

## ***DE FACTO* UNION**

### **BYPASSING the formalities**

Customs change. Nowadays, many couples decide to live together without getting married or entering into a civil union. Uncertain as to choice of spouse, disillusioned by a previous marriage, or simply unwilling to make a commitment, an increasing number of unmarried couples are living together. If you are among them, you may be wondering about the legal aspects of your situation. One thing you should know is that whether you and your *de facto* spouse have lived together 3, 5 or even 20 years, you will not be granted the same legal status as a married or civil union spouse.

### **I'VE HEARD THAT...**

Despite what you may have heard, the following statements are false.

**False:** The property bought by my *de facto* spouse will be split half-and-half in the event of separation.

**False:** If we have a child together, we must adopt it to establish filiation.

**False:** Should my *de facto* spouse die, all assets will automatically revert to me.

These are but a few of the mistaken assumptions made by *de facto* spouses.

### **MY HOUSE, YOUR HOUSE OR OUR HOUSE?**

Remember that the rights under the *Civil Code of Québec* to the protection of a family residence and the obligatory division of family patrimony in the event of separation are granted only to legally married couples or to couples in a civil union.

A *de facto* spouse who is the sole owner of the family residence may sell or hypothecate it without the consent of the other spouse. In the event of separation, the registered owner of the residence keeps it for himself and may even sell it alone without splitting the proceeds of sale with his former *de facto* spouse.

If you plan to buy a house, why not do so in undivided co-ownership (i.e. with both your names as purchasers in the deed)? If you are both owners, you are both adequately protected and, at the time of resale, both benefit from the increased value of the house purchased jointly.

### **CHILDREN: EQUAL BEFORE THE LAW**

Children born of a *de facto* marriage have the same rights and obligations as children from a legal marriage or civil union. Therefore, there is no need for parents to adopt such children. As is the case for all other children, the child may be given the surname of the mother or the father, or a combination of the two.

## **MENTAL INCAPACITY**

Supposing you temporarily or permanently lose your mental faculties... or become unable to take care of yourself or administer your property or assets...

In such cases, it is reassuring to your loved ones to know that you have designated, in a **mandate given in anticipation of mental incapacity**, your *de facto* spouse or someone else chosen by you to act as mandatary. In the event of your incapacity, your mandatary will legally represent you and make important decisions that concern you.

**Consult the Chambre des notaires brochure on mandates given in anticipation of incapacity.**

## **NO ONE LIVES FOREVER**

Even if you spend your entire life with a *de facto* spouse, you will not be his or her legal heir when he or she dies.

The most elementary prudence dictates that *de facto* spouses who wish to leave their assets to their spouse when they die should draw up a will. Without such a will, the family of the deceased *de facto* spouse inherits the succession in accordance with the *Civil Code of Québec*. Furthermore, you will not be able to collect your *de facto* spouse's life insurance unless he or she has designated you in writing as the beneficiary of the policy, either in the policy itself or by will.

## **IN THE EVENT OF SEPARATION**

*De facto* spouses without financial resources are not entitled to support in the event of separation. However, child support may be requested on behalf of children born of such a *de facto* union.

Even if the parents live separately, they continue to have parental authority over their children. Therefore, full rights of access cannot be opposed unless there are serious reasons for doing so.

Assets accumulated during cohabitation must be divided in accordance with proof of ownership, unless otherwise indicated in a joint agreement. Hence the importance of keeping all receipts and bills showing ownership of property acquired during the *de facto* union.

## **RECOGNIZED RIGHTS FOR *DE FACTO* SPOUSES DEPEND ON THE LAWS INVOLVED**

Some laws, especially those of a social nature, give equal rights to married or civil union couples and same-sex or opposite-sex *de facto* spouses. Each of those laws establishes its own criteria (duration of cohabitation, existence of a child, etc.) for the recognition of certain legal effects.

No general conclusion may be drawn from any one set of laws. For example, the Régie de l'assurance-automobile du Québec recognizes, under certain conditions, the right of a *de facto*

spouse to death benefits should his or her spouse die in an automobile accident, but this does not entitle the surviving spouse to the deceased's assets unless provided for by will.

Since June 24, 2002, the *Civil Code of Québec* has recognized the right of the *de facto* spouse to consent to healthcare for his or her spouse when the latter is not capable of giving such consent and where no proxy, trustee or guardian has been appointed.

## **DON'T WAIT UNTIL IT'S TOO LATE**

Your notary is fully qualified to inform you and provide you with proper advice. He can tell you all you need to know about the civil and tax implications of your *de facto* union. If necessary, he may suggest the drawing up of an agreement in notarial form setting forth all the rules applying to your *de facto* union.

Such a contract may be long or short, depending on the matters you wish to include. Your notary can help you decide just how much the contract should cover. For instance, you may wish to include provisions concerning:

- Ownership rights in the shared residence
- Administration and disposal of assets acquired during cohabitation
- Gifts of furniture and other assets
- The fate of the shared residence in the event of separation or death
- Rights to support between the *de facto* spouses following a separation
- The division of certain assets on separation

## **THE ADVANTAGE OF PLANNING BEFOREHAND**

A great deal of painful arguing and needless wrangling may be avoided if, when you and your *de facto* spouse decide to separate, you are able to rely on an agreement made in better days.

**Consult your notary: he leaves nothing to chance.**



**Chambre  
des notaires  
du Québec**

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