

# BREAKING UP AMICABLY

You want to settle the legal consequences of your breakup amicably?

## CONSULT YOUR NOTARY!



To settle the legal consequences of breaking up amicably, consult a legal expert who is focused on reaching an agreement.

Consult your **notary!**



# WHAT A NOTARY CAN DO WHEN A RELATIONSHIP ENDS

You and your spouse may decide to put an end to your relationship in an atmosphere of respect and cooperation. By encouraging discussion, your notary will **help you agree** on the terms of your breakup and find **lasting solutions**. For example:

- + Who will keep the house and furniture?
- + Who will have custody of the children?
- + Will the other parent have access or visitation rights to the children?
- + Should there be support payments for the children or the spouse? How much should they be?
- + How will the pension plans be divided?
- + Who will pay the joint debts?

Because of his training and expertise, your notary will **inform** and **advise** you of your rights and duties so you can make **enlightened decisions**.

Your notary will put in writing the outcomes you have agreed on and will make sure they are clear and meet **the requirements of the law** as well as your **intentions** and **needs**.

## THE BREAKUP OF COMMON LAW PARTNERS

If you are **common law partners**, meaning you are neither married nor united by a civil union, you may settle the consequence of your breakup in various ways.

### 1. If you have a cohabitation contract

If you have a **cohabitation contract** in which you have already settled some of the outcomes of a breakup, it must be taken into account. Your notary will inform you of its effects on the breakup.

However, you could agree with your partner to set aside this contract. Your notary could then advise you on other possibilities to help reach an agreement dealing with the consequences of the breakup.

### 2. If you don't have a cohabitation contract

If there is no cohabitation contract or if the contract does not deal with the consequences of a breakup, you may then ask your notary to prepare an **amicable breakup agreement** in which your needs and those of your family are protected.

*If you **have children** and are unable to agree on custody and support payments, you will have to go before a court to decide the issues.*

## THE BREAKUP OF MARRIED COUPLES

If you are married, the only way to **end the marriage** is by a **judgment of divorce**. The simple fact of no longer cohabiting does not mean you are relieved of your duties and obligations towards your spouse.

If **all the outcomes of your divorce** have been agreed upon with your spouse, you may then draft an agreement and submit it to the court for approval. This is called a "divorce by **joint agreement**".

If you are unable to agree, the court will decide.

*Generally, the only grounds for a divorce by joint agreement are to **have been separated for more than one year**.*



## FAMILY MEDIATION IS A WAY OF RESOLVING THE OUTCOMES OF YOUR BREAKUP WITHOUT HAVING TO ARGUE IN COURT.

There are numerous advantages to a divorce by joint agreement, including the reduced risk of conflict and of a negative impact on your children. The divorce is also quicker and less expensive because you avoid a trial.

Your notary will **advise** you during your discussions and **inform** you of your rights and obligations. You may then make informed decisions and reach an agreement on the outcomes of your divorce.

Your notary will also **draft the agreement** that you will submit to the court for approval. The fact that your agreement has been prepared by a notary will certainly facilitate its approval by the court.

*If you have a **civil union** agreement, you do not need a divorce to end your union. Your notary will explain your various options for settling the effects of the breakup.*

## FAMILY MEDIATION

Family mediation is a way of resolving the consequences of your breakup without having to argue in court. It allows you to share your opinions, fears and requirements in an atmosphere that is respectful and conducive to open discussions.

Couples with children must attend a **mandatory information session** on family mediation before going to court. However, you may be exempted on serious grounds, if for example:

- + You are victim of family violence.
- + Your physical or mental condition prevents you from participating.
- + You and your partner live very far apart.

Many notaries have received **special training** in family mediation and are **accredited** by the Chambre des notaires du Québec to act as family mediators.

If you have problems agreeing on certain aspects of the breakup or if the relationship with your spouse is strained, your notary will be there to advise you during mediation. He will provide all the information you need to **find the best possible solutions**.

Because of his duty to be **impartial**, your notary will ensure that the negotiated solutions are **fair** and **equitable** for all.

Family mediation may therefore be useful at all phases of a breakup, especially when an agreement must be reached.

If you have children, you may even be entitled to a number of **hours of free mediation**.

*A notary can counsel you at every phase of your breakup.*

*Do not hesitate to consult a notary even if you do not need help for drafting a document.*

## HOW TO PREPARE?

### INFORMATION TO COLLECT

- The date you ceased cohabitation if such is the case
- Your cohabitation contract if you are common law spouses
- Your marriage contract if you are married
- A patrimonial balance sheet which lists your property, investments and debts
- Any other information requested by your notary

### FOOD FOR THOUGHT

- Is your decision to break up definite?
- Do you wish to proceed amicably?
- Do you think your spouse is open to this?
- What needs to be discussed to settle the outcomes of your breakup?
- Have you considered revising your will?
- Any other question raised by your notary.

**DID YOU KNOW?**

