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## Marriage

Understand the legal  
consequences of your  
commitment!

# United... in the eyes of the law?

Marriage is not only an expression of love or a family event. It's also a decision with many and often complex legal consequences.

Your notary will advise you of your rights and duties as a spouse. He will explain the legal rules intended to protect your respective interests and will assess with you the possibility of adapting them to your needs through a marriage contract.

## The rights and duties of spouses

The law provides that **during the marriage**, the spouses have the **same rights and the same obligations towards one another**. Among other things, they must:

- Offer respect, fidelity, succour and assistance to one another.
- Lead the family and shoulder their responsibilities towards their children together.
- Choose the family residence together.
- Contribute proportionally to their respective means to household tasks and family expenses (lodging, clothes, food and so on).

## Protecting the spouses' property and managing their debts

Whether we are talking about marriage, divorce or death, there are legal rules to ensure:

- the protection of each spouse's property and money; and
- the liability for their debts.

### 1 CHOOSING A MATRIMONIAL REGIME

The law provides that every married couple is subject to a matrimonial regime whose purpose is to:

1. Establish the rules for managing the spouses' property, money and debts **during the marriage**.
2. Determine how to divide their property and establish its net value in the event of **divorce or death**.

In Québec, there are two types of matrimonial regimes : the regime of separation of property by marriage contract and the regime of partnership of acquests with or without marriage contract. Spouses may adapt one of them to their particular needs in a **marriage contract** signed before a notary.

**Spouses married since July 1, 1970 are automatically governed by the matrimonial regime of the partnership of acquests if:**

- They do not have a marriage contract;
- Their marriage contract contains no provisions dealing with their matrimonial regime.

**By signing a marriage contract under the regime of separation of property, each spouse administers his or her own property, which is referred to as «separate» property. Each spouse is the owner of the property in his or her own name.**

In the event of separation, a decree of judicial separation does not dissolve the marriage, but triggers the liquidation of the matrimonial regime of the partnership of acquests and the partitioning of the family patrimony. As of the decree, the spouses will be subject to the matrimonial regime of separation as to property.

Your notary will explain the differences between the matrimonial regimes in the law and will advise you so your choices adequately meet your needs. He will also draft your marriage contract to meet all the legal requirements.

He could stipulate the use of family mediation in the event of separation.

Legal protection of the residence can be enhanced by registering a “declaration of family residence”.

## 2 PROTECTING THE FAMILY RESIDENCE AND PROPERTY

Regardless of your matrimonial regime or the content of your marriage contract, the law gives special protection to the family residence and to the property in the residence used by the family.

This means that during the marriage, **a spouse must obtain the other's consent to:**

- Sell, lease, mortgage, transfer or encumber the family residence if it is located in a building with four units or less.
- Sell, lease or transfer the family residence if it is located in a building with five units or more.
- Sublet, transfer or terminate the lease of a dwelling if the landlord has been informed that it is a family dwelling.
- Sell, transfer or even part with property in the residence used by the family.

## 3 PARTITION OF THE FAMILY PATRIMONY

**In the event of a divorce or death**, the law provides that the net value of the property in the family patrimony will normally be shared equally by the spouses.

The following are the items which automatically become part of the family patrimony from the date of marriage:

- The residence(s) used by the family
- The property in the residence that is used by the family
- The vehicles used by the family
- Each spouse's retirement savings plans, their pension plans and their annuities

The family patrimony rules are mandatory, regardless of your matrimonial regime or the content of your marriage contract. They cannot be modified during the marriage, even by means of a marriage contract.

## Support payments and other financial requests

Under certain circumstances, the law allows a spouse the right to make such requests as:

- spousal support for himself or herself; or
- compensation if, during the marriage, the spouse became poorer while at the same time contributing to the enrichment of the other spouse without any valid reason.

These kinds of requests are generally made in the event of a divorce or the death of a spouse. They must be the subject of a court decree.

Your notary will advise you on the financial claims you may be entitled to make.

## Protection in the event of death

If you pass away without having made a will, the law provides that your spouse becomes one of your heirs.

The spouse is not necessarily the only heir. The surviving spouse has to share the inheritance with the other legal heirs. For example, if you have children, two thirds of the inheritance goes to your children and one third goes to your spouse.

## Marriage celebrated by your notary

The law authorizes your notary to perform civil marriages anywhere in Québec. The marriage may be performed at any place chosen by the future spouses as long as it respects the solemn character of the ceremony.

Besides informing you of the legal consequences of marriage, your notary will make sure that all the legal formalities are observed.

## The civil union

In Québec, a civil union is another way for couples to be legally united. It is distinct from a marriage, but involves nearly the same legal consequences. Therefore, the rules stated in this pamphlet also apply to a civil union, though some adjustments are needed.

## Did you know?

→ Together, spouses are liable for debts contracted during the marriage for the family's needs. To avoid being liable for your spouse's debts, you must advise, before a debt is contracted, the person or company you are dealing with.

→ It is also a good idea to prepare before the marriage a patrimonial inventory, which is an inventory of your assets and their value. In the event of a divorce or death, it will then be easier to determine what you have accumulated during your marriage.

→ It is possible to change one's matrimonial regime during the marriage by signing a marriage contract before a notary stipulating the change in matrimonial regime.

## → HOW TO PREPARE

### Information to collect

- Each spouse's birth certificate
- The documents relating to the spouses' civil status if either of them have previously been married (judgment of divorce, death certificate, etc.)
- The date and location of the ceremony
- The contact information of someone who is able to confirm your identity for the publication of the marriage notice
- The contact information of two people who will be witnesses during the ceremony
- Any other information requested by your notary

### Food for thought

- Would a marriage contract be appropriate?
- Who will perform your marriage?
- Have you prepared a patrimonial inventory?
- Have you considered preparing a will?