



Successions

- » When one of your loved ones dies, you may well wonder if you might inherit. A relative asks you to serve as the liquidator for his estate after he dies. Who are the legal heirs? What is the role of the liquidator? What are the liquidator's duties with respect to a succession? This document will answer these questions and many others.



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» Successors and heirs

Since this brochure will refer frequently to “successor”, “heir” and “legatee”, it is important to have a clear understanding of the differences between these terms.

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

An **heir** is a successor who accepts an inheritance to which he is entitled.

A **legatee** is someone who inherits, generally in derogation of the rules of legal succession, either because he is not included in the successors or because he is a successor who inherits a larger portion than normally provided for him by law.

When a person dies without a will (ab intestat), we refer to a legal succession. In this case, the law determines who the successors are depending on the degree of their relationship with the deceased. It also determines their rank and the portion of their inheritance.

A successor is always entitled to renounce his right to inherit. But, as soon as he accepts the succession, he becomes an heir. The quality of heir is irrevocable. Only the court may cancel acceptance of the succession, and only for specific reasons.

A successor may accept the succession at any time between the opening of the succession, namely the date on which the deceased died, and the publication of the notice of inventory (see the section [Refusal or acceptance of the succession](#)). However, certain actions that he takes or fails to take automatically entail his acceptance of the succession even if he does not give his formal consent. Such actions include:

- using property in the succession as if it were personal property;
- exempting the liquidator from taking an inventory;
- not renouncing the succession within the prescribed time.

However, with the consent of all the successors, a person may distribute the deceased person's clothing, personal papers, medals, diplomas and family mementos, and such an action, in itself, does not entail formal acceptance of the succession. Similarly, perishables may be sold, given to charities or divided among the successors, and property that is expensive to keep or liable to depreciate quickly may be sold without entailing acceptance of the succession.

Moreover, a successor who, acting in bad faith, misappropriates property of the succession for his own profit, conceals such property or fails to have it included in the inventory is considered to have renounced the succession, even if he previously accepted it.



» Succession with a will or testamentary succession

If the deceased person left a will in which he appointed persons as his heirs, this is called a testamentary succession. The testator may also hand down a legacy by particular title to someone who is not his legal heir. A legatee by particular title is not considered an heir. He does not have the same obligations with respect to the succession as an heir, particularly with respect to the debts of the deceased individual. In the sections entitled [Inventory of property and notice of closure](#) and [Payment of debts](#), we will see which rules apply in this case.



» Succession without a will or legal succession

If the deceased person did not leave a will or, in other words died ab intestat, we refer to a legal succession. As we said earlier, in this case, the Civil Code of Québec determines which persons are entitled to inherit, in which order and what share of the succession each may inherit.

The successors are the spouse to whom the deceased person was married or civilly united, the deceased person's blood relatives and his relatives by adoption.

This excludes the de facto spouse (the person with whom the deceased person lived but to whom he was not married) and in-laws. In-laws include the following persons: brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law and mother-in-law. The expressions "father-in-law" and "mother-in-law" may also refer to the second spouse of a parent.

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

- Was the deceased person married or civilly united and did he leave a surviving

- spouse? If so, is there a notarised marriage or civil union contract?
- The existence of a notarised marriage or civil union contract has been determined. Does it 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.
 - The existence of a notarised marriage or civil union contract has been determined, but the contract does not contain a testamentary clause. Has the deceased person left any children?
 - If he has left children, the succession must be partitioned between the spouse and the children.
 - If he has left no children, the succession must be partitioned between the spouse and the relatives of the deceased person.
 - No notarised marriage contract exists. Has the deceased person left any children?
 - If he has left children, the succession must be partitioned between the spouse and the children.
 - If he has left no children, the succession must be partitioned between the spouse and the relatives of the deceased person.

Please note

In cases where the succession must be partitioned, the family patrimony must be partitioned first. The succession can only be partitioned after that has been done.

(see the section [Partition of the family patrimony](#)).

The table entitled **Legal devolution of a succession** illustrates the rules we have just described and makes it easy to understand how an inheritance is distributed to the various successors, in most legal successions

To understand the table, it is necessary to know that:

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

Two principles also apply with respect to establishing the right to inherit from the different parents of the deceased person: **representation** and **closeness of degree** of relationship.

- **Representation** means that a descendant becomes a successor in place of his ascendant if his ascendant is deceased

Example

Norman has a son, George, who in turn has a daughter, Mary.

George dies in 1990.

Then Norman dies in 1995.

Norman's granddaughter, Mary, as her father's representative, becomes a successor in place of George.

In a direct line of descent from the deceased person, that is, from his child to his grandchild to great grandchild, etc., representation continues indefinitely, whereas in the privileged collateral line, representation applies only in favour of the deceased

person's brothers and sisters and their children. Other collaterals (grandnephews, grandnieces, etc.) are ordinary collaterals.

Please note

The privileged collaterals are entitled to succession, even if the relationship with the deceased person is not based on marriage.

- **Closeness of degree** of relationship means that, within the same line of successors, the successor the most closely related to the deceased person excludes more distant relatives from the succession. Considering the frequency of divorce and remarriage, it is not always easy to establish, at a first glance, the hierarchy of successors. You should note, however, that if the privileged collaterals are the issue of different marriages, their share is divided in half, with one half going to those from father's line – consanguine brothers and sisters – and the other half going to those from the mother's side – uterine brothers and sisters. Following that, the succession is divided in equal shares among the heirs for that line. If there are brothers and sisters in both lines – natural brothers and sisters – they share in both successions.

The above two principles illustrate the fact that the same person may be a successor in two ways, either as the representative of a successor or as an actual successor.

Example:

Ralph, the deceased person, had two sisters: Jane and Pauline.

Pauline died before Ralph and left one son, Peter.

Peter, as the representative of his mother, Pauline, partitions the succession with Jane.

If Jane is deceased, Peter, as Ralph's nephew, partitions the succession with Jane's living children, if she left any.

Legal devolution of a succession

Relationship with the deceased				
Children or their representatives	Surviving spouse	Father, mother or one of the two	Brothers, sisters or their representatives	Nephews and nieces
Full				
2/3	1/3			
	Full			
	2/3	1/3		

	2/3		1/3*	
		Full		
		1/2*	1/2*	
			Full*	
	2/3			1/3*
		1/2		1/2*
				Full*

Legend

Existence of persons so related to the deceased person, thus making them successors, and share of the succession to which they are entitled.

Absence of persons so related to the deceased person, thus entitling other successors to a share of the succession.

Exclusion from the succession of persons so related to the deceased person because other, closer successors exist.

* The brothers and sisters of the deceased person, as well as his nephews and nieces, partition the share of the succession to which they are entitled, in keeping with the following conditions: the brothers and sisters of the deceased person must be the offspring of the same father and the same mother as the deceased person and the nephews and nieces in question must be the offspring of these same brothers and sisters of the deceased person.

In the case of half-brothers and half-sisters of the deceased person, and their descendants, other rules apply.

Ordinary ascendants and ordinary collaterals are called to the succession only if the deceased person leaves no spouse, descendants, ascendants or privileged collaterals. Nieces and nephews may be represented by their children (the grandnephews and grandnieces of the deceased person). Relatives beyond the eighth degree are not considered successors. In this case, property belonging to the succession and located in Québec would by law go to the State.

» Partition of the family patrimony

Whether or not the deceased spouse left a will and regardless of which matrimonial regime governed the legal relationship between the spouses (even if a notarised marriage contract exists), whenever a succession must be partitioned, the family patrimony must be partitioned first. Furthermore, it is the value of the property that is partitioned, not the property itself. It is important to note that the family patrimony can only be partitioned among legally married or civilly united spouses.

The surviving spouse may renounce all or part of the family patrimony, in a notarised document. Nevertheless, in order to be valid, this renunciation must be registered with the [Register of personal and movable real rights](#) (Registre des droits personnels et réels mobiliers) (see coordinates at the end of this brochure) within one year of the date on which the right to the partition started.

Thus, even before attempting to determine who inherits the property of the succession, half of the **net value** of the following property devolves to the surviving spouse:

- the family residence (home, condo, etc.);
- secondary residences used by the family;
- furniture in these residences;
- automobiles used by the family;
- pension plan benefits, including registered retirement savings plan (RRSP) benefits, accrued during the marriage or civil union, and any other retirement savings instruments.

Example

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

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

The value of the family patrimony totals \$273,000. Each spouse's share is \$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).

After settling the matter of family patrimony, the succession is partitioned according to

the testator's wishes (if a will exists) or according to the rules of legal devolution (if no will exists).



» Liquidator

In the case of both a legal succession and a testamentary succession, a liquidator, formerly the “testamentary executor”, is appointed to administer the succession.

Generally, it is the testator who appoints the liquidator. Even if he appoints a “testamentary executor” or an “administrator of the succession”, etc., that person nonetheless has the quality of liquidator. However, if the testator does not appoint a liquidator or if the succession is a legal succession, 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 submitted to the court. The choice of the liquidator by the heirs may be made by means of a declaration, a simple agreement under private writing (a sheet of paper on which the choice of the heirs is indicated) or a notarial act.

The name of the chosen liquidator is published in the Register of personal and movable real rights (Registre des droits personnels et réels mobiliers), by completing a registration request, as well as in the [Land Register](#) , if required.

Once appointed, the liquidator is responsible for settling the succession as soon as possible. There is no specific time limit, but if the liquidation takes more than one year, the liquidator must, at the end of the year, report to the heirs concerning his administration.



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 that he be remunerated or, if all the heirs agree, they may decide to remunerate him. Of course, the costs incurred in settling the estate are borne by the succession.

Finally, it should be noted that:

- no person is obligated to accept the duty of liquidator unless he is the only heir;
- a person who accepts this duty has the option of resigning from it, but not without a serious reason, not at an inopportune time and not where such resignation would amount to failure of duty;
- if the liquidator resigns, he must notify the heirs in writing;
- if the liquidator resigns, he is responsible for any prejudice that his resignation may cause the heirs.



» Search for a will

The death of a close relative or friend necessitates attending to many different matters, one of the most important of which is searching for a will. This involves looking through the deceased person's personal effects, finding out whether he had a safety deposit box and contacting persons or organisations likely to possess the will. A search will also have to be made of the Registre central des testaments et des mandats of the [Chambre des notaires du Québec](#)  and the Registre des testaments et des mandats of the [Barreau du Québec](#)  (see the coordinates for these organisations on page 19). These searches are necessary to make sure that either there is no will or that the will that has been found is the most recent one. In fact, only the most recent will has any legal value.

It is preferable to contact the Chambre des notaires and the Barreau by telephone to obtain the form entitled Request for a search of will and to find out how to access the register of wills and how much the search will cost.



» Probate of a will

The holograph will (written by hand) and the will made before witnesses must be probated by the Superior Court of the judicial district where the deceased person had his domicile or by a notary, unless the said will was deposited with a member of that notary's firm.

The request to probate a will must be filed after the testator's death by any interested person — usually the liquidator — or by a legal professional, namely a notary or solicitor acting on his client's behalf.

The heirs and successors must be notified of the steps to be taken to probate the deceased person's will. The court may exempt the person entrusted with this task — usually the liquidator — from notifying all the successors, where to do so would be impractical or too expensive, and, particularly, where it would seem unnecessary.

A request to probate a will must be accompanied by the necessary supporting documents, namely:

- the original will;
- the act of death issued by the Directeur de l'état civil;
- a statement, often called an affidavit, made under oath attesting to the authenticity of the signature and, where applicable, of the deceased person's writing;
- proof that the notice has been sent to the heirs and successors.




» Inventory of property and notice of closure

As part of his mandate, the liquidator must take an inventory of the property of the succession. He may be exempted from doing this with the consent of all the heirs and successors, although it is not in their interest to do so, since the existence of an inventory affords them protection if the deceased person's total debts exceed his total assets.

It should be noted that the heirs are liable for the deceased person's debts only up to the value of the property they receive from the succession. If the successors exempt the liquidator from taking an inventory, they are considered as having accepted the succession and are personally liable for all of the succession's debts, even if they 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 he was acting in good faith, apply to the court to have his obligation reduced or to have his liability limited to the value of the property he received if, for example, new information or the appearance of a creditor whose existence could not have previously been known substantially augments the extent of his obligation.

Once the inventory has been completed, a notice of closure of inventory must be registered in the Register of personal and movable real rights (Registre des droits personnels et réels mobiliers) by completing a General application of registration to be obtained from that [organism](#) .

The liquidator must inform the heirs, the successors who have not yet decided whether to accept or refuse the succession, the legatees by particular title and the creditors that the notice of closure of inventory and the place at which the inventory may be consulted have been registered in the Register of personal and movable real rights (Registre des droits personnels réels et mobiliers). Often this consultation is made 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 of the deceased person's last known address. The notice must mention the main particulars appearing on the General application of registration. There is no need to publish all of the information provided on the form submitted to the Register of personal and movable real rights (Registre des droits personnels réels et mobiliers).



» Refusal or acceptance of the succession

The successors have two options: renouncing the succession or accepting it. They have six (6) months following the opening of the succession, namely the date of death, to exercise their option. It is wise to wait for the publication of the notice of closure of inventory before deciding, since that publication may lead to the discovery of unknown property belonging to the succession or, in many cases, of unknown creditors. This new information will make it possible to correct the inventory and to have a better idea of the succession's solvency. The six-month period may also be extended by as many days as are necessary to give a successor sixty (60) days, following closure of the inventory, to exercise his option.

Generally, one renounces a succession if its debts exceed its assets. If the successors decide to renounce the succession they must do so by means of a notarised document, since renunciation may not be done by private writing. More rarely, this renunciation is done by judicial declaration in the course of legal proceedings.

If there is no notarised document to indicate that a successor has refused to accept the

succession, he is deemed to have accepted it.

The heirs, that is, the successors who accept the succession, are obligated to pay the deceased person's debts up to the value of the property they receive. Once a successor accepts the succession, he cannot simply change his mind and renounce it. He must apply to the court if he wishes to have his acceptance cancelled.



» 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 procedure in the event that unknown property or creditors are discovered. He then pays the succession's debts. Three situations may occur.

1. The succession is solvent

The liquidator will therefore pay the creditors and legatees by particular title without further delay. He will also pay the electricity, telephone and heating bills, funeral expenses, other current expenses, claims resulting from the partition of the family patrimony, the compensatory allowance that must be paid to the surviving spouse (compensation for having contributed to enriching the deceased person's family patrimony), where applicable 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 the liquidator is not certain of having enough property to cover all the succession's debts and the legacies by particular title, the liquidator will not pay any debt or any legacy before sixty (60) days have elapsed following registration of the notice of closure of inventory in the Register or personal and movable real rights (Registre des droits personnels et réels mobiliers). He may, however, before the sixty (60) days have elapsed, pay the public utility accounts (telephone, electricity, gas) and any pressing debts.

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

3. The succession is not solvent

The property of the succession is insufficient to cover all the debts and the legacies by particular title. The liquidator must act very cautiously. He must draw up a complete statement of the debts and the legacies by particular title and must 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 consult a legal advisor so as to avoid any mistakes.

The payment proposal must be drafted according to certain rules: the preferred creditors (those whose claims pertain to legal costs, movable property, tax laws or property taxes) or the hypothecary creditors, according to their rank, are paid first, the other creditors are paid on a pro rata basis and any legatees by particular title are paid last.

If there is not enough property to pay all the legatees by particular title, the liquidator must follow other rules, such as the pro rata reduction rule or, if provided for in the will, the preference rule.

It is always possible for a well-informed liquidator to obtain a voluntary reduction of the debt by the creditors, so as to satisfy as many of the people involved as possible. In this case, the liquidator must explain the situation fully to the creditors, disclose all the facts to them and obtain their written consent.

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» Closure of the liquidator's account

Once liquidation of the succession has been completed, the liquidator must submit a final account showing the succession's net assets or its deficit.

The liquidator must register a notice of closure of the liquidator's account in the Register of personal and movable real rights (Registre des droits personnels et réels mobiliers) using the General application for registration form, which can be obtained from that organisation.


The will may impose other duties on the liquidator, which he must carry out in accordance with the deceased person's instructions.

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» Delivery and partition of property

The heirs receive the property after they have accepted the liquidator's final account. If the will so requires or if the majority of the heirs so request, the liquidator must append to his account a proposal for partition. If the proposal for partition is accepted, the liquidator carries out the partition upon turning the property over to the heirs. If the proposal for partition is not accepted, the liquidator delivers the property to the heirs, who become undivided owners and will have to partition the property in accordance with the law (see the section [Succession without a will or legal succession](#)).

The liquidator must complete the deceased person's federal and provincial income tax returns and request authorisation from Revenu Québec to dispose of the property.

To obtain a brochure on this subject, contact [Revenu Québec](#) .

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

We hope this text has helped to answer your questions. However, if some aspects remain unclear, do not hesitate to contact [us](#).

Note: In this text, the masculine form is used to designate either sex.

See also

[How to contact](#) the Superior Court in all Québec courts

[Wills](#)

[Family patrimony](#)

Interesting links

[Barreau du Québec](#)

[Chambre des notaires du Québec](#)

[Register of personal and movable real rights](#)
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General Information

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