



Successions

» Following the death of a family member, it is natural to wonder if you are going to inherit something. Or perhaps a relative has asked you to act as the liquidator of the succession after he or she dies. What is the role of the liquidator? What duties are involved in liquidating a succession? What is a legal succession?



This document answers these questions and many others.

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» A few definitions

In order to clearly understand the information contained in this brochure, it is important to know from the start the meaning of the terms and expressions that are used.

Successor

A successor is a person who, under the Civil Code, is entitled to inherit.

Heir

An heir is a successor who accepts the inheritance to which he or she is entitled.

Legatee by particular title

A legatee by particular title is a person who receives a specific legacy (bequest) from the testator but who is not considered an heir. A legatee does not have the same obligations towards the succession as an heir, for example, with respect to the deceased's debts.

Legal succession

A legal succession is a succession that is not liquidated according to the deceased's wishes as expressed in a will but according to the rules of the Civil Code.

Testamentary succession

A testamentary succession is a succession that is liquidated according to the deceased's wishes as stated in a legally valid will.

» What needs to be done if a close relative or friend dies

The death of a close relative or friend makes a number of actions necessary, one of the most important of which is searching for a will. This involves looking through the deceased's personal effects, finding out whether he or she had a safety deposit box and contacting persons or organizations likely to have the will in their possession.

A search will also have to be made in the [Registre des dispositions testamentaires et des mandats du Québec](#) . These searches must be carried out to make sure either that there is no will, or that the will that has been found is the most recent one. Only the most recent will has any legal value.

Important

If the deceased was married or in a civil union, the family patrimony must be partitioned and the matrimonial or civil union regime liquidated before settling the succession (see the section [Partition of the family patrimony and liquidation of the matrimonial or civil union regime](#)).

» When there is a will

If the deceased left a will, the succession is a *testamentary succession*, or *testate succession*. Québec law recognizes three types of wills: a *notarial will*, which is executed before a notary and signed by a witness; a *holograph will*, which is entirely hand-written by and signed by the testator and requires no witness; and a *will made before witnesses*, which may be written by hand or by mechanical means, or dictated to someone, and which must be authenticated by two witnesses.

The holograph will and the will made before witnesses must be probated by the Superior Court in the [judicial district](#) in which the testator resided, in the district where the testator died, or in the district in which the willed property is located. These two types of wills can also be probated by a notary, on the condition that the will to be probated was not filed with a member of the notary's firm.

The application to have a will probated may be made after the testator's death by any interested person — usually the liquidator of the succession — or by a legal professional acting on behalf of a person interested in the succession.

The persons entitled to inherit, namely, the successors, must be notified of the probate proceeding. However, the court may exempt the person filing the proceeding from notifying all the successors where to do so would be impractical or too expensive, or where it appears unnecessary.

An application for the probate of a will must be accompanied by the following documents:

- the original will;
- the act (certificate) of death issued by the [Registrar of Civil Status](#) .

- a statement under oath (affidavit) by one of the witnesses (for a will made in the presence of witnesses) or by a person who is familiar with the testator's signature or handwriting (for a holograph will); and
- proof of delivery of the notice to the successors.

It also has to be ascertained whether the testator named a liquidator (formerly known as a *testamentary executor*) to administer the succession. If the testator has not designated a liquidator, the heirs act together to perform the liquidator's duties. They may assign themselves specific duties, decide that one or more heirs will act as liquidator, or designate a person who is not an heir.

If the heirs are unable to agree on whom to designate as the liquidator, the matter may be decided by the court. The liquidator chosen by the heirs may be appointed by means of a declaration or an agreement signed by the heirs (a sheet of paper on which the choice of the heirs is indicated) or by notarial act or instrument.

The name of the chosen liquidator must be entered in the [register of personal and movable real rights](#) , using the *General Application for Registration form*, and must be entered as well in the [land register](#)  if the succession involves an immovable.

» When there is no will

If the deceased did not leave a will, the succession is liquidated as provided in the Civil Code and this is called a *legal succession*, or *intestate succession*. In this case, the heirs jointly perform the liquidator's duties, unless they designate a liquidator.

In a legal succession, the successors are the spouse to whom the deceased was married or joined by civil union and the deceased's blood relatives and relatives by adoption (thus excluding a de facto spouse and [in-laws](#)¹).

In order to determine which rules apply in a legal succession, a certain number of questions must first be answered.

- Was the deceased married or in a civil union, and did he or she leave a surviving spouse? If so, is there a marriage contract or a notarial civil union contract?
- Does the marriage contract or civil union contract executed before a notary contain a testamentary clause whereby the surviving spouse receives all the property of the spouse who dies first? If it does, the only successor is the surviving spouse.
- If the marriage contract or notarial civil union contract does not contain a testamentary clause, or if there is no such contract, did the deceased have any children?
 - If so, the succession must be partitioned between the spouse and the children.
 - If not, the succession must be partitioned between the spouse and other relatives of the deceased.

» Distribution of the inheritance in a legal succession

The table below shows at a glance how an inheritance is distributed to the various successors in most legal successions.

Relationship with the deceased				
Children or their representatives	Surviving spouse	Father, mother or one of the two	Brothers, sisters or their representatives	Nieces and nephews
All				
2/3	1/3			
	All			
	2/3	1/3		
	2/3		1/3	
		All		
		1/2	1/2	
			All	
	2/3			1/3
		1/2		1/2
				All

Color Key

These relatives exist; they are the successors and are entitled to the specified portion of the succession.

These relatives do not exist, and the other successors are entitled to a larger portion.

These relatives are excluded from the succession because other, closer relatives exist.

To understand the table, it is important to remember that in the partition of a succession,

- a deceased's father and mother are privileged ascendants;
- grandparents, great-grandparents, etc., are ordinary ascendants;
- the deceased's brothers and sisters born to the same parents, brothers and sisters born outside marriage but legally recognized and half-brothers and half-sisters, as well as their children, are privileged collaterals;
- aunts, uncles, great-aunts, great-uncles, cousins, grandnieces, grandnephews, etc., are ordinary collaterals.

Two principles determine a relative's right to inherit: degree of relationship and representation.

Degree of relationship

The principle of precedence by proximity of the degree of relationship means that the successor the most closely related to the deceased within the same line of successors - privileged collateral line or ordinary collateral line - excludes more distant relatives from the succession.

In order for the deceased's siblings and nieces and nephews to have an **equal** share in their portion of the succession, the siblings must issue from the same mother and father as the deceased and the nieces and nephews concerned must be born of those same siblings of the deceased. Different rules apply to the deceased's half-brothers and half-sisters.

Privileged collaterals who are not *whole-blood* relatives that is, they do not have the same mother **and** the same father are *half-blood* relatives and are either *uterine* (they have the same mother) or *consanguine* (they have the same father).

If there are only sisters and brothers in the privileged collateral line, the succession is partitioned as follows: if the siblings do not have the same two parents as the deceased, their share is divided equally among the successors in the paternal line (having the same father) *consanguine* brothers and sisters and successors in the maternal line (having the same mother) *uterine* brothers and sisters. The portion of the succession passing to a line is divided in equal shares among the heirs in that line. If there are brothers and sisters in both lines *whole-bloods* they share in the portion passing to each line.

Example

Ralph dies without having made a will

He is married to Pauline and has no children.

He has three brothers: Louis and Roger, who have the same parents as Ralph, and Peter, who has the same mother but whose father is the mother's second spouse.

Louis and Roger are *whole-blood* brothers of Ralph (the deceased) and Peter is a *uterine* brother of Ralph. Since Ralph was legally married to Pauline, the family patrimony will first be partitioned and then the matrimonial regime will be liquidated. Ralph's succession consists of the remainder. Let us say the succession amounts to \$45,000; this is how it would be divided:

Pauline, his spouse, receives 2/3 of the succession, or \$30,000.

The remaining 1/3, or \$15,000, is divided in equal shares among the brothers in the paternal line (\$7,500) and the brothers in the maternal line (\$7,500). There are two brothers in the paternal line, Louis and Roger, and they each receive one half of the portion passing to that line, or \$3,750. There are three brothers in the maternal line, Louis, Roger and Peter, and they each receive one third of the portion passing to that line, or \$2,500.

Since Louis and Roger are in both lines, they share in the portion passing to each line so they each receive \$6,250. Peter's share in the succession is \$2,500.

Representation

Succession by representation takes place when a descendant becomes a successor in the place of an ascendant who has died or is declared [unworthy of inheriting](#)².

Example

Norman has two sons, George and Robert. George has a daughter, Mary.

George dies in 1990.

Then Norman dies in 1995.

Norman's successors are his descendants George and Robert.

Since George is deceased, Norman's granddaughter Mary, as a representative of George, becomes a successor in the place of George.

Representation takes place ad infinitum in the direct-line descendants of the deceased: children, grandchildren, great-grandchildren, and so forth.

In the privileged collateral line, representation is permitted only in favour of the children of the deceased's brothers and sisters.



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» Accepting or refusing a succession

A successor may renounce the right to inherit, but becomes an heir as soon as he or she accepts the succession. The quality of heir is irrevocable. Only the court may cancel acceptance of the succession and [only for specific reasons](#).³

A successor has 6 months from the opening of the succession (usually from the date of death or from the date the right arises) to accept or refuse a succession.

It is wise to wait for the publication of the notice of closure of inventory before making a decision, since it may reveal unknown property belonging to the succession or, in many cases, unknown creditors. If the publication results in new information, the inventory can be corrected and a better idea will be had of the succession's value. The 6-month period is extended by as many days as are necessary to give successors 60 days from closure of the inventory to exercise their option (see the section [Inventory of property and notice of closure](#)).

Successors generally renounce a succession if the deceased's debts exceed the value of the assets of the succession. If the successors decide to renounce the succession they must do so by notarial act since a renunciation may not be made by private writing (a document not executed by a notary). More rarely, the renunciation may be made by a judicial declaration in the course of legal proceedings.

The heirs are required to pay the deceased's debts up to the value of the property they inherit. Successors who accept a succession cannot simply change their mind and renounce it; they must apply to the court if they wish to cancel their acceptance.

If there is no notarial instrument indicating that a successor has refused to accept the succession, the successor is considered to have accepted it. Similarly, certain actions or omissions, even without the successor's formal agreement, entail an acceptance of the succession. These include:

- using property in the succession as if it were personal property;
- exempting the liquidator from making an inventory;
- failing to renounce the succession within the prescribed time;
- liquidating the succession without following the rules of the Civil Code.

Important

If the heirs exempt the liquidator from making an inventory, they are liable for the succession's debts in excess of the value of the property they inherit.

However, if all the successors are in agreement, the clothing, personal papers, medals, diplomas and family mementos of the deceased may be distributed and the action does not, in itself, entail formal acceptance of the succession. Similarly, perishables may be sold, given to charity or divided among the successors, and property that is expensive to keep or liable to depreciate quickly also sold, without entailing acceptance of the succession.

A successor who, acting in bad faith, misappropriates succession property for his or her own benefit, conceals property or fails to have it included in the inventory is considered in law to have renounced the succession, even if the successor has previously accepted it.

» **Partition of the family patrimony and liquidation of the matrimonial or civil union regime**

If the deceased was married or in a civil union when he or she died, **before dividing the succession**, whether testamentary or legal, first the family patrimony must be partitioned and the matrimonial or civil union regime liquidated.

Partition of the family patrimony

The property in the family patrimony is divided not in kind but in value. The value of the property, and not the property itself, is partitioned.

This means that, before determining who inherits the property in the succession, half of the net value of all of the following property devolves to the surviving spouse:

- all family residences (house, condo, cottage, etc.);
- furniture used by the family in the residences;
- motor vehicles used for family transport;
- benefits accrued during the marriage or civil union in a retirement plan;

Important

A family patrimony that is being partitioned because of the death of one of the spouses does not include the benefits accrued during the marriage or civil union in a retirement plan governed or established by a statute under which the surviving spouse has a right to a death benefit and the earnings registered during the marriage or civil union, as provided in the *Act respecting the Québec Pension Plan* or in equivalent programs. More information on this subject is available in the document titled [Family Patrimony](#).

Example

Here is the value of the property belonging to Andrew and Patricia in the family patrimony at the time of Andrew's death:

Property	Andrew	Patricia
Family residence	\$100 000	--
Secondary residences	--	\$25 000
Furniture	--	\$15 000
Motor vehicles	\$15 000	\$8 000
RRSP	\$70 000	\$40 000
Total	\$185 000	\$88 000
Value of the family patrimony	\$273 000	

The total value of the family patrimony is \$273,000. Each spouse's share is therefore one half, or \$136,500. In order to partition the family patrimony, the succession must pay Patricia \$48,500: \$136,500 (the portion of the family patrimony to which Patricia is entitled) less \$88,000 (the value of the property already belonging to Patricia).

Important

The surviving spouse may renounce all or part of the family patrimony in a notarial act. For the renunciation to be valid, however, it must be registered in the [register of personal and movable real rights](#)  within 1 year from the first day of entitlement to the partition.

Liquidation of the matrimonial or civil union regime

All property that is not part of the family patrimony must be liquidated according to the rules of the spouses' matrimonial or civil union regime before distributing the

succession. More information on this subject is available in the document titled [Marriage](#).



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» **How to settle a succession**

After settling the family patrimony and the matrimonial or civil union regime, the succession is partitioned according to the testator's wishes if a will exists or according to the rules of legal succession if no will exists.

A succession is settled by a liquidator. Once appointed, the liquidator must settle the succession as soon as possible. There is no specific time limit, but if the liquidation takes more than 1 year, the liquidator must, at the end of the year, report on the administration of the succession to the heirs, creditors and legatees by particular title that have not been paid.

A liquidator who is not an heir is entitled to receive remuneration, the amount of which is set by the heirs if not provided for in the will. A liquidator who is an heir is not automatically entitled to remuneration, although the will may provide for remuneration or, if all the heirs agree, they may decide to offer remuneration. All costs incurred in settling the estate are borne by the succession.

Finally, it should be noted that:

- no person is obliged to accept the task of liquidating the succession, unless that person is the only heir;
- a person who accepts the task has the option of resigning from it for a serious reason;
- a liquidator who resigns must notify the heirs in writing;
- the liquidator is liable for harm caused to the heirs.

Inventory of property and notice of closure

One of the liquidator's duties is to make an inventory of the property of the succession. This step may be omitted with the consent of all the heirs and successors, although it is not in their interest to do so since an inventory will let them know if the deceased's total debts exceed the total assets (liquid assets).

The heirs are liable for the deceased's debts only up to the value of the property they receive from the succession, but if they exempt the liquidator from making an inventory, they are considered to have accepted the succession and are personally liable for all of the succession's debts, even if the debts exceed the value of the property they receive.

However, an heir who has paid or is required to pay the succession's debts may, if acting in good faith, apply to the court to have the obligation reduced or to have the liability limited to the value of the property received if, for example, new information or the appearance of a creditor whose existence could not have previously been known substantially broadens the obligation.

The liquidator must register a notice of closure of inventory in the [register of personal and movable real rights](#) using the *General Application for Registration* form.

The liquidator must inform the heirs, the successors who have not yet accepted or refused the succession, the legatees by particular title and the creditors of the registration of the notice of closure of inventory in the register of personal and movable real rights and of the place where the inventory may be consulted. In many cases, they may consult the inventory at the domicile of the liquidator, although this is not obligatory.

The liquidator must also have a notice of closure of inventory published in a daily or weekly newspaper distributed in the locality where the deceased's last principal

residence was located. The notice must contain the main particulars in the application for registration. There is no need to publish all of the information provided on the form sent to the register of personal and movable real rights.

Important

The will may impose other duties and functions on the liquidator, which must be carried out in accordance with the deceased's instructions.

Payment of debts

Once the inventory has been completed and the notice of closure of inventory has been published, a cautious liquidator will wait a few days before going on with the liquidation in the event that unknown property or creditors are discovered which may affect the inventory. The liquidator then pays the succession's debts. Three situations may occur.

1. The succession is solvent

If the succession is solvent, the liquidator pays the creditors and legatees by particular title without further delay, and also pays any electricity, telephone and heating bills, funeral expenses, other current expenses, and, if the deceased was married or in a civil union, the claims resulting from partition of the family patrimony and liquidation of the matrimonial or civil union regime. The liquidator pays the compensatory allowance, if any, to the surviving spouse (for having enriched the deceased's family patrimony) and, generally, all the other debts of the succession.

2. It is unclear whether the succession is solvent

If it is unclear whether the succession is solvent and it is not certain that the value of the property is sufficient to cover all the succession's debts and the legacies by particular title, no debts or legacies (bequests) are paid until 60 days have elapsed following registration of the notice of closure of inventory in the register of personal and movable real rights. The liquidator may, however, before the 60 days have elapsed, pay public utility bills (telephone, electricity, gas) and any pressing debts.

The 60-day period gives the liquidator time to sell any property that must be sold to pay all the succession's debts and the legacies by particular title. To sell the property, the liquidator must obtain the consent of the heirs or, failing their consent, the permission of the court.

3. The succession is not solvent

If the property is insufficient to cover all the debts and the legacies by particular title, the liquidator must act with prudence: the liquidator must draw up a complete statement of the debts and the legacies by particular title and then make a payment proposal, which must be sent to the interested parties and be approved by the court. Before making a payment proposal, the liquidator should seek legal advice to avoid mistakes.

The payment proposal must be drafted according to certain rules: the preferred creditors (those whose claims relate to legal costs, movable property, tax laws, or property taxes) and the hypothecary creditors, according to their rank, are paid first; then the other creditors are paid, on a pro rata basis if they cannot be paid in full; next, the support creditors are paid, on a pro rata basis if they cannot be paid in full; and any legatees by particular title are paid last.

If the property is insufficient to pay all the legatees by particular title, the liquidator must follow other rules.

A liquidator may negotiate with the creditors to have them voluntarily reduce their claim in order to satisfy as many of them as possible. In doing so, the liquidator must explain the situation fully to the creditors, disclose all relevant facts to them and obtain their written consent.

Delivery and partition of property

The liquidator must submit a final account showing the succession's net assets or deficit. The liquidator must then complete the deceased's federal and provincial income tax returns and, before distributing the deceased's property, obtain authorization from the Ministère du Revenu du Québec by completing and submitting the form [Notice of Distribution of the Property of an Estate](#)  and obtain a clearance certificate from the Canada Revenue Agency by completing and submitting the form [Asking for a Clearance Certificate](#) .

The heirs receive their inheritance once they have accepted the liquidator's final account. The closure of the liquidator's account must be entered in the [register of personal and movable real rights](#)  by means of a notice identifying the deceased and indicating the place where the account may be consulted. If stipulated in the will or requested by a majority of the heirs, the liquidator must include a proposal for partition in the final account. If the proposal for partition is accepted, the liquidator proceeds with the partition and turns the property over to the heirs. If the proposal for partition is not accepted, the property is partitioned as provided in the Civil Code (see the section [Distribution of the inheritance in a legal succession](#)).

Important

The deceased's obligation to make support payments does not end upon his or her death. The deceased's heirs must continue to assume this obligation for a certain time (see the document titled [Wills](#)).

1. In-laws include a deceased's brother-in-law, sister-in-law, stepson, stepdaughter, son-in-law, daughter-in-law, father-in-law and mother-in-law. "Father-in-law" and "mother-in-law" include the spouse of a parent who has remarried.

2. Unworthiness deprives a person of any right to the succession. A person who has caused serious harm to the deceased is generally unworthy of inheriting. A person who is convicted of making an attempt on the life of the deceased is unworthy by operation of law (Civil Code, art. 620).

3. Acceptance of an inheritance can be annulled only for the reasons and within the time limits that apply to a claim of nullity of a contract (Civil Code, arts. 1385-1424).

» For more information

The different forms of wills:

- [Wills](#)

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

- [Family Patrimony](#)

The effects of different types of conjugal relationships on successions:

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

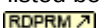
The addresses and telephone numbers of Québec courthouses:

- [Courthouses](#)

The judicial district a municipality is located in:

- [Search for a judicial district](#)

Québec's register of testamentary dispositions and mandates:

- [Register of Testamentary Dispositions and Mandates](#)  (In French)
- Guide to Filing the Income Tax Return of a Deceased Person:
- [Revenu Québec](#) 
- Notice Before Distribution of the Property of an Estate form:
- [Revenu Québec](#) 
- Asking for a Clearance Certificate:
- [Canada Revenue Agency](#) 
- What to Do Following a Death guide:
- [Canada Revenue Agency](#) 
- To obtain a certificate or copy of an act:
- [Registrar of Civil Status](#)  
- What to Do in the Event of Death guide_
- [Services Québec](#) 
- Click the name of any of the organizations listed below to visit their website:
- [Register of Personal and Real Rights](#)  
 - [Land Register of Québec](#)  (registry offices) *(on-line Land Register in French only)*

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: November 17, 2005

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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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