

PensionFacts



If you divorce or separate, you and your spouse must decide if and how your pension will be divided

How a separation or divorce affects your pension

If you are going through a separation or divorce, you and your spouse must decide if and how you will divide your pension (that is, split it so that it can be shared). This fact sheet explains your options.

We strongly recommend that you and your spouse obtain independent legal advice about your individual rights when dividing a pension or any other family assets. The Pension Plan cannot provide advice on this topic.

Your former spouse's entitlement to your pension

Under the *Family Relations Act* (FRA), your pension is considered to be a family asset, like a house or a car. If you separate or divorce, your spouse may be entitled to a portion (normally one-half) of the pension you earned during the marriage. (Although the FRA provisions do not automatically apply to a common law spouse, a member and a common law spouse can agree to divide the pension under the FRA.) You and your spouse may agree to divide your pension, with each of you receiving a percentage of the total pension, or both of you may agree to leave your pension intact and divide family assets in another way.

If your pension is to be divided, the separation agreement or court order must provide clear direction about how this will be done. See “What to include in a separation agreement or court order” in this fact sheet for guidelines.

Your former spouse can claim a share of your pension by submitting (as soon as possible) a *Claim of Spouse to Interest in a Member's Pension* (Form 1) to the Plan. See also “How your former spouse can become a limited member of the Plan” in this fact sheet.

Make sure that you and your former spouse keep your contact information up to date with the Plan at all times so that we can contact you if we need to. Former spouses who become limited members are entitled to receive information from the Plan about the pension.

How your former spouse can become a limited member of the Plan

By becoming a limited member of the Plan, your former spouse can receive their share of the pension directly from the Plan.

On July 1, 1995, a provision (Part 6) was added to the FRA to allow the Plan to pay the former spouse's share of the pension directly to the former spouse. If the separation agreement or court order is dated on or after that date, your former spouse can become a limited member of the Plan by submitting:

- a *Request for Designation as a Limited Member of the Pension Plan* (Form 2) and the administration fee (\$500 payable to the Plan by cheque, money order or bank draft),¹
- evidence of entitlement to part of the pension, in a separation agreement or court order, and
- clear copies of proof of age/identity documents for you and your former spouse such as a passport, Canadian citizenship or immigration papers, a current driver's licence or BC identification card, a birth certificate, or a Certificate of Indian Status card.

Before July 1, 1995, there was no provision under the FRA to allow the Plan to pay a portion of a member's pension directly to a former spouse. If your separation agreement or court order is dated before that date, your former spouse can only become a limited member before you retire if:

- your separation agreement or court order states that you must sever your former spouse's portion of the pension, or
- you and your former spouse agree in writing to divide the pension under Part 6 of the FRA. You can do this by submitting an *Agreement to Divide Pension Under Part 6 of the Family Relations Act* (Form 7).

Your former spouse can also wait until you retire and apply to become a limited member at that time. In this case, it does not matter when the separation agreement or court order is dated.

We suggest that you and your former spouse talk with a lawyer about the steps and timing involved in becoming a limited member so that you understand the process.

How your former spouse receives a share of your pension

Once your former spouse is a limited member, the Plan will calculate your pension and your former spouse's entitlement and pay your former spouse's share directly.

Your former spouse can have their share of the pension transferred as a lump sum to a locked-in investment vehicle once you have reached earliest retirement age. This might be a registered retirement savings plan (RRSP), a retirement income fund (RIF) or a life income fund (LIF).

Your former spouse can also wait until you retire and receive a separate pension directly from the Plan.

If you terminate employment before earliest retirement age and transfer the commuted value of your share of the pension as a lump sum to a locked-in retirement investment vehicle, your former spouse must do the same with their share of the pension.

1. The plan member and the former spouse are equally responsible for paying this fee. Under the FRA, an individual who pays more than an equal share can recover the overpayment from the other person. The Plan is not responsible for recovering fees.

A death before retirement may affect how a pension is divided

The plan member's death, or the death of a former spouse who is entitled to a share of the pension, may affect how a pension is divided. Two examples are shown below. Contact the Plan for information about your specific situation.

- If you die before starting to receive your pension, the FRA provides that your former spouse is entitled to all (as opposed to half) the pension benefits that were earned during the relationship unless the separation agreement or court order states otherwise. Keep in mind that this entitlement may be more than you and your former spouse anticipated, which may be an issue if there is a subsequent spouse who may be affected.
- If the pension is to be divided under Part 6 of the FRA and your former spouse dies before you retire and before receiving their share of the pension, this share will be paid to your former spouse's estate.

If you and your former spouse agree not to divide your pension

You and your former spouse may agree that you can keep your entire pension as a trade-off for another family asset. In this case, you may want to know the value of your pension so that you can negotiate a settlement

You and your former spouse may agree that you can keep your entire pension as a trade-off for another family asset.

of family assets with your former spouse. You or your former spouse can have an independent actuary calculate the pension's value based on information from the Plan. You can request the information necessary to do this directly

from the Plan. Your former spouse must submit a *Claim of Spouse to Interest in a Member's Pension* (Form 1) along with evidence of the spousal relationship, such as a clear copy of the marriage certificate, to receive this information.

If you are retiring or are retired

If you are retiring and your former spouse is a limited member, the Plan will notify your former spouse of their pension options at the same time as you are notified of your options.

If you are retired, your former spouse can still become a limited member and receive a share of your pension directly from the Plan. In this case, the pension option you selected at retirement will apply to both your share and your spouse's share of the pension. Your former spouse may or may not continue to receive the pension after your death, depending on the option you selected. See the *Choosing Your Best Pension Option* booklet for more information about pension options.

What to include in court orders and separation agreements

You and your former spouse should provide clear direction in the separation agreement or court order about how the pension is to be divided. If the Plan needs to get clarification, there could be delays in processing your pension.

We recommend that you discuss the following guidelines with a lawyer.

- Provide the correct name of the pension plan (or plans) to be divided. Normally, all pension benefits earned during a marriage are divided, not just those in the plan member's current plan. If pension benefits under some pension plans are not to be divided, clearly state this.
- Clearly identify the start and end dates (day, month and year) for the entitlement period. You can include time when you lived together before the marriage.
- Indicate the former spouse's proportionate share of the pension. This is normally 50 per cent or less of the pension earned during the entitlement period. The Plan cannot divide a pension based on a set dollar amount.
- Clearly state what the former spouse's entitlement will be if the plan member dies before starting to receive the pension. If you do not provide direction, the FRA provisions will apply. Under the FRA provisions, if the plan member dies before starting to receive the pension, the former spouse is entitled to all the pension benefits that were earned during the marriage unless the agreement or order states otherwise. Keep in mind that this entitlement may be more than the member and former spouse anticipated, which may be an issue if there is a subsequent spouse who may be affected.
- Some Municipal Pension Plan members have a defined contribution component to their pension under a special agreement, for example, police officers and fire fighters. If the pension includes a defined contribution component, clearly state how this component is to be divided. If you do not provide direction, the FRA provisions will apply.
- Explain any other special provisions for dividing the pension that vary from those under the FRA (for example, if the division will include any service purchased after the entitlement date).

Please contact the Plan if you have questions about the pension division information needed in a separation agreement or court order.



PensionFacts is published for the Municipal Pension Plan by the Pension Corporation. This publication is based on the relevant plan documents (statutes, regulations and rules). If there is a discrepancy between this publication and the plan documents, the plan documents apply.

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