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Pension Benefits Act

Understanding the
Division of Benefits for
Separating Spouses



Introduction

When couples split up, they must divide their assets. If one of them earned a pension benefit during their marriage, registered domestic partnership, or common-law partnership, then the other person may be entitled to a share. This guide is designed to help spouses who are separating to understand the provisions of the Pension Benefits Act.

This act governs the division of pensions, pension benefits, LIRA's, LIF's and life annuities. It applies to benefits earned in employer-sponsored pension plans established for Nova Scotia employees. It does not apply to employees engaged in work under federal jurisdiction. It does not apply to pension plans established for provincial public servants, teachers, judges, or members of the legislature.

The legislation does not require that a benefit earned under a pension plan be divided. If the other assets of the marriage or partnership are sufficient, then the spouse's share may be satisfied in a matrimonial property settlement by trading off other assets of value equal to the value of the spouse's share of the benefit.

How to Use This Guide

This guide will show how to divide a benefit earned under a pension plan when you and your spouse are separating. We've included a flow chart to help you understand the process and the choices that may be available. We've also included detailed instructions and other information that you will need. As you read through the process, you will need to refer to the definitions. We use some words in very specific ways.

If you are the spouse who will be making a claim for a division of a benefit earned under a pension plan, then these are the steps you must follow:

- Step 1: File a request for information
- Step 2: Decide to either divide the benefit or trade off other assets
- Step 3: Get a court order or domestic contract
- Step 4: Divide the benefit depending on the situation

If you are the pension plan member, former member, retired member or owner, then the administrator or financial institution must notify you whenever a claim is made against your benefit or whenever your benefit is divided.

This guide has no legal authority. Use the Act and the Pension Benefits Regulations to determine specific regulatory requirements.

The Pension Benefits Regulations can be accessed at the following web site:
<http://www.novascotia.ca/just/regulations/rxam-z.htm#penben>

Who Can Use the Information in this Guide?

- Spouses who are separating
- Pension plan sponsors, especially employers
- Family law practitioners
- Financial institutions

Who to Contact

If you need help using this guide, or interpreting the act, contact:

Finance and Treasury Board

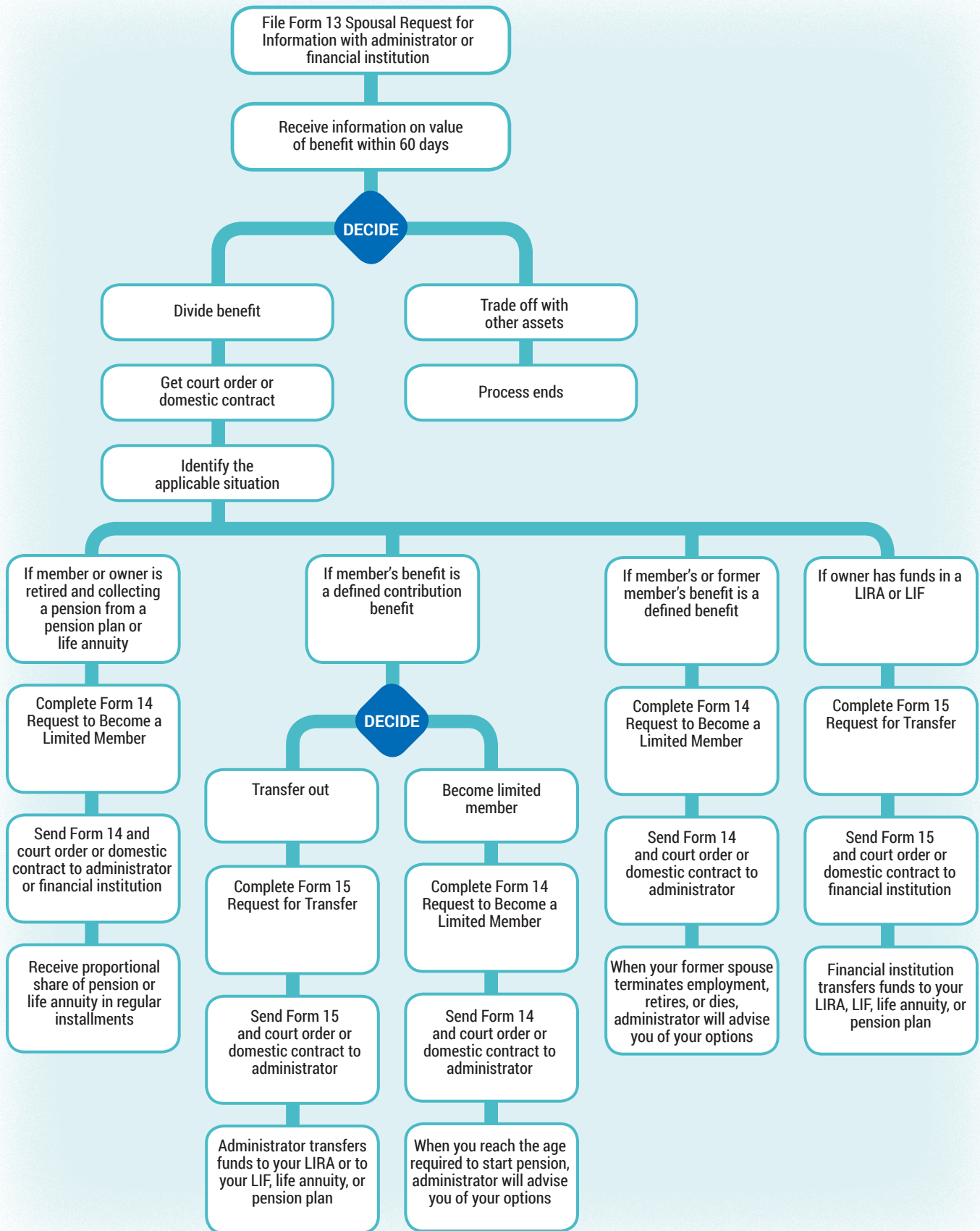
Pension Regulation Division

email: pensionreg@novascotia.ca

fax: 902-424-5327

tel: 902-424-8915

If you are claiming a share of your spouse's benefits, here are the steps you must follow:



STEP ONE

File a request for information

A spouse claiming a share of benefit must file Form 13 Spousal Request for Information with the administrator or financial institution. The parties must be living apart before a request can be made.

The administrator or financial institution must notify the member, former member, retired member or owner that a claim is being made against his or her benefit (Form 16 Division of Pension Benefits NOTICE) as soon as the administrator receives Form 13 Spousal Request for Information from the spouse.

The administrator must provide to the spouse any information necessary to value the benefit within 60 days of receiving Form 13 Spousal Request for Information. This may include:

- a summary of the plan provisions
- the member's or former member's pension or pension benefit accrued under the pension plan
- any additional voluntary contributions
- the member's or former member's pensionable service accrued in the pension plan
- if the former member no longer participates in the pension plan, the date membership terminated
- the terms of the life annuity
- the value of the LIRA or LIF

The administrator is only required to update the information once in each calendar year, upon request.

STEP TWO

Decide either to divide the benefit or to trade off other assets

The spouse must decide whether to

- divide the benefit

OR

- trade off other assets instead of dividing the benefit

The spouse should get legal advice before deciding. If other assets are traded instead of dividing the benefit, there is no application under the act.

STEP THREE

Get a court order or domestic contract

The court order or domestic contract must

- provide for the division of the benefit
- specify the separation date

- identify the date of marriage or start of the common-law or registered domestic partnership
- identify the percentage of the benefit accrued during the marriage or partnership to be credited to the spouse. The percentage may be at most fifty per cent (50%).

STEP FOUR

Divide the benefit depending on the situation

There are four different situations that could exist when the division of a benefit occurs. In some cases, more than one situation could exist at the same time. The member, former member, retired member or owner may

- be retired and drawing on a pension or receiving payments under a life annuity
- have earned a defined contribution benefit
- have earned a defined benefit
- have transferred funds out of a pension plan into a LIRA or LIF

IF THE MEMBER OR OWNER IS RETIRED AND COLLECTING A PENSION FROM A PENSION PLAN OR LIFE ANNUITY

If a pension or life annuity is already being paid to the retired member or owner at the time of the division, then the spouse's share of the pension or life annuity will be paid as a pension or life annuity.

Steps to claiming a share of the pension or life annuity

- The spouse completes Form 14 Request to Become a Limited Member.
- The spouse files Form 14 and a copy of the court order or domestic contract with the administrator or financial institution.
- The administrator or financial institution notifies the retired member or owner that a claim is being made against his or her pension or life annuity (Form 16 Division of Pension Benefits NOTICE).
- The administrator or financial institution calculates and pays the proportionate share of the retired member's pension or owner's life annuity to the spouse.

Other information about claiming a share of the pension or life annuity

The administrator must make separate source deductions for income taxes for both the pension or annuity paid to the retired member or owner and the pension or life annuity paid to the spouse.

If the retired member or owner dies and the pension or life annuity chosen at retirement was a joint and survivor pension or life annuity, then the spouse gets the survivor benefit. If the pension or life annuity chosen at retirement was in a different form, then payments to the spouse continue in the chosen form. For example, if a single life annuity with 60 monthly payments guaranteed was chosen, then payments would continue until the end of the guaranteed period. If the spouse dies, then the retired member or owner receives the full pension or life annuity.

IF THE MEMBER'S OR FORMER MEMBER'S BENEFIT IS A DEFINED CONTRIBUTION BENEFIT

If the member's or former member's benefit is a defined contribution benefit, it can be divided at the separation date.

The spouse must decide whether to

- transfer the proportionate share of the defined contribution benefit out of the pension plan
- OR
- leave the proportionate share in the plan and become a limited member of the plan. If the spouse becomes a limited member, then they still have the option to transfer out of the plan, but only when reaching early retirement age or if the plan winds up.

Steps to transfer out of the pension plan

- The spouse completes Form 15 Request for Transfer.
- The spouse files Form 15 Request for Transfer and a copy of the court order or domestic contract with the administrator.
- The administrator notifies the member or former member of the claim with Form 16 Division of Pension Benefits NOTICE.
- The administrator calculates and transfers the spouse's proportionate share to a LIRA. The spouse can start to receive pension income from these funds once he or she reaches early retirement age (normally age 55) by purchasing a life annuity or a LIF.

Steps to become a limited member of the pension plan

- The spouse completes Form 14 Request to Become a Limited Member.
- The spouse files Form 14 Request to Become a Limited Member and a copy of the court order or domestic contract with the administrator.
- The administrator notifies the member or former member of the claim with Form 16 Division of Pension Benefits NOTICE.
- When the limited member reaches the age required to start a pension, the administrator will advise him or her of the options. The limited member is entitled to the same options as a member or former member on retirement.

Other information

The administrator may charge a fee of up to \$250 to divide a defined contribution benefit.

IF THE MEMBER'S OR FORMER MEMBER'S BENEFIT IS A DEFINED BENEFIT

If the benefit to be divided is a defined benefit, then the spouse of the member or former member must become a limited member of the pension plan.

Steps to becoming a limited member

- The spouse completes Form 14 Request to Become a Limited Member
- The spouse files Form 14 Request to Become a Limited Member and a copy of the court order or domestic contract with the administrator.

- The administrator notifies the member or former member of the claim with Form 16 Division of Pension Benefits NOTICE.
- The administrator determines the limited member's proportionate share of the pension benefit when the member or former member terminates employment, retires, or dies. The limited member is entitled to the same options as the member or former member. The administrator will provide information regarding any available options to the limited member.

Other information about becoming a limited member

The administrator may charge a fee of up to \$500 to divide a defined benefit.

If the member or former member retires, the administrator will convert the limited member's proportionate share to a separate pension payable to the limited member. The amount of pension is based on the age of the limited member.

The limited member is not required to choose a form of pension that will provide a subsequent spouse with a survivor pension.

The member or former member must choose a joint and survivor pension if there is a subsequent spouse when the member or former member retires, unless the subsequent spouse waives that requirement (Form 6 Spousal Waiver of Joint and Survivor Pension Benefit). After the division takes place, the administrator will adjust the pension benefit of the member or former member.

For an example of how to calculate a defined benefit when the member or former member retires see Appendix 1.

If the member terminates employment, then the administrator will determine the limited member's proportionate share of the defined benefit. The administrator will advise the limited member of the options available. After the division takes place, the administrator will adjust the pension benefit of the member.

If the member or former member dies, the administrator calculates and pays the proportionate share of the pre-retirement death benefit to the limited member.

IF THE MEMBER HAS TRANSFERRED FUNDS TO A LIRA OR LIF

Assets contained in a LIRA or LIF are divided in the same way as defined contribution benefits, with a few adaptations.

Steps to dividing a LIRA or LIF:

- The spouse applies directly to the financial institution holding the funds. Use Form 15 Request to Transfer and include a copy of the court order or domestic contract.
- The financial institution must notify the owner of the claim with Form 16 Division of Pension Benefits NOTICE.
- The financial institution calculates and transfers the spouse's proportionate share to a LIRA or other available option.

Other information about dividing a LIRA or LIF

The benefit to be divided is the total dollar value of the LIRA or LIF at the separation date. If under the age for early retirement, then the spouse's or partner's share must be transferred either into his or her own LIRA or into his or her pension plan, if that pension plan permits. If funds are transferred into a LIRA, then the spouse can receive pension income from these funds once he or she reaches early retirement age (normally age 55) by purchasing a life annuity or a LIF. If at the age of early retirement, then the spouse or partner's share may be transferred directly into a life annuity or LIF.

DEFINITIONS

administrator A person who administers a pension plan.

court order An order of the Supreme Court of Nova Scotia, or an equivalent order of a court of competent jurisdiction made outside the Province and enforceable in the Province, that provides for the division of a pension benefit, deferred pension, pension, LIRA, LIF or life annuity.

defined benefit A pension benefit earned under a plan that contains a specific formula to determine the amount of pension each member is to receive. For example, a plan may provide a benefit of \$25.00 per month for each year of service, or a benefit of two percent of earnings multiplied by the years of service.

defined contribution benefit A pension benefit provided by contributions and the investment earnings on the contributions.

domestic contract A written agreement that provides for a division between spouses of any pension benefit, deferred pension, pension, LIRA, LIF or life annuity, and includes a marriage contract as defined in the Matrimonial Property Act.

division A division of any of the following between spouses made in accordance with Section 74 of the Act by court order or domestic contract:

- i. a pension benefit of a member,
- ii. a deferred pension of a former member,
- iii. a pension of a retired member, or a life annuity of an owner
- iv. a LIRA of an owner,
- v. a LIF of an owner;

financial institution A bank, credit union, an insurance company or any organization that invests money in financial assets.

former member A person who is entitled to pension benefits and is no longer employed by the organization that provides the pension or is no longer a member of the pension plan. Note that a person who had the right to some pension benefits earned by a spouse and is no longer in a relationship with that spouse is not considered a former member.

LIF A life income fund providing lifetime retirement income subject to maximum annual withdrawal limitations.

limited member A person designated as a limited member of a pension plan.

LIRA A locked-in retirement account to which locked-in pension funds are transferred from a pension plan with restrictions to ensure that pension funds remain locked-in to provide retirement income.

member A member of the pension plan.

owner The owner of a LIRA, a LIF or a life annuity

pension A pension benefit that is in payment.

pension benefit The amounts payable to a member or former member during their lifetime, to which they will become entitled at the normal retirement date. The pension benefit may also refer to the amount to which any other person is entitled upon the death of a member or former member.

pensionable service The months or parts of months during which a member's or former member's pension benefit accrues. It includes the months or parts of months during which a pension benefit, earned by a member or former member under another pension plan, has been transferred to the pension plan.

retired member A person who has retired and is receiving a pension under a pension plan.

separation date The date a spouse becomes entitled to a division of any of the following:

- (i) a pension benefit of a member
- (ii) a deferred pension of a former member
- (iii) a pension of a retired member
- (iv) a LIRA of an owner
- (v) a LIF of an owner
- (vi) a life annuity of an owner

separate pension The proportionate share of a member's or former member's pension benefit that is established in favour of a spouse.

spouse Means

- The person you are married to.
- The person you are married to, if the marriage hasn't been legally ended.
- The person you thought you were married to, if you are still living together.
- The person you thought you were married to, if you have lived together in the last 12 months.
- The person who is your registered domestic partner under the Vital Statistics Act.
- The person you have been living with in a sexual relationship for at least one year, if neither of you are married to someone else.
- The person you have been living with in a sexual relationship for at least three years, even if one or both are you are married to someone else

For the purposes of this document, the word "spouse" includes a former spouse.

Waiver A written agreement in which a person gives up a right to something to which they would otherwise be entitled. For example, a written agreement in which a spouse gives up the right to receive pension benefits to which they would ordinarily be entitled.

CALCULATION OF PROPORTIONATE SHARE -- DEFINED CONTRIBUTION BENEFIT

The proportionate share of a defined contribution benefit must be calculated in accordance with the following formula:

$$\text{proportionate share} = P \times (A \div B) \times C$$

in which

P = the percentage of the pension benefit or deferred pension to be credited to the spouse under a court order or domestic contract

A = pensionable service accumulated by the member or former member, accruing from the earliest of all of the following dates to the separation date:

- i. the date of the marriage,
- ii. the beginning of the domestic partnership,
- iii. the beginning of the cohabitation in a conjugal relationship.

B = the total pensionable service accumulated by the member or former member to the separation date

C = the total of all of the following:

- i. the contributions to the pension plan to the credit of the member or former member as at the separation date,
- ii. the net investment returns that are allocated, or that are to be allocated, in respect of those contributions to the date that the spouse's proportionate share is transferred from the pension plan or established in the pension plan in favour of the spouse as a limited member.

CALCULATION OF PROPORTIONATE SHARE OF LIRA OR LIF

The proportionate share of a LIRA or LIF must be calculated in accordance with the following formula:

$$\text{proportionate share} = P \times (A \div B) \times C$$

in which

P = the percentage of the LIRA or LIF to be credited to the spouse under a court order or domestic contract

A = pensionable service accumulated by the owner, accruing from the earliest of all of the following dates to the separation date:

- i. the date of the marriage,
- ii. the beginning of the domestic partnership,
- iii. the beginning of the cohabitation in a conjugal relationship

B = the total pensionable service accumulated by the owner, to the separation date

C = the total of all of the following:

- (i) the value of the assets in the LIRA or LIF as at the separation date, and
- (ii) in respect of the assets that are in the LIRA or LIF as at the separation date, the net investment returns allocated, or that are to be allocated, from the separation date to the date that the spouse's proportionate share in the LIRA or LIF is transferred out of the LIRA or LIF.

CALCULATION OF PROPORTIONATE SHARE OF PENSION OR LIFE ANNUITY, DEFINED BENEFIT OR PRE-RETIREMENT DEATH BENEFIT IN RESPECT OF DEFINED BENEFIT (DB)

The proportionate share of a pension, life annuity, defined benefit or pre-retirement death benefit in respect of a defined benefit must be calculated in accordance with the following formula:

$$\text{proportionate share} = P \times (A \div B)$$

in which

P = the percentage of the pension, life annuity, defined benefit or pre-retirement death benefit to be credited to the spouse under a court order or domestic contract

A = pensionable service accumulated by the member, former member, retired member, or owner accruing from the earliest of all of the following dates to the separation date:

- (i) the date of the marriage,
- (ii) the beginning of the domestic partnership,
- (iii) the beginning of the cohabitation in a sexual relationship

B = the total pensionable service accumulated by the member, former member or retired member to

(i) to the earlier of the following dates:

- A. the date that the member, former member or owner retires,
 - B. the date that the member or former member terminates membership in the pension plan,
- or

(ii) for a plan that requires a determination of a proportionate share of a pre-retirement death benefit on the death of the member or former member, to the date of the member's or former member's death.

APPENDIX 1

Calculating a Defined Benefit When the Member or Former Member Retires

When the member or former member actually retires, the administrator calculates the pension to be paid to the member or former member and the pension to be paid to the spouse.

In this example, the member's pensionable service at retirement is 30 years, the pensionable service accumulated during the marriage is 20 years, the percentage awarded to the spouse is 50%, and the annual pension is \$9,000.

Calculate the proportionate share: $P \times (A/B)$

If $P = 50\%$ percentage of the pension awarded to the spouse

and $A = 20$ years pensionable service accumulated during the relationship

and $B = 30$ years total pensionable service at retirement then $P \times (A/B) = 50\% \times (20/30) = 33.33\%$

Apply the proportionate share to the member's annual pension

If the annual pension = \$9,000 and proportionate share = 33.33%

then the member or former member's annual pension is reduced by \$3,000

Calculation: $\$9,000 - \$3,000 = \$6,000$

The member's annual pension is now \$6,000

Convert the spouse's share to an annual lifetime pension

Convert the spouse's share of the pension into an annual lifetime pension. This conversion is based on the spouse's age. The resulting pension may be more or less than \$3,000 per year.

Remember that the administrator may charge a fee of up to \$500 for dividing a defined benefit.