

Louisiana Laws on Community Property and Covenant Marriage

Louisiana law, LA-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. 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.

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

Remember

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.

THE COVENANT MARRIAGE ACT

What is covenant marriage?

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?

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
- 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; and 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". 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.

What are the grounds for a covenant marriage divorce?

1) The other spouse has committed adultery. 2) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor. 3) The other spouse has abandoned the matrimonial domicile for a period of one year and constantly refuses to return. 4) The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses. 5) The spouses have been living separate and apart continuously without reconciliation for a period of two years. 6) 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. 7) 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 and board are as follows:

1) The other spouse has committed adultery. 2) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor. 3) The other spouse has abandoned the matrimonial domicile for a period of one year and constantly refuses to return. 4) The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses. 5) The spouses have been living separate and apart continuously without reconciliation for a period of two years. 6) 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.

Covenant marriage forms

For samples of the recitation, affidavit, and attestation covenant marriage forms for couples about to enter into marriage or couples already married, please visit the Attorney General's website at www.ag.state.la.us. Click on "News and Publications" then "Community Property and Covenant Marriage."

Resources

Louisiana Department of Justice
Office of the Attorney General
225.326.6000
www.ag.state.la.us

Louisiana State Bar Association
www.lsba.org

Lawyer Referral Services
Baton Rouge: 225.344.9926
Lafayette: 337.237.4700
Lake Charles: 337.436.2914
New Orleans: 504.561.8828
Shreveport: 318.222.0720

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