

Upon application, the court may depart from the principle of equal partition when it considers that the partition would create an injustice because of the short duration of the marriage or civil union, the squandering of property by one of the spouses, or bad faith.

A second partition of the family patrimony may occur if the spouses obtain a divorce judgment after returning to live together after a separation judgment.

Renunciation

Couples who were married before the family patrimony legislation came into force could indicate, in a notarial document made before January 1, 1991, that they did not wish to be subject to the family patrimony provisions. However, this renunciation could not apply to earnings already registered under the Québec Pension Plan.

Any renunciation made in a notarial document may be voided if it takes advantage of one party's ignorance or inexperience to the extent that consent is obtained by force or is vitiated. The renunciation may also be voided for any reason that would ordinarily render a contract null.

Contact information

Register of personal and movable real rights

Direction des registres et de la certification

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Toll-free: 1 800 465-4949

Telecommunications device for the deaf

(TDD): 514 864-9373

Website: www.rdprm.gouv.qc.ca

For more information

The information summarized in this document was valid at the time of printing. For more information, go to www.justice.gouv.qc.ca or contact:

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FAMILY PATRIMONY

The legal rules governing the constitution and partition of the family patrimony apply to all couples who are married or in a civil union, but not to couples living together in a de facto relationship.

The family patrimony is constituted during the marriage or civil union. It can be partitioned, or one of the spouses can renounce his or her share, when

- one of the spouses dies;
- the couple divorces;
- the couple becomes legally separated;
- the civil union is dissolved;
- the marriage or civil union is annulled.

In all cases, a renunciation of the partition of the family patrimony must be recorded in the register of personal and movable real rights.

The family patrimony must be partitioned before the couple's property is shared under the terms of a will or a marriage or civil union regime. The spouses partition the value of the property making up the family patrimony, but do not have to divide up the property itself.

Property included in the family patrimony

The value of the property to be partitioned is the total net value of the following property accumulated during the marriage or civil union, regardless of which spouse owns it:

- all the residences used by the family (including condos, cottages, apartments and other dwellings);
- the furniture used by the family to furnish or decorate the residences;
- the motor vehicles used for family transportation;

- the rights accrued in a pension plan during the marriage or civil union;
- the earnings registered during the marriage or civil union under the Act respecting the Québec Pension Plan or in an equivalent program.

Property excluded from the family patrimony

The following property is excluded from the calculation of the total net value of the property making up the family patrimony:

- property that was a gift or a bequest to one of the spouses either before or during the marriage or civil union, as well as any increase in the value of such property during the marriage or civil union;
- property used exclusively by one of the spouses (computer, musical instrument, artwork, etc.);
- businesses and farms (except the residential portion);
- cash and money held in bank accounts;
- savings bonds, treasury bonds, shares and other investments (except RRSPs);
- profit-sharing plans;
- supplementary pension plans for high-income earners; and
- non-registered annuity contracts.

Calculating the value of the family patrimony

The value of the property making up the family patrimony is calculated on the basis of its market value, in other words the amount that could be generated by selling the property. The value is calculated on the date on which one of the spouses dies, the date on which the proceedings to end the marriage or civil union are instituted, or the date on which the spouses stop living together.

The following amounts must then be subtracted from the value calculated:

- the amount of any debts contracted to acquire, improve, maintain or preserve the property that makes up the family patrimony on the date on which one spouse dies, the date on which legal proceedings are instituted to end the marriage or civil union, or the date on which the spouses stop living together;
- the net value of any property that is included in the family patrimony but that belonged to one of the spouses at the time of the marriage or civil union, as well as a portion of the appreciation in value of the property during the marriage or civil union;
- any amount contributed by one spouse out of a gift or inheritance during the marriage or civil union to acquire or improve property included in the family patrimony, as well as a portion of the appreciation in value of the property during the marriage or civil union.

Partitioning of the family patrimony

In concrete terms, the partition is effected by one spouse paying an amount of money or transferring ownership of property in lieu of money to the other spouse. Any property transferred may come from outside the family patrimony.

At the time of the partition, the court may award specific property to one of the spouses. In some cases, where one spouse owes the other an amount of money, the court may order that it be paid in instalments over a period of up to 10 years. It may also require the debtor spouse to provide security to cover the amount owed.

When property has been removed from the family patrimony, without being replaced, in the year preceding the date of partitioning, the court may order compensation to be paid to the spouse who is disadvantaged by its removal.