SETTLEMENT OF A SUCCESSION

Your NOTARY: an artisan and a master

Since the coming into force of the new *Civil Code of Québec*, the settlement of a succession has become, more than ever, a delicate and complex matter. The law provides for the transmission of the rights of a deceased person to his heirs and imposes precise rules for liquidation of the succession. In the settlement of a succession, the intervention of a notary ensures that the many obligatory procedures are properly followed and thorny legal questions correctly resolved. Failure to seek his advice may cause undue delay in the liquidation of the deceased's affairs and compromise the fundamental rights of the heirs. The notary is the best advisor of the liquidator, who, by law, must settle the succession; the notary will guide him every step of the way. The notary is the principal artisan and master of the entire operation.

HOW IS A SUCCESSION SETTLED?

To be effective, the settlement of a succession requires that each procedure be followed in accordance with the law, from the time of death until final delivery of property to the heirs.

The normal procedures include, in particular:

- Funeral arrangements
- Obtaining proof of death
- A will search
- The opening and the inventory of the safety-deposit box
- The opening of an account at a financial institution
- The probate of the will
- The analysis of the testamentary provisions
- The determination of the heirs
- The appointment of the liquidator
- The preparation of an inventory
- The claiming of life insurance benefits, pensions and allowances
- The completion of tax formalities
- The liquidation of the family patrimony and matrimonial rights
- The determination of the deceased's patrimony
- The publication of notices
- The exercise of the heirs' option
- The administration of succession property
- The payment of debts and particular legacies
- The transmission of the property
- The rendering of account
- The partition of the succession

Each and every one of these procedures is subject to obligatory rules. The following are some examples.

THE WILL SEARCH

In the absence of a will, the law will determine who are the heirs. The main effect of the will is to set aside the application of the Civil Code provisions and give effect to the testator’s wishes. Only his last wishes must be carried out. Accordingly, the first thing to do, before anything else, is to meticulously search through the deceased’s personal belongings to find a written document containing the expression of his last wishes.

The search often leads to the discovery of a private writing or a copy of a notarial will. But that is not enough. All possible steps must be taken and nothing must be overlooked to ascertain that the liquidator is in possession of the testator’s last instructions. For this reason, the Chambre des notaires du Québec created a register in 1961 that now contains more than 6,000,000 registered wills. Consultation of this register is therefore necessary, not only to ascertain the possible existence of a will, but also to ensure that the known will is the last one executed by the deceased.

THE APPOINTMENT OF A LIQUIDATOR

The *Civil Code of Québec* establishes a regime of administration and liquidation of a succession. It is the liquidator who is in charge of the complete execution of the deceased’s wishes. The identity of the person chosen is usually disclosed in the will. The heirs will choose someone only if the deceased has died without a will or if it is not provided for in his will.

The liquidator’s powers and duties are specified by law. Nevertheless, the testator may modify them in order to attain specific objectives or simply to ensure greater efficiency in the settlement of the succession and to simplify the liquidator’s task.

The person appointed liquidator and in whom the testator has shown confidence is usually a relative or friend. The liquidator can give a notary the mandate to proceed with the liquidation of the succession and provide the former with regular reports, or, more prudently, the liquidator can retain the notary's services as an advisor from the outset.

The liquidation of a succession is a heavy responsibility, especially if an heir, legatee or creditor feels he or she has been wronged because the liquidator was negligent of his or her duties. It is therefore important to talk about it immediately with a notary.

TAX FORMALITIES

The liquidation of a succession has serious tax consequences. The tax laws require the filing of income tax returns for the deceased. Nevertheless, the heir is permitted to make certain elections which may be profitable. Certificates must be obtained from the tax authorities to permit the final distribution of property to the heirs. These measures are important and taxpayers must follow them. Ask your notary for help. He is aware of these requirements.

LIQUIDATION OF THE FAMILY PATRIMONY AND THE RIGHTS PERTAINING TO THE MATRIMONIAL OR CIVIL UNION REGIME

The heirs are entitled to receive the deceased's patrimony, that is, all his property and rights less the payment of debts and the attribution of particular legacies. Before assets can be determined, the marriage or civil union effects of the deceased must be taken into consideration.

Death results in the liquidation of the family patrimony. The matrimonial or civil union regimes of community of property and partnership of acquests must also be liquidated. The other particular protective measures offered by law to the surviving spouse, such as the compensatory allowance, the claim for support and certain preferential allocations, must be taken into account. Marriage or civil union has a considerable impact on the composition of the deceased's patrimony. Only an expert is in a position to correctly determine the respective rights and obligations of former spouses or civil union partners when one of them dies. Failure to consult a notary can have importunate consequences.

ACCEPTING OR RENOUNCING A SUCCESSION

With some exceptions, no one is obliged under the law to accept a succession which has devolved to him. A succession may show a deficit, having more debts than assets, in which case, it is appropriate to renounce it. The *Civil Code of Québec* has abolished the rule which obliged an heir who unconditionally accepted a succession to pay all the debts of the deceased. However, under the new law the heir can still, in certain circumstances, be held personally liable for the debts of the succession even if they are greater than the property he receives.

Sometimes, it is better to renounce a succession. Consulting a notary before making a decision is advisable and sometimes essential. A renunciation, where required, is usually drawn up in the form of a notarial deed.

THE NOTARIAL WILL: A SIGNIFICANT ADVANTAGE

Under the law of successions, the testator's wishes are, in principle, sovereign. By drawing up a will, a person can freely choose his heirs and legatees. With his notary's advice, the testator may also include in his will various provisions to considerably facilitate the settlement of the succession and minimize its cost.

The notarial will remains with the notary, thus safeguarded from any loss, and kept confidential. The notary will see to the entry of each will in the Register of Dispositions of the Chambre des notaires du Québec, without disclosing its contents. The will thus remains confidential and is guaranteed to be found at the time of death.

The notarial will is the only will not subject to probate. All other wills must be probated by a notary or in court.

Consult your notary: he leaves nothing to chance.

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