



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 35
(2013, chapter 27)

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

**Introduced 17 April 2013
Passed in principle 28 May 2013
Passed 6 December 2013
Assented to 6 December 2013**

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EXPLANATORY NOTES

This Act 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 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 documents attesting events relating to civil status electronically, and declarations of birth or death will no longer need to be signed by a witness. In addition, when it is clear that a change is requested in connection with a change of the person's sexual identity, the registrar is from now on dispensed from ascertaining that notices of the application for a change of given name or of the application for a change of the designation of sex on the act of birth have been published, and dispensed from publishing a notice when authorizing any such change. The registrar is also dispensed from such obligations when a change of a name concerns a child under six months of age. As well, a person whose sexual identity does not correspond to the designation of sex that appears in their act of birth may, on meeting certain conditions, have the designation changed without having to undergo medical treatment or surgery.

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

In publication of rights matters, 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 form, made available by the land registrar, is filled out beforehand. Furthermore, 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 of the information contained in the original deed or act to an information technology-based medium will only be accepted by the registrar if the signature of the notary or advocate who drew up the deed or act is affixed by means of a signature key pair and subject to certain conditions. 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 register, or 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, this Act contains technical and consequential amendments as well as transitional provisions.

LEGISLATION AMENDED BY THIS ACT:

- 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 replaced by the following article:

“63. Before authorizing a change of name, the registrar of civil status shall ascertain that notices of the application have been published, except where

(1) a special exemption from publication has been granted by the Minister of Justice for reasons of general interest;

(2) 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; or

(3) the change requested concerns a child under 6 months of age.

In addition, the registrar may require the applicant to furnish any necessary additional explanation and information and shall give third persons who so request the opportunity to state their views.”

2. Article 67 of the Code is amended by replacing the second paragraph by the following paragraph:

“Notice of the change is published in the *Gazette officielle du Québec* except where

(1) a special exemption from publication has been granted by the Minister of Justice for reasons of general interest;

(2) 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; or

(3) the change requested concerns a child under 6 months of age.”

3. Article 71 of the Code is replaced by the following article:

“71. Every person whose sexual identity does not correspond to the designation of sex that appears in that person’s act of birth may, if the conditions prescribed by this Code and by government regulation have been met, have that designation and, if necessary, the person’s given names changed.

These changes may in no case be made dependent on the requirement to have undergone any medical treatment or surgical operation whatsoever.

Subject to article 3084.1, only a person of full age who has been domiciled in Québec for at least one year and is a Canadian citizen may obtain such changes.”

4. Article 72 of the Code is replaced by the following article:

“72. The application is made to the registrar of civil status; the documents prescribed by government regulation must also be provided.”

5. Article 73 of the Code is replaced by the following article:

“73. The application is subject to the same procedure as an application for a change of name, except as to publication requirements, and to the same duties. A change of designation of sex has, with the necessary modifications, the same effects as a change of name.”

6. Article 105 of the Code is replaced by the following article:

“105. The register of civil status is kept in duplicate.”

7. Article 106 of the Code is repealed.

8. 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”.

9. 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”.

10. 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”.

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

12. 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.

13. 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”.

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

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

16. 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.”

17. 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.

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.”

18. 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.”

19. 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.

20. 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”.

21. 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”.

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

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

24. Article 721 of the Code is amended

(1) by striking out “or a deaf-mute” in the first paragraph and by replacing “only deaf” in that paragraph by “able to do so”;

(2) by replacing the second and third paragraphs by the following paragraph:

“In the will, the testator declares that he has read it in the presence of the notary and, where such is the case, the witness. If the testator is unable to speak, the declaration is read to him by the notary in the presence of the witness; if he is able to speak, it is read aloud by the testator himself, in the presence of the notary and the witness.”

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

“722.1. A deaf person who, being unable to speak, 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 and may in no case be the spouse of the testator or related to the testator in either the direct or the collateral line up to and including the third degree, or connected with the testator by marriage or a civil union.

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.”

26. 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”.

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

“730.1. A deaf person who, being unable to speak, 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 and may in no case be the spouse of the testator or be related to the testator in either the direct or the collateral line up to and including the third degree, or connected with the testator by marriage or a civil union.

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.”

28. Article 903 of the Code is amended

(1) by adding “and ensure the utility of the immovable” after “for as long as they remain there”;

(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.”

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 form made available by the Land Registrar. If the application is presented in hard copy, it must be accompanied by the registration slip printed from that 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 of the information contained in the original deed or act to an information technology-based medium cannot be accepted by the registrar unless the signature of the notary or advocate who drew up the deed or act is affixed by means of a signature key pair in accordance with the Regulation respecting land registration (chapter CCQ, r. 6).

Documentation attesting that the notary or advocate made the transfer in accordance with section 17 of the Act to establish a legal framework for information technology (chapter C-1.1) must be attached to the application for registration.”

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

“If the summary is notarized, the mere signature of the notary is a sufficient certificate.”

32. Article 2999.1 of the Code is amended by adding the following sentence at the end of the last paragraph: “If the notice is notarized, the mere signature of the notary is sufficient verification.”

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 striking out subparagraph 6 of the first paragraph.

35. The Code is amended by inserting the following article after article 3021:

“3021.1. The Land Registrar is bound to keep, for archival purposes, in the registry offices or in any other place, all registers and documents in paper form, including those which were converted to electronic form pursuant to a ministerial order under the Act respecting registry offices (chapter B-9).”

36. 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.”

37. The Code is amended by inserting the following article after article 3074:

“3074.1. In land registration matters, the registrar may, on his own initiative, cancel the registration of an address that no longer has effect because of the cancellation of the registration of a principal right.”

38. The Code is amended by inserting the following before subsection 1 of Section II of Chapter I of Title Two of Book Ten:

“§0.1. — *Change of designation of sex*

“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 proves impossible in the country where the person is domiciled, the registrar of civil status may, at the request of the person, change the designation and, if necessary, change the person’s given names in the act drawn up in Québec.

The application is subject to the conditions prescribed by the law of Québec, except those respecting domicile and nationality.”

ACT RESPECTING THE IMPLEMENTATION OF THE REFORM OF THE CIVIL CODE

39. 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

40. 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

41. 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, as stated in the Schedule to this Act, 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.

42. 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 27 years prior to 6 December 2013 and not cancelled at that date, provided the registration is renewed within three years of that date.

43. The first regulation made under sections 3 and 4 must be examined by the competent committee of the National Assembly before it is adopted by the Government.

44. This Act comes into force on 6 December 2013, except sections 1 to 5, 29 and 30, which come into force on the date or dates to be set by the Government.

SCHEDULE
(Section 41)

Dates on which registry offices became fully computerized with regard to land registration

Land Registration Division	Date	Reference in Gazette officielle du Québec
A		
ABITIBI	15 October 2002	2002, G.O. 1, 1166
ARGENTEUIL	1 December 2003	2003, G.O. 1, 1196
ARTHABASKA	4 August 2003	2003, G.O. 1, 842
B		
BEAUCE	26 May 2003	2003, G.O. 1, 507
BEAUHARNOIS	12 May 2003	2003, G.O. 1, 454
BELLECHASSE	28 January 2002	2002, G.O. 1, 10
BERTHIER	16 September 2002	2002, G.O. 1, 1058
BONAVENTURE I	18 August 2003	2003, G.O. 1, 879
BONAVENTURE II	20 October 2003	2003, G.O. 1, 1061
BROME	8 September 2003	2003, G.O. 1, 939
C		
CHAMBLY	22 April 2003	2003, G.O. 1, 387
CHAMPLAIN	3 September 2002	2002, G.O. 1, 996
CHARLEVOIX I	24 November 2003	2003, G.O. 1, 1184
CHARLEVOIX II	10 November 2003	2003, G.O. 1, 1135
CHÂTEAUGUAY	7 April 2003	2003, G.O. 1, 344
CHICOUTIMI	25 June 2002	2002, G.O. 1, 731
COATICOOK	18 February 2002	2002, G.O. 1, 91
COMPTON	25 February 2002	2002, G.O. 1, 91
D		
DEUX-MONTAGNES	24 March 2003	2003, G.O. 1, 320
DORCHESTER	4 February 2002	2002, G.O. 1, 91
DRUMMOND	23 June 2003	2003, G.O. 1, 573
F		
FRONTENAC	9 June 2003	2003, G.O. 1, 557
G		
GASPÉ	15 September 2003	2003, G.O. 1, 969
GATINEAU	3 June 2002	2002, G.O. 1, 663
H		
HULL	2 July 2002	2002, G.O. 1, 758
HUNTINGDON	16 June 2003	2003, G.O. 1, 557

I		
ÎLES-DE-LA-MADELEINE	3 November 2003	2003, G.O. 1, 1114
J		
JOLIETTE	21 October 2002	2002, G.O. 1, 1197
K		
KAMOURASKA	11 February 2002	2002, G.O. 1, 91
L		
L'ASSOMPTION	23 September 2002	2002, G.O. 1, 1086
L'ISLET	14 January 2002	2002, G.O. 1, 10
LA TUQUE	13 May 2002	2002, G.O. 1, 473
LABELLE	29 April 2002	2002, G.O. 1, 379
LAC-SAINT-JEAN-EST	22 July 2002	2002, G.O. 1, 840
LAC-SAINT-JEAN-OUEST	5 August 2002	2002, G.O. 1, 907
LA PRAIRIE	2 June 2003	2003, G.O. 1, 525
LÉVIS	15 April 2002	2002, G.O. 1, 379
LOTBINIÈRE	21 January 2002	2002, G.O. 1, 10
M		
MASKINONGÉ	9 September 2002	2002, G.O. 1, 1036
MATANE	22 April 2002	2002, G.O. 1, 379
MATAPÉDIA	27 May 2002	2002, G.O. 1, 473
MISSISQUOI	17 November 2003	2003, G.O. 1, 1158
MONTCALM	7 October 2002	2002, G.O. 1, 1137
MONTMAGNY	7 January 2002	2002, G.O. 1, 10
MONTMORENCY	10 February 2003	2003, G.O. 1, 133
N		
NICOLET	19 August 2002	2002, G.O. 1, 956
P		
PAPINEAU	12 August 2002	2002, G.O. 1, 927
PONTIAC	8 April 2002	2002, G.O. 1, 379
PORTNEUF	3 February 2003	2003, G.O. 1, 99
Q		
QUÉBEC	24 February 2003	2003, G.O. 1, 197
R		
RICHELIEU	11 March 2002	2002, G.O. 1, 212
RICHMOND	11 August 2003	2003, G.O. 1, 855
RIMOUSKI	25 March 2002	2002, G.O. 1, 212
ROUVILLE	10 June 2002	2002, G.O. 1, 702
ROUYN	22 September 2003	2003, G.O. 1, 984

S

SAGUENAY	14 October 2003	2003, G.O. 1, 1061
SAINT-HYACINTHE	9 October 2001	2001, G.O. 1, 1022
SAINT-JEAN	2 April 2002	2002, G.O. 1, 212
SEPT-ÎLES	27 October 2003	2003, G.O. 1, 1101
SHAWINIGAN	29 July 2002	2002, G.O. 1, 888
SHEFFORD	29 September 2003	2003, G.O. 1, 1003
SHERBROOKE	21 May 2002	2002, G.O. 1, 473
STANSTEAD	4 March 2002	2002, G.O. 1, 213
SAINTE-ANNE-DES-MONTS	25 August 2003	2003, G.O. 1, 894

T

TÉMISCAMINGUE	2 September 2003	2003, G.O. 1, 918
TÉMISCOUATA	17 June 2002	2002, G.O. 1, 702
TERREBONNE	30 June 2003	2003, G.O. 1, 590
THETFORD	28 July 2003	2003, G.O. 1, 808
TROIS-RIVIÈRES	15 July 2002	2002, G.O. 1, 816

V

VAUDREUIL	20 May 2003	2003, G.O. 1, 482
VERCHÈRES	14 April 2003	2003, G.O. 1, 373

