

## **MATRIMONIAL OR CIVIL UNION REGIMES**

### **Matrimonial or civil union regimes**

Husbands and wives and civil union spouses are equal before the law.

Whether a wedding is civil or religious, or whether the spouses enter into a civil union, certain requirements relating to age, capacity, matrimonial status, blood ties, the officiating minister or official, and the publication of certain notices must be met. Both married spouses, necessarily a man and a woman, as well as opposite or same-sex civil union spouses, have the same rights and obligations. They owe each other respect, fidelity, succour and assistance. Each spouse retains his or her given names and surnames after marriage or civil union. Both equally share the moral and material responsibility for the family and exercise parental authority together.

### **THE CHOICES**

All spouses, whether united by civil or religious marriage or by civil union, have a matrimonial regime or a civil union regime. The regime lays down the rules for the economic relationship between the spouses and the fate of their property when the regime is dissolved.

The matrimonial or civil union regime comes into effect upon the solemnization of the marriage or the civil union—or the date of the deed changing the regime—and ends in the following circumstances:

- When there is a judgment of divorce or nullity of marriage or civil union
- When there is a judgment of dissolution of civil union by the court or when the civil union is dissolved before a notary
- By the spouses decision to adopt, by notarized contract, a new regime
- On the death of one of the spouses.

The *Civil Code of Québec* expressly provides for rules concerning two regimes: partnership of acquests and separation as to property.

The regime of partnership of acquests applies automatically to married couples (since July 1<sup>st</sup>, 1970) and civil union couples (since June 24<sup>th</sup>, 2002), who have not made a marriage or civil union contract. It is called the legal regime. Spouses may also opt for the regime of partnership of acquests by marriage or civil union contract signed before a notary, and add other conditions or particulars to it.

The regime of separation as to property cannot be adopted otherwise than by a contract signed before a notary. In such contracts, all agreements that are not contrary to law are possible between spouses.

Spouses married before July 1<sup>st</sup>, 1970, who have never signed a marriage contract are subject to the regime of community of movables and acquests, better known as community of property. This regime is no longer governed by the *Civil Code of Québec*, but couples already married

under it nevertheless continue to be governed by its rules. Newly married or civil union spouses may also, by notarial marriage or civil union contract, choose a community-type regime.

### **The regime of partnership of acquests**

In partnership of acquests, there are two types of assets: “private property” and “acquests”. Private property is **usually** acquired before the marriage or civil union, or received during the regime by gift or inheritance. All property not considered private by law is an acquest.

Under partnership of acquests, each spouse administers his own private property and acquests, subject, in the case of gifts of his acquests during his lifetime, to the consent of the other spouse. Other restrictions also apply with respect to family residences and movable effects which serve for the use of the household. When the regime is dissolved, each spouse may demand the division of the acquests of the other in accordance with established rules.

### **THE REGIME OF SEPARATION AS TO PROPERTY**

The regime of separation as to property recognizes only “private property”. Each spouse administers his own property or assets alone and may dispose of them as he or she sees fit, subject to provisions protecting family residences and movable effects which serve for the use of the household.

Separation as to property has the advantage of ensuring the complete autonomy of each spouse and protecting a spouse against the errors or financial difficulties of the other. It can, however, result in some unfairness towards the financially weaker spouse, especially in the event of dissolution of the regime.

### **FAMILY PATRIMONY AND COMPENSATORY ALLOWANCE**

Certain provisions of the **Civil Code of Québec** apply to all spouses, regardless of their matrimonial or civil union regime.

The family patrimony provisions came into effect July 1<sup>st</sup>, 1989. Marriage and civil union (since June 24<sup>th</sup>, 2002) now automatically include the creation of a family patrimony. In the event of separation as to bed and board, divorce, dissolution of civil union or the nullity of marriage or civil union, the value of the family patrimony is divided equally between the spouses or between the surviving spouse and the heirs, as the case may be.

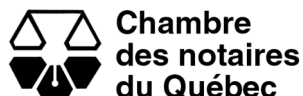
Certain rules ensure the protection of the family residences during the marriage or civil union. In most cases, a spouse may not sell or even hypothecate a family residence of which he is the sole owner without the written consent of the other spouse. However, this protection is only partial unless the non-owner spouse has previously published at the registry office a declaration of family residence. Similarly, a spouse may not, without the consent of the other spouse, alienate, hypothecate or remove from the family residence the movable property serving for the use of the household.

**For more information, consult the leaflet called “*Family Patrimony*”.**

The court, in declaring separation from bed and board, divorce, dissolution of civil union or nullity of marriage or civil union, may order either spouse to pay to the other an allowance as compensation for the latter’s contribution, in property or services, to the enrichment of the patrimony of the former. The same applies on death. If the dissolution takes place before a notary, following the rules prescribed by law, the spouses can compromise and agree on an amount as compensatory allowance.

The choice of matrimonial or civil union regime does not always get the attention it deserves. **You should consult your notary.** He can help you analyze your situation and guide you in the choice of a regime suitable to your needs.

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



**Chambre  
des notaires  
du Québec**

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