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Common law unions

If you are sharing your life with another person without being married or in a civil union, there are ways to protect yourself and ensure your relationship is equitable.

Choosing to live together without being married

A common law union, also known as a de facto union, is a conjugal lifestyle. It occurs when two people live together for some time and present themselves as a couple, without being legally married or in a civil union. People who live in a common law union are known as “**common law spouses**.”

Even after living together for many years, common law spouses do not have the same rights and obligations as couples who have decided to get married or enter into a civil union.

Rights and obligations of common law spouses

The law generally does not **grant common law spouses the same protections as those given to married or civil union couples**. In principle, common law spouses do not have any rights or obligations toward one another.

For example, common law spouses:

- ❖ **Do not inherit**, when their partner dies, if the partner has not named them as the beneficiary in their will.
- ❖ **Are not subjected to the rules of family patrimony or matrimonial regime**. Therefore, except as otherwise agreed by the parties, the partition of property accumulated while living together is established based on the right of ownership that a spouse may assert on a given asset. In other words, in the event of separation, each spouse keeps the assets they acquired while living together.
- ❖ **Are not entitled to alimony for themselves**, in the event of separation or death (children, however, remain entitled to child support).
- ❖ **Cannot prevent a spouse who is the sole owner of the family home** from selling, renting, assigning or mortgaging it, or even disposing of the assets of which they are sole owner used by the family. The same principle applies to a rented family dwelling when the lease is signed by only one spouse.

Common law spouses can still make an agreement between themselves to define the terms of their union and the consequences of a possible separation.

As long as their agreement complies with the law, common law spouses can grant each other whatever spousal rights they wish!

Exceptions

Some laws give common law spouses the same rights and obligations as married or civil union spouses when their partnership meets certain criteria (e.g., duration of the union or cohabitation, having a child together).

Did you know?

→ Common law spouses have the same obligations and responsibilities toward their children as married or civil union couples.

Thus, in the event of separation or the death of the parents, all children have the same rights and the same protections, regardless of whether their parents were married, in a civil union or a common law union.

→ In the absence of a will, your common law spouse is not considered an heir. Your assets will go to your children or, if you don't have any, to other family members, as stipulated by law.

Some laws give common law spouses the same rights and obligations as married or civil union spouses.



How do you protect yourself?

Consult your notary and benefit from their expertise! A notary will advise you on the issues that need to be discussed and on the various notarized documents that can protect you. A notary will put your wishes into clear legal language that complies with the law. These documents, which the notary will prepare for you, concern many aspects of a couple's life and will set out a plan for the outcomes of a separation, a possible incapacity or the death of a spouse.

These notarized documents are reliable and secure. They are written in accordance with the law, and are generally more difficult to challenge and easier to trace because the notary keeps the originals.

COHABITATION CONTRACT (OR DE FACTO UNION AGREEMENT)

The cohabitation contract allows spouses **to define and agree on the rights**, obligations, responsibilities and protections they want to mutually confer during the union and in the event of separation.

This contract may cover the management and division of the assets, money and debts of the two partners. It may also include each spouse's contributions and responsibilities toward their life as a couple and the equivalent of alimony for a spouse.

UNDIVIDED CO-OWNERSHIP AGREEMENT

The undivided co-ownership agreement is a valuable contract when common law spouses are joint **owners of a property**, such as a house, condo or land.

Among other things, the contract allows the common law spouses to agree on the responsibilities and contributions of each person toward the purchase, costs, maintenance, repairs and mortgage payments. It can also cover the division of assets in the event of separation or death.

PROTECTION MANDATE (OR MANDATE IN CASE OF INCAPACITY)

The protection mandate is a document that protects you if you become incapacitated, i.e., if the state of your health renders you unable to make decisions or act on your own behalf. This may result from illness, an accident, or simply from the effects of aging.

The protection mandate allows you to designate a person who will act on your behalf and make decisions in your interests. In this document, you may specify your wishes about decisions that concern you personally (e.g., care, lodging) or the administration of your assets (e.g., using your money and your assets for your family, or managing your business).

WILL

The will is the only document that allows a person to designate their common law spouse as their heir when they die. The will also allows you to optimize tax benefits upon your death and avoid complex situations for your spouse (e.g., having to buy your share of the house).

Separation is not always easy and can raise tensions, despite signed agreements. Family mediation can help ease the tension and encourage an amicable settlement of your separation. As you prepare these agreements, discuss them with your notary and consider the relevance of including a mediation clause in some of these documents.

→ HOW TO PREPARE

Information you will need

- Your date of birth and social insurance number
- Documents relating to your civil status (e.g., birth certificate, judgment of divorce)
- A patrimonial inventory, i.e., a list of your assets and properties, your investments and debts, including any assets and properties outside Québec
- Your titles to property if you own land or a dwelling
- Your business documents (e.g., shareholder agreement or partnership agreement)
- Your life insurance policies
- Any other information requested by your notary

Food for thought

- How do you manage your assets, money and debts? Who pays the bills and in what proportion?
- In the event of separation, would each spouse be willing to share their assets, money and debts with the other? Would you like to provide the equivalent of spousal support for the other person?
- Are you co-owners of a property? Would it be a good idea to sign an agreement to establish the rights and obligations of each party in relation to this property?
- Do you have a protection mandate designating the person who will make decisions for you if you become incapacitated?
- Do you have a signed will stipulating who will inherit your assets upon your death?
- Any other questions raised by your notary.