

La. R.S. Title 9, Book 1, Code Title 5, Ch. 1, Pt. 3, Subpt. E Note

Subpart E. RELOCATING A CHILD'S RESIDENCE

§ 9:355.1. Definitions.

As used in this Subpart:

- (1) "Principal residence of a child" means:
 - (a) The location designated by a court to be the primary residence of the child.
 - (b) In the absence of a court order, the location at which the parties have expressly agreed that the child will primarily reside.
 - (c) In the absence of a court order or an express agreement, the location, if any, at which the child has spent the majority of time during the prior six months.
- (2) "Relocation" means a change in the principal residence of a child for a period of sixty days or more, but does not include a temporary absence from the principal residence.

§ 9:355.2. Applicability.

- A. This Subpart shall apply to an order regarding custody of or visitation with a child issued:
 - (1) On or after August 15, 1997.
 - (2) Before August 15, 1997, if the existing custody order does not expressly govern the relocation of the child.
- B. This Subpart shall apply to a proposed relocation when any of the following exist:
 - (1) There is intent to establish the principal residence of a child at any location outside the state.
 - (2) There is no court order awarding custody and there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than seventy-five miles from the domicile of the other parent.
 - (3) There is a court order awarding custody and there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than seventy-five miles from the principal residence of the child at the time that the most recent custody decree was rendered.
 - (4) If either no principal residence of a child has been designated by the court or the parties have equal physical custody, and there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than seventy-five miles from the domicile of a person entitled to object to relocation.
- C. To the extent that this Subpart conflicts with an existing custody order, this Subpart shall not apply to the terms of that order that govern relocation.
- D. This Subpart shall not apply when either of the following circumstances exist:
 - (1) The persons required to give notice of and the persons entitled to object to a proposed relocation have entered into an express written agreement for the relocation of the principal residence of the child.

- (2) There is in effect an order issued pursuant to Domestic Abuse Assistance, R.S. 46:2131, et seq., Protection from Dating Violence, R.S. 46:2151, Part II of Chapter 28 of Title 46 or the Post-Separation Family Violence Relief Act or Injunctions and Incidental Orders, Parts IV and V of Chapter 1 of Code Title V of Code Book I of Title 9, except R.S. 9:372.1, all of the Louisiana Revised Statutes of 1950, Domestic Abuse Assistance, Chapter 8 of Title XV of the Children's Code, or any other restraining order, preliminary injunction, permanent injunction, or any protective order prohibiting a person from harming or going near or in the proximity of the other person.

§ 9:355.3. Persons authorized to propose relocation of principal residence of a child.

The following persons are authorized to propose relocation of the principal residence of a child by complying with the notice requirements of this Subpart:

- (1) A person designated in a current court decree as the sole custodian.
- (2) A person designated in a current court decree as a domiciliary parent in a joint custody arrangement.
- (3) A person sharing equal physical custody under a current court decree.
- (4) A person sharing equal parental authority under Chapter 5 of Title 11 VII of Book I of the Louisiana Civil Code.
- (5) A person who is the natural tutor of a child born outside of marriage.

§ 9:355.4. Notice of proposed relocation of child; court authorization to relocate.

- A. A person proposing relocation of a child's principal residence shall notify any person recognized as a parent and any other person awarded custody or visitation under a court decree as required by R.S. 9:355.5.
- B. If multiple persons have equal physical custody of a child under a court decree, the person proposing relocation shall notify the other of a proposed relocation of the principal residence of the child as required by R.S. 9:355.5, and before relocation shall obtain either court authorization to relocate, after a contradictory hearing, or the express written consent of the other person.

§ 9:355.5. Mailing notice of proposed relocation address.

- A. Notice of a proposed relocation of the principal residence of a child shall be given by registered or certified mail, return receipt requested, or delivered by commercial courier as defined in R.S. 13:3204(D), to the last known address of the person entitled to notice under R.S. 9:355.4 no later than any of the following:
 - (1) The sixtieth day before the date of the proposed relocation.
 - (2) The tenth day after the date that the person proposing relocation knows the information required to be furnished by Subsection B of this Section, if the person did not know and could not reasonably have known the information in sufficient time to provide the sixty-day notice, and it is not reasonably possible to extend the time for relocation of the child.
- B. The following information shall be included with the notice of intended relocation of the child:
 - (1) The current mailing address of the person proposing relocation.
 - (2) The intended new residence, including the specific physical address, if known.
 - (3) The intended new mailing address, if not the same.
 - (4) The home and cellular telephone numbers of the person proposing relocation, if known.
 - (5) The date of the proposed relocation.

- (6) A brief statement of the specific reasons for the proposed relocation of a child.
 - (7) A proposal for a revised schedule of physical custody or visitation with the child.
 - (8) A statement that the person entitled to object shall make any objection to the proposed relocation in writing by registered or certified mail, return receipt requested, within thirty days of receipt of the notice and should seek legal advice immediately.
- C. A person required to give notice of a proposed relocation shall have a continuing duty to provide the information required by this Section as that information becomes known.

§ 9:355.6. Failure to give notice of relocation.

The court may consider a failure to provide notice of a proposed relocation of a child as:

- (1) A factor in making its determination regarding the relocation of a child.
- (2) A basis for ordering the return of the child if the relocation has taken place without notice or court authorization.
- (3) Sufficient cause to order the person proposing relocation to pay reasonable expenses incurred by the person objecting to the relocation.

§ 9:355.7. Objection to relocation of child.

Except for a person with equal physical custody of a child under a court decree, a person who is entitled to object to a proposed relocation of the principal residence of a child shall make any objection within thirty days after receipt of the notice. The objection shall be made in writing by registered or certified mail, return receipt requested, or delivered by commercial courier as defined in R.S. 13:3204(D), to the mailing address provided for the person proposing relocation in the notice of proposed relocation.

A person with equal physical custody of a child under a court decree need not make an objection under this Section. The rights of persons with equal physical custody are governed by R.S. 9:355.4(B).

§ 9:355.8. Limitation on objection by non-parents.

A non-parent may object to the relocation only if he has been awarded custody. A non-parent who has been awarded visitation may initiate a proceeding to obtain a revised visitation schedule.

§ 9:355.9. Effect of objection or failure to object to notice of proposed relocation.

Except as otherwise provided by R.S. 9:355.4(B), the person required to give notice may relocate the principal residence of a child after providing the required notice unless a person entitled to object does so in compliance with R.S. 9:355.7.

If a written objection is sent in compliance with R.S. 9:355.7, the person proposing relocation of the principal residence of the child shall initiate within thirty days after receiving the objection a summary proceeding to obtain court approval to relocate. Court approval to relocate shall be granted only after a contradictory hearing.

§ 9:355.10. Burden of proof.

The person proposing relocation has the burden of proof that the proposed relocation is made in good faith and is in the best interest of the child.

§ 9:355.11. Court authorization to relocate.

If timely objection to a proposed relocation is made by a person entitled to object, the person proposing relocation shall not, absent express written consent of the objecting person, relocate the child pending resolution of the dispute by final order of the court, unless the person proposing relocation obtains a temporary order pursuant to R.S. 9:355.12.

§ 9:355.12. Temporary order.

- A. The court may grant a temporary order allowing relocation.
- B. The court, upon the request of the moving party, may hold an expedited preliminary hearing on the proposed relocation but shall not grant authorization to relocate the child on an ex parte basis.
- C. If the court issues a temporary order authorizing relocation, the court shall not give undue weight to the temporary relocation as a factor in reaching its final determination.
- D. If temporary relocation of a child is permitted, the court may require the person relocating the child to provide reasonable security guaranteeing that the court-ordered physical custody or visitation with the child will not be interrupted or interfered with or that the relocating person will return the child if court authorization for the relocation is denied at trial.
- E. An order not in compliance with the provisions of this Section is not enforceable and is null and void.

§ 9:355.13. Priority for trial.

A trial on the proposed relocation shall be assigned within sixty days after the filing of the motion to obtain court approval to relocate.

§ 9:355.14. Factors to determine contested relocation.

- A. In reaching its decision regarding a proposed relocation, the court shall consider all relevant factors in determining whether relocation is in the best interest of the child, including the following:
 - (1) The nature, quality, extent of involvement, and duration of the relationship of the child with the person proposing relocation and with the non-relocating person, siblings, and other significant persons in the child's life.
 - (2) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development.
 - (3) The feasibility of preserving a good relationship between the non-relocating person and the child through suitable physical custody or visitation arrangements, considering the logistics and financial circumstances of the parties.
 - (4) The child's views about the proposed relocation, taking into consideration the age and maturity of the child.
 - (5) Whether there is an established pattern of conduct by either the person seeking or the person opposing the relocation, either to promote or thwart the relationship of the child and the other party.
 - (6) How the relocation of the child will affect the general quality of life for the child, including but not limited to financial or emotional benefit and educational opportunity.
 - (7) The reasons of each person for seeking or opposing the relocation.
 - (8) The current employment and economic circumstances of each person and how the proposed relocation may affect the circumstances of the child.

- (9) The extent to which the objecting person has fulfilled his financial obligations to the person seeking relocation, including child support, spousal support, and community property, and alimentary obligations.
- (10) The feasibility of a relocation by the objecting person.
- (11) Any history of substance abuse, harassment, or violence by either the person seeking or the person opposing relocation, including a consideration of the severity of the conduct and the failure or success of any attempts at rehabilitation.
- (12) Any other factors affecting the best interest of the child.

- B. The court may not consider whether the person seeking relocation of the child may relocate without the child if relocation is denied or whether the person opposing relocation may also relocate if relocation is allowed.

§ 9:355.15. Mental health expert; appointment.

The court, on motion of either party or on its own motion, may appoint an independent mental health expert to render a report to assist the court in determining the best interest of the child.

§ 9:355.16. Application of factors at initial hearing.

If the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child, the court shall consider also the factors set forth in R.S. 9:355.14 in making its initial determination.

§ 9:355.17. Modification of custody.

Providing notice of a proposed relocation does not constitute a change of circumstance warranting a change of custody. Relocating without prior notice if there is a court order awarding custody or relocating in violation of a court order may constitute a change of circumstances warranting a modification of custody.

Any change in the principal residence of a child, including one not meeting the threshold distance set out in R.S. 9:355.2, may constitute a change of circumstances warranting a modification of custody.

§ 9:355.18. Posting security.

If relocation of a child is permitted, the court may require the person relocating the child to provide reasonable security guaranteeing that the court-ordered physical custody or visitation with the child will not be interrupted or interfered with by the relocating party.

§ 9:355.19. Sanctions for unwarranted or frivolous proposal to relocate child or objection to relocation.

- A. After notice and a reasonable opportunity to respond, the court may impose a sanction on a person proposing or objecting to a proposed relocation of a child if it determines that the proposal or objection was made:
 - (1) For the purpose of harassing the other person or causing unnecessary delay or needless increase in the cost of litigation.
 - (2) Without a basis in existing law or on the basis of a frivolous argument.
 - (3) In violation of Code of Civil Procedure Article 863(B).
- B. A sanction imposed under this Section shall be limited to what is sufficient to deter repetition of such conduct. The sanction may consist of reasonable expenses and attorney fees incurred as a direct result of the conduct.