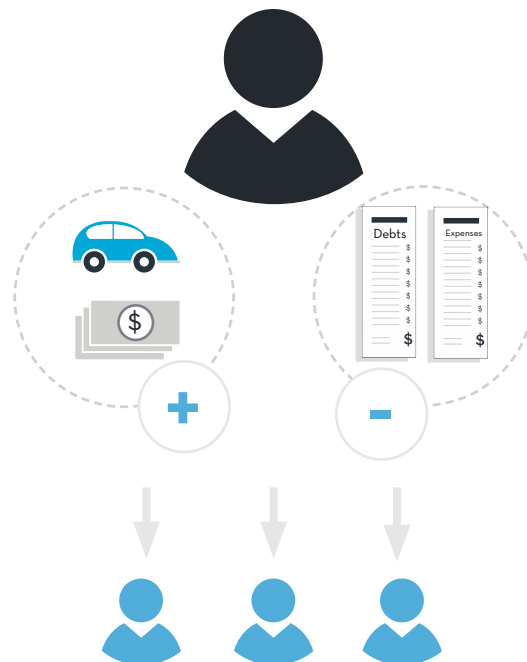


Dealing With a Death and Settling an Estate

Documents, funerals, wills, and settling someone's affairs





éducaloi

Éducaloi's mission is to explain to Quebecers the law, their rights, and their responsibilities in everyday language that is easy to understand.

Important Notice

The law changes. This guide is up to date to January 2021. Visit Éducaloi's website at educaloi.qc.ca/seniors to see if there is a more recent version of this guide.

This guide is meant as legal information, not legal advice. If you need advice on a specific situation, consult a notary or a lawyer. This guide applies only in Quebec.

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www.cnq.org

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Summary of Five Key Steps

Dealing with the death, funeral, and the estate of someone who dies is emotional. On top of this, the paperwork can seem like a maze of legal requirements.

To help you navigate the process, we have summarized five key things that must be done when someone dies:

- Step 1:** Notify the government of the death
- Step 2:** Organize a funeral, if necessary
- Step 3:** Check for a will
- Step 4:** Identify the liquidator (executor)
- Step 5:** The liquidator's role: settle the affairs of the deceased

Who does these things

Steps 1 to 4: These are usually done by a spouse, other person in the family circle, or someone entitled to inherit.

You can also ask a notary or lawyer to do them, but there will be a fee.

Step 5: This step is the responsibility of the “liquidator.” This is the official name in Quebec law for the person sometimes called the executor.

If no liquidator was named, this step is done by the heirs (people entitled to inherit).

How long they take

The five steps can take several months or even more than a year. It depends on how complicated the situation is and whether there are delays getting government documents.

Things can go faster if the person did not have much property and none or few debts. (Debts means money owed.) Things also go faster if the person who died planned ahead, by making a will, for example.



Step 1: Notify the Government of the Death

The death must be registered in an official government list.

How to notify the government

In the days right after the death, the documents listed below must be sent to a Quebec government agency called the Directeur de l'état civil (registrar of civil status):

1. an “attestation of death” form. This is usually filled out by a doctor.
2. a “declaration of death” form. This document is provided by the funeral company that takes care of the body. Usually, it is filled out by the spouse or partner of the person who died, or anyone else who can identify the person.
3. the medicare card of the person who died
4. an “Application for the simplified forwarding of information relative to the death to departments and agencies” form from the Directeur de l'état civil. This form notifies several government departments in one step and reduces the amount of paperwork.

If you deal with a funeral company, they can help you with these documents.

When it gets these documents, the Directeur de l'état civil will prepare an official document regarding the death, called an “act of death.”



Getting official proof of death

You will need proof of death to search for a will and to settle the affairs of the person who died. For example, you will need it to close bank accounts and cancel services and benefits (credit cards, telephone, pension, etc.).

To get proof, you can ask the Directeur de l'état civil to send you one of these documents:

1. copy of the act of death
2. a death certificate (The Directeur can make a certificate using the act of death.)

Number of copies to get

Some organizations will keep the document you send them to confirm the death. So, it's important to request several copies from the Directeur de l'état civil.



Cost of official proof of death

The documents cost between \$33 and \$76. The exact cost depends on how you request them, for example, Internet, mail, or in person. Also, if you request fast delivery, there might be extra fees.

How long official proof takes

It takes about two to three weeks to get it from the Directeur de l'état civil. It can go faster if you pay extra for quicker delivery.

Step 2: Organize a Funeral if Necessary

Did the person want a funeral? If so, did the person leave specific instructions about what kind of funeral?

Find out what the person wanted

Check with the family circle and other people close to the person who died.

Check the person's will, if they had one.

You can also check the person's personal papers for a pre-arranged funeral contract (see below) or any instructions in documents such as a protection mandate or even a handwritten note. A registry of pre-arranged funeral contracts is being set up. Ask a funeral company about this.

Pre-arranged funeral contract

This is a legal agreement that lets you arrange and pay for a funeral before your death. To learn more, see Éducaloi's website.



If you can't find out what the person wanted, the decision must be made by the people entitled to inherit.

Cost of funerals

It all depends on the person's wishes and the funeral company chosen.

If the person contributed enough to the Québec Pension Plan, part of the cost might be reimbursed by the Plan. This is called the "death benefit." It can be up to \$2,500. The person who paid for the funeral has the first right to get this money. The application must be made within 60 days of the death.

If the deceased did not contribute enough to the Québec Pension Plan, a special benefit can sometimes still be paid.

To learn more, visit the Retraite Québec website at www.retraitequebec.gouv.qc.ca/en/ under the heading "Death", then "Pensions and benefits for spouses, children and heirs".

When should the funeral take place?

In the days following the death.

Step 3: Check for a Will

A will is a document that expresses the wishes of the person who died. It says who will inherit money and property. It can also include rules the liquidator must follow to settle the person's affairs.

How to check

1. Search the will registries

A registry is an official kind of list.

Fill out the will search forms for these two registries:

- wills made by notaries: registry of the Chambre des notaires
- wills made by lawyers: registry of the Barreau du Québec

The Resources section at the end of this guide explains how to get the search forms.

There is a fee of between \$17 to \$23 for each registry. You will get an answer in a few weeks.

If there is a will listed in one of the registries, you will not get the will itself. You will get a certificate with the name and contact information for the notary or lawyer who made the will. You can then contact that person to get a copy.

2. Check for a will not in the registries

It is possible to write a will yourself, without a notary or lawyer. This kind of will is not put in the registries mentioned above.

Check for this kind of will in the personal papers of the person who died, and with the circle of family and friends.

There is a will made by a notary

You need to get an official copy of the will, if you don't already have one.

- **How:** Contact the notary mentioned in the will search certificate you got. (See the section on searching for a will.) You will need to send that notary proof of death and a copy of your will search certificates. (The will could also be at the Superior Court in some exceptional situations. If so, the address will be on the search certificate you got.)
- **Who can get a copy:** The people entitled to inherit under the will, or who would inherit by law if there were no will. Other people can have a copy only if a court gives permission.
- **Cost:** Depends on the notary's fees
- **How long:** Roughly a few days



What if there is a more recent will that is not notarized?

You must follow the same steps you would if the original will was not notarized. See the next page.

There is a will, but not made by a notary

The will must go through a legal process called “probate.” Probate confirms that the will was made by the person who died, that it is the most recent one, and that it respects the legal requirements.

- **How:** There are two ways:
 1. Ask a notary to prepare a probate document.
 2. Get a court decision on your own or with the help of a lawyer.

To learn more about going to court yourself, read Éducaloi’s website article on probate.

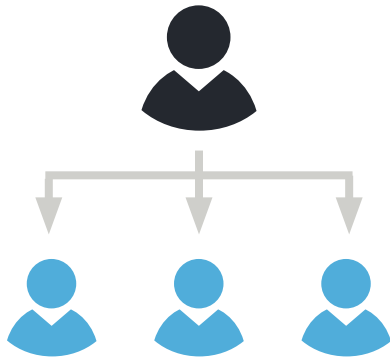
- **Cost:** Usually more than \$1,000. The cost depends on how complicated the will is.
- **How long:** Usually about six to 12 weeks. But if you go through the courts, it varies in each region of Quebec.

There is a will, but it was made outside Quebec

This will can be recognized in Quebec, but there might be extra steps involved. For example, you might have to get an official statement from a lawyer that the will is valid in the place it was made.

There is no will

Legal rules will decide which relatives inherit and how much. It is only if there are no relatives at all that everything goes to the government.



To learn more about who inherits when there is no will, see the chart on Éducaloi’s website: educaloi.qc.ca/en/capsules/dying-without-a-will/

A notary or lawyer can provide a document saying who will inherit. This is called a “declaration of heredity.”

Some institutions, such as insurance companies, the government, and banks, will ask for this declaration to deal with the deceased’s money.

- **How:** To get a declaration, you must provide proof of death and information on the family of the deceased.
- **Cost:** It depends on the fees of the notary or lawyer and the complexity of the situation.
- **How long:** Usually a few days

Step 4: Identify the Liquidator

The liquidator is the official name in Quebec law for the person who settles the affairs of someone who has died. Some people know the liquidator as the “executor.”

The liquidator can be anyone 18 years old or over, a notary, a lawyer, or a trust or savings company authorized by law to do this job. A person who inherits can be a liquidator.



Can the liquidator be outside Quebec?

Yes, but if the liquidator is outside Canada – not just in another province or territory – there can be serious tax consequences. Get professional advice on this.

How to know who the liquidator is

First, check the will. A will normally names the liquidator or liquidators. (A will can name more than one.)

If the will does not name anyone, or there is no will, the people who inherit name the liquidator by a majority decision. If they do not name one, or disagree on who to name, a court can name one.

The name of the liquidator must be registered in the Registre des droits personnels et réels mobiliers (RDPRM), a Quebec government registry. It must also be registered in the land registry (“registre foncier”) if the person owned property. For contact information for these registries, see the Resources section of this guide. A notary could assist you with this.

Step 5: The Liquidator's Tasks

The liquidator must wrap up all the affairs of the person who died and carry out instructions in the will, if there is one.

This is also called settling the succession. Succession is the official name in Quebec law for an estate.

The liquidator can get help from a notary, lawyer, or other professionals. The liquidator can also delegate some tasks, such as asking an accountant to do taxes or a notary to manage legal matters.

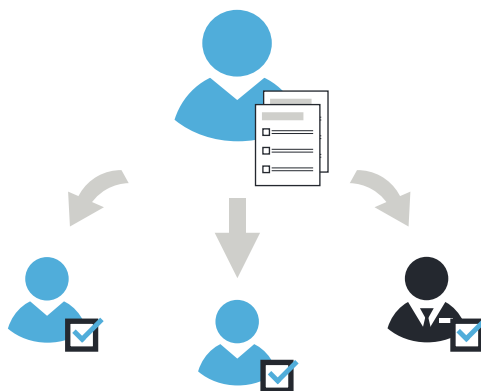
The liquidator can be paid for the work of settling the estate. However, if the liquidator is also entitled to inherit, special rules apply.

The liquidator has eight main tasks, listed in the pages that follow.



Refusing to be liquidator

The person named as liquidator does not have to accept, unless that person is the only one who will inherit. Then, that person must accept.



Task 1: Notify people entitled to inherit

The liquidator must notify all the people entitled to inherit.

This is important because the law gives people the right to refuse an inheritance. Why would you want to refuse? It might be because the person who died had a lot of debts.

You usually have six months from the death to refuse. This refusal must be in a document made by a notary or confirmed in a court decision.



Debts? Be careful!

People can refuse an inheritance if the debts of the deceased exceed the assets. For example, your mother left you her entire estate. She had \$50,000 in assets but owed debts of \$100,000. You are entitled to refuse the estate. You will not be responsible for the debts of \$100,000, but you will not receive the \$50,000 in assets either.

But a person can be held responsible for the debts in these situations:

- they don't follow the legal rules for settling an estate
- they refuse to - or neglect to - settle the estate
- they take things belonging to the person who died

Task 2: End employment, services, and benefits of the deceased

The liquidator must inform companies the deceased dealt with about the death.

This includes the Québec Pension Plan, the Régie d'assurance maladie du Québec (RAMQ or health insurance board), social assistance programs, phone and cable companies, hydro, insurance companies, banks, and credit card companies.

You need to contact each company or government agency to see exactly what you have to do and to get a final bill or collect any benefits owed to the deceased.

Task 3: Open a bank account for the estate

The liquidator must open a bank account in the name of the estate of the deceased.

This account is for holding money belonging to the deceased, such as money in bank accounts, insurance payments, death benefits, and any salary owed.

This account is also for making payments on behalf of the estate (bills, etc.).



Task 4: Identify the rights of a spouse and children

Death puts an end to marriage or a civil union. (Civil union is a kind of marriage recognized in Quebec.)

The surviving spouse has a right to claim certain money coming from a division of property under family law rules, and a division under what is called a matrimonial or civil union regime. These rules don't apply to common-law partners.

Also, in some cases, the surviving spouse and any children can claim support payments from the estate.

The rules on the rights of surviving spouses and children are complex. It is a good idea to get legal advice on this.



Wondering if you are named in a will?

You can try asking the liquidator for a copy of the will. To get a copy from a notary who made a notarial will, you will need the will search certificates and proof of death explained earlier in this guide.

Task 5: Make a list of money, property, and debts

This list is called an inventory. It is important because it lets people entitled to inherit know whether the deceased had more debts than property and money. Remember that these people can turn down their inheritances if they are worried about these debts.

If all the people entitled to inherit agree, the liquidator does not have to make an inventory. But if they choose to do this, they become responsible for any debts of the deceased, even if the debts exceed the assets. It is therefore highly recommended to seek the advice of a notary or lawyer before making such a decision.

What's in an inventory?

- a description of things belonging to the deceased and their value (e.g., money, buildings, cars, investments)
- a description of any debts and payments to be made (e.g., taxes, money owed to a surviving spouse and children, funeral costs, fees for a notary, lawyer or accountant, fees for death certificates)



- The inventory must be signed before a notary, or in front of two witnesses, and mention the date and place of signature.

A “notice of closure of inventory” must be published in a government registry called the Registre des droits personnels et réels mobiliers (RDPRM). This notice confirms that the inventory has been done and says where people can look at it. The notice must also be published in a newspaper distributed in the area of the deceased’s last known address.



There is property outside Quebec?

There might be extra steps involved if the deceased had property outside Quebec. It is a good idea to get legal advice in these situations.

Task 6: Pay taxes and get tax certificates

Before handing out any property or money, the liquidator must file and pay provincial and federal taxes.

The liquidator must also get certificates confirming the taxes have been paid. Revenu Québec's is called "Certificate Authorizing the Distribution of Property." The Canada Revenue Agency's is called a "Clearance Certificate."

Task 7: Pay debts and give specific gifts

If there is enough money and property to pay any debts and give out specific gifts mentioned in the will, the liquidator pays the debts and gives out these gifts.

A specific gift means the will left a specific thing to a specific person (or a specific thing to several people) who would not otherwise inherit.

If there is not enough money to pay the debts and give the specific gifts, the liquidator must follow a specific legal procedure. It is a very good idea to get legal advice about this procedure.

Task 8: Give a report to people entitled to inherit

The liquidator must prepare a report for the people entitled to inherit. This report tells them what was left after all debts were paid and specific gifts given out. It must have enough details to let people check that it is accurate.

The people entitled to inherit must accept this report before the liquidator can give them their inheritances and the role of liquidator comes to an end.

Finally, the liquidator must publish a notice in the Quebec-government registry called the *Registre des droits personnels et réels mobiliers* (RDPRM). The notice mentions the name of the person who died and the place the report can be looked at by people with an interest in the estate, such as people owed money.

This is the end of settling the estate.



Giving money and property in advance

If the estate obviously has more money and property than debts, the liquidator can give a kind of advance on an inheritance even before preparing a final report on settling the estate.

Also, if they all agree, and even before the liquidator finishes settling the estate, the people entitled to inherit can divide among themselves property that is not very valuable. This includes clothing, diplomas, and souvenirs.

Information on Death, Estates, and the Law Generally

Éducaloi

educaloi.qc.ca/en

educaloi.qc.ca/seniors

Quebec Government

quebec.ca/en/

Click on “Family and support for individuals”, then “Death”.

You can also download a PDF guide “What to Do in the Event of Death” from the same page.

Or call:

- Quebec City: 418-644-4545
- Montreal: 514-644-4545
- Elsewhere: 1-877-644-4545 (toll free)
- TTY: 1-800-361-9596 (toll free)

Justice Québec

www.justice.gouv.qc.ca/en

Click on “Your Money and Your Possessions”, then “Successions”.

Retraite Québec (pension plan)

www.retraitequebec.gouv.qc.ca/en/

Click on “Death”, then “Steps to take in the event of a death”.

Chambre des notaires (notaries’ professional order)

www.cnq.org

Switch to English, then go to “Successions and Wills.”

Find a Notary

Chambre des notaires du Québec

www.cnq.org

Switch to English, then go to “Find a Notary”. You can search by language, region, accessibility for people with reduced mobility, and notaries who accept legal aid.

Find a Lawyer

Barreau du Québec (law society)

www.barreau.qc.ca

Switch to English, then go to “Find a lawyer”.

For a free or low-cost consultation:

- Montreal: 514-866-2490
(30 minutes for \$30)
- Longueuil: 450-468-2609
(30 minutes for \$50)
- Quebec City, Beauce and Montmagny: 418-529-0301
(30 minutes for \$30)

JurisRéférence

www.jurisreference.ca/en/

Select Find a Lawyer and click on “find the lawyer” in red. Search by region or area of law.

Free and Low-Cost Legal Services

La boussole juridique

boussolejuridique.ca/en/

List of legal services in Quebec. Search by region and area of law.

Community Justice Centres (Centres de justice de proximité)

www.justicedeproximite.qc.ca/en

Get legal information in person and sometimes by phone.

Check for a Will

Wills made by a notary: Chambre des notaires registry

www.cnq.org

Switch to English. Click on “The Chambre and Your Protection”, then “The Chambre’s Services”, then “Search the Registers” and “Search for a will”.

Or call:

- 514-879-1793
- 1-800-263-1793

Wills made by a lawyer: Barreau du Québec registry

www.barreau.qc.ca

Switch to English. Go to “Wills and mandates” at the bottom, then click on “Search for a will or mandate”.

Or call:

- 514-954-3411
- 1-844-954-3411

Get Death Certificates and Related Documents

Directeur de l'état civil

www.etatcivil.gouv.qc.ca

Switch to English. Click on “Forms” then “Certificate or Copy of an Act”.

Or call:

- Quebec City: 418-644-4545
- Montreal: 514-644-4545
- Elsewhere: 1-877-644-4545 (toll free)
- TTY: 1-800-361-9596

Register the Name of the Liquidator

Registre des droits personnels et réels mobiliers (RDPRM)

www.rdprm.gouv.qc.ca (French only)

Go to “Vous êtes liquidateur d’une succession?”.

Or call:

- 514-864-4949 (Greater Montreal)
- 418-646-4949 (Quebec City and region)
- 1-800-465-4949 (Elsewhere)

Registre foncier

1-866-226-0977

Get Tax Certificates

Government of Canada

www.canada.ca

Enter “clearance certificate” in the search box on the top right.

Revenu Québec

www.revenuquebec.ca/en/

Click on “Citizens”, then “Your Situation”, then “Liquidators of a Succession (Steps to Follow After a Death)”.

Éducaloi explains the law to Quebecers in everyday language.



Read about these and other topics at www.educaloi.qc.ca:

- Planning ahead
- Wills
- Pre-arranged funeral contracts
- Probating a will
- Dying without a will
- Life insurance



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