

Separation, Divorce and Dissolving a Civil Union

- » There are several ways of bringing a marriage or civil union to an end. If you are married, these include de facto separation, legal separation (officially called separation from bed and board), and divorce.



If you are joined in a civil union, they include de facto separation and the dissolution of your union by a joint notarized statement or court order.

Each solution has specific features that must be taken into account.

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Take note!

This document does not deal with the separation of two people living in a de facto relationship. De facto spouses who wish to separate should consult the document [De Facto Union](#).

» De facto separation

Two individuals who are married or joined by civil union may decide to separate after agreeing on all the consequences of their separation, including child custody, the payment of support, the division of joint property, etc. Since the agreement is based only on the goodwill of the spouses, who remain married or joined by civil union in the eyes of the law, each spouse is still subject to the rights and obligations of the marriage or civil union. This means that even after a separation of several years, a spouse who is unable to meet his or her own needs may apply to the court to obtain support from the other spouse. In addition, unless the marriage or civil union is legally dissolved, both spouses remain liable for debts incurred, singly or jointly, to support the family. In the case of a de facto separation, there is no legal way to enforce execution of an agreement between the two spouses if one spouse decides not to respect it.

» Legal separation

Legal separation, known officially as separation from bed and board, follows a court decision based on the fact that the spouses no longer wish to live together. This option is not available for spouses joined by civil union.

Unlike a divorce, a legal separation does not break the bond of marriage. Spouses who are legally separated are no longer required to live together, but they are still subject to the other duties of marriage and owe each other respect, fidelity, succour and assistance.

An application for separation from bed and board may be submitted by one or both spouses. If the spouses are in agreement and manage to settle all the terms of the separation (child custody, the payment of support, the division of property, etc.), they may submit a draft agreement to the court, and are not required to disclose the grounds of their separation to the judge.

However, if one spouse is opposed to the separation, or if the couple is unable to agree on the terms of the separation, the court will grant separation from bed and board on one of the grounds provided for by law: de facto separation at the time of the application, a serious failure by one spouse to fulfil an obligation of marriage, or a series of circumstances which make living together barely tolerable. Thus, if the spouses are already living apart, the deserted spouse may apply for a legal separation on this ground alone.

It should be noted that the spouses are still bound by some of the clauses of their marriage contract. Among other things, gifts made inter vivos (between living persons) or mortis causa (in the event of death) can be cancelled, modified or maintained by the judge.

If the spouses voluntarily begin living together again, the legal separation ends.



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» Divorce

The federal Divorce Act states there is only one ground for divorce: the breakdown of a marriage. A marriage is deemed to have broken down when:

- the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding;
- the spouse against whom the divorce proceeding is brought has committed adultery;
- the spouse against whom the divorce proceeding is brought has treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

If the application is based on the first reason, neither spouse has to prove that the other spouse was at fault. They can apply for divorce jointly as soon as they begin to live apart. However, the divorce will not be granted until the spouses have been living apart for one year.

One of the spouses may apply for divorce even if the other disagrees. However, in applications based on adultery or physical or mental cruelty, only the victim may apply for a divorce.

Any gifts which one spouse may have granted to the other in the event of death and in consideration of the marriage are annulled by the divorce.

» Dissolution of a civil union

A civil union may be dissolved by a court order, or by a joint statement of the spouses supported by a notarized act, when the desire of the spouses to live together is irreparably impaired.

The spouses may dissolve their union by a joint statement made before a notary if the following conditions are fulfilled: first, the spouses have settled all of the consequences of the dissolution in an agreement and, second, the interests of their children (if any) are not at stake. The statement and the agreement are supported by a notarized act. They have the same effect as a judgment of dissolution, from the date on which the notary receives them.

If it is not possible to make a joint dissolution statement before a notary, the union must be dissolved by a court.

When a civil union is dissolved either by a court order or by a joint statement made before a notary, any gifts which one spouse may have made to the other, in the event of death and in consideration of the union, are annulled.

Please note

Two people joined by a civil union do not need to dissolve the union in order to marry each other. The marriage automatically dissolves the civil union, while maintaining the rights and obligations created by the civil union under the Civil Code.

» Principal steps for obtaining a court order

Spouses who wish to separate legally, obtain a divorce or dissolve their civil union must generally submit an application to that effect to the Superior Court in the [district](#) in which they share a home, or in which one of them lives if they no longer live together.

If married spouses agree on all of the terms of their separation or divorce, they can prepare a [draft agreement](#) and submit it to the judge at the hearing for the application. This document records the agreement entered into by the spouses concerning the dissolution of their matrimonial regime, the division of property, child custody, visiting and extended outing rights, and the payment of support and a compensatory allowance, where applicable. The spouses must also prepare the other supporting documents required when submitting a joint application for separation or divorce to the court. If the spouses find it difficult to draft the required documents, they may seek the help of a lawyer or notary who can draw up these documents for them or provide advice about their contents.

At the time of the hearing, the judge studies the terms of the draft agreement or the agreement entered into by the spouses and ratifies it if the agreement is fair for all family members. The judge may also amend the agreement or dismiss it, depending on the evidence submitted.

If spouses who are joined by civil union agree on all of the terms for ending their union and the interests of their children are at stake, they can prepare a draft agreement, as in the case of married spouses, which they then submit to the judge at the time of the hearing.

If the spouses, whether married or joined by civil union, cannot agree, they should seek advice from a person specializing in matrimonial law (lawyer, mediator, etc.). It should be noted that, in this case, the spouses may turn to [family mediation](#).

Family mediation is a conflict resolution process that allows couples who wish to end their union to benefit from the services of an impartial, professional mediator when negotiating and settling an application for separation, divorce, or the dissolution of a civil union. The mediator can help negotiate a fair agreement with the free and enlightened consent of each spouse. Couples with children are entitled to six free mediation sessions with a professional mediator.

Please note

Where two spouses who wish to separate disagree on matters such as the custody of their children, support payments for a spouse or the children, the family patrimony, and the other patrimonial rights resulting from the marriage or civil union, they must take part in a mediation information session before their request can be heard by the court. A copy of the mediator's report must be submitted at the time of the hearing.

However, a spouse who has a valid reason for not taking part in the mediation information session may declare that fact to a mediator. Examples of valid reasons include an unequal power relationship between the spouses, the disability or physical or psychological condition of one of the spouses, or the geographical distance between the homes of the two spouses.

The mediation information session may be a private session, involving only the spouses and the mediator, or it may be a group session, as decided by the spouses. If they cannot agree what type of session to attend, or on the choice of a mediator, they must attend a group session either together or separately.

If the parties are represented by lawyers, the lawyers will try to arrive at an amicable agreement. This agreement may concern all or some of the aspects of the separation, dissolution or divorce.

If it is still not possible to arrive at an agreement that covers all aspects, the court will determine interim measures regarding child custody, child support, and rights to outings and visits, for example, so that life will continue “as normal” until the hearing. At the same time, the judge may authorize one parent to remain in the family home.

At the time of the hearing, the judge can maintain or modify the interim measures determined earlier. The judge will study the agreements reached with respect to certain matters and will ratify them if they are fair for all family members, or may modify them or reject them, depending on the evidence submitted. The judge will also render a decision concerning the matters on which the spouses did not reach an agreement. Finally, the judge will pronounce the separation, the divorce or the dissolution of the civil union, as requested in the application.

Please note

The orders rendered by the court may be modified, particularly concerning custody or child support payments if the welfare of the children is at stake or if the situation of one of the spouses has changed. Family mediation is also possible at this time. If the interests of the children are at stake, the parents are entitled to three free mediation sessions.



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» Children: a joint responsibility

Both the father and the mother have the right and the obligation to ensure that their children are educated, supervised and cared for; they retain their parental authority, regardless of their matrimonial status.

Before granting separation from bed and board, divorce or the dissolution of a civil union, the judge studies the spouses' emotional and financial situation, and may even hear experts (psychologists, social workers, etc.). The judge then decides which spouse will be awarded custody of the children, but may reassess the situation at a later date. The judge may also decide that the parents are to share custody. If the judge considers that the children are old enough to choose which parent they wish to live with, the judge may grant their request if it is reasonable. In all cases, the decision is made with the best interests of the children in mind.

Among other things, the Divorce Act stipulates that the judge's decision must promote as much contact between the children and each spouse as is consistent with the best interests of the children. This means that the judge must determine the extent to which the parent who has custody is willing to facilitate contact with the other parent and other family members (such as grandparents), whom the child should continue to see. If the parents fail to agree on these points, the court may determine how contact will be maintained. In addition, with the court's permission, a person other than the father or mother may also apply for custody of a child, or access rights.

Parents may agree to joint custody. In this case, it is up to them to establish the terms and conditions, particularly with respect to outings or visits, depending on their availability and the circumstances. This, of course, involves speaking together frequently and making joint decisions. If this agreement is not ratified by the court, there is no legal way to enforce it if one of the spouses does not respect it.

» Child support obligations

Regardless of whether the father or mother has custody of the children, each parent must contribute to their needs in keeping with their means. The contribution may be in the form of money or time.

The [amount of support](#) is calculated on the basis of the total income of both parents, the number of children, the custody time and certain additional costs associated with the child's specific needs. Each year, the amount is index-linked, unless the court decides otherwise.

If the children are destitute, even after reaching full age, the parents, or the parent who is in a position to do so, have an obligation to provide financial assistance.

When filing for divorce, if one or the parents resides elsewhere in Canada or in a foreign country, the [federal guidelines](#)  for child support are applied. Documentation on this matter is available in the various courthouses. For more information, call 1 888 373-2222 toll-free.



» Spousal support obligations

Separation from bed and board, divorce or dissolution of a civil union can all lead to the payment of spousal support, also known as alimony.

In order to determine the need to order support payments for one of the spouses and the amount of the support, the judge must take into account the resources, needs and overall situation of each of the spouses. The judge may also take into account

- the length of time the spouses lived together;
- the duties of each spouse during their union;
- the degree of financial independence of each spouse;
- orders, agreements or other support arrangements previously established in favour of the spouse or the dependent children.

In general, spousal support is paid temporarily to the spouse in need, in order to help them get a new start in life, although each case is different.

Spousal support is not granted automatically. An application for support must be submitted to the court along with a statement of the spouse's financial situation and financial needs. The individual from whom spousal support is claimed must then provide evidence of his or her own means. If support is granted, the judge will determine the amount and it will be automatically indexed each year, unless the judge decides otherwise. In exceptional cases, the support paid periodically may be replaced by a lump sum payment. In addition, the judge can grant support for a prescribed period of time and revise the amount, as required.

» Continuing support obligation

When a person paying support dies, the ex-spouse or the children who are owed support may obtain a financial contribution from the succession to meet their needs, provided they meet certain conditions and apply within six (6) months of the death. The amount will be determined in keeping with various factors, including the needs and the abilities of the individual to whom the support is owed as well as the assets of the succession.

If the ex-spouse or the children do not receive the support to which they were entitled, they may also apply for a contribution from the estate, under the same conditions.

For more information, please see the document [Wills](#).

Please note

There is no longer any support obligation between grandparents and their grandchildren.



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» Partition of property

When a legal separation, divorce or dissolution of a civil union is granted, the property must be divided between the two spouses. This is first carried out in keeping with the rules governing the partition of [family patrimony](#), then in keeping with the spouses' matrimonial or civil union regime.

The family patrimony includes family homes, household furniture used by the family to furnish or decorate their homes, motor vehicles used for family transport and benefits accrued in a public pension plan or some retirement plans.

The division of the family patrimony is a distribution of money, not of property. The first step is to determine the market value of all the family's property at the time of the legal separation, divorce or dissolution of a civil union.

Next, to calculate the net value of the family patrimony, the following amounts must be subtracted:

- any debts contracted for the purchase, improvement, upkeep or conservation of the property in the family patrimony;
- various other amounts, such as the net value of the property-forming part of the family patrimony-that was owned by one of the spouses before the marriage, and the additional value it has acquired during the marriage.

The Régie des rentes du Québec offers a free service that simulates the effects of a partition of earnings registered with the Régie. [Click here](#)  to find out more on how to use this service.

The net value is then divided equally between the spouses.

Property that is not included in the family patrimony (rental property, bank accounts, shares, bonds, etc.) is divided in accordance with the spouses' matrimonial or civil union regime.

A spouse who owes the other spouse money as a result of the partition of the family patrimony may pay it in cash or by transferring ownership of property of equal value. If the spouses fail to reach an agreement on the terms of the partition of the family

patrimony, the court may assign specific property to one spouse, such as ownership of the family home or a share in the other spouse's rights in a family business. To avoid hardship, it may order payment by instalments over a period not exceeding ten years, and any other measure it considers appropriate to ensure proper execution of the judgment.

When property has been withdrawn from the family patrimony in the year prior to the institution of proceedings for legal separation, divorce or dissolution of a civil union and not replaced, the judge may order compensation to be paid to the spouse who has been disadvantaged by its withdrawal. The judge may also, upon request, waive the principle of equal partition if it would create an injustice, for example because of the short duration of the marriage or civil union, the squandering of property by one of the spouses, or bad faith on the part of one of the spouses.

For more information on the question, see the document [Family Patrimony](#).



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» Compensatory allowance

A compensatory allowance compensates one spouse for his or her contribution, in the form of goods or services, to the enrichment of the other spouse's patrimony.

When rendering a judgment on separation from bed and board, divorce or the dissolution of a civil union, the judge must assess this allowance, if so requested by one of the spouses, taking into account the matrimonial regime and the marriage or civil union contract. The objective is not to divide the property into equal shares but to compensate the losses suffered by one spouse for the benefit of the other. Of course, the spouse concerned must prove that he or she helped enrich the other's patrimony, and establish the value of the contribution.

As a general rule, the courts do not consider household work alone as a contribution to the enrichment of the other spouse's patrimony giving rise to a compensatory allowance, unless the work exceeds a spouse's normal contribution to household duties.

» For more information

Living as a couple and the legal framework:

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

Family mediation and certified mediators in Québec:

- [Family Mediation](#)
- [Family Mediation: Another way to win](#) (video)
- [Search for a family mediator](#)

What constitutes family patrimony and rules for partition of the family patrimony:

- [Family Patrimony](#)

How to prepare the documents required for a divorce:

- [Joint Application for Divorce on Draft Agreement](#)

De facto separation:

- [De facto separation: legal aspects and consequences](#) (in French only)

Legal separation:

- [Legal separation: legal aspects and consequences](#) (in French only)

Rights of grandparents:

- [Rights of grandparents: rights to visits or outings their grandchildren](#) (in French only)

The calculation of child support

- [The Québec Model for the Determination of Child Support Payments](#)
- [Table to Determine the Basic Parental Contribution](#)

The types of wills and rules for liquidating a succession:

- [Wills](#)
- [Successions](#)

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

- [Régie des rentes du Québec](#) 

Federal Child Support Guidelines:

- [Department of Justice Canada](#) 

The registration of a waiver of partition of the family patrimony, of the value of acquests, of community property or to register the cancellation of such a waiver, to register a divorce judgment, the annulment of a marriage or the dissolution of a civil union, a legal separation (or a separation as to property):

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

To avoid duplicate proceedings for divorce in different courts across Canada:

- [Central Registry of Divorce Proceedings](#) 

(Department of Justice Canada)

The guide entitled "When a Couple Separates":

- [Services Québec](#) 

Forms that relate to Separation, Divorce and Dissolving a Civil Union:

- [Sworn Statement under Article 827.5 of the Code of Civil Procedure](#) (SJ-766)
- [Child Support Determination Form](#) (SJ-789)

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.



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General Information

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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.

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