

Notaries and civil marriages

For many people, the commitment of one person to another is solemnized by a marriage ceremony, either civil or religious, or, since June 2002, by a civil union ceremony.

Regardless of whether it takes place in a church, courthouse or elsewhere, the ceremony is very important because it is the opportunity for the two people involved to solemnly and publicly declare their wish to be married.

However, there is more to it than just the ceremony itself: the validity of a marriage depends on various rules.

The notary as officiant

When two people wish to marry civilly, they must first choose a competent officiant. This is an essential condition for the validity of the marriage. Since 2002, couples have been able to solemnize their union before a notary in a civil ceremony.

The provisions of the *Civil Code of Québec* that govern marriage ceremonies impose various responsibilities on the officiants, some of which are already familiar to notaries, such as the obligation to verify the parties' identities and obtain their consent. As a public and judicial officer, the notary is fully authorized to fulfil the function of officiant.

Legal requirements

Before the ceremony

Before the civil ceremony, the officiant notary must make sure that both intended spouses have reached the required age of 16 years or more, and that they have never been married before, or if they have, that the previous marriage was dissolved by means of death, divorce or annulment. Note that a decree of judicial separation does not annul the marriage. A judgment of divorce must be obtained before the person can remarry. The notary will take care to ask for the required proofs of identity and marital status before the marriage.

If an intended spouse is younger than 18 years, the notary must obtain the consent of the parent or tutor.

Because the marriage must be “publicly” contracted, a notice of marriage must be posted where the ceremony will be held as well as at the courthouse nearest to that place for the 20 days preceding the date of the ceremony. This form of “publicity”—the notice of marriage—replaces the traditional “publication of the bans.” An exemption from publication can be obtained for serious cause.

When meeting with the notary, the notice of marriage is prepared and, at this time, the intended spouses must be accompanied by a witness of major age known to the couple. This witness does not have to be one of the witnesses for the ceremony itself. However, they must know both intended spouses. If not, two witnesses are required. The role of the witness at this meeting with the notary is to attest to the accuracy of the information in the notice of marriage (names and dates and places of birth for the intended spouses).

Meeting your officiant/notary is also a good opportunity to discuss your choice of matrimonial regime by marriage contract. By law, marriage contracts must be notarized. For more information on this, consult the pamphlet on matrimonial or civil union regimes.

When preparing to meet with your notary, make sure to collect all required documents and to ask someone you know to act as witness to the notice of marriage.

Where the ceremony takes place

The notary can perform a civil marriage every day between 9 a.m. and 10 p.m., including Sundays and statutory holidays, unless the marriage takes place in a courthouse. In this case, the limitations to which the clerks and deputy clerks of the Superior Court are subject apply, i.e., between 9 a.m. and 4:30 p.m. only, every day except Sundays and statutory holidays.

If one of the intended spouses cannot move because of a physical condition, attested to by medical certificate, the ceremony can take place where that intended spouse is, if the officiant agrees.

The notary can perform the marriage in any location agreed upon with the intended spouses, provided that it respects the solemn nature of the ceremony and is furnished accordingly. Therefore, a marriage solemnized by notary gives the intended spouses a much wider choice of location.

It is not enough to just tell the notary where the ceremony is to take place. They must be able to ensure that the location respects the solemn nature of the ceremony and that it is furnished accordingly. The officiant reserves the right to accept or refuse to perform the civil marriage ceremony due to the choice of location. Discuss your choice with your notary. Together, you can agree on a place that fulfils the legal requirements.

The ceremony

At the ceremony, the officiant reads to the intended spouses sections 392 to 396 of the *Civil Code of Québec*, in the presence of two witnesses. These sections treat the effects of marriage: respect, fidelity, succour, assistance, the obligation to live together, the moral and material direction of the family, duties, etc.

It is important to know the legal consequences of marriage. Do not hesitate to talk about them beforehand with your notary, who will inform you not only about your rights and responsibilities, but also the other effects of marriage, such as the constitution of family patrimony.

After reading the spouses' rights and responsibilities, the officiant obtains their consent and declares them married. The spouses sign a declaration of marriage, which the witnesses countersign, and then the notary signs. This declaration will be sent to the Registrar of Civil Status and will constitute the proof of marriage.

Review with your notary your desired protocol and details of the ceremony: exchange of vows, readings, music, etc. They will always listen and may even make useful suggestions.

The rules governing civil marriage also govern the civil union ceremony, appropriately adapted.

Consult your notary: he leaves nothing to chance.

