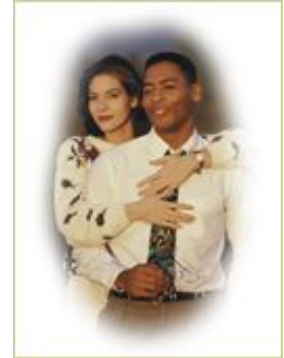




## De facto unions

- » It is now common in our society for two people to live together as a couple without being married or in a civil union. Their choice of lifestyle is known as a de facto union.



Do partners in a de facto union have rights, and do they have any legal obligations towards each other and their children? What is the legal status of a de facto union?

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## » De facto unions and the law

Québec lawmakers, respecting the freedom of choice of couples living in a de facto union, have deliberately chosen not to extend to de facto couples the same rights and responsibilities that married or civil union couples have under the Civil Code of Québec, regardless of the number of years of cohabitation.

Although the Civil Code does not generally regulate the status of de facto spouses, [certain laws](#), such as laws governing employment (social) assistance, legal aid, income tax, the Québec Pension Plan and workers' compensation, treat de facto spouses of the same or opposite sex as a couple.

Since rights and requirements under those laws vary, you should contact the [government departments or bodies](#)  that administer them to find out how they apply to you.

## » Protecting your interests

Your decision to live in a de facto union may well reflect a desire to base your lifestyle on principles of equality and free choice. To prevent misunderstandings and ensure fairness, your views about your life as a couple and as a family need to be made clear.

Verbal agreements are hard to prove so it would be prudent to put your arrangements in writing in a [cohabitation contract](#)<sup>1</sup>, which you would be advised to sign before a notary or a lawyer, with full knowledge of the consequences of the contract.

The contract cannot be amended or terminated unilaterally, that is by one spouse only. By mutual agreement, however, you and your spouse may make changes at any time as circumstances change or unexpected events occur. A cohabitation contract is the only protection you can give each other in terms of a legal framework for your relationship and constitutes conclusive proof of the terms of your agreement.

A cohabitation contract can cover any aspect of daily life, establish arrangements concerning the children and the family residence, and even include provisions in the event of a breakup or death.

## » Cohabitation contracts

### *Property*

A cohabitation contract usually lists each spouse's assets and their exact value, as well as all household goods and the name of the owner(s). In addition to major items such as a car, a cottage and furniture, it is important to keep a record of all smaller items (linens, dishes, etc.), since their combined value may be considerable. It is in the interest of both spouses to identify and keep invoices; should one spouse sell or give away property belonging to the other, or to both of them, the aggrieved spouse can then take legal action.

In the event of a breakup, the property is divided in accordance with the terms of the contract, which cannot be altered by the court should court intervention be necessary.

### *Sharing of responsibilities*

Each spouse's contribution to household expenses and shared responsibility for any debts you may have can be defined in the contract. Care should be taken not to allocate one spouse's income to a single item, such as groceries or childcare. Couples are free to choose the terms of their agreement, but it must be fair if disputes are to be avoided.

### *Power of attorney*

When executing a cohabitation contract before a notary or lawyer, it is advisable to also sign a power of attorney authorizing the spouses to act on each other's behalf in specific circumstances. Should one of you suffer a serious illness or accident, a [power of attorney](#) will be required to settle such matters as the sale of your house in accordance with your wishes. Your relationship is not legally recognized, so why run the risk of finding yourself entangled in legal problems?

#### *Gifts inter vivos*

Your cohabitation contract can be used to confirm in writing any gift *inter vivos* (during lifetime) you wish to make to each other. For example, one spouse may promise to give the other spouse \$15,000 on reaching retirement, or to give him or her that dream cottage. In the event that the promised money gift cannot be made, or that the cottage is sold to someone else, the aggrieved spouse will be entitled to claim damages. It should be remembered, however, that if promised property has been sold, the deed of sale cannot be annulled.



### » **Family residence**

Persons living in a de facto relationship are not entitled to the [family residence](#)<sup>2</sup> protection the Civil Code of Québec provides for individuals who are married or in a civil union. As a consequence, a de facto spouse who is the sole owner of the couple's home can sell or rent it without telling the other spouse.

#### *Ownership*

Joint home ownership (co-ownership) is the best mutual protection for de facto couples. The same holds true for the purchase of other immovable property. Joint ownership of a couple's home or other immovable property is usually established in a notarial contract.

If a hypothecary loan must be taken out to purchase a house, the couple's ability to repay the loan, and not their marital status, serves as the lending institution's main criterion for deciding whether to grant the loan.

A cohabitation contract can provide, in the event of a breakup, for the purchase by one spouse of the other's share, or a right of residence or even the transfer of full ownership to the spouse who has custody of the children.

#### *Rental*

With respect to rented housing, the only protection provided in the Civil Code of Québec for couples living in a de facto union is the right, for the spouse who has been left, to continue occupying the dwelling in which the couple lived before the breakup even though he or she did not sign the lease. To be entitled to that protection, the spouse must have lived in the dwelling with the legal lessee (tenant) for at least six months and still be living in it, and must notify the landlord within two months of the departure of the spouse who signed the lease.

## » Children

### *Rights and obligations*

Whether married, in a civil union or living in a de facto union, all parents have the same rights and obligations with respect to their children.

Parents must provide for their children's basic needs for education, shelter, food and clothing. And all children are equal in the eyes of the law, regardless of their parents' marital status; all are legally entitled to inherit from their parents, grandparents, etc., unless expressly excluded by will.

The only requirement for a child to legally inherit from his or her parents or grandparents is that the child's filiation with them be clearly established (i.e. that they be identified as the child's father and mother).

### *Legal recognition*

Contrary to widespread belief, parents who are not married or in a civil union are not required to adopt their child in order to have the child recognized as theirs.

At the time of birth, **both** the mother and father must complete and sign a Declaration of Birth form before a witness, who will also sign it. The declaration constitutes legal recognition of the child.

The Declaration of Birth states the child's last name(s) and given name(s), sex, place, date and time of birth, the parents' marital status and relationship with the child, and the domicile address of the parents and of the witness.

The parents must send the Declaration of Birth to the [Registrar of Civil Status](#) **DEC 21** within thirty days of the birth, together with a copy of the Attestation of Birth given to them by the physician or other person who attended the birth.

Your cohabitation contract could specify that the provision of full-time care of the couple's children by one spouse will be decided on by mutual agreement, and provide for financial or other compensation for the stay-at-home spouse's contribution to the family's well-being. You could also formalize in the contract your agreement to set aside money for the future needs of your children, for example by saving family allowances to pay for their education.

The contract could also provide for compensation for the parent who will have custody of the children in the event of a breakup, and security for payment.

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## » End of relationship

The provisions of the Civil Code of Québec respecting family patrimony do not apply to couples living in a de facto union. To ensure a fair division of property and avoid potential problems in the event of a breakup or death, de facto spouses should have a written agreement and a clear and unambiguous will.

### *Breakup*

A breakup may be settled in accordance with the couple's [cohabitation contract](#), which determines each spouse's obligations with respect to gifts, division of property, lump sum payments, etc., and which must be enforced as written.

If the cohabitation contract is not respected, a party may apply to the court to have it


enforced. The only provisions that may be altered by the judge, should court intervention be necessary, are provisions involving the rights and well-being of the children (i.e., child support, custody, visiting rights, etc.).

The breakup may also be settled by a dissolution agreement reached by the de facto spouses with or without the assistance of a mediator, notary or lawyer, whether or not they have a cohabitation contract.

A dissolution agreement sets out the terms and conditions relating to division of property, custody of the children and child support. The access rights of the parent who does not have custody of the children may also be determined in the agreement.

As a last resort, the issues may be settled in court.

No matter how long cohabitation has lasted, de facto spouses have no legal support obligation to each other, even if one spouse is in need and the other has a high income. The obligation of both parents to provide for their children, however, subsists.

De facto spouses who separated after June 30, 1999, whether they are of the same or opposite sex, can apply for partition of their employment earnings recorded under the Québec Pension Plan during their de facto union. Before making a decision on the matter, it would be advisable to apply to the Régie des rentes du Québec for a simulation of the effects of a partition ([Application for Simulated Partition of Employment Earnings](#) .

### *Death*

De facto spouses are not legal heirs under the law. If a person living in a de facto union dies without a will, the estate is divided among the legal heirs of the deceased (children or father and mother, brothers and sisters, etc.) according to the [succession](#) rules of the Civil Code of Québec. De facto spouses who wish to bequeath property to each other must do so in a [will](#).

A de facto spouse must be named as beneficiary to be entitled to the proceeds of a life insurance policy.

Since a deceased's joint bank accounts and safety deposit boxes are frozen until the final settlement of the estate, spouses should have separate accounts and safety deposit boxes. Moreover, any bearer bonds, jewellery or money found in a joint safety deposit box could be included in the estate of the deceased if ownership of the items cannot be proven.

## **Your rights and freedoms**

In Québec, four laws protect fundamental human rights and freedoms and prohibit discrimination:

- the Charter of Human Rights and Freedoms;
- the Canadian Charter of Rights and Freedoms;
- the Canadian Human Rights Act;
- the Canadian Bill of Rights.

If you believe you have been discriminated against because of your marital status, you should contact the bodies responsible for the administration of those laws.

***Legislation granting de facto spouses the same rights as married or civil union spouses, and imposing on them the same obligations***

[Québec Legislation](#) 

- Workers' Compensation Act
- An Act respecting industrial accidents and occupational diseases
- An Act respecting financial assistance for education expenses
- Legal Aid Act
- Automobile Insurance Act
- An Act respecting insurance
- Savings and Credit Unions Act
- An Act respecting trust companies and savings companies
- An Act respecting school elections
- An Act respecting duties on transfers of immovables
- Cooperatives Act
- Taxation Act
- An Act respecting the Québec sales tax
- An Act respecting labour standards
- Courts of Justice Act
- An Act respecting the Québec Pension Plan
- An Act respecting the Government and Public Employees Retirement Plan
- An Act respecting the Civil Service Superannuation Plan
- Supplemental Pension Plans Act
- An Act respecting the conditions of employment and the pension plan of the Members of the National Assembly
- An Act respecting the Pension Plan of Certain Teachers
- An Act respecting the Pension Plan of Peace Officers in Correctional Services
- An Act respecting the Pension Plan of Elected Municipal Officers
- An Act respecting the Teachers Pension Plan
- Crime Victims Compensation Act
- An Act respecting income support, employment assistance and social solidarity

[Canadian Legislation](#) 

- Canada Pension Plan
- Citizenship Act
- Employment Insurance Act
- Income Tax Act
- Old Age Security Act
- Pension Benefits Division Act
- Pension Fund Societies Act
- Public Service Employment Act
- Public Service Superannuation Act
- Special Retirement Arrangements Act
- Supplementary Retirement Benefits Act
- War Veterans Allowance Act

1. Les Publications du Québec has published a brochure entitled [Cohabitation Contract](#), which contains information on de facto unions and suggests a structure for writing a cohabitation contract. It contains a document that can be completed and serve as a cohabitation contract. The brochure is available at all Publications du Québec sales outlets.

2. A declaration of family residence protects the family home of married and civil union spouses, whether it is owned or rented, by preventing married or civil union spouses from executing any transaction serving to sell, rent or hypothecate (mortgage) the family residence without the other spouse's consent, on pain of liability for damages.

## » For more information

Agreements between de facto spouses on the responsibilities of each spouse:

- [Cohabitation Contracts](#) 

Agreements on child custody and support upon breakup of a de facto union

- [Joint Application for the Determination of Custody, Access and Child Support](#)


Conjugal institutions:

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

Declarations of birth, parental authority and the rules of filiation:

- [Filiation](#)

Delegating property administration:

- [Mandate](#) (Power of attorney)
- [My Mandate in Case of Incapacity](#) 

The consequences of a breakup or the death of a de facto spouse:

- [Separation, Divorce and Dissolving a Civil Union](#)
- [Child Support](#)
- [Wills](#)
- [Successions](#)


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

- [Family Patrimony](#)


Protection provided by a declaration of family residence:

- [Family residence: protection and declaration](#)  (In French)

Laws and Regulations

- [Les Publications du Québec](#) 
- [Department of Justice Canada](#) 

Government departments and bodies that apply Québec legislation:

- [Government of Québec](#) 

### ***Should you wish to***

Declare a birth:

- [Registrar of Civil Status](#) 

Request the partition of employment earnings recorded under the Québec Pension Plan:

- [Request for a simulation of the effects of the partition of employment earnings](#) 

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**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: December 5, 2006

Québec 

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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.

Latest update: February 20, 2007

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