

Community Newsletter

LEGAL INFORMATION



Winter 2018 – Common-law Unions (conjoints de fait)

What is a common-law union “conjoints de fait”?

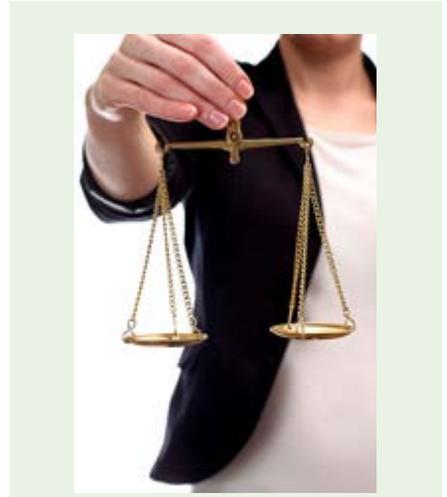
It is a factual situation where two non-married individuals (of the same or different sex) present themselves publicly as a couple and they cohabit for a certain amount of time.

Even after cohabiting for a long period of time, the common-law relationship between the couple does not transform into a marriage.

NB: Unless expressly mentioned by a law, the time of cohabitation may vary depending on the law in question.

Advantages and Disadvantages of a common-law union

DISADVANTAGES	ADVANTAGES
<ul style="list-style-type: none">- No protection of the family residence.- No sharing of a family patrimony- No payment of spousal support	<ul style="list-style-type: none">- No partition of property upon rupture- No liability for debts to the other spouse



Have you heard of mediation?

Mediation is a method of alternative dispute resolution in which a neutral person (the mediator) intervenes to bring the parties in dispute closer together. The mediator proposes suitable solutions to help the parties resolve the conflict that opposes them.

If children are involved, the former common-law couple could benefit from a certain number of free hours of mediation with a mediator that has been accredited by the government.¹

In the event of a separation, for common law partners:

Obligation of spousal support: Tribunals have recognized that there is no obligation of spousal support due between common-law partners.

- However, a child resulting from a common-law union has the right to child support from one of the parents. The request for child support could be issued by the person having parental authority. Usually the person having parental authority is the mother or the father, as legal tutors of the child.

Partition of property: The common-law union does not give a right to the partition of property. This is true whether the property was acquired while the couple was cohabiting or not, unless they had stipulated such a partition beforehand in a written agreement.

- In other words, each person will be entitled to take their property at the end of the common-law union.
- **NB:** However, if the common-law couple bought a property together as co-owners in an indivision of property (without material division of the property), the following rules that apply. In the event of a separation, the common-law couple can end the indivision by selling the property and sharing the profit from the sale according to each former de facto spouse's respective part.

Financial compensation: In the event that there is no recourse for the impoverished former de facto spouse, it is possible to invoke unjust enrichment.

- This could be illustrated by the impoverishment of the former de facto spouse that contributed to the enrichment of the other, without justification.

In the event of a separation, for the children:

Child support: All children have the same rights, whether they were born to married parents or not. Child support is given to ensure that certain needs of the child are met. These needs include food, dwelling, housekeeping, personal care, clothes, leisure and transport.

- Parents are obliged to provide support to their children.
- Depending on the place of residence of the common-law couple, the determination of the amount of child support will be determined by federal or provincial regulations.²
- For modification of child support, *Service administratif de réajustement de la pension alimentaire* (SARPA) is a practical option that does not require intervention by tribunals.

Parental authority: Both parents exercise their parental authority together, that is they exercise all the rights and obligations of parents towards their children, unless their parental authority was revoked by a judge beforehand (deprivation of parental authority).

⇒ In any case, as a parent, your child's interest should guide your decisions. The child's interest will also guide the decisions of the different authorities concerned.

Protect yourself in the eventuality of a separation

A **written agreement** between common-law partners is a relatively flexible method that allows common-law couples to determine, for themselves, their obligations during their union. This cohabitation agreement could also determine what is to happen in the eventuality of a separation.

LEGAL INFORMATION CLINIC

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Resources: Comité des organismes accréditateurs en médiation familiale www.coamf.org

References: 1 www.justice.gouv.qc.ca | 2 www.educaloi.qc.ca

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