from another state that move into Louisiana and establish a domicile in Louisiana that do not wish to have their property become community property have one year to enter into a matrimonial agreement without court approval. La. Civ. Code art. 2329.

Summary:

- Marriage may change your property rights to a community property regime.
- Louisiana's community property law will apply if you do not enter into a marriage contract establishing a separate property regime or otherwise modifying the community property regime.
- You may enter into a matrimonial agreement before or after you are married.
- Contracts entered into after marriage generally require a court's approval.
- A matrimonial agreement must be signed by the spouses in the presence of a notary public and two witnesses or executed under private signature duly acknowledged by the spouses.
- Community property laws may have tax consequences affecting property and inheritance of property.
- It is important to distinguish between federal tax consequences and community property rights under state law.
- If you need more assistance in understanding the community property laws, tax ramifications of marriage, or if you are thinking about entering into a matrimonial agreement, you should consult a private attorney.
- The Lawyer Referral Services referenced in this pamphlet can help you find an attorney who may be able to assist you.
- In large cities, call your legal aid office for assistance if you cannot afford a lawyer.

Resources:

**Statewide Lawyer Referral and Information Service
888-503-5747**

**Louisiana State Bar Association
www.lsba.org**

**Local Bar Services
Baton Rouge: 225-344-4803
Lafayette: 337-237-4700
New Orleans: 504-525-7453
Shreveport: 318-221-8104
Lake Charles/Southwest Louisiana: 337-497-0090**

THE COVENANT MARRIAGE ACT

Covenant Marriage

Louisiana enacted a stronger, alternative form of marriage called the covenant marriage. Parties to a covenant marriage understand and agree that marriage is a lifelong relationship. Louisiana law governing covenant marriage is found at Louisiana Revised Statutes 9:272-276.

Creating a Covenant Marriage

In order to enter into a covenant marriage, a couple must do the following:

- Obtain premarital counseling. La. R.S. 9:272 (A).
- Declare their intent to contract a covenant marriage on their application for a marriage license as provided in La. R.S. 9:272 (B); *See also* La. R.S. 9:224(C) and La. R.S. 9:273.
- Execute a declaration of intent to contract a covenant marriage. La. R.S. 9:273.
- File the application for a marriage license and the declaration of intent with the official who issues the marriage license. La. R.S. 9:272.

Contents of Declaration of Intent

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

- A recitation signed by both parties. See La. R.S. 9:273. The recitation must 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.
- 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. Certain information must be discussed in the counseling. See La. R.S. 9:273.
- An attestation signed by the counselor and attached to or included in the parties' affidavit, confirming that the couple was counseled as to the nature and purpose of the marriage. La. R.S. 9:273.
- The signature of both parties witnessed by a notary. La. R.S. 9:273.
- 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. See La. Ch. Code art. 1545; La. R.S. 9:273.

Applicability to already married couples

Married couples may convert their marriage into a covenant marriage. This is accomplished by executing a declaration of intent to designate their marriage as a covenant marriage to be governed by the applicable laws. *See* La. R.S. 9:275 (C) for the required contents of the declaration.

The declaration of intent must be presented to the officer who issued the couple's marriage license and with whom the couple's marriage certificate is filed. If the couple was married outside of the state, a copy of the foreign marriage certificate shall be filed with the officer who issues marriage licenses in the parish where the couple is domiciled.

A declaration of the intent to designate a marriage as a covenant marriage shall contain all of the following:

- A recitation signed by both parties. La. R.S. 9:275.
- 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. Certain information must be discussed in the counseling. *See* La. R.S. 9:275.
- 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. La. R.S. 9:275.
- The signature of both parties witnessed by a notary. La. R.S. 9:275.
- 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. *See* La. Ch. Code art. 1545; La. R.S. 9:273.

Special incidents and effects of a covenant marriage

The law provides that spouses to a covenant marriage are subject to all of the laws governing married couples generally and special rules governing covenant marriage. La. R.S. 9:293-298. The special rules imposed by covenant marriage include the following:

- Spouses owe each other love and respect, and they commit to a community of living. Each spouse should attend to the satisfaction of the other's needs.
- Spouses are bound to live together, unless there is a good cause otherwise.
- Spouses determine the family residence by mutual consent, according to their requirements and those of the family.
- The management of the household is the right and the duty of both spouses.
- Spouses by mutual consent after collaboration shall make decisions relating to family life in the best interest of the family.
- Spouses are bound to maintain, teach, and educate their children born of the marriage in accordance with their capacities, natural inclinations, and aspirations, and shall prepare them for their future.

Grounds for divorce in a covenant marriage

An extremely important effect of covenant marriage is that there are a limited number of reasons or grounds for divorce. *See* La. R.S. 9:307; La. Civ. Code arts. 102-103. In entering into covenant marriage, spouses voluntarily declare that if there are difficulties, they commit to take all reasonable efforts to preserve their marriage, including marriage counseling. La. R.S. 9:273. According to legal commentaries, this declaration is a legally binding obligation on the spouses. Not only is formal marital counseling to be undertaken, but also all other reasonable steps are to be taken. 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 is a factual determination and will depend on all the circumstances.

Subsequent to the parties obtaining counseling, a judgment of divorce from a covenant marriage may be only be obtained upon proof of the following grounds:

- 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.

La. R.S. 9:307(A).

Grounds for a judgment of separation from bed and board

Instead of an immediate divorce, and subsequent to the parties obtaining counseling, a spouse may obtain a separation from bed and board. A separation from bed and board in a covenant marriage does not dissolve the bond of matrimony, since the separated husband and wife are not at liberty to marry again; but it puts an end to their conjugal cohabitation, and to the common concerns, which existed between them. *See* La. R.S. 9:309(A).

A judgment of separation from bed and board may be obtained only upon proof of the following grounds:

- 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.

See La. R.S. 9:307(B).

Spouses who are judicially separated from bed and board in a covenant marriage retain that status until either they reconcile or divorce. La. R.S. 9:309(B).

Regardless of whether the spouse is attempting to obtain a judgment of separation of bed and board or a judgment of divorce, the spouses are required to take part in counseling or other intervention until the rendition of a judgment of divorce except in situations in which one spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses. *See* La. R.S. 9:307(C) and (D).

Forms

The law suggests sample legal forms for couples entering a covenant marriage, which can be found at La. R.S. 9:273.1 and La. R.S. 9:275.1. These forms and other applicable laws can be viewed free of charge at the legislature's website: <http://www.legis.la.gov/legis/LawSearch.aspx>