

Family

De facto spouses in Quebec: Do they need a cohabitation agreement?

By **Charlotte Oger-Chambonnet**



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(January 24, 2023, 12:18 PM EST) -- Living in a marital way but not getting married is more popular than ever in Quebec, with 43 per cent of couples living as de facto spouses. Yet, the rights of de facto spouses remain largely unprotected in Quebec law. For these couples, it is possible to ensure that their respective obligations are clearly defined and that their financial interests are protected by signing a cohabitation agreement.

What is a cohabitation agreement?

A cohabitation agreement is a legal agreement between two people who are living together but are not married.

This type of contract can set out the rights and responsibilities of each person regarding their respective property, jointly owned property and assets, and debts. The agreement can determine how the property will be divided in the event of a separation. Having such an agreement helps to

establish a clear understanding of each partner's rights and responsibilities.

The terms of a cohabitation contract will vary depending on the specific needs and wishes of the couple. Some couples choose to create a cohabitation contract to protect their assets or to clearly define their rights and responsibilities in the cohabitation.

What can be included in a cohabitation agreement?

A cohabitation agreement can:

- Outline each partner's financial responsibilities and obligations;
- Identify the pre-owned property and existing debts of each partner prior to the relationship;
- Define how property and assets will be divided in the event of a separation;
- Define how debts will be shared in the event of a separation;
- Provide for financial support in the event of separation;
- Provide for gifts between the partners (in which case the couple should consult with an attorney or a notary to verify if the agreement should be notarized);
- Include any other clauses that do not contravene public order.

It is strongly recommended to define how jointly owned property should be shared in the event of a separation if the partners make unequal contributions to the assets or repayment of debts. For instance, many couples are unaware that the monies in their joint account will be presumed to be owned equally by both owners of the account, even though they may have contributed unequally to the account. Having an agreement that clearly specifies how the couple's assets are shared can avoid major disagreements in the event of a breakup.

Some couples may also wish to include provisions for custody in the event they have or wish to have children. However, it is important to note that such provisions can be set aside by the court if they are considered to go against the best interests of the children.

Overall, a cohabitation agreement can provide peace of mind and help ensure that both partners are on the same page regarding their relationship, finances and plans for the future. Each agreement should be tailored to the couples' specific situation, and it is recommended to consult a lawyer or a notary if a couple intends to sign such a contract.

Wills and protection mandates

De facto spouses are often unaware that, regardless of the length of their relationship, and of whether or not they have children together, the surviving partner will not inherit from the deceased unless specifically provided for in their will. The couple should also prepare their mandates in case of incapacity at the same time as their wills.

Can a couple draft their own cohabitation agreement?

It is possible for couples to draft their own agreement. Both partners must be of legal age and have the capacity to consent. It is highly recommended that they consult an attorney or a notary to ensure that the contract is enforceable and that both partners understand the terms and are giving their enlightened consent to the agreement that they are signing.

Having a notarized agreement is not essential, but it is preferable given that it would be harder to contest its enforceability and the agreement will remain inscribed in the notary's minutes.

The couple may modify their agreement at any time as long as they both agree.

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