



## Your de facto union — a wise choice?

### Additional information about the checklist

The following text is meant for any couple, whether the spouses are the same or a different sex. The masculine gender is used to make the text easier to read and designates both men and women.

#### **If you are living with or thinking about living with a spouse**

##### **Have you prepared a list of the property each of you own?**

When your relationship ends, you and your common-law spouse are considered to be single people who have lived under the same roof. Each spouse must therefore take back his own property.

##### **Do you want to be co-tenants? You will both have to sign the lease.**

If you do not co-sign the lease, your spouse can terminate, assign, sub-lease or renew it without your consent.

If you and your spouse break up, the courts can give the parent with custody of the children the use of the dwelling, whether or not he signed the lease, for a short period in the interest of the children.

If you do not have any children, the courts refuse to allow one of the spouses to use the dwelling when you have both signed the lease. You should therefore decide who will continue to live in the dwelling and who will pay the rent. If you cannot agree, you might have to pay the rent or live as co-tenants until the end of the lease. Note that the owner of the dwelling is not bound by any agreement between you and your spouse, unless he agrees to the changes to the lease.

To be considered a couple for the purpose of low-income housing, you and your spouse must present yourselves publicly as spouses and live together on a regular basis.

##### **Do you want to be co-owners of your residence? You will both have to sign a deed of co-ownership when you purchase it.**

If you buy a building in co-ownership with your spouse, your name must appear on the deed of sale signed before a notary. Your share in the building is deemed to be equal to your spouse's share. If it is not, this should be indicated in the notarial deed; otherwise it could be difficult for you to claim your share.

Unless you and your spouse are co-owners of the family home, the spouse who is the sole owner can rent, sell or hypothecate it without the other's consent.

If your relationship ends, the courts can give the parent with custody of the children (or one of the parents if custody is shared) the use of the home which he does not own or which he co-owns, for a short period in the interest of the children

When the home is sold or transferred between de facto spouses while they are living together, you may be exempt from the transfer tax (welcome tax) if you meet the definition of "spouse" in the *Act respecting duties on transfers of immovables*.

##### **Have you discussed the consequences of a break-up, death or incapacity?**

It is important to discuss these issues with your spouse while you are living together; otherwise you could end up without protection or leave your spouse without protection in the event of a break-up, death or disability.

During your discussions, you may determine what each person's role will be with respect to the management of the common property, the performance of household chores and the support and education of the children. You can also determine what the impact of each person's role will be on the advancement of your respective careers and your possibility of accumulating assets.

You may also want to discuss your future needs in terms of financial compensation in the case of a break-up or in terms of life insurance and inheritance in the event of death. You may also want to discuss your wishes regarding the protection of your person or the management of your property in the case of incapacity following an accident or illness. Once you have discussed these issues, you have several options.

**You may want to have a cohabitation contract prepared in which you will set out:**

A cohabitation contract is a verbal or written agreement between spouses in which you decide in advance on the consequences of a break-up. It is preferable for the contract to be in writing to make it easier to prove its contents before the courts. The contract may also be signed before a lawyer or notary. It may provide for:

- **the sharing of finances while you live together;**

Unless you agree otherwise in writing or verbally, you cannot make your spouse liable for the things you buy alone for the family's needs.

- **how the common property will be divided up if your relationship ends;**

Unless you agree otherwise, your spouse will take back the property which belonged to him before you began living together and property purchased while you lived together.

Your spouse may dispose of furniture belonging to him without your consent.

If your relationship ends, the courts may, for a short period and in the interest of the children, grant the parent with custody the use of furniture he does not own.

- **the payment of alimony or financial compensation.**

As a de facto spouse, you are not entitled to alimony when your relationship ends unless a cohabitation contract so provides.

**If not, don't forget to obtain and keep an invoice for things you buy while you live together.**

This will help you divide up your property: you may determine who owns a particular item and the value of property you bought together.

**If you want your spouse to inherit, prepare a will.**

If you don't have a will, your spouse will not inherit. However, a child born of a de facto union can inherit from one or both parents even if there is no will.

**If you want your spouse to be a beneficiary under your life insurance policy, designate him or her in writing.**

If you have designated a person as beneficiary, your insurer will give all your benefits directly to that person.

If you have not designated anyone, your insurer will pay the benefits to your estate. Your liquidator will have to pay all your debts before paying your heirs their inheritance. If your will does not provide that your spouse will inherit, he will not be entitled to your insurance benefits.

**If you want to ensure that your spouse will look after you and your property in the event of incapacity, prepare a mandate given in anticipation of incapacity.**

A mandate in anticipation of incapacity is a document in which a person who is capable states who will look after him and administer his property in the case of incapacity. In the absence of such a mandate, an application for the institution of protective supervision will have to be made to the court by someone close to you. After taking into consideration the advice of your relatives and friends, the court will choose who will look after you and manage your property.

If you wish to ensure that your spouse will look after you and manage your property in the case of incapacity (due to accident or illness, for example), designate him in a mandate in anticipation of incapacity.

A sample mandate in anticipation of incapacity is available free of charge on the Public Curator's web site at the following address: [www.curateur.gouv.qc.ca](http://www.curateur.gouv.qc.ca). The *Mes volontés* kit containing a sample mandate in anticipation of incapacity, a sample will and information about estates is currently available in bookstores which are partners with Publications du Québec or at the following address: [www2.publicationsduquebec.gouv.qc.ca](http://www2.publicationsduquebec.gouv.qc.ca), at a cost of \$21.95.

**Do you already receive government child care benefits? If so, you should inform the public bodies in question one year after you start living together or after you have a child together.**

The amount to which you or your spouse is entitled as child care benefits (CCB) or Canada child tax benefits (CCTB) is calculated every year taking into account:

- your marital situation (with or without a spouse);
- your family income, i.e. the amount of your income and that of your spouse, if applicable;
- the number of children under age 18 who live with you;
- whether or not you have joint custody of your child.

In calculating your family income, you will be considered de facto spouses if you have lived together:

- for at least 12 months **OR**
- as soon as you begin living with the biological or adoptive parent (father or mother) of at least one of your children.

You must therefore inform the Régie des rentes du Québec and the Canada Revenue Agency of the change in your marital situation in order to receive the amounts to which you are entitled.

Whether or not you are living with someone does not affect the amount to which you are entitled as the universal child care benefit (UCCB). It is currently a monthly amount of \$100 per child under 6 years of age.

## **You're about to become a parent**

**Do you want to be recognized as your child's parents? You will both have to sign the declaration of birth.**

Even if your child is born while you are living together, the other parent must sign the declaration of birth to be recognized as the parent.

**Your child has the same rights and obligations as a child born to married parents and you have the same duties and obligations toward your child.**

Both parents exercise parental authority and all decisions made with respect to the children must be made jointly and in their interest.

**In certain circumstances, you can adopt the child of your de facto spouse if you have lived together for at least three years.**

## **If your spouse dies**

**If you have lived in a de facto union with your spouse for at least three years or for at least one year if you have a child together, you may be entitled to benefits from the RRQ, the SAAQ, the CSST or the IVAC, depending on the circumstances surrounding the death.**

If your spouse dies, you may be entitled to the surviving spouse's pension under the *Act respecting the Québec Pension Plan*.

Depending on the circumstances surrounding the death, certain laws also provide that you may be entitled to a pension, benefits or the reimbursement of the cost of psychotherapy. This is the case under the following laws:

- the *Act respecting the Québec Pension Plan*
- the *Automobile Insurance Act*
- the *Act respecting industrial accidents and occupational diseases*
- the *Crime Victims Compensation Act*
- the *Act to promote good citizenship*

## **If you separate**

**You will have to decide on child custody, access rights and child support.**

Both parents have the same rights and duties in regard to their parental authority and together they must make all decisions concerning their children. If you separate, the custody of your children may be entrusted to one of you, or you may have shared custody. The decision concerning your children's custody must be taken in their best interest.

Whether custody is entrusted to one or the other, parents must consult each other, and together they must make every important decision concerning their children well being, health, education and religion.

If you separate, your children are entitled to support. Each parent must look after the needs of the children and share these costs proportionally to their income. As the obligation to provide child support is of public order, you cannot waive your children's right to support.

Since September 1, 1997, your ex-spouse and you are entitled to obtain the services of a professional mediator during the negotiation and settlement of your application for child custody, or child support, or the review of an existing decision.

The Service de médiation familiale will pay the mediator's fee for six sessions. However, if the mediation concerns the review of an existing court judgment, the Service will pay for only three sessions.

**The common property can be divided up according to your cohabitation contract. If you don't have one, you can take the property which belongs to you and divide up the common property. If you can't agree, you will have to apply to the courts.**

The general rule is that you have three years to make a claim, normally beginning on the date you separate.

**The dividing up of the residence you purchased in co-ownership can be settled by selling it or transferring one spouse's share to the other. If you can't agree, you will have to apply to the courts.**

You are not required to remain co-owners of your home. However, you cannot force your spouse to sell you his share. In the case of a disagreement, you can ask the courts to order your home to be put up for sale.

**You can also ask your ex-spouse for compensation for your contribution to his or her patrimony, the repayment of a debt or compensation for damages he caused you. If you can't agree, you will have to apply to the courts.**

The general rule is that you have three years to make a claim. Depending on the circumstances, this period begins on the date your claim arises or the date you separate.

**If you no longer want your ex-spouse to benefit under your will or as beneficiary under your life insurance, you will have to make the necessary changes.**

If your ex-spouse is your heir, your break-up will not have an effect on the will. You will have to change your will; otherwise your ex-spouse could inherit, even if you are separated.

Also, the break-up of de facto spouses does not have an effect on the designation of a spouse as beneficiary under life insurance. You will have to change the designation, otherwise your ex-spouse will benefit under your life insurance policy in the event of death, even if you are separated.

**You will have to change your mandate in anticipation of incapacity if you have designated your ex-spouse as mandatary and you no longer wish him or her to act as such.**

If your ex-spouse is your mandatary, your break-up will not affect your mandate in anticipation of incapacity. You will have to change your mandate, otherwise your ex-spouse could be designated to look after you and manage your property in the event of incapacity.

**If your cohabitation contract so provides, you can claim alimony or financial compensation.**

The law does not provide for alimony between de facto spouses. You can only obtain alimony or compensation for the time you devoted to your family to the detriment of your career if you have signed a cohabitation contract.

**You will have to inform the Régie des rentes du Québec and the Canada Revenue Agency of your separation so they can determine the new amount of child assistance payments and child tax benefits you are entitled to.**

For the purpose of calculating government child benefits, you will be considered not to have a spouse if you have lived separately for 90 days or more following the break-up. After the 90-day period, you will have to inform the Régie des rentes du Québec and the Canada Revenue Agency so they can calculate the new amounts to which you will be entitled given your new marital situation. These amounts will be adjusted retroactively to take account of the 90-day waiting period.

## **OTHER LAWS**

For the purpose of the eligibility for certain government programs, the definition of “spouse” may vary. This is the case for the following laws:

- *Legal Aid Act*
- *Individual and Family Assistance Act*
- *Act respecting financial assistance for education expenses*
- *Act respecting labour standards*
- *Old Age Security Act*
- *Income Tax Act*
- *Taxation Act*

To find out whether you are eligible for these programs, contact the organizations in question.

With respect to the *Income Tax Act* and the *Taxation Act*, refer to the definition in each of these laws to find out whether you qualify as a “spouse” within the meaning of that law and whether you are entitled to the various tax credits and deductions.