
PENSION BENEFITS ACT:

A Guide to Understanding the Division of Pensions and Pension Benefits for Separating Spouses and Common-Law Partners

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 and common-law partners who are separating to understand the provisions of the Pension Benefits Act.

This act governs the division of pensions and pension benefits, but only for 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 pension or pension benefit be divided. If the other assets of the marriage or partnership are sufficient, then the spouse's or common-law partner'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 or common-law partner's share of the pension or pension benefit.

How to Use This Guide

This guide will show how to divide a pension or pension benefit with your spouse or common law partner when you 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 or common-law partner who will be making a claim against a member's pension, 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 separation agreement
- Step 4: Divide the pension or pension benefit depending on the situation

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

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

The Pension Benefits Act and Regulations can be accessed at the following web site:
www.gov.ns.ca/enla/pensions/pba.htm

Who Can Use the Information in this Guide?

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

Who to Contact for Help or for More Information

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

Nova Scotia Department of Environment and Labour

Pension Regulation Division

tel: 902-424-8915

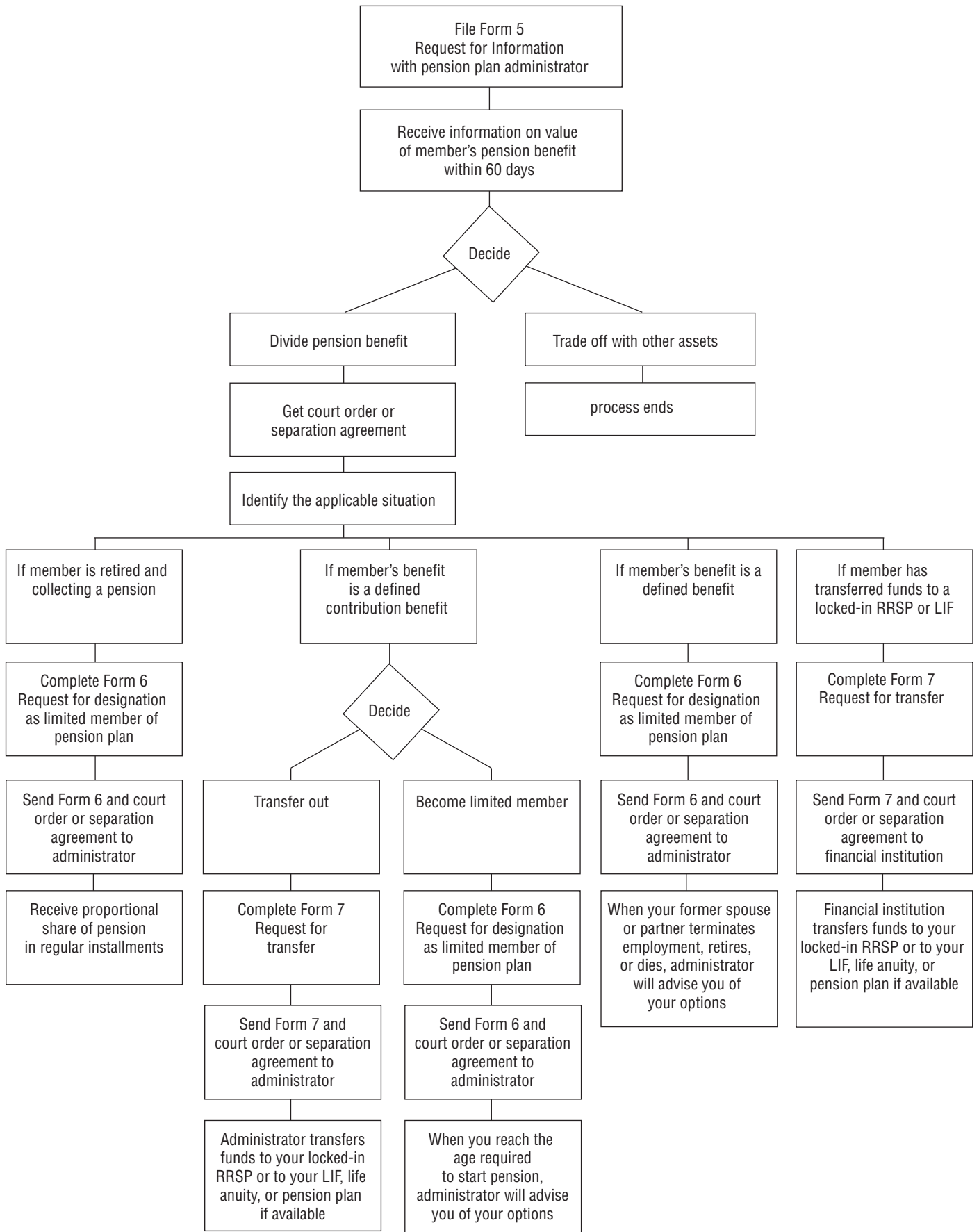
fax: 902-424-0648

e-mail: macneiln@gov.ns.ca

Nancy MacNeill Smith

Superintendent of Pensions

If you are claiming a share of your spouse's or common-law partner's benefits, here are the steps you must follow:



STEP ONE

File a request for information

A spouse or common-law partner claiming a share of a member's pension or pension benefit must file Form 5, Request for Information, with the pension plan administrator. The parties must be living apart before a request can be made.

The administrator must notify the member or former member that a claim is being made against his or her pension or pension benefit (Form 8 - Notice of Receipt) as soon as the administrator receives Form 5 from the spouse or common-law partner.

The administrator must provide to the spouse or common-law partner any information necessary to value the member's or former member's pension or pension benefit within 60 days of receiving Form 5. 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 administrator is only required to update the information once in each calendar year, upon request.

STEP TWO

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

The spouse or common-law partner must decide whether to

- divide the pension or pension benefit
- OR**
- trade off other assets instead of dividing the pension or pension benefit

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

STEP THREE

Get a court order or separation agreement

The court order or separation agreement must

- provide for the division of the pension or pension benefit
- specify the entitlement date
- identify the date of marriage or start of the common-law or registered domestic partnership
- identify the percentage of the pension or pension benefit accrued during the marriage or partnership to be credited to the spouse or common-law partner. The percentage may be at most fifty per cent.

STEP FOUR

Divide the pension or pension benefit depending on the situation

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

- be retired and drawing on a pension
- have earned a defined contribution benefit, also called a money purchase benefit
- have earned a defined benefit
- have transferred funds out of a pension plan into a locked-in RRSP or LIF

If the member is retired and drawing on a pension

If a pension is already being paid to the member at the time of the division, then the spouse's or common-law partner's share of the pension will be paid as a pension.

Steps to claiming a share of the pension

- The spouse or common-law partner completes Form 6 - Request for Designation as Limited Member of Pension Plan.
- The spouse or common-law partner files Form 6 and a copy of the court order or separation agreement with the administrator. If the pension is a life annuity purchased from a life insurance company, then the life insurance company is the administrator.
- The administrator notifies the former member that a claim is being made against his or her pension (Form 8 - Notice of Receipt).
- The administrator calculates and pays the proportionate share of the former member's pension to the spouse or common-law partner.

Other information about claiming a share of the pension

The administrator must make separate source deductions for income taxes for both the pension paid to the former member and the pension paid to the spouse or common-law partner.

If the former member dies and the pension chosen at retirement was a joint and survivor pension, then the spouse or common-law partner gets the survivor benefit. If the pension chosen at retirement was in a different form, then payments to the spouse or common-law partner 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 or common-law partner dies, then the former member receives the full pension.

If the member's benefit is a defined contribution benefit

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

The spouse or common-law partner must decide whether to either

- 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 or common-law partner 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 or common-law partner completes Form 7 - Request for Transfer of a Defined Contribution Benefit or a Defined Benefit.
- The spouse or common-law partner files Form 7 and a copy of the court order or separation agreement with the administrator.
- The administrator notifies the member or former member of the claim with Form 8 - Notice of Receipt.
- The administrator calculates and transfers the spouse's or common-law partner's proportionate share to a locked-in Registered Retirement Savings Plan (RRSP). The spouse or common-law partner 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 Life Income Fund (LIF).

Other information about transferring out

If the entitlement date was before June 4, 2001, it is now possible to transfer defined contribution benefits out of the pension plan.

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

Steps to become a limited member of the pension plan

- The spouse or common-law partner completes Form 6 - Request for Designation as Limited Member of Pension Plan.
- The spouse or common-law partner files Form 6 and a copy of the court order or separation agreement with the administrator.
- The administrator notifies the member or former member of the claim with Form 8 - Notice of Receipt.
- When the spouse or common-law partner 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 about becoming a limited member

The defined contribution benefit to be divided is the member's or former member's contributions and net investment returns. However, if the member or former member is vested, then the employer's contributions made on the member's or former member's behalf are also included.

If the member's benefit is a defined benefit

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

Steps to becoming a limited member

- The spouse or common-law partner completes Form 6 - Request for Designation as Limited Member of Pension Plan.
- The spouse or common-law partner files Form 6 and a copy of the court order or separation agreement with the administrator.
- The administrator notifies the member or former member of the claim with Form 8 - Notice of Receipt.
- The administrator determines the spouse's or common-law partner'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 spouse's or common-law partner's proportionate share to a separate pension payable to the spouse or common-law partner. The amount of pension is based on the age of the spouse or common-law partner.

The spouse or common-law partner is not required to choose a form of pension that will provide a subsequent spouse or common-law partner with a survivor pension.

The member or former member must choose a joint and survivor pension if there is a subsequent spouse or common-law partner when the member or former member retires, unless the subsequent spouse or common-law partner waives that requirement (Form 4).

After the division takes place, the administrator will adjust the pension 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 or former member terminates employment, then the administrator will determine the spouse's or common-law partner's proportionate share of the defined benefit. The administrator will advise the spouse or common-law partner of the options available. After the division takes place, the administrator will adjust the pension of the member or former member.

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

If the member transferred funds to a locked-in RRSP or LIF

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

Steps to dividing a locked-in RRSP or LIF:

- The spouse or common-law partner applies directly to the financial institution holding the funds. Use Form 7 and include a copy of the court order or separation agreement. For the purpose of this application, "administrator of pension plan" on Form 7 means the financial institution holding the locked-in RRSP or LIF.
- The financial institution must notify the member or former member of the claim with Form 8 - Notice of Receipt.
- The financial institution calculates and transfers the spouse's or common-law partner's proportionate share to a locked-in RRSP or other available option.

Other information about dividing a locked-in RRSP or LIF

The benefit to be divided is the total dollar value of the locked-in RRSP or LIF at the entitlement 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 locked-in RRSP or into his or her pension plan, if that pension plan permits. If funds are transferred into an RRSP, then the spouse or common-law partner 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.

common-law partner An individual who has cohabited with another individual in a conjugal relationship for at least two years, neither of them being a spouse of each other or of anyone else. For the purposes of this document, the word “common-law partner” also includes a former common-law partner of a member or former member.

court order An order of the Supreme Court of Nova Scotia that provides for a division of a pension or a pension benefit. It may also include an order of a court of competent jurisdiction made outside the province and enforceable in the province.

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 determined with reference to and provided by contributions, and the investment earnings on the contributions, paid by or for the credit of a member and determined on an individual account basis. This may also be called a money purchase benefit.

entitlement date In relation to a spouse or common-law partner, the date on which the spouse or common-law partner became entitled to a division of the member’s or former member’s pension or pension benefit.

Form 4 A Spousal Waiver of Joint and Survivor Pension. Found in the regulations.

Form 5 Request by Spouse or Common-Law Partner for Information Respecting Member’s or Former Member’s Pension or Pension Benefit. Found in the regulations.

Form 6 Request for Designation as Limited Member of Pension Plan. Found in the regulations.

Form 7 Request for Transfer of a Defined Contribution Benefit or a Defined Benefit. Found in the regulations.

Form 8 Notice of Receipt. Found in the regulations.

former member A person who has terminated employment or membership in a pension plan and is:

- entitled to a deferred pension payable from the pension fund
- receiving a pension payable from the pension fund
- entitled to receive payment of pension benefits from the pension fund within one year after termination of employment or membership

OR

- entitled to receive any other payment from the pension fund

LIF Life Income Fund. This is a locked-in registered retirement 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.

locked-in RRSP A Registered Retirement Savings Plan 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.

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.

proportionate share -- defined contribution benefit

The proportionate share of a defined contribution benefit must be calculated as follows:

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

where

- A = the pensionable service accruing from the later of
- the date of marriage or the start of a common-law or registered domestic partnership
- OR**
- the date on which the member entered the pension plan, to the entitlement date
- B = the total pensionable service accumulated by the member to the date on which the share of the spouse or common-law partner is
- transferred from the pension plan
- OR**
- established in a separate account in the pension plan for the spouse or common-law partner as a limited member
- C = the total of
- (a) the contributions to the pension plan to the credit of the member or former member
- and**
- (b) the net investment returns allocated, or that are to be allocated, in respect of those contributions to the date on which the share of the spouse or common-law partner is
- transferred from the pension plan
- OR**
- established in a separate account in the pension plan for the spouse or common-law partner as a limited member
- P = the percentage of the pension benefit to be credited to the spouse or common-law partner under a court order or separation agreement.

proportionate share -- pension, defined benefit, or pre-retirement death benefit

The proportionate share of a pension, defined benefit, or pre-retirement death benefit must be calculated as follows:

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

where

P = the percentage of the pension or pension benefit to be credited to the spouse or common-law partner under a court order or separation agreement.

A = the pensionable service accumulated by the member or former member from the date of marriage or the start of a common-law or registered domestic partnership to the entitlement date for the spouse or common law partner. Exclude any pensionable service for that period purchased by and credited to the member or former member after that entitlement date.

B = the total pensionable service accumulated by the member or former member to the earlier of the date on which the member or former member retires, terminates membership in the pension plan, or dies.

separate pension The proportionate share of a member's or former member's pension that is established in a separate account in favour of a spouse or common-law partner.

separation agreement A written agreement made between spouses or common-law partners, including a marriage contract within the meaning of the Matrimonial Property Act, that provides for a division of a pension or a pension benefit.

- spouse**
- (1) A man and woman who
 - are married to each other
 - are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity

OR

 - have gone through a form of marriage with each other, in good faith, that is void and are either cohabiting or have cohabited at some point during the twelve months preceding the entitlement date

OR
 - (2) A domestic partner as defined under the Vital Statistics Act.

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

vested Once a member has participated in a pension plan for two years (or less, depending on the plan), then that person is vested. Vested members are entitled to the entire benefit accrued on their behalf. For a defined contribution benefit this means that members are entitled to the accumulated value of their own contributions plus the accumulated value of the contributions made by the employer on their behalf.

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 or common-law partner.

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 or common-law partner

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 or partner's share to an annual lifetime pension

Convert the spouse's or common-law partner's share of the pension into an annual lifetime pension. This conversion is based on the spouse's or common-law partner'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.