

Family law cases involving children are not simply about winning and losing, they are about doing what is in the best interest of the children. It is in the family's best interest to work hard to reach an agreement about custody. Fights over custody inflict emotional damage on the children and the parents, which is difficult to repair.

#### DECLARATION OF NULLITY

A marriage can be declared null and void when one of the spouses did not freely consent to the marriage. This right is lost if the complaining spouse later "confirmed" the marriage. Some marriages are absolutely null, as if they never occurred, if: there was no ceremony; stand-ins were used; it is a bigamous marriage; it is precluded by familial relationship.

#### IF YOU ARE SERVED WITH LEGAL PAPERS YOU SHOULD:

- Note any hearing dates set by the court;
- Realize that you have a limited time in which to file an answer or take action;
- Contact an attorney;
- Immediately tell the attorney or receptionist that you have been served with legal papers and there is a court date coming up.

#### GETTING LEGAL HELP

If you feel you cannot afford an attorney, free legal assistance may be available by contacting your nearest office by phone or by visiting [www.la-law.org](http://www.la-law.org) for more information.

**Shreveport**  
720 Travis Street  
Shreveport, LA 71101  
(800) 826-9265

**Natchitoches**  
134 St. Denis Street  
Natchitoches, LA 71457  
(800) 960-9109

**Lake Charles**  
2911 Ryan Street  
Lake Charles, LA 70601  
(877) 256-0639

**Monroe**  
7016 Cameron Street  
Monroe, LA 71201  
(800) 259-6591

**Alexandria**  
1808 Jackson Street  
Alexandria, LA 71301  
(800) 256-4343

**Lafayette**  
1020 Surrey Street  
Lafayette, LA 70501  
(800) 256-1175

#### Battered Women's Shelters

SNAP, New Iberia (337) 367-7627  
Faith House, Lafayette (337) 232-8954  
(877) 430-SAFE  
Faith House, Abbeville (337) 893-3033  
Faith House, Opelousas (337) 948-5974  
Faith House, Crowley (337) 788-3092  
Faith House, Ville Platte (337) 365-8504  
Chez Hope, Franklin (337) 828-4200  
(800) 331-5303  
New Start, St. Martinville (337) 394-8559  
LA Domestic Violence Hotline  
(888) 411-1333  
Turning Point, Alexandria (318) 442-7196  
June Jenkin's Women's Shelter, DeRidder  
(337) 462-6504  
(800) 54-ABUSE  
Calcasieu Battered Women's Program  
(337) 436-4552  
(800) 233-8066  
Cameron Parish Outreach Program  
(337) 515-9295

**LA Support Enforcement Services**  
(888) LAHELP-U

Funding for the publication of this brochure was provided by:



*This brochure, prepared by Acadiana Legal Services, 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 a trained expert who knows the facts because the facts may change the application of the law.*

# What You Should Know About Divorce And Custody



# DIVORCE

A person who seeks to end his/her marriage by way of divorce, has to first determine which type of divorce is applicable. There are five (5) ways to seek a divorce. These are:

One party having voluntarily lived separate and apart continuously for the necessary period of time required by law at the time the petition is filed.

- If you do not have minor children of the marriage, 180 days are required;
- If you have minor children of the marriage, 365 days are required;
- If you have minor children of the marriage and a domestic violence protective order has been issued against the other spouse, 180 days are required; Or if the Court finds after a special hearing that the other spouse has committed domestic violence, 180 days are required;

One party having voluntarily lived separate and apart continuously for the necessary period of time (see days above) required by law **after the date** that the petition has been served or service has been waived by the other spouse;

Adultery;

The other spouse has committed a felony and has been sentenced to death or prison at hard labor;

In accordance with the terms and conditions of a Covenant Marriage.

**NOTE:** While marriage does not change one's maiden or legal name, changing government ID cards that have your married name, may require a court order.

# CUSTODY

The law recognizes (with some exceptions) that it is in a child's best interest that their parents enjoy joint custody unless it can be shown by clear and convincing evidence that it is not warranted. Parents are free to enter into joint custody agreements as to what they think is best for their children. Most joint custody agreements have a designated parent who is referred to as the domiciliary parent and with whom the child will primarily live. Unless it is not in the child's best interest, the other parent is allowed frequent and continuing contact. It is often best to specify the visitation dates in any agreement to avoid future conflicts.

Joint custody requires the parents to work with one another in decision-making and to exchange information about the child.

If both parents want sole custody, seek restricted visitation, or desire to be the domiciliary parent, the issue of custody becomes contested. The court will have many factors to consider in deciding what is best for the minor child. Some of these factors are:

- §The love and affection and other emotional ties between parent and child;
- §The ability of the parent to give the child love, affection, guidance, and the willingness to support a relationship between the child and the other parent;
- §The ability of the parent to provide the child with food, clothing, medical care, and other material needs;
- §The distance between the respective residences of the parties;
- §The length of time the child has lived with the parent and the desirability of maintaining that environment;
- The moral fitness of the parent and its effects on the child (e.g. drugs, lifestyle, domestic violence);

- The mental and physical health of the parent (e.g. bi-polar, suicidal);
- The home, school, and community history of the child (e.g. doctors records);
- The wishes of the child (especially teenage children); and
- The previous responsibility for the care and rearing of the child.

**NOTE:** As a general rule, contested changes to existing custody judgments require proof that either there has been a material change in circumstances after the prior judgment was rendered or that continuation of the existing custody judgment is damaging to the child. Documentation and proof of such changes are important as courts recognize that continued litigation is bad for the child.

If you and your spouse quit living together, the law gives each of you an equal right to the children until a court grants an order of custody. If the children are living with you and your spouse threatens to take them out of the parish or state where you live, or poses a threat to the safety of the children, it may be in your best interest and your children's best interest to refuse to allow the children to visit with that parent unless a court order has been obtained that establishes legal custody. Be prepared to justify such an action.

If you are not married and the father does not have his name on the child's birth certificate, his ability to exercise his rights absent a Court order, is somewhat limited.

Generally, the basic rules regarding custody awards between married parents apply to custody of children of parents who are not married.