



## Family Patrimony

- » The institution of a family patrimony confirms that two individuals united by the bonds of marriage or civil union form a partnership. It guarantees that the spouses enjoy equal legal and economic rights, and that each spouse is entitled to a fair portion of the family property.



Couples who have married or entered into a civil union are subject to the rules governing the establishment and partition of the family patrimony until the marriage or civil union ends owing to death, divorce, separation, dissolution of the civil union or annulment of the marriage or civil union, regardless of their matrimonial regime or whether or not they have children.

### [What is family patrimony?](#)

[Family residences](#)

[Pension plans](#)

- [Earnings registered under the Québec Pension Plan](#)

### [What property is excluded from the family patrimony?](#)

### [How is the value of the family patrimony established?](#)

[Assets](#)

[Liabilities](#)

### [How is the family patrimony partitioned?](#)


### [Can partition of the family patrimony be waived?](#)

### [Special provisions](#)

- [For more information](#)

## » What is *family patrimony*?

At the time the family patrimony is to be partitioned, the spouses divide up an amount of money, not actual property. The amount represents the total net value of the following property, regardless of which spouse owns it:

- all residences used by the family (condos, cottages, apartments and other dwellings);
- the furniture used by the family to furnish or decorate the residences;
- the motor vehicles used for family transportation;
- the rights accrued in a pension plan **during the marriage or civil union**;
- the earnings registered **during the marriage or civil union** under the [Act respecting the Québec Pension Plan](#)  or equivalent programs.

*Family residences*

- > Minister
- > Department
- > Publications
- > Forms
- > Programs and services
- > Related links
- > Courts
- > Contact us
- > About this site

If you own a building (duplex, income property or other) in which your family has a dwelling, only the portion occupied by the family is considered to be part of the family patrimony. Its value is proportional to the percentage of the building it occupies. The value of the family residence is based on various characteristics such as size, location, general condition, advantages such as access to a yard or parking area, etc.

These rules also apply to secondary residences.

#### *Pension plans*

Only pension plan benefits accrued during the marriage or civil union are included in the family patrimony. For example, if you joined a pension plan in 1996 and were married in 1999, only the benefits accrued as of 1999 are included in the family patrimony. Benefits accrued from the time you joined the plan in 1996 up to the date of your marriage in 1999 remain separate, outside the family patrimony.

#### *Earnings registered under the Québec Pension Plan*

If your judgment of divorce, separation, annulment or dissolution took effect after June 30, 1989, the earnings on which contributions were made to the Québec Pension Plan will automatically be partitioned between you and your ex-spouse, unless the judgment or notarial agreement states a waiver or renunciation. (See the section [Can partition of the family patrimony be waived?](#)) In the case of a *de facto* couple that later married or entered into a civil union, the earnings registered under the Québec Pension Plan during the *de facto* union may also be partitioned. Both spouses in this situation must satisfy certain conditions and file a joint application with the Régie des rentes once they have agreed on how the earnings are to be partitioned.

Persons wishing to know whether there is any advantage to waiving or not waiving the partition of earnings may request the Régie des rentes du Québec ([Application for Simulated Partition of Employment Earnings](#)) to prepare a simulation of the effects of the partition. There is no charge for this service.

It is important to know that

- the Régie des rentes sends the partition notice to both ex-spouses if it has their addresses, which is not always the case;
- the contributions are partitioned for all the years of the marriage or civil union, unless the judgment specifies a different period;
- the partition may create a right to benefits, or modify future or current benefits;
- if the divorce, separation, annulment or dissolution judgment was rendered outside Québec, the family patrimony is not automatically partitioned; a request must be filed with the Régie des rentes; and
- when partition is waived, the Régie notifies both ex-spouses in writing.

An important point to mention is that partition cannot result in a spouse being deprived of more than 50% of the value of his or her rights accrued in a pension plan governed or established by statute. The spouse who is the pension plan member cannot end up with fewer rights in the pension plan after partition than the non-member spouse.

### Important

If the marriage or civil union is dissolved as a result of the death of one of the spouses, the earnings registered under the Act respecting the Québec Pension Plan or equivalent programs are excluded from the family patrimony, as are rights accrued in a pension plan established or governed by statute and providing for death benefits to be paid to the surviving spouse.

Upon application, the court may depart from the principle of equal partition of the earnings registered under the Act respecting the Québec Pension Plan or equivalent programs and order that the earnings not be divided. This may happen, for example, where the marriage or civil union was of short duration, or in the presence of bad faith or the squandering of property by one of the spouses.



### »» What property is excluded from the family patrimony?

The following property is excluded from the family patrimony:

- property that was a gift or a bequest to one of the spouses either before or during the marriage or civil union;
- any increase in the value of that property during the marriage or civil union;
- property used exclusively by one of the spouses (computer, musical instrument, artwork, etc.);
- businesses and farms (except the residential portion);
- cash and bank accounts;
- savings bonds, treasury bonds, shares and other investments (except RRSPs);
- profit-sharing plans;
- supplementary pension plans for high-income earners; and
- non-registered annuity contracts.

### »» How is the value of the family patrimony established?

#### *Assets*

The term “assets” means the market value of the family patrimony as a whole, in other words the amount that would be generated if all the property were sold on the date of the spouse’s death, the date on which legal proceedings are initiated to end the marriage or civil union, or the date on which the spouses stop living together.

#### *Liabilities*

The following must be deducted from the patrimony assets:

- debts contracted to acquire, improve, maintain or preserve the property that makes up the family patrimony on the date of the spouse’s death, the date on which legal proceedings are initiated to end the marriage or civil union, or the date on which the spouses stop living together;
- the net value of property that is included in the family patrimony and that belonged to one of the spouses at the time of the marriage or civil union, as well as a portion of the appreciation in value of the property during the marriage or civil union.
- the amount contributed by one spouse out of a gift or inheritance during the marriage or civil union to acquire or improve property included in the family

patrimony, as well as a portion of the appreciation in value of the property during the marriage or civil union.

### »» **How is the family patrimony partitioned?**

In concrete terms, the partition is effected by one spouse paying an amount of money or transferring ownership of property in lieu of money to the other spouse. Any property transferred must come from outside the family patrimony.

At the time of the partition, the court may award specific property to one of the spouses. To avoid harm to the debtor spouse, the court may order that the amount owing be paid in instalments over a period that cannot exceed ten years. It may also require the debtor spouse to provide security to cover the amount owed.

When property has been removed from the family patrimony, without being replaced, in the year preceding the date of the spouse's death or the date of filing of an application for divorce, separation, annulment or dissolution, the court may order compensation to be paid to the spouse who is disadvantaged by its removal. It may also order compensation to be paid when the property was removed from the family patrimony more than a year before the patrimony is partitioned, if it was clearly removed in order to reduce the share of the other spouse.

Upon application, the court may depart from the principle of equal partition when it considers that the partition would create an injustice. This may happen, for example, where the marriage or civil union was of short duration, or in the presence of bad faith or the squandering of property by one of the spouses.

#### **Important**

When a marriage or civil union is dissolved following the death of one of the spouses, property not included in the family patrimony is divided up in keeping with the rules of the spouses' matrimonial regime.

The provisions of the Civil Code relating to family patrimony take precedence over wills and testamentary clauses in marriage or civil union contracts, but do not render them null and void. The family patrimony must be partitioned before a succession can be liquidated.



[Top](#)

### »» **Can partition of the family patrimony be waived?**

The spouses cannot waive their rights in the family patrimony in advance, through their marriage or civil union contract or by any other means. However, after the death of one of the spouses or a court judgment granting a divorce, separation, annulment or dissolution, a spouse may waive his or her right to the family patrimony, in full or in part, in a notarial document. A spouse may also do so by making a legal declaration to that effect during the course of proceedings for divorce, separation, annulment or dissolution. The judgment or notarial agreement between the parties must state the waiver.

To be effective, the waiver must be registered in the [Register of personal and movable real rights](#) **RDPRM** within one year after the date on which the right to partition becomes effective. Failure to respect that time limit means the spouse wishing to waive partition will be considered to have accepted it.

## Important

Except for earnings registered under the Québec Pension Plan, the provisions in the Civil Code governing family patrimony do not apply to couples who were married before family patrimony legislation came into force and who indicated in a notarial document, before to January 1, 1991, that they did not wish to be subject to the family patrimony provisions.

Any waiver made in a notarial document may be voided if it causes serious harm to one of the parties because it takes advantage of that party's ignorance or inexperience to the extent that consent is obtained by force or is vitiated. The waiver may also be voided for any reason that would ordinarily render a contract null.

### » Special provisions

The provisions of the Civil Code concerning family patrimony do not apply to spouses

- in a *de facto* union;
- in a situation of *de facto* separation that began before May 15, 1989, and who in a written agreement or otherwise settled the consequences of their separation, provided they have not subsequently lived together; or
- to spouses who filed an application for separation, divorce or annulment before May 15, 1989.

In the event of a second partition of the family patrimony, the date on which the spouses began to live together again replaces the date of marriage or civil union for the purpose of applying the partition rules.

People who were married outside Québec but who are residing in Québec at the time of partition are subject to the partition rules.

### » For more information

Conjugal institutions:

- [Marriage](#)
- [Civil Unions](#)

The effects of partition of employment earnings registered under the Québec Pension Plan:

- [Régie des rentes du Québec](#) 

The registration of a waiver of partition of the family patrimony

- [Register of Personal and Movable Real Rights](#) 

You may also consult the family mediation professional whose services you retained.

---

**The content of this document is strictly informative and has no legal value.**

If you find some of the information difficult to understand, do not hesitate to [contact us](#).  
**Please note, however, that we cannot interpret the information to apply it to a specific situation.**

Latest update: August 9, 2005

- 
- [General information](#) • [Policies, Studies and Reports](#) • [Administrative documents](#) •
  - [Publications for sale](#) •

Québec 

© [Gouvernement du Québec, 2003](#)



## General Information

---

» Ministère de la Justice du Québec  
Édifice [Louis-Philippe-Pigeon](#)  
1200, route de l'Église, 6<sup>e</sup> étage  
Québec (Québec) G1V 4M1

Telephone: 418 643-5140

Toll free: 1 866 536-5140

Email: [communications.justice@justice.gouv.qc.ca](mailto:communications.justice@justice.gouv.qc.ca)

**Please note:** The personnel at the Service de renseignements of the Ministère de la Justice can help you understand the general rules for applying Québec legislation. They cannot, however, interpret these rules to respond to a specific case or situation.

When contacting us by mail or e-mail, please indicate your address and telephone number so that we can contact you when necessary.

---

• [General information](#) • [Courthouses](#) • [Complaints Bureau](#) • [Public service directory](#) •

- > [Minister](#)
- > [Department](#)
- > [Publications](#)
- > [Forms](#)
- > [Programs and services](#)
- > [Related links](#)
- > [Courts](#)
- > [Contact us](#)
- > [About this site](#)