

FAMILY PATRIMONY

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Mine! Yours! Whose?

On July 1st, 1989, the provisions of the law instituting the family patrimony came into force. The purpose of this legislation was to favour economic equality between married spouses and, since June 24, 2002, between civil union spouses, and to put an end to the injustices of which the poorer spouse could sometimes be the victim especially where the spouses had chosen the regime of separation as to property. The effect of this law is to provide for the equal partition (i.e. division) of the value of the family patrimony assets in the event of the death of one of the spouses, or in the event of a judgment of separation as to bed and board, divorce or nullity of marriage or civil union or dissolution of civil union by court or by notarized joint declaration and transaction contract.

DOES THE LAW APPLY TO YOU?

All legally married or civil union couples, no matter what the date of their marriage or civil union and regardless of their matrimonial or civil union regime, are subject to the provisions of this law. As a general rule, spouses are required to divide the family assets between them, whether or not they have signed a marriage or civil union contract, and whether or not they have common children.

EXCEPTIONS

The following couples are not required to comply with the partition of the family patrimony:

- Those who renounced the family patrimony before January 1st, 1991
- Those who filed a petition for divorce, separation as to bed and board or annulment of marriage in court before May 15, 1989
- Those who ceased living together before May 15, 1989, and had settled the consequences of their separation by way of written agreement or otherwise

The rules concerning the partition of the family patrimony **do not apply to spouses living in a *de facto* marriage.**

WHAT ARE THE FAMILY ASSETS?

The family patrimony is composed of the following property owned by one or the other of the spouses:

- The residences of the family or the rights which confer use of them
- The movable property with which they are furnished or decorated and which serves for the use of the household
- The motor vehicles used for family travel

- The benefits accrued during the marriage or civil union under a retirement plan (except, in the event of death, a retirement plan governed or established by a law that grants a right to death benefits to the surviving spouse)
- The earnings of each spouse registered during the marriage or civil union pursuant to the *Act respecting the Québec Pension Plan* or similar programs (except in the event of death)

However any such property received by either spouse before or during the marriage or civil union by way of gift or succession, or its reinvestment, is excluded from the family patrimony.

WHAT RIGHTS DO I HAVE DURING THE MARRIAGE OR CIVIL UNION?

Until the marriage or civil union comes to an end, the rules concerning family assets do not conflict with the right of ownership each spouse has in his or her own property. Each spouse remains free to dispose of his or her assets, subject to restrictions which have been enacted to protect the family residences (the owner spouse not sell may or hypothecate a family residence without the written consent of the other spouse if it has fewer than five dwellings) and property serving for the use of the household (the owner spouse may not alienate, hypothecate or remove it from the family residence without the consent of the other spouse). There are other restrictions resulting from the matrimonial or civil union regime (for example, a spouse who is subject to the regime of partnership of acquests may not give away, during his or her lifetime, any acquest without the consent of the other).

In short, the law does not make the spouses co-owners of the property included in the family patrimony, but rather, creates a right to partition the value of such property at the end of the marriage or civil union.

WHEN DOES PARTITION TAKE PLACE?

The partition of the family patrimony takes place as a result of separation as to bed and board, divorce, nullity of marriage or civil union, the dissolution of civil union through a court or before a notary, or the death of one of the spouses. It is only then that the value of the family patrimony is split equally, unless the court, in exceptional circumstances, decides otherwise. Civil union spouses can also make this choice according to the terms of the notarized transaction contract.

HOW DO WE PROCEED WITH THE PARTITION?

When it is time to partition the family patrimony, its value is established on the basis of fair market value. However, certain relatively complex deductions are allowed. It is best to refer to a proper specialist, the notary.

In view of the family patrimony provisions, **you should consult your notary**, since,

- If you are future spouses, it would be wise to list the property you own at the time of your marriage or civil union and specify its value in a marriage or civil union contract
- If you are already married or in a civil union, it might be appropriate to make changes to your marriage or civil union contract or your will

Consult your notary: he leaves nothing to chance.



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