



LACAILLE, Lise
The Notary and Daily Life
Detail



Amicable SEPARATION or divorce



Contemplating the breakdown of a marriage is never easy. Often, the decision is made only after a long period of heartbreak, soul-searching and agonizing uncertainty, especially where children are involved. More and more couples wish to minimize the conflict, and choose to amicably dissolve the union in a climate that is conducive to agreement. If you are among them, your notary can give you information and advice on the legal consequences of separation, divorce or dissolution of a civil union. Trusted family advisors over the years, notaries are experts in civil law, and this includes matrimonial law. Their university training and experience in drawing up contracts make them outstanding legal advisors. Your notary can inform you and guide you through the legal process leading to separation, divorce or the dissolution of a civil union. But, are you actually aware of the differences between separation, divorce and dissolution of a civil union?



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IF YOU ARE MARRIED, YOU CAN CHOOSE SIMPLY TO SEPARATE, TO FILE FOR A SEPARATION FROM BED AND BOARD, OR TO DIVORCE.

DE FACTO SEPARATION:

- There is no legal consequence, even if the spouses are no longer living together.
- The marriage or civil union bond between the spouses remain.
- Spouses retain the duties and obligations toward one another that they had while living as a couple.
- It is not permitted to make a petition for the partition of the family patrimony.
- The date of the *de facto* separation can be used by the court for the partition of the family patrimony if the couple later obtains a judgment of separation from bed and board or divorce.

SEPARATION FROM BED AND BOARD

- This is necessarily the result of a court judgment.
- The spouses remain husband and wife in spite of a judgment being reached, and can therefore not remarry.
- The spouses are released from their obligation to live together, but the other duties and obligations resulting from marriage continue.
- If the matrimonial regime was not already separation as to property, it is now, and this results in the partition of the family patrimony.

DIVORCE

- A divorce is the outcome of a judgment which is final and which ends the marriage.
- It causes the partition of the family patrimony and the dissolution of the matrimonial regime.

IF YOU ARE IN A CIVIL UNION, YOU MAY OPT FOR A DE FACTO SEPARATION OR A DISSOLUTION OF THE UNION.

DE FACTO SEPARATION

- This has the same consequences as those regarding a marriage.
- The date on which the couple stopped living together can be used to determine the net value of the family patrimony and the effects of the dissolution of a civil union regime.

DISSOLUTION OF A CIVIL UNION

This is the result of a joint declaration made before a notary, or a court judgment.

➤ A notarized joint declaration

- The spouses may, in a joint declaration, consent to the dissolution of their union provided they have reached agreement on all the legal consequences.

- The declaration and the agreement, as witnessed in a transaction contract, must be made before a notary.
- The joint declaration of dissolution and the transaction contract have the effects of a judgment dissolving a civil union.
- It has the same consequences as those regarding a marriage.

➤ Court judgment

- For cases where there is no joint declaration of dissolution made before a notary
- Where the interests of the couple's children are at stake
- Has the same consequences as those regarding a marriage

AMICABLE SEPARATION

To obtain an amicable separation of a marriage or civil union, the married spouses or civil union couples who go before the court to dissolve their union may opt for an amicable separation or divorce.

Statistics have proven the benefits of an amicable agreement as opposed to a judgment obtained through a climate of confrontation and quarrelling: it can shorten the process and reduce the costs and legal fees. Moreover, it appears that the children involved are much less traumatized by the experience when their parents can communicate and agree.

There are no winners or losers under the judgment which follows the draft agreement since it ratifies the result of negotiations and agreements freely entered into by responsible individuals wishing to decide their future for themselves.

To obtain an amicable judgment of separation from bed and board, divorce or the dissolution of a civil union, the spouses must have agreed to all the consequences of their separation beforehand. Your notary can draw up such an agreement for you: this is referred to as the draft agreement. It is the fundamental document that is submitted to court with your application for separation from bed and board, divorce or the dissolution of a civil union. In the judgment of separation from bed and board, divorce or dissolution of a civil union following the joint application accompanied by the draft agreement, the court confirms the draft agreement.

Spouses who agree on the consequences of the dissolution of their civil union and who do not have children are allowed to dissolve their union before a notary, without having to go before a court of law. This is a true amicable split since no intervention is required by the court. However, even if the spouses agree on all the consequences of their breakdown, they must go before the court as soon as the interests of the spouses' children are at stake. However, you can opt for an amicable split, even if the rules oblige you to obtain a court judgment.

WHAT SHOULD THE DRAFT AGREEMENT CONTAIN?

The agreement settles all questions arising from a marriage breakdown, such as the following:

- Where will the children's residence be? How will custody and access be shared? And who will pay for the children's schooling?

- Who will remain in the family residence? Must it be sold instead?
- Who will keep the furniture?
- Who will pay off the spouses' joint debts?
- Will there be spousal or child support? For whom and for how long?
- How will the family patrimony be divided, and how will the matrimonial regime be liquidated?
- Will a compensatory allowance be paid? And so on.

FAMILY MEDIATION

If questions are raised on a particular subject or relations between the spouses deteriorate to the point that it becomes difficult to finalize an agreement on the effects of the marriage breakdown, the couple may resort to family mediation. Family mediation may even be used at the outset of the separation if difficulties are foreseeable. Family mediation is also possible in the case of the dissolution of a civil union.

Many notaries have developed an expertise as a result of special training and have been certified by their professional order to act as family mediators. This enables them, as impartial third parties, to help spouses resolve their differences themselves and draw up a workable, mutually satisfactory agreement that determines the effects of family reorganization.

Family mediation is an alternative to the traditional judicial process. Unlike the judicial process, mediation allows room for emotions and direct exchanges.

THE ROLE OF THE MEDIATOR NOTARY

Family mediation is not therapy for the reconciliation of parties. Before beginning mediation, the mediator notary must be sure that the couple's decision to separate is final. The aim of the mediator notary is to ensure that the solutions found are just and fair for everyone and that they respect the laws in force. He or she does not give an opinion but provides all the information necessary for the parties to make enlightened decisions.

THE STEPS IN MEDIATION

Mediation is characterized mainly by its flexibility and, depending on the degree of difficulty or the points to be covered, consists of two to eight sessions lasting one or two hours each. The steps followed by the mediator notary are basically the same in any mediation.

1. The first introductory meeting is where the mediator notary explains to the parties the process of mediation and the basic rules that apply. If, at the end of the first meeting, the parties decide to continue mediation, the mediator notary has them sign a consent to mediation as evidence of their good faith; it also ensures full cooperation and establishes costs.

2. The mediator notary, together with the spouses, analyses the problems and determines their needs and interests and those of their children.

3. The spouses and the mediator notary then explore different options and verify whether they meet the needs that have been identified.

4. After the parties have reached an agreement and made the necessary decisions, the mediator notary prepares a draft agreement that fully reflects their wishes. He or she verifies that the solutions contained in the draft agreement (if it concerns separation from bed and board, divorce or the dissolution of a civil union before the court), or in a notarized transaction contract (if it concerns separation from bed and board, divorce or the dissolution of a civil union before a notary), comply with the law. In addition, the mediator notary ensures that the agreement respects the interests and meets the needs of all parties involved.

5. Once the draft agreement is signed, a joint application for separation from bed and board, divorce or dissolution of a civil union before the court must then be prepared on the basis of the agreement. Because of the precautions taken, the draft agreement is very likely to be approved by the court and confirmed by judgment.

The process leading to an amicable separation can be summarized as follows:

• Separation from bed and board	}	The parties petition the court for separation from bed and board, divorce or dissolution of the civil union, along with the draft agreement. Recourse to family mediation is possible.
• Divorce		
• Dissolution of the civil union before the court		

• Dissolution of the civil union before the notary	}	The parties have access to mediation to work out an agreement on one or more aspects of the consequences of their separation. The notary takes account of the agreement in a notarized transaction contract.

THE NOTARY: YOUR "AGREEMENT LAWYER"

By their training and the obligations imposed on them by law, notaries are specialists in the drafting of contracts and are impartial experts with the responsibility to inform and advise the parties who hire their services. Because they foster a climate of agreement conducive to negotiation, notaries are clearly the best-qualified professionals to help you reach a satisfactory conclusion to your separation, your divorce or the dissolution of your civil union.

Consult your notary: he leaves nothing to chance.