

## Spousal Support

There are two types of spousal support in Louisiana: interim spousal support and final periodic spousal support. Interim spousal support may be awarded to a spouse who does not have sufficient income for his/her maintenance pending the divorce. It is designed to maintain the status quo in both spouses' living conditions, to the extent that this can be accomplished, and it may last up to six months after the date of the divorce.

Final spousal support may be awarded to an ex-spouse who has been found to be free from fault in the breakup of the marriage. It can be awarded after a determination that the spouse requesting the support has a need and the other spouse has the means to provide for that need.

## Property Rights

Another ancillary matter which may be addressed either in the divorce proceeding or thereafter is the use and occupancy of the family home, use of car(s) or the use of other community assets.

Unless the parties before or during the marriage entered into a matrimonial agreement excluding or modifying the legal regime or community property, generally speaking, everything acquired by the spouses while married and residing in Louisiana is owned equally by them. Property owned before marriage, individual gifts during marriage and inherited property are considered separate property and generally not subject to division when the community regime terminates.

Community property is that which is acquired during the marriage through the effort, skill or industry of either spouse, such as wages and employee benefit plans, property donated to the spouses jointly and other property not classified as separate. If the parties cannot agree on what assets and liabilities are to be partitioned to each party, or what values are to be assigned, the court will determine values and then divide all of the assets and liabilities so each spouse received one-half of the net value of the joint estate.

## Other Information and Procedures

Most courts have special procedural rules concerning divorce and ancillary matters. A copy of these special rules should be obtained from the applicable clerk of court. These rules may only supplement, rather than replace, the requirements set forth in the state's statutes.

## Costs

All courts have a set schedule of fees and costs for filing, service of pleadings and other charges. If a party to a lawsuit cannot afford filing fees, etc., the party may qualify to file in forma pauperis at either minimal or no cost. Special forms are normally required to obtain this status.

A person may also qualify to obtain the services of a legal aid organization at minimal or no cost. The names, addresses and phone numbers of these organizations can be obtained from the Louisiana State Bar Association.

*This brochure, prepared by the Public Information Committee of the Louisiana State Bar Association, is issued to inform and provide general information, not to advise. If you have a specific legal problem, you should not try to apply or interpret the law without the aid of an attorney who knows the facts because the facts may change the application of the law.*



For further information, call or write to:

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**DIVORCE**  
*Who gets custody?  
Who pays support?*

## Divorce in Louisiana

Because of the prevalence of marital breakdown in today's society, almost everyone has been or could be affected by spouses physically separating and seeking a divorce. Terminating a marriage may involve custody, spousal/child support and property rights. The issues may be simple and easily resolved by the parties, with or without professional assistance, or may be more complicated, necessitating professional assistance.

This brochure provides a very basic overview of Louisiana law concerning termination of marriages and the various areas where serious legal issues may arise. Every citizen is guaranteed the right to self-representation but, because the legal determinations will have long-term effects on the spouses and family, legal representation is recommended.

## Termination of Marriages

Marriages are terminated in Louisiana in four ways:

- ▶ death of either spouse;
- ▶ divorce;
- ▶ declaration of nullity of the marriage; or
- ▶ presumption of death.

It should be noted that Louisiana no longer has an action for legal separation, effective January 1, 1991, except in the case of a covenant marriage.

## Divorce

There are three grounds for divorce in Louisiana:

### 1) Living Separate and Apart

The requisite time periods necessary for living separate and apart before obtaining a judgment of divorce are as follows: 180 days in cases where there are no minor children of the marriage; and 365 days where there are minor children of the marriage. Special rules may apply when the parties have contracted a covenant marriage or when there has been a finding of physical or sexual abuse. The action can be defeated if the parties reconcile by resuming to live together with a mutual intent to resume the marriage. Certain procedural formalities are required.

a. Living separate and apart before filing of petition

If the parties have already lived separate and apart for the requisite time period, continuously and

without reconciliation, either spouse may file for the divorce.

b. Living separate and apart after filing of a petition

Once a Petition for Divorce has been filed and the parties remain separate and apart, either spouse may ask the court to finalize a divorce after the requisite 180 or 365 days have passed following either service of the petition, written waiver of said service, or physical separation (whichever is later).

c. Covenant marriage

A couple may contract a covenant marriage after they obtain counseling, declare such an intent on their marriage license and execute an intent to contract a covenant marriage. A couple must seek counseling and may obtain a judgment of divorce only upon proof of the following:

- adultery by the other spouse;
- commission of a felony by the other spouse;
- abandonment of the other spouse for a period of a year;
- physical or sexual abuse;
- living separate and apart for two years; or
- living separate and apart for one year after the date of the judgment of separation from room and board.

2) Adultery

Adultery on the part of the other spouse is grounds for an immediate divorce; there is no required waiting period. The burden of proof is on the party alleging the adultery and is very strict. Corroborative testimony is required and it must be proven that the other spouse engaged in sexual relations with another person.

3) Conviction of a Felony

If the other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor, a petition for divorce can be filed. The facts of conviction and sentencing are the only proof requirements; appeals and actual serving of the sentence are immaterial.

## Declaration of Nullity

A marriage can be judicially declared null and void when the consent of one of the spouses was not freely given at the time of the marriage. The right to ask for this declaration of nullity is lost if the complaining spouse subsequently "confirmed" the marriage.

A marriage is absolutely null and considered as having never occurred (and, therefore, cannot be "confirmed") if:

- ▶ the marriage was contracted without a ceremony;
- ▶ stand-ins were used (procuration);
- ▶ it was a bigamous marriage;
- ▶ it is between people of the same sex; or
- ▶ it is precluded by a familial relationship.

Because these types of marriages are absolutely null, there is no need for a judicial declaration.

## Presumption of Death

If a spouse disappears under circumstances that make death seem certain, although the body has not been found, a proceeding can be filed to have the death recognized by law, thereby terminating the marriage. If the spouse is on active duty in one of the United States' armed forces and has been reported missing under circumstances causing the armed services to accept the presumption of death, a Louisiana court may make a declaration of death.

## Custody/Visitation

In the divorce proceeding or thereafter, either spouse may request a determination of custody, visitation, child support and property rights. Custody is often the most crucial and emotionally charged issue during or after the divorce. Professional mental health counseling may be beneficial to both the children and parents in learning how to deal with this issue.

While "joint custody" is presumed to be in the best interest of the children, this legal presumption can be rebutted by either parent proving by clear and convincing evidence that sole custody is in the children's best interest. When determining the best interest of the child, the court shall consider all factors it deems relevant including, but not limited to:

- ▶ relationship between the child and the parents;
- ▶ which parent has historically taken care of the child;
- ▶ parent's ability to provide for and give guidance;
- ▶ parent's ability to encourage a continuing relationship between the child and the other parent;

- ▶ parent's moral, mental and physical health; or
- ▶ child's wishes if they are of sufficient age.

Subsequent changes to an initial setting of custody may be made but the burden of proof necessary to do so depends upon the means by which the initial setting was made. If the parties came to an agreement and executed a judgment without the taking of testimony or a decision by a judge, then a material change of circumstances must be shown and that the proposed change is in the child's best interest. If the initial custody setting was determined by a judge after the taking of testimony, the burden of proof is much higher.

Under extraordinary circumstances, grandparents and siblings may be granted visitation rights if it is found to be in the child's best interest.

## Relocation of the Child

A parent seeking to relocate with a child must give notice to the other parent and obtain either court approval following a contradictory hearing or get written consent from the other parent. This requirement exists in cases of both sole and joint custody. Noncompliance with these requirements may have serious repercussions. An exception may apply in cases where there has been a finding of a history of family violence.

## Child Support

Typically, the parent not having custody (or primary physical custody in joint custody situations) will be required to contribute to the support of the minor children. The amount of child support is determined by reference to the Child Support Guidelines which order mandatory support at stated levels. A trial judge can deviate from the guidelines but must give specific oral or written reasons why the deviation is in the child's best interest. In addition, child support can include each parent's respective portions of medical insurance, medical costs not covered by insurance, private school tuition and extracurricular expenses. Child support amounts may be adjusted by the court if one party is able to show that there has been a material change in circumstances since the last setting.