



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 35

**An Act to amend the Civil Code as
regards civil status, successions and the
publication of rights**

Introduction

**Introduced by
Mr. Bertrand St-Arnaud
Minister of Justice**

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EXPLANATORY NOTES

This bill amends the Civil Code of Québec to make a number of modifications concerning civil status, successions and the publication of rights.

In civil status matters, the registrar of civil status is given the power, subject to certain conditions, to draw up the act of death of a missing person after the court has found someone guilty of acts causing the person's death or the disappearance of the person's body. The act drawn up has the same value as a declaratory judgment of death. The registrar of civil status is also given the power, again subject to certain conditions, to change the designation of sex that appears on the act of birth of a person who was born in Québec but is domiciled outside Québec, when it is impossible to make such a change in the country where the person is domiciled. It will now be possible to send declarations or attestations of events relating to civil status electronically, and declarations of birth or death will no longer need to be signed by a witness. In addition, the registrar of civil status will no longer be required to ascertain that notices of applications for a change of given name have been published when it is clear that the change requested relates to a modification of the person's sexual identity, notices of applications for a change of the designation of sex on an act of birth or notices of decisions authorizing any such change.

In succession matters, the rules relating to notarial wills and wills made in the presence of witnesses are amended so that a deaf-mute person who is unable to read or write can make either type of will through a sign-language interpreter.

In publication of right matters, it will now be possible to register a renunciation of the benefit of accession as a means of establishing superficies as well as an obligation to perform an act attached to a servitude. It will no longer be necessary for notaries to sign twice when certifying notarized summaries or notices. No applications for registration purposes will be accepted in future unless a dynamic form, available on the land register website, is filled out beforehand. It will be possible, under certain conditions, to apply for the registration of a notarial deed executed en brevet or a private deed by presenting electronically transferred reproduction of the deed, provided it bears the digital signature of the notary or the advocate

who made the transfer. The registrar will be authorized to cancel certain registrations on the registrar's own initiative. In addition, the Société d'habitation du Québec and La Financière agricole du Québec, without having to renew the registration of their address, are to be notified of certain events that could affect their rights for as long as the registration of hypothecs in their favour is maintained. Various changes are made to the rules that apply to the preservation of documents at registry offices.

Lastly, the bill contains technical and consequential amendments as well as transitional provisions.

LEGISLATION AMENDED BY THIS BILL:

- Civil Code of Québec;
- Act respecting the implementation of the reform of the Civil Code (1992, chapter 57);
- Act to amend the Civil Code and other legislative provisions relating to land registration (2000, chapter 42).

Bill 35

AN ACT TO AMEND THE CIVIL CODE AS REGARDS CIVIL STATUS, SUCCESSIONS AND THE PUBLICATION OF RIGHTS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CIVIL CODE OF QUÉBEC

- 1.** Article 63 of the Civil Code of Québec is amended by inserting “or unless, in the case of an application concerning a given name, it is clear that the change requested relates to a modification of the person’s sexual identity” after “for reasons of general interest” in the first paragraph.
- 2.** Article 67 of the Code is amended by adding “or unless, in the case of a change of given name, it is clear that the change requested relates to a modification of the person’s sexual identity” at the end of the second paragraph.
- 3.** Article 71 of the Code is amended
 - (1) by replacing “sur son acte” in the first paragraph in the French text by “à son acte”;
 - (2) by replacing “Only a person of full age who has been domiciled in Québec” at the beginning of the second paragraph by “Subject to the provisions of article 3084.1, only a person of full age who has been domiciled in Québec”.
- 4.** Article 73 of the Code is amended by striking out “the same publication requirements and”.
- 5.** Article 105 of the Code is replaced by the following article:

“105. The register of civil status is kept in duplicate.”
- 6.** Article 106 of the Code is repealed.
- 7.** Article 108 of the Code is amended by replacing “on the written copy of the register and is substituted for the original form of the name in the computerized copy of the register and on” in the second paragraph by “in the register and is substituted for the original form of the name on”.
- 8.** Article 109 of the Code is amended by replacing “affixes a registration number to it” in the second paragraph by “assigns a registration number to it”.

9. Article 112 of the Code is amended by striking out “, together with the declaration of birth of the child, unless it cannot be transmitted immediately”.

10. Article 113 of the Code is amended by striking out “, before a witness, who signs it”.

11. Article 115 of the Code is amended

(1) by replacing “, of the mother, and of the witness” in the first paragraph by “and of the mother”;

(2) by striking out the second paragraph.

12. Article 116 of the Code is amended by replacing “shall attach a note to it” in the second paragraph by “shall also provide a note”.

13. Article 125 of the Code is amended by striking out the last sentence.

14. Article 126 of the Code is amended by striking out the second paragraph.

15. Article 129 of the Code is amended by replacing the last paragraph by the following paragraph:

“The registrar of civil status then makes the required entries in the register.”

16. The Code is amended by inserting the following article after article 133:

“133.1. Where a court has found a person guilty of acts having caused the death of a missing person or the disappearance of a deceased person’s body, any interested person may declare the death of the absentee to the registrar of civil status. A copy of the judgment of guilty, having become final, must be attached to the declaration of death.

In the absence of any objection from a third person within 20 days of the notices given in accordance with the rules determined by government regulation, the registrar draws up the act of death of the absentee. Where the date, time and place of death are unknown, the registrar fixes them on the basis of the particulars of the judgment and the presumptions that may be drawn from the circumstances.

The act drawn up by the registrar produces the same effects as a declaratory judgment of death.”

17. Article 134 of the Code is replaced by the following article:

“134. The registrar of civil status makes a notation of the act of marriage or civil union in the act of birth, and makes a notation of the act of death in the act of birth and the act of marriage or civil union.”

18. Article 135 of the Code is amended

(1) by replacing “in the computerized version of the acts” in the first and second paragraphs by “in the acts”;

(2) by replacing “in the computerized version of the act” in the third paragraph by “in the act”;

(3) by striking out “the computerized copy of” in the last paragraph.

19. Article 136 of the Code is amended by replacing “sur l’acte” in the first and second paragraphs in the French text by “à l’acte”.

20. Article 137 of the Code is amended by replacing “in the computerized copy of the register to ensure the publication of the register” in the second paragraph by “in the register”.

21. Article 142 of the Code is amended by striking out the last sentence.

22. Article 147 of the Code is amended by replacing “sur l’acte” in the French text by “à l’acte”.

23. The Code is amended by inserting the following article after article 722:

“722.1. A deaf-mute person who, being unable to read or write, cannot avail himself of the other provisions of this section may make a notarial will, provided he conveys his wishes to the notary through a sign-language interpreter.

The testator, in the presence of the notary and a witness, declares, through the same means, that the document translated to him by the interpreter is his will.

The interpreter is chosen by the testator from among interpreters qualified to exercise their functions before the courts.

The interpreter must first swear in writing, before the notary, the testator and the witness, to carry out his functions with impartiality and accuracy and not to disclose any information related to his mandate. The original of the oath is attached to the will.”

24. Article 729 of the Code is amended by replacing “may not make a will in the presence of witnesses, unless the will is read” in the first paragraph by “may make a will in the presence of witnesses, provided the will is read”.

25. The Code is amended by inserting the following article after article 730:

“730.1. A deaf-mute person who, being unable to read or write, cannot avail himself of the other provisions of this section may make a will in the

presence of witnesses, provided he conveys his wishes to the drafter through a sign-language interpreter.

The testator, in the presence of the witnesses, declares, through the same means, that the document translated to him by the interpreter is his will. Where possible, the testator affixes his signature or a personal mark at the end of the will. Otherwise, the testator has a third party sign for him, in his presence and in accordance with his instructions. The witnesses then sign the will immediately in the presence of the testator.

The interpreter is chosen by the testator from among interpreters qualified to exercise their functions before the courts.

The interpreter must first swear in writing, before the drafter, the testator and the witnesses, to carry out his functions with impartiality and accuracy and not to disclose any information related to his mandate. The original of the oath is attached to the will.”

26. Article 903 of the Code is amended

- (1) by adding “and ensure the utility of the immovable” at the end;
- (2) by adding the following paragraph at the end:

“However, movables which, in the immovable, are used to operate an enterprise or to carry on activities remain movables.”

27. Article 1110 of the Code is amended by adding the following paragraph at the end:

“Renunciation of the benefit of accession may be published.”

28. Article 1178 of the Code is amended by adding the following paragraph at the end:

“The right of the owner of the dominant land to the performance of an act by the owner of the servient land must be registered in the land register if it is to be set up against third persons.”

29. Article 2982 of the Code is amended by adding the following paragraph at the end:

“In all cases, before an application for registration and the accompanying documents may be presented, information concerning, among other things, the nature of the act or rights to be registered, the identity of the parties to the act or of the holder of the rights and, if applicable, the description of the immovables concerned must be entered on the dynamic form posted by the Land Registrar on the land register website. If the application is presented in paper form, it must be accompanied by the registration slip printed from the dynamic form.”

30. The Code is amended by inserting the following article after article 2982:

“2982.1. An application for registration in the land register made by presenting a notarial deed executed en brevet or an act in private writing resulting from the transfer into electronic form of the information contained in the original deed or act cannot be accepted by the registrar unless the application bears the electronic signature of the notary or advocate who made the transfer.

A certificate by the notary or advocate attesting that the transfer was made from the original deed or act, that the transfer is documented in accordance with section 17 of the Act to establish a legal framework for information technology (chapter C-1.1) and that the documentation is being properly preserved must be attached to the application.”

31. Article 2988 of the Code is amended by replacing “and that the document represents the will expressed by the parties” by “that the document represents the will expressed by the parties and that the summary or notice, if notarized, is accurate”.

32. Article 2992 of the Code is amended by adding the following paragraph at the end:

“The signature of the notary on a notarized summary is an attestation of the accuracy of the summary.”

33. Article 3017 of the Code is amended by adding the following sentence at the end of the second paragraph: “It must also be sent to La Financière agricole du Québec and the Société d’habitation du Québec in the case of an immovable charged with hypothecs published in their favour.”

34. Article 3021 of the Code is amended by inserting “, including those” after “the registers and documents in paper form” in subparagraph 6 of the first paragraph.

35. Article 3066.1 of the Code is amended by adding the following sentence at the end of the first paragraph: “It may also be cancelled on the registrar’s own initiative if the registrar becomes aware that the undivided co-ownership has ended.”

36. Article 3074 of the Code is amended by adding the following paragraph at the end:

“However, in land registration matters, only registrations of addresses that no longer have effect because of the cancellation of the registration of a principal right may be cancelled on the registrar’s own initiative.”

37. The Code is amended by inserting the following article after article 3084:

“3084.1. When a change of the designation of sex that appears on the act of birth of a person born in Québec but domiciled outside Québec is not possible in the country where the person is domiciled, the registrar of civil status may, on the request of the person, make the change in the act drawn up in Québec.

The change, which may also pertain to the person’s first names, must be made in accordance with the law of Québec, except the requirements respecting domicile and nationality.”

ACT RESPECTING THE IMPLEMENTATION OF THE REFORM OF THE CIVIL CODE

38. Section 48 of the Act respecting the implementation of the reform of the Civil Code (1992, chapter 57) is repealed.

ACT TO AMEND THE CIVIL CODE AND OTHER LEGISLATIVE PROVISIONS RELATING TO LAND REGISTRATION

39. Section 245 of the Act to amend the Civil Code and other legislative provisions relating to land registration (2000, chapter 42) is amended by adding the following paragraph at the end:

“This section does not prevent the Land Registrar from preserving these registers and documents in any other place the Registrar deems appropriate.”

TRANSITIONAL AND FINAL PROVISIONS

40. The provisions added to article 3017 of the Civil Code by section 33 apply only to a hypothec the constitution, acquisition or transmission of which was registered on or after the date on which the registry office established for the registration division in which the immovable concerned is situated became fully computerized with regard to land registration or, in the case of the registration division of Montréal, after 31 August 1980 and, in the case of the registration division of Laval, after 31 July 1980.

41. The period of 30 years set in article 3022 of the Civil Code with regard to the validity of the registration of an address in the land register is deemed to begin on the registration of the address in the register, even if the registration was effected before 9 October 2001.

This section does not affect the validity of the registration of an address effected more than 30 years prior to (*insert the date of coming into force of this section*) and not cancelled at that date, provided the registration is renewed within three years of that date.

42. The right of the owner of the dominant land to the performance of an act stipulated in an act registered before (*insert the date of coming into force*

of this section) is deemed to have been validly registered provided the right to such performance is included in the act so registered.

43. The provisions of this Act come into force on the date or dates to be set by the Government.

