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
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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
APPENDIX

I. General Civil Code Article Revisions

TITLE IV - HUSBAND AND WIFE SPOUSES

CHAPTER I - MARRIAGE: GENERAL PRINCIPLES

Art. 86. Marriage; definition

Marriage is a legal relationship between a man and a woman two natural persons that is created by civil contract. The relationship and the contract are subject to special rules prescribed by law.

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

Art. 87. Contract of marriage; requirements

The requirements for the contract of marriage are:

The absence of legal impediment.

A marriage ceremony.

The free consent of the parties to take each other as husband and wife spouses, expressed at the ceremony.

Reporter's Note: This article has been modified to comply with the mandate of the United States Supreme Court that same-sex couples be permitted to exercise the right to marry in Louisiana and that same-sex marriages validly contracted elsewhere be given full faith and credit in Louisiana. Obergefell v. Hodges, 135 S.Ct. 2584 (2015). See also Constanza v. Caldwell, 167 So.3d 619 (La. 2015).
Art. 89. Impediment of same sex

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

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

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

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

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

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

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

TITLE VII. PARENT AND CHILD

CHAPTER 5. PARENTAL AUTHORITY OF MARRIED PERSONS

SECTION 1. GENERAL PRINCIPLES OF PARENTAL AUTHORITY

Art. 221. Authority of married parents

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

Reporter's Note: "Parent," as used in this article, is defined in La. Civ. Code Ann.,
art. 3506(9) (Rev. 2016).

CHAPTER 6. OBLIGATIONS OF CHILDREN AND PARENTS AND OTHER
ASCENDANTS

Art. 236. Filial honor and respect

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

Reporter's Note: "Parent," as used in this article, is defined in La. Civ. Code Ann.,
art. 3506(9) (Rev. 2016).

TITLE VIII--OF MINORS, OF THEIR TUTORSHIP

AND EMANCIPATION

CHAPTER 1--OF TUTORSHIP

SECTION 1--GENERAL DISPOSITIONS

Art. 246. Occasion for tutorship.

The minor not emancipated is placed under the authority of a tutor after the
dissolution of the marriage of his father and mother parents or the separation from bed and
board of either one of them from the other.
SECTION 3--OF THE TUTORSHIP BY WILL

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

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

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

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

Art. 259. Option of acceptance of tutorship.

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

But if he refuses the tutorship, he loses in that case all the legacies and other advantages, which the person who appointed him may have made in his favor under a persuasion that he would accept this trust.
SECTION 4--OF THE TUTORSHIP BY THE EFFECT OF THE LAW

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

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

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

SECTION 5--OF DATIVE TUTORSHIP

Art. 270. Occasion for tutorship.

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

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

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

TITLE V. OBLIGATIONS ARISING WITHOUT AGREEMENT

CHAPTER 3. OF OFFENSES AND QUASI OFFENSES
Art. 2315.1. Survival action

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

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

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

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

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

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

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

D. As used in this Article, the words "child", "brother", "sister", "father", "mother", "grandfather", and "grandmother" "parents", and "grandparents", include a child, brother, sister, father, mother, grandfather, and grandmother "parent", and "grandparent", by adoption, respectively.
E. For purposes of this Article, a father or mother parent who has abandoned the deceased during his minority is deemed not to have survived him.

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

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

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

The same responsibility attaches to the tutors of minors.

**Reporter's Notes:** (a) "Parent," as used in this article, is defined in LA. CIV. CODE ANN. art. 3506(9) (Rev. 2016).
(b) It is possible that only one parent will be held vicariously liable for a child’s torts under this Article. In *R.P. v. W. Feliciana Parish Sch. Bd.*, 2014 WL 4667589 (La. App. 1st Cir. 2014), the First Circuit held that a divorced father was not vicariously liable for the damages caused by his rapist son. Father and son had not resided together for many years, and mother was awarded son’s custody at the time of the parents’ divorce.

**TITLE VI. MATRIMONIAL REGIMES**

**Art. 2333. Minors.**

Unless fully emancipated, a minor may not enter into a matrimonial agreement without the written concurrence of his father and mother both parents, or of the parent having his legal custody, or of the tutor of his person.
**Reporter's Notes:** (a) "Parent," as used in this article, is defined in LA. CIV. CODE ANN. art. 3506(9) (Rev. 2016).
(b) If the minor's parents are married, the consent of both parents is required.

**TITLE XXV. OF THE SIGNIFICATION OF SUNDRY TERMS OF LAW EMPLOYED IN THIS CODE**

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

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

* * *

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

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

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

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

* * *

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

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

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

BOOK IV. CONFLICT OF LAWS

TITLE II. STATUS

Art. 3520. Marriage

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

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

Reporters Note: This article has been modified to comply with the mandate of the United States Supreme Court that same-sex couples be permitted to exercise the right to marry in Louisiana and that same-sex marriages validly contracted elsewhere be given full faith and credit in Louisiana. Obergefell v. Hodges, 135 S.Ct. 2584 (2015). See also Constanza v. Catchwell, 167 So.3d 619 (La. 2015).
II. Community Property Revisions

TITLE VI. MATRIMONIAL REGIMES

CHAPTER 1. GENERAL PRINCIPLES

Art. 2329. Exclusion or modification of matrimonial regime.

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

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

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

Reporter’s Note: New Revised Statutes §9:2831 (2016) extends the one-year grace
period afforded to new Louisiana domiciliaries to same-sex couples married on or before
domiciliaries, those couples will now be afforded a year to become acquainted with the
newly applicable community property regime, and to opt out of it without court approval
within a relatively short window, if they so desire.

CODE TITLE VI--MATRIMONIAL REGIMES

CHAPTER 2. MATRIMONIAL REGIMES

§9:2831. Matrimonial agreement without court approval

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

Reporter’s Notes: (a) New Revised Statutes §9:2831 (2016) extends the one-year
grace period afforded to new Louisiana domiciliaries to same-sex couples married on or
before June 26, 2015, the date of Obergefell v. Hodges, 135 S. Ct. 2584 (2015). Much like
new domiciliaries, those couples will now be afforded a year to become acquainted with the
newly applicable community property regime, and to opt out of it without court approval
within a relatively short window, if they so desire.
(b) The passage of this Act is not intended to affect the validity of contracts created
between same-sex couples before June 26, 2015.

35:11. Marital status of parties to be given

A. Whenever notaries pass any acts they shall give the marital status of all parties to
the act, viz., if either or any party or parties are men, they shall be described as single,
mated, or widower. If married or widower, the Christian and family name of wife shall be-
given. If either or any party or parties are women, they shall be described as single, married-
or widow. If married or widow, their Christian and family name shall be given, adding that-
she is the wife of or widow of the husband’s name. Parties shall be described as single,
mated, or widowed. If married or widowed, the full name of each party, including any
maiden name or other surname, shall be listed, along with the name of the party’s spouse.

*   *   *

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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 1. 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:

<table>
<thead>
<tr>
<th>GROOM Applicant 1</th>
<th>BRIDE Applicant 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Last Name</strong></td>
<td><strong>Last Name</strong></td>
</tr>
<tr>
<td><strong>Surname</strong></td>
<td><strong>Surname</strong></td>
</tr>
<tr>
<td><strong>of Groom</strong></td>
<td><strong>of Bride</strong></td>
</tr>
<tr>
<td><strong>Applicant 1</strong></td>
<td><strong>Applicant 2</strong></td>
</tr>
<tr>
<td><strong>First Name</strong></td>
<td><strong>First Name</strong></td>
</tr>
<tr>
<td><strong>of Groom</strong></td>
<td><strong>of Bride</strong></td>
</tr>
<tr>
<td><strong>Applicant 1</strong></td>
<td><strong>Applicant 2</strong></td>
</tr>
<tr>
<td><strong>Middle/Second Name</strong></td>
<td><strong>Middle/Second Name</strong></td>
</tr>
<tr>
<td><strong>of Groom</strong></td>
<td><strong>of Bride</strong></td>
</tr>
<tr>
<td><strong>Applicant 1</strong></td>
<td><strong>Applicant 2</strong></td>
</tr>
<tr>
<td><strong>Surname on Birth Certificate of Applicant 1</strong></td>
<td><strong>Maiden Name of Bride Surname on Birth Certificate of Applicant 2</strong></td>
</tr>
</tbody>
</table>

Date of Application: ________________________ (Parish), State of Louisiana

Hour of Application:

Address

Is residence inside city limits?

☐ Yes ☐ No

Parish/County

State

Race/Ethnicity

Date of Birth (month-day-year)

State of Birth

Father's Parent's Full Birth Name

State of Birth

Mother's Parent's Maiden Full Birth Name

State of Birth

16
<table>
<thead>
<tr>
<th>Address</th>
<th>Is residence inside city limits?</th>
<th>Parish/County</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>□ Yes □ No</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Date of Birth (month-day-year)</th>
<th>State of Birth</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Father's Parent's Full Birth Name</th>
<th>State of Birth</th>
<th>Mother's Parent's Maiden Full Birth Name</th>
<th>State of Birth</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Covenant Marriage</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
<td>If yes, complete the following:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>We, ___________________ and ___________________</td>
<td>do hereby declare our intent to contract a Covenant Marriage and, accordingly, have executed a declaration of intent attached hereto.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Groom-Applicant 1</th>
<th>Has the groom Applicant 1 been formerly married?</th>
<th>Are you Has Applicant 1 been divorced?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>________ How many times?</td>
<td>________?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bride-Applicant 2</th>
<th>Has the bride Applicant 2 been formerly married?</th>
<th>Are you Has Applicant 2 been divorced?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>________ How many times?</td>
<td>________?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SSN</th>
<th>Groom's Applicant 1's Social Security Number</th>
<th>Bride's Applicant 2's Social Security Number</th>
</tr>
</thead>
</table>

I ______________________ (print name of groom) 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 ______ (1st, 2nd, 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).

Signature of Groom Applicant 1

Sworn to and subscribed before me this ______ day of __________________, 20__.

__________________________ Notary Public/Deputy Clerk/Deputy Registrar

I ______________________ (print name of bride) 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 ______ (1st, 2nd, etc. number) marriage but that I am not currently married to anyone else, and that I
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).

Signature of Bride Applicant 2

Sworn to and subscribed before me this ______ day of __________________, 20__.

________________________ Notary Public/Deputy Clerk/Deputy Registrar

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

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

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

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

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

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

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

E. The failure of the application to contain the signatures of both parties shall not affect
the validity of the covenant marriage if the declaration of intent and accompanying affidavit have
been signed by the parties.
9:273. Covenant marriage; contents of declaration of intent

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

   (1) 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 two natural persons who agree to live together as husband and wife spouses 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 spouses for the rest of our lives."

   (2)(a) 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, which counseling shall include a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties, and that they have received and read the informational pamphlet developed and promulgated by the office of the attorney general entitled "Covenant Marriage Act" which provides a full explanation of the terms and conditions of a covenant marriage.

   (b) 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.

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

B. The declaration shall contain two separate documents, the recitation and the
affidavit, the latter of which shall include the attestation 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
as provided in R.S. 9:272(B).

9:273.1. Declaration of intent; form

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

"DECLARATION OF INTENT

We do solemnly declare that marriage is a covenant between two natural persons who agree to live together as husband and wife spouses 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 spouses for the rest of our lives."

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

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 the 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 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 prospective spouse)

(Name of prospective 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 obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if marital difficulties arise.

_________________________ Counselor
9:275. Covenant marriage; applicability to already married couples

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

B.(1) This declaration of intent in the form and containing the contents required by Subsection C of this Section 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 this state, a copy of the foreign marriage certificate, which need not be certified, with the declaration of intent attached thereto, shall be filed with the officer who issues marriage licenses in the parish in which the couple is domiciled. The officer shall make a notation on the marriage certificate of the declaration of intent of a covenant marriage and attach a copy of the declaration to the certificate.

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

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

(a) 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 two natural persons who agree to live together as husband and wife spouses 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 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 Marriage, and we renew our promise to love, honor, and care for one another as husband and wife spouses for the rest of our lives."

(b)(i) An affidavit by the parties that they have discussed their intent to designate their marriage as a covenant marriage with a priest, minister, rabbi, clerk of the Religious
Society of Friends, any clergymen of any religious sect, or a professional marriage counselor, which included a discussion of the obligation to seek marital counseling in times of marital difficulties and that they have received and read the informational pamphlet developed and promulgated by the office of the attorney general entitled "Covenant Marriage Act" which provides a full explanation of the terms and conditions of a Covenant Marriage.

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

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

(2) The declaration shall contain two separate documents, the recitation and the affidavit, the latter of which shall include the attestation 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 as provided in Subsection B of this Section.

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

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

"DECLARATION OF INTENT

We do solemnly declare that marriage is a covenant between two natural persons 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."

B. The following is the suggested form of the affidavit which may be used by the parties, notary, and counselor:
STATE OF LOUISIANA
PARISH OF ________________

BE IT KNOWN THAT on this ___ day of ______, ________, before me the
undersigned notary, personally came and appeared:

____________________________________
(In 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
obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if
marital difficulties arise.

_________________________________________
Counselor

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

A.(1) Separation from bed and board in a covenant marriage does not dissolve the
bond of matrimony, since the separated husband-and-wife spouses 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.

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

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

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

(3) Reestablishment of the community under the provisions of this Section shall be
effective toward third persons only upon filing notice of the reestablishment for registry in
accordance with the provisions of Civil Code Article 2332. The reestablishment of the
community shall not prejudice the rights of third persons validly acquired prior to filing
notice of the reestablishment nor shall it affect a prior community property partition between
the spouses.
9:2729. Presumption of uniform intent and ownership

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

13:1832. Hearing and order

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

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

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

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

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

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

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

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

D. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife the spouses or parent and child may not be invoked in a proceeding under this Subpart.
IV. Code of Civil Procedure Revision

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.