

# **Louisiana State Law Institute**

## **Marriage-Persons Committee**

### **Same-Sex Marriage Report to the Legislature**

**Prepared for the Legislature**

**March 16, 2016**

**Baton Rouge, Louisiana**

Katherine S. Spaht, Chair

Andrea B. Carroll, Reporter

# LOUISIANA STATE LAW INSTITUTE

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Katherine S. Spaht, Chair

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March 16, 2016

To: Representative Taylor F. Barras  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, LA 70804-9602

Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, LA 70804

From: Andrea Carroll, Reporter  
Marriage-Persons Committee of the Louisiana State Law Institute

**Report to the Louisiana Legislature  
Regarding Louisiana Family Legislation after *Obergefell v. Hodges***

The United States Supreme Court's June 2015 decision in *Obergefell v. Hodges* found state law bans on same-sex marriage unconstitutional on both Due Process and Equal Protection grounds. 135 S.Ct. 2584, 2604 (2015). Following *Obergefell*, the United States District Court for the Eastern District held that Louisiana Constitution article XII, § 15, Louisiana Civil Code article 89, and Louisiana Civil Code article 3520(B) were in violation of the Fourteenth Amendment of the United States Constitution. *Robicheaux v. Caldwell*, 2015 WL 4090353 (E.D. 2015). The Louisiana Supreme Court followed suit in July 2015, finding that "*Obergefell* compels the conclusion that the State of Louisiana may not bar same-sex couples from the civil effects of marriage on the same terms accorded to opposite-sex couples." *Costanza v. Caldwell*, 167 So. 3d 619, 621 (La. 2015).

The decisions of *Obergefell*, *Robicheaux*, and *Costanza* render many Louisiana statutes relating to marriage unconstitutional. Louisiana Civil Code article 89, for instance, currently states that "[p]ersons of the same sex may not contract marriage with each other." This article may no longer be applied as written.

Worse still, decisions in *Obergefell*, *Robicheaux*, and *Costanza* create many uncertainties in Louisiana law. One of the most significant issues plaguing family court judges and lawyers relates to the potential retroactive effect of *Obergefell* and its progeny. Whether *Obergefell* operates retroactively is a question that remains unresolved. Other states are beginning to confront these issues jurisprudentially. For example, in *Hard v. Strange*, 2:2013cv00922 (M.D. Ala. 2015), a same-sex couple married legally in Massachusetts in 2011 and then moved to Alabama, where one spouse passed away a few months later. The surviving spouse was denied succession benefits because the same-sex marriage was not legally recognized in Alabama. Following *Obergefell*, the surviving spouse in *Hard* successfully argued to an Alabama federal court that he should retroactively inherit the estate of his deceased spouse, requiring a transfer of more than half a million dollars. Other recent case law indicates a trend toward retroactivity, making it likely that *Obergefell* and its progeny will be given full retroactive effect.

In Louisiana, a retroactive application of *Obergefell* would create ripples well beyond the successions sphere. Because Louisiana's default marital property regime is one of community property, same-sex couples legally married in another state before *Obergefell* may be governed by Louisiana's community property regime retroactively. This retroactive effect may create substantial unintended consequences for the parties to the marital relationship themselves, who now are governed by a property regime they arguably could not have anticipated would retroactively apply to them. Perhaps more importantly, there are serious implications for the rights of third parties, including buyers of immovable property and creditors alike. Legislative change is needed to aid spouses and third parties alike in navigating *Obergefell's* temporal effect.

Louisiana laws related to paternity and maternity are even more uncertain. Louisiana law currently contains a presumption, for instance, that the "husband of the mother" is presumed to be the father of a child born to his wife during marriage. La. Civ. Code art. 185 (2015). Further, Louisiana law prohibits the "husband of the mother" from disavowing a child born to his wife as a result of assisted conception to which he consented. La. Civ. Code art. 188. In the wake of *Obergefell*, many states are beginning to face questions of whether the federal constitution requires that their similar statutes be applied to same-sex couples. Legislative intervention will be needed in this arena as Louisiana law continues to develop.

These issues are only the tip of the iceberg for areas of Louisiana law that may need to be considered and clarified following *Obergefell*, *Robicheaux*, and *Costanza*. The Marriage-Persons Committee of the Louisiana State Law Institute has begun cataloging and examining in detail the areas of Louisiana law and provisions that need amendment following the legalization of same-sex marriage, though this task is far from complete.

At the moment, the Law Institute, through its Council, has prepared this report, which addresses some fundamental legislative changes that, if the legislature desires, could be made to bring Louisiana law into line with *Obergefell*. If the legislature is inclined to make revisions to address the complicated issues that continue to arise, including those discussed above, the attached report may provide some aid.

Further, the Marriage-Persons Committee for the Law Institute continues to study Louisiana legislation that may be in need of revision in the wake of *Obergefell*, and stands ready to provide the legislature with any further needed information, or to study and make recommendations about particular uncertainties as the legislature directs.

Respectfully submitted,

Andrea Carroll  
Reporter  
Marriage-Persons Committee  
Louisiana State Law Institute



1 ~~Art. 89. Impediment of same sex~~

2 ~~Persons of the same sex may not contract marriage with each other. A purported~~  
3 ~~marriage between persons of the same sex contracted in another state shall be governed by~~  
4 ~~the provisions of Title II of Book IV of the Civil Code.~~

5

6 **Art. 96. Civil effects of absolutely null marriage; putative marriage**

7 An absolutely null marriage nevertheless produces civil effects in favor of a party  
8 who contracted it in good faith for as long as that party remains in good faith.

9 When the cause of the nullity is one party's prior undissolved marriage, the civil  
10 effects continue in favor of the other party, regardless of whether the latter remains in good  
11 faith, until the marriage is pronounced null or the latter party contracts a valid marriage.

12 A marriage contracted by a party in good faith produces civil effects in favor of a  
13 child of the parties.

14 ~~A purported marriage between parties of the same sex does not produce any civil~~  
15 ~~effects.~~

16 **Reporter's Note:** This article has been modified to comply with the mandate of the  
17 Louisiana Supreme Court that same-sex spouses be extended "the civil effects of marriage  
18 on the same terms as those accorded to opposite-sex couples." *Costanza v. Caldwell*, 167  
19 So. 3d 619, 621 (La. 2015).

1 BOOK I.

2 TITLE VII. PARENT AND CHILD

3 CHAPTER 5. PARENTAL AUTHORITY OF MARRIED PERSONS

4 SECTION 1. GENERAL PRINCIPLES OF PARENTAL AUTHORITY

5 **Art. 221. Authority of married parents**

6 ~~The father and mother~~ Parents who are married to each other have parental authority  
7 over their minor child during the marriage.

8 Reporter's Note: "Parent." as used in this article. is defined in LA. CIV. CODE ANN.  
9 art. 3506(9) (Rev. 2016).  
10

11 CHAPTER 6. OBLIGATIONS OF CHILDREN AND PARENTS AND OTHER

12 ASCENDANTS

13 **Art. 236. Filial honor and respect**

14 A child regardless of age owes honor and respect to his ~~father and mother~~ parents.

15 Reporter's Note: "Parent." as used in this article. is defined in LA. CIV. CODE ANN.  
16 art. 3506(9) (Rev. 2016).  
17

18 TITLE VIII--OF MINORS, OF THEIR TUTORSHIP

19 AND EMANCIPATION

20 CHAPTER 1--OF TUTORSHIP

21 SECTION 1--GENERAL DISPOSITIONS

22 **Art. 246. Occasion for tutorship.**

23 The minor not emancipated is placed under the authority of a tutor after the  
24 dissolution of the marriage of his ~~father and mother~~ parents or the separation from bed and  
25 board of either one of them from the other.

1 Reporter's Note: "Parent," as used in this article, is defined in LA. CIV. CODE ANN.  
2 art. 3506(9) (Rev. 2016).  
3

4 SECTION 3--OF THE TUTORSHIP BY WILL

5 **Art. 257. Surviving parent's right of appointment.**

6 The right of appointing a tutor, whether a relation or a stranger, belongs exclusively  
7 to the ~~father or mother~~ parent dying last.

8 The right of appointing a tutor, whether a relation or a stranger, also belongs to a  
9 parent who has been named the curator for the other living spouse, when that other living  
10 spouse has been interdicted, subject only to the right of the interdicted parent to claim the  
11 tutorship should his incapacity be removed by a judgment of a court of competent  
12 jurisdiction.

13 This is called tutorship by will, because generally it is given by testament; but it may  
14 likewise be given by any declaration of the surviving ~~father or mother~~ parent, or the parent  
15 who is the curator of the other spouse, executed before a notary and two witnesses.

16 Reporter's Note: "Parent," as used in this article, is defined in LA. CIV. CODE ANN.  
17 art. 3506(9) (Rev. 2016).  
18

19 **Art. 259. Option of acceptance of tutorship.**

20 The tutor by will is not compelled to accept the tutorship to which he is appointed by  
21 the ~~father or mother~~ parent.

22 But if he refuses the tutorship, he loses in that case all the legacies and other  
23 advantages, which the person who appointed him may have made in his favor under a  
24 persuasion that he would accept this trust.

25 Reporter's Note: "Parent," as used in this article, is defined in LA. CIV. CODE ANN.  
26 art. 3506(9) (Rev. 2016).



1 SECTION 4--OF THE TUTORSHIP BY THE EFFECT OF THE LAW

2 **Art. 263. Qualified ascendants; collaterals by blood; surviving spouse.**

3 When a tutor has not been appointed to the minor by ~~father or mother~~ the parent  
4 dying last, or if the tutor thus appointed has not been confirmed or has been excused, then  
5 the judge shall appoint to the tutorship, from among the qualified ascendants in the direct  
6 line, collaterals by blood within the third degree and the surviving spouse of the minor's  
7 ~~mother or father~~ parent dying last, the person whose appointment is in the best interests of  
8 the minor.

9 **Reporter's Note:** "Parent," as used in this article, is defined in LA. CIV. CODE ANN.  
10 art. 3506(9) (Rev. 2016).  
11

12 SECTION 5--OF DATIVE TUTORSHIP

13 **Art. 270. Occasion for tutorship.**

14 When a minor is an orphan, and has no tutor appointed by ~~his father or mother~~ a  
15 parent, nor any relations who may claim the tutorship by effect of law, or when the tutor  
16 appointed in some of the modes above expressed is liable to be excluded or disqualified, or  
17 is excused legally, the judge shall appoint a tutor to the minor.

18 **Reporter's Note:** "Parent," as used in this article, is defined in LA. CIV. CODE ANN.  
19 art. 3506(9) (Rev. 2016).  
20

21 BOOK III. OF THE DIFFERENT MODES OF ACQUIRING THE OWNERSHIP OF

22 THINGS

23 TITLE V. OBLIGATIONS ARISING WITHOUT AGREEMENT

24 CHAPTER 3. OF OFFENSES AND QUASI OFFENSES

1 **Art. 2315.1. Survival action**

2 A. If a person who has been injured by an offense or quasi offense dies, the right to  
3 recover all damages for injury to that person, his property or otherwise, caused by the  
4 offense or quasi offense, shall survive for a period of one year from the death of the  
5 deceased in favor of:

6 (1) The surviving spouse and child or children of the deceased, or either the spouse  
7 or the child or children.

8 (2) The surviving ~~father and mother~~ parents of the deceased, or either of them if he  
9 left no spouse or child surviving.

10 (3) The surviving brothers and sisters of the deceased, or any of them, if he left no  
11 spouse, child, or parent surviving.

12 (4) The surviving ~~grandfathers and grandmothers~~ grandparents of the deceased, or  
13 any of them, if he left no spouse, child, parent, or sibling surviving.

14 B. In addition, the right to recover all damages for injury to the deceased, his  
15 property or otherwise, caused by the offense or quasi offense, may be urged by the  
16 deceased's succession representative in the absence of any class of beneficiary set out in  
17 Paragraph A.

18 C. The right of action granted under this Article is heritable, but the inheritance of it  
19 neither interrupts nor prolongs the prescriptive period defined in this Article.

20 D. As used in this Article, the words "child", "brother", "sister", "~~father", "mother",~~  
21 "~~grandfather", and "grandmother"~~ "parents", and "grandparents", include a child, brother,  
22 sister, ~~father, mother, grandfather, and grandmother~~ "parent", and "grandparent", by  
23 adoption, respectively.

1 E. For purposes of this Article, a ~~father or mother~~ parent who has abandoned the  
2 deceased during his minority is deemed not to have survived him.

3 Reporter's Note: "Parent." as used in this article, is defined in LA. CIV. CODE ANN.  
4 art. 3506(9) (Rev. 2016).  
5

6 **Art. 2318. Acts of a minor**

7 The ~~father and the mother~~ parents are responsible for the damage occasioned by their  
8 minor child, who resides with them or who has been placed by them under the care of other  
9 persons, reserving to them recourse against those persons. However, the ~~father and mother~~  
10 parents are not responsible for the damage occasioned by their minor child who has been  
11 emancipated by marriage, by judgment of full emancipation, or by judgment of limited  
12 emancipation that expressly relieves the parents of liability for damages occasioned by their  
13 minor child.

14 The same responsibility attaches to the tutors of minors.

15 Reporter's Notes: (a) "Parent." as used in this article, is defined in LA. CIV. CODE  
16 ANN. art. 3506(9) (Rev. 2016).

17 (b) It is possible that only one parent will be held vicariously liable for a child's torts  
18 under this Article. In *R.P. v. W. Feliciana Parish Sch. Bd.*, 2014 WL 4667589 (La. App. 1st  
19 Cir. 2014), the First Circuit held that a divorced father was not vicariously liable for the  
20 damages caused by his rapist son. Father and son had not resided together for many years,  
21 and mother was awarded son's custody at the time of the parents' divorce.  
22

23 **TITLE VI. MATRIMONIAL REGIMES**

24 **Art. 2333. Minors.**

25 Unless fully emancipated, a minor may not enter into a matrimonial agreement  
26 without the written concurrence of ~~his father and mother~~ both parents, or of the parent  
27 having his legal custody, or of the tutor of his person.

1 Reporter's Notes: (a) "Parent," as used in this article, is defined in LA. CIV. CODE  
2 ANN. art. 3506(9) (Rev. 2016).

3 (b) If the minor's parents are married, the consent of both parents is required.  
4  
5

6 TITLE XXV. OF THE SIGNIFICATION OF SUNDRY TERMS

7 OF LAW EMPLOYED IN THIS CODE

8 **Art. 3506. General definitions of terms**

9 Whenever the terms of law, employed in this Code, have not been particularly  
10 defined therein, they shall be understood as follows:

11 \* \* \*

12 8. Children. ~~Under this name are included those persons~~ Child signifies a person  
13 ~~born of the marriage, those adopted, and those whose filiation to the parent has been~~  
14 ~~established in the manner provided~~ or otherwise filiated to a parent by law, as well as  
15 descendants of ~~them~~ the child in the direct line.

16 A child born of marriage is a child conceived or born during the marriage of his  
17 parents or adopted by them.

18 A child born outside of marriage is a child conceived and born outside of the  
19 marriage of his parents.

20 9. Parent. Parent signifies a person who is filiated to a child.

21 \* \* \*

22 ~~12. Family. Family in a limited sense, signifies father, mother, and children. In a~~  
23 ~~more extensive sense, it comprehends all the individuals who live under the authority of~~  
24 ~~another, and includes the servants of the family.~~

25 ~~It is also employed to signify all the relations who descend from a common root.~~

26 \* \* \*

1  
2 **Reporter’s Note:** The term “parent” includes both filiative relations by biology and  
3 by adoption, persons presumed to be parents under the Civil Code, and those whose  
4 parentage has been established by a judgment of filiation. See LA. REV. STAT. ANN.  
5 §9:355.2, cmt. (c) ; CH. CODE ANN. arts. 116(17) and 1193.  
6

7  
8 BOOK IV. CONFLICT OF LAWS

9 TITLE II. STATUS

10 **Art. 3520. Marriage**

11 ~~A. A marriage that is valid in the state where contracted, or in the state where the~~  
12 ~~parties were first domiciled as husband and wife spouses, shall be treated as a valid marriage~~  
13 ~~unless to do so would violate a strong public policy of the state whose law is applicable to~~  
14 ~~the particular issue under Article 3519.~~

15 ~~B. A purported marriage between persons of the same sex violates a strong public~~  
16 ~~policy of the state of Louisiana and such a marriage contracted in another state shall not be~~  
17 ~~recognized in this state for any purpose, including the assertion of any right or claim as a~~  
18 ~~result of the purported marriage.~~

19 **Reporter’s Note:** This article has been modified to comply with the mandate of the  
20 United States Supreme Court that same-sex couples be permitted to exercise the right to  
21 marry in Louisiana and that same-sex marriages validly contracted elsewhere be given full  
22 faith and credit in Louisiana. *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). See also  
23 *Constanza v. Caldwell*, 167 So.3d 619 (La. 2015).

1 **II. Community Property Revisions**

2 TITLE VI. MATRIMONIAL REGIMES

3 CHAPTER 1. GENERAL PRINCIPLES

4 **Art. 2329. Exclusion or modification of matrimonial regime.**

5 Spouses may enter into a matrimonial agreement before or during marriage as to all  
6 matters that are not prohibited by public policy.

7 Spouses may enter into a matrimonial agreement that modifies or terminates a  
8 matrimonial regime during marriage only upon joint petition and a finding by the court that  
9 this serves their best interests and that they understand the governing principles and  
10 rules. They may, however, subject themselves to the legal regime by a matrimonial  
11 agreement at any time without court approval.

12 During the first year after moving into and acquiring a domicile in this state, spouses  
13 may enter into a matrimonial agreement without court approval.

14 **Reporter's Note:** New Revised Statutes §9:2831 (2016) extends the one-year grace  
15 period afforded to new Louisiana domiciliaries to same-sex couples married on or before  
16 June 26, 2015, the date of *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Much like new  
17 domiciliaries, those couples will now be afforded a year to become acquainted with the  
18 newly applicable community property regime, and to opt out of it without court approval  
19 within a relatively short window, if they so desire.

20  
21 CODE TITLE VI--MATRIMONIAL REGIMES

22 CHAPTER 2. MATRIMONIAL REGIMES

23 **9:2831. Matrimonial agreement without court approval**

24 Same-sex couples married on or before June 26, 2015 may enter into a matrimonial  
25 agreement without court approval for one year from the effective date of this Act.

26 **Reporter's Notes:** (a) New Revised Statutes §9:2831 (2016) extends the one-year  
27 grace period afforded to new Louisiana domiciliaries to same-sex couples married on or  
28 before June 26, 2015, the date of *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Much like

1 new domiciliaries, those couples will now be afforded a year to become acquainted with the  
2 newly applicable community property regime, and to opt out of it without court approval  
3 within a relatively short window, if they so desire.

4 (b) The passage of this Act is not intended to affect the validity of contracts created  
5 between same-sex couples before June 26, 2015.  
6

7 **35:11. Marital status of parties to be given**

8 A. Whenever notaries pass any acts they shall give the marital status of all parties to  
9 the act, viz: ~~If either or any party or parties are men, they shall be described as single,~~  
10 ~~married, or widower. If married or widower the christian and family name of wife shall be~~  
11 ~~given. If either or any party or parties are women, they shall be described as single, married~~  
12 ~~or widow. If married or widow, their christian and family name shall be given, adding that~~  
13 ~~she is the wife of or widow of the husband's name. Parties shall be described as single,~~  
14 married, or widowed. If married or widowed, the full name of each party, including any  
15 maiden name or other surname, shall be listed, along with the name of the party's spouse.

16 \* \* \*

**III. Revised Statutes Revisions  
(on marriage and persons-related issues)**

**1:18. Husband or wife denotes spouse**

Unless it is otherwise clearly indicated by the context, the term “husband” or “wife” shall mean “spouse.”

~~CODE TITLE IV - HUSBAND AND WIFE SPOUSES~~  
CHAPTER 1. MARRIAGE: GENERAL PRINCIPLES  
PART I. OFFICIANTS

**9:223. Form**

A. An application for a marriage license shall be made on a form provided by Subsection B of this Section.

B. The application form shall be as follows:

Application for Marriage _____ (Parish), State of Louisiana				
Date of Application: _____				
Hour of Application: _____				
<b>GROOM Applicant 1</b>	<u>Last Name Surname of Groom Applicant 1</u>	<u>First Name of Groom Applicant 1</u>	<u>Middle/Second Name of Groom Applicant 1</u>	<u>Surname on Birth Certificate of Applicant 1</u>
	Address	Is residence inside city limits? <input type="checkbox"/> Yes <input type="checkbox"/> No	Parish/County	State
	<u>Race/Ethnicity</u>	Date of Birth (month-day- year)	State of Birth	
	<u>Father's Parent's Full Birth Name</u>	State of Birth	<u>Mother's Parent's Maiden Full Birth Name</u>	State of Birth
<b><del>BRIDE</del> Applicant 2</b>	<u>Last Name Surname of Bride- Applicant 2</u>	<u>First Name of Bride- Applicant 2</u>	<u>Middle/Second Name of Bride- Applicant 2</u>	<u>Maiden Name of Bride- Surname on Birth Certificate of Applicant 2</u>



	Address	Is residence inside city limits? <input type="checkbox"/> Yes <input type="checkbox"/> No	Parish/County	State
	Race/ <u>Ethnicity</u>	Date of Birth (month-day-year)	State of Birth	
	<del>Father's</del> <u>Parent's Full Birth Name</u>	State of Birth	<del>Mother's</del> <u>Parent's Maiden Full Birth Name</u>	State of Birth
Covenant Marriage	Covenant Marriage <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, complete the following: We, _____ and _____ do hereby declare our intent to contract a Covenant Marriage and, accordingly, have executed a declaration of intent attached hereto.			
<u>Groom-Applicant 1</u>	Has the <del>groom</del> <u>Applicant 1</u> been formerly married? _____ How many times? _____		Are you <u>Has Applicant 1 been</u> divorced _____?	
<u>Bride-Applicant 2</u>	Has the <del>bride</del> <u>Applicant 2</u> been formerly married? _____ How many times? _____		Are you <u>Has Applicant 2 been</u> divorced _____?	
SSN	<u>Grooms's Applicant 1's</u> Social Security Number		<u>Bride's Applicant 2's</u> Social Security Number	
<p>I _____ (print name of <del>groom</del>) do swear or affirm that the information contained in this application for marriage is true and correct. I further swear or affirm that this is my _____ (1<sup>st</sup>, 2<sup>nd</sup>, etc. number) marriage but that I am not currently married to anyone else, and that I am free to marry under the laws of the state of Louisiana. I further understand and acknowledge that giving any false information or false statement in this application of marriage shall constitute the crime of filing a false public record in violation of the Louisiana Criminal Code (R.S. 14:133).</p> <p>_____ Signature of <del>Groom</del> <u>Applicant 1</u></p> <p>Sworn to and subscribed before me this _____ day of _____, 20__.</p> <p>_____ Notary Public/Deputy Clerk/Deputy Registrar</p> <p>I _____ (print name of <del>bride</del>) do swear or affirm that the information contained in this application for marriage is true and correct. I further swear or affirm that this is my _____ (1<sup>st</sup>, 2<sup>nd</sup>, etc. number) marriage but that I am not currently married to anyone else, and that I</p>				

am free to marry under the laws of the state of Louisiana. I further understand and acknowledge that giving any false information or false statement in this application of marriage shall constitute the crime of filing a false public record in violation of the Louisiana Criminal Code (R.S. 14:133).

\_\_\_\_\_  
Signature of ~~Bride~~ Applicant 2

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public/Deputy Clerk/Deputy Registrar

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**9:224. Application; information required**

A. The application for a marriage license provided by R.S. 9:223, and containing all of the following information, shall be sworn to and signed by both parties before a notary public, deputy clerk, or deputy registrar:

- (1) The date and hour of the application.
- (2) The full name, residence, race/ethnicity, and age of each party.
- (3) The names of the parents of each party.
- (4) The number of former marriages of each party, and whether divorced or not.
- (5) The relationship of each party to the other.
- (6) Each party's social security number, if both parties were born in any state or territory of the United States or are naturalized citizens of the United States.

(a) If a party does not have a social security number issued by the United States Social Security Administration because the party is not a citizen or a lawful permanent resident of the United States, the party shall present either of the following:

- (i) A valid and unexpired passport from the country of his birth.
- (ii) An unexpired visa accompanied by a Form I-94 issued by the United States.

(b) The state registrar of vital records and the officiant shall maintain confidentiality of social security numbers. Notwithstanding the provisions of R.S. 44:1 et seq. the clerk of court shall maintain the confidentiality of a party's social security number in an application for a marriage license provided a request is made to the clerk in writing by the party at the time of application.

1 (7) An acknowledgment that each party is free to marry pursuant to Louisiana law, that  
2 the information contained in the application is true and correct, and that each party understands  
3 that falsification of the application shall constitute the filing of false public records pursuant to  
4 R.S. 14:133.

5 B.(1) Both applicants are not required to execute the application at the same time,  
6 provided that each applicant executes the application before a notary public as required by R.S.  
7 9:224(A).

8 (2) A member of the armed forces of the United States shall not be required to sign the  
9 application required by Subsection A of this Section if the co-applicant attaches a copy of the  
10 military identification card of the member. If both applicants are members of the armed forces  
11 of the United States, only one applicant shall be required to sign the application, but that  
12 applicant shall attach a copy of the military identification card of the co-applicant not signing the  
13 application.

14 (3) In the event of extenuating circumstances, and after a finding that the parties have  
15 complied with all other requirements, for good cause shown, a judge of the First or Second City  
16 Courts of the city of New Orleans, a family court judge, a juvenile court judge, a district court  
17 judge, a city court judge, or a justice of the peace may order an issuing official within the  
18 territorial jurisdiction of his court to issue a marriage license with the notarized signature of only  
19 one of the applicants. The written order shall be attached to the marriage application.

20 C. In cases wherein the parties intend to contract a covenant marriage, the application for  
21 a marriage license must also include the following statement completed by at least one of the two  
22 parties:

23 "We, [name of intended ~~husband~~ spouse] and [name of intended ~~wife~~ spouse], do hereby  
24 declare our intent to contract a Covenant Marriage and, accordingly, have executed a declaration  
25 of intent attached hereto."

26 D. Upon request, the state registrar shall provide the information required in this Section  
27 to the agency charged with implementing a program of family support in accordance with R.S.  
28 46:236.1.1 et seq., which shall maintain the confidentiality of the information.

29 E. The failure of the application to contain the signatures of both parties shall not affect  
30 the validity of the covenant marriage if the declaration of intent and accompanying affidavit have  
31 been signed by the parties.

1 **9:273. Covenant marriage; contents of declaration of intent**

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

4 (1) A recitation signed by both parties to the following effect:

5 "A COVENANT MARRIAGE

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

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

17 (2)(a) An affidavit by the parties attesting they have received premarital counseling  
18 from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of  
19 any religious sect, or a professional marriage counselor, which counseling shall include a  
20 discussion of the seriousness of covenant marriage, communication of the fact that a  
21 covenant marriage is a commitment for life, a discussion of the obligation to seek marital  
22 counseling in times of marital difficulties, and that they have received and read the  
23 informational pamphlet developed and promulgated by the office of the attorney general  
24 entitled "Covenant Marriage Act" which provides a full explanation of the terms and  
25 conditions of a covenant marriage.

26 (b) An attestation, signed by the counselor and attached to or included in the parties'  
27 affidavit, confirming that the parties were counseled as to the nature and purpose of the  
28 marriage.

29 (3)(a) The signature of both parties witnessed by a notary.

1 (b) If one or both of the parties are minors, the written consent or authorization of  
2 those persons required under the Children's Code to consent to or authorize the marriage of  
3 minors.

4 B. The declaration shall contain two separate documents, the recitation and the  
5 affidavit, the latter of which shall include the attestation either included therein or attached  
6 thereto. The recitation shall be prepared in duplicate originals, one of which shall be  
7 retained by the parties and the other, together with the affidavit and attestation, shall be filed  
8 as provided in R.S. 9:272(B).

9  
10 **9:273.1. Declaration of intent; form**

11 A. The following is suggested as a form for the recitation which may be used by the  
12 couple:

13 "DECLARATION OF INTENT

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

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

25 B. The following is the suggested form of the affidavit which may be used by the  
26 parties, notary, and counselor:

27 STATE OF LOUISIANA  
28 PARISH OF

29 BE IT KNOWN THAT on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me the  
30 undersigned notary, personally came and appeared:

31 \_\_\_\_\_

1 (Insert names of the prospective spouses)

2  
3 who after being duly sworn by me, Notary, deposed and stated that:

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

7 A discussion of the seriousness of Covenant Marriage;

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

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

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

16 \_\_\_\_\_  
17 (Name of prospective spouse)

18 \_\_\_\_\_  
19 (Name of prospective spouse)

20  
21 SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_ DAY OF

22 \_\_\_\_\_, \_\_\_\_\_.

23 \_\_\_\_\_  
24 NOTARY PUBLIC

25  
26 ATTESTATION

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

32 \_\_\_\_\_  
33 Counselor

1 **9:275. Covenant marriage; applicability to already married couples**

2 A. On or after August 15, 1997, married couples may execute a declaration of intent  
3 to designate their marriage as a covenant marriage to be governed by the laws relative  
4 thereto.

5 B.(1) This declaration of intent in the form and containing the contents required by  
6 Subsection C of this Section must be presented to the officer who issued the couple's  
7 marriage license and with whom the couple's marriage certificate is filed. If the couple was  
8 married outside of this state, a copy of the foreign marriage certificate, which need not be  
9 certified, with the declaration of intent attached thereto, shall be filed with the officer who  
10 issues marriage licenses in the parish in which the couple is domiciled. The officer shall  
11 make a notation on the marriage certificate of the declaration of intent of a covenant  
12 marriage and attach a copy of the declaration to the certificate.

13 (2) On or before the fifteenth day of each calendar month, the officer shall forward  
14 to the state registrar of vital records each declaration of intent of a covenant marriage filed  
15 with him during the preceding calendar month pursuant to this Section.

16 C.(1) A declaration of intent to designate a marriage as a covenant marriage shall  
17 contain all of the following:

18 (a) A recitation signed by both parties to the following effect:

19 "A COVENANT MARRIAGE

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

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

30 (b)(i) An affidavit by the parties that they have discussed their intent to designate  
31 their marriage as a covenant marriage with a priest, minister, rabbi, clerk of the Religious

1 Society of Friends, any clergyman of any religious sect, or a professional marriage  
2 counselor, which included a discussion of the obligation to seek marital counseling in times  
3 of marital difficulties and that they have received and read the informational pamphlet  
4 developed and promulgated by the office of the attorney general entitled "Covenant  
5 Marriage Act" which provides a full explanation of the terms and conditions of a Covenant  
6 Marriage.

7 (ii) An attestation signed by the counselor confirming that the parties were  
8 counseled as to the nature and purpose of the marriage.

9 (iii) The signature of both parties witnessed by a notary.

10 (2) The declaration shall contain two separate documents, the recitation and the  
11 affidavit, the latter of which shall include the attestation either included therein or attached  
12 thereto. The recitation shall be prepared in duplicate originals, one of which shall be  
13 retained by the parties and the other, together with the affidavit and attestation, shall be filed  
14 as provided in Subsection B of this Section.

15

16 **9:275.1. Declaration of intent; married couples; form**

17 A. The following is suggested as a form for the recitation which may be used by the  
18 couple:

19

"DECLARATION OF INTENT

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

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

30 B. The following is the suggested form of the affidavit which may be used by the  
31 parties, notary, and counselor:



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STATE OF LOUISIANA  
PARISH OF \_\_\_\_\_

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

\_\_\_\_\_  
(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, any clergyman 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 marital 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

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

1 obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if  
2 marital difficulties arise.

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Counselor  
5

6 **9:309. Separation from bed and board in a covenant marriage; effects**

7 A.(1) Separation from bed and board in a covenant marriage does not dissolve the  
8 bond of matrimony, since the separated ~~husband and wife~~ spouses are not at liberty to marry  
9 again; but it puts an end to their conjugal cohabitation, and to the common concerns, which  
10 existed between them.

11 (2) Spouses who are judicially separated from bed and board in a covenant marriage  
12 shall retain that status until either reconciliation or divorce.

13 B.(1) The judgment of separation from bed and board carries with it the separation  
14 of goods and effects and is retroactive to the date on which the original petition was filed in  
15 the action in which the judgment is rendered, but such retroactive effect shall be without  
16 prejudice to the liability of the community for the attorney fees and costs incurred by the  
17 spouses in the action in which the judgment is rendered, or to rights validly acquired in the  
18 interim between commencement of the action and recordation of the judgment.

19 (2) Upon reconciliation of the spouses, the community shall be reestablished  
20 between the spouses, as of the date of filing of the original petition in the action in which the  
21 judgment was rendered, unless the spouses execute prior to the reconciliation a matrimonial  
22 agreement that the community shall not be reestablished upon reconciliation. This  
23 matrimonial agreement shall not require court approval.

24 (3) Reestablishment of the community under the provisions of this Section shall be  
25 effective toward third persons only upon filing notice of the reestablishment for registry in  
26 accordance with the provisions of Civil Code Article 2332. The reestablishment of the  
27 community shall not prejudice the rights of third persons validly acquired prior to filing  
28 notice of the reestablishment nor shall it affect a prior community property partition between  
29 the spouses.

1 **9:2729. Presumption of uniform intent and ownership**

2 Co-owners are presumed to acquire in equal portions. For the purposes of this  
3 presumption, ~~a husband and wife~~ spouses acquiring together for the community property  
4 regime are considered one co-owner.

5  
6 **13:1832. Hearing and order**

7 A. Unless the court issues a temporary emergency order pursuant to R.S. 13:1816,  
8 upon a finding that a petitioner is entitled to immediate physical custody of the child, the  
9 court shall order that the petitioner may take immediate physical custody of the child unless  
10 the respondent establishes that:

11 (1) The child custody determination has not been registered and confirmed under  
12 R.S. 13:1827 and that:

13 (a) The issuing court did not have jurisdiction under Subpart B;

14 (b) The child custody determination for which enforcement is sought has been  
15 vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subpart  
16 B; or

17 (c) The respondent was entitled to notice, but notice was not given in accordance  
18 with the standards of R.S. 13:1808, in the proceedings before the court that issued the order  
19 for which enforcement is sought; or

20 (2) The child custody determination for which enforcement is sought was registered  
21 and confirmed under R.S. 13:1827 but has been vacated, stayed, or modified by a court of a  
22 state having jurisdiction to do so under Subpart B.

23 B. The court shall award the fees, costs, and expenses authorized under R.S. 13:1834  
24 and may grant additional relief, including a request for the assistance of law enforcement  
25 officials, and set a further hearing to determine whether additional relief is appropriate.

26 C. If a party called to testify refuses to answer on the ground that the testimony may  
27 be self-incriminating, the court may draw an adverse inference from the refusal.

28 D. A privilege against disclosure of communications between spouses and a defense  
29 of immunity based on the relationship of ~~husband and wife~~ the spouses or parent and child  
30 may not be invoked in a proceeding under this Subpart.

## IV. Code of Civil Procedure Revision

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### C.C.P. Art. 3947. Name confirmation

A. Marriage does not change the name of either spouse. However, a married person may use the surname of either or both spouses as a surname.

B. The court may enter an order confirming the name of a ~~married woman~~ spouse in a divorce proceeding, whether ~~she~~ he is the plaintiff or defendant, which confirmation shall be limited to the name which ~~she~~ he was using at the time of the marriage, or the name of ~~her~~ his minor children, or ~~her maiden name~~ his surname on the birth certificate, without complying with the provisions of R.S. 13:4751 through 4755. This Article shall not be construed to allow ~~her~~ an amendment to ~~amend her~~ a birth certificate with the Bureau of Vital Statistics.