



PENSION BULLETIN 2018-04

Re: *Pension Benefits Act* - Marriage Breakdown

Provisions regarding marriage breakdown can be found in the following sections of our legislation:

- Sections 44 and 45 of the New Brunswick *Pension Benefits Act*;
- Sections 27 to 34 of the *General Regulation – Pension Benefits Act*;
- Section 26 of the *Shared Risk Plans Regulation – Pension Benefits Act*.

These sections apply to both marriage and common-law partnership breakdown. The *Pension Benefits Act* (“PBA”) does not provide for the entitlement to a portion of a pension but rather how the funds can be accessed following the awarding of the entitlement through a decree, order or judgment (“Court Order”) from a competent tribunal or through a domestic contract. If the pension is divided by a Court Order, the pension is divided in accordance with the Order. If it is divided by domestic contract, no more than 50% of the pension may be divided.

It is the portion of the commuted value¹ of the pension that was earned during the marriage or common-law partnership that is divided upon breakdown. The value is determined by multiplying the ratio of the years of credited service earned during the marriage or common-law partnership to total years of credited service by the commuted value of the benefit. Detailed instructions on the calculations can be found in the *General Regulation – Pension Benefits Act* and the *Shared Risk Plans Regulation – Pension Benefits Act*. These calculations are done by an actuary.

If the spouse or common-law partner is a member of the same pension plan, no transfer out of the plan occurs. The spouse or common-law partner’s pension within the plan gets revalued to include the new entitlement. If the spouse or common-law partner is not a member of the same pension plan, the spouse or common-law partner must choose to transfer their portion to:

- Another pension plan with the consent of the administrator of that plan; or
- To a prescribed retirement savings arrangement (LIF, LIRA or deferred life annuity).

It is important to note that the transferred funds remain locked-in.

¹ The commuted value is the value calculated in the prescribed manner and as of a fixed date of a pension. For shared risk plans and defined contribution plans, you would use the termination value and the account balance respectively.

The parties to a marriage breakdown may request a statement from the pension plan administrator that discloses the commuted value of the pension and the portion that is available for division. This request must be made in writing and the parties must provide the date of marriage or formation of the common-law partnership and the date of the breakdown of the marriage or common-law partnership. The administrator is required to provide the statement free of charge once. If the wrong dates are provided by the parties and a new request is made, the administrator may charge a reasonable fee to do the calculations again. These calculations take time so it is important to request them well in advance of any court dates.

Once the pension has been divided, the non-member spouse or common-law partner has no further rights under the pension plan. The pension plan member's benefits are revalued after the division.

If a member of a pension plan dies before they retire, the spouse or common-law partner at the date of death will receive the pre-retirement death benefit unless a Pre-Retirement Death Benefit Waiver has been signed by the spouse or common-law partner and delivered to the pension plan administrator before the date of death of the member. In other words, even if a person is separated, the spouse will still be entitled to the pre-retirement death benefit until the divorce is final unless a waiver has been signed. The designation of another beneficiary will have no effect until the divorce is final.

The marriage breakdown and common-law partnership provisions of the PBA apply to LIFs, LIRAs and annuities, i.e. any monies that have been transferred from a pension plan and placed in a retirement savings arrangement.

Please be advised a spousal/common-law consent form will continue to be required for any unlocking provisions until such time as the divorce is final or the pension funds have been divided according to a Court Order or domestic contract.

If you have any questions, please email info@fcnb.ca and provide your name, phone number and your question.

This Bulletin has no legal authority and should not be construed as legal advice. The *Pension Benefits Act* and its regulations should be used to determine specific requirements.