

## Pension Commission

### Update #32

*Issued May 2005*

## **One-time or Prescribed Transfer of up to 50% of the balance in one or more Life Income Funds (LIFs) or Locked-in Retirement Income Funds (LRIFs) to a Prescribed Registered Retirement Income Fund**

**Reference:** *The Pension Benefits Act, Section 21.4 and Regulation 76/2005*

Section 21.4 of The Pension Benefits Amendment Act was proclaimed into law effective May 25, 2005, and the Pension Benefits Regulation was amended effective the same date.

The Amendment Act and Regulation 76/2005 can be accessed through the Pension Commission website at:

<http://web2.gov.mb.ca/laws/statutes/2005/c00205e.php>

The amendment gives Manitoba retirees greater control over managing their retirement savings by permitting a one-time transfer of locked-in pension funds to a Registered Retirement Income Fund (RRIF) that is not locked-in.

Further, the new legislation protects the rights and interests of spouses and common-law partners, both present and former. A transfer can only be made with the informed written consent of a cohabiting spouse or common-law partner, after he or she receives the required documentation concerning the proposed transfer. Further, an amount sufficient to satisfy a Pension Benefits Act credit splitting claim of a former spouse or common-law partner must be retained. It also ensures LIF or LRIF owners who have family support obligations which must be met are not able to avoid this responsibility by making a transfer.

The legislation will also ensure that the funds in the RRIF are not attachable by creditors but are subject to attachment for purposes of satisfying Family Property Act claims and maintenance orders.

### **SUMMARY OF CHANGES**

A LIF or LRIF owner who is at least age 55 may apply for a one-time transfer under section 21.4 of the Act, which is defined under the regulation as a “prescribed transfer”, of an amount up to 50% of the balance in one or more of his or her LIFs or LRIFs to a Registered Retirement Income Fund (RRIF) as defined in the Income Tax Act (Canada), the contract for which meets the requirements of the regulation (“prescribed RRIF”).

**NOTE:** An application for a prescribed transfer may only be made in respect **a LIF or LRIF that is locked-in under The Pension Benefits Act of Manitoba and regulation.**

According to section 21.4(4) of the Act, the maximum amount available for a prescribed transfer may be affected by:

- any amount that is payable to a former spouse or common-law partner as required by the credit splitting provisions under section 31(2) of The Pension Benefits Act,
- an order issued by the Maintenance Enforcement Program of the Department of Justice under The Garnishment Act to enforce a maintenance order
- an order issued by the Maintenance Enforcement Program under section 59.3 of The Family Maintenance Act to preserve assets.

The financial institution must provide the applicant and, if he or she was a pension plan member, his or her cohabiting spouse or common-law partner with information specified by the regulation that includes the maximum amount available for a prescribed transfer.

A prescribed transfer cannot be made by an applicant who was a pension plan member unless the spouse or common-law partner consents in writing by completing the “Spouse’s/Common-law Partner’s consent to transfer to a Registered Retirement Income Fund Contract”. This form is required to form a part of the application form. The form including, “Comments and Instructions”, can be accessed through the Pension Commission website at <http://www.gov.mb.ca/labour/pension/forms/prrifspousalconsent.pdf>

The applicant must file an application with the financial institution which must contain the information required under subsection 18.2(5.3) of the regulation, including a written statement from the Superintendent that the applicant has not previously made a prescribed transfer, and if required, the written consent of the cohabiting spouse or common-law partner.

Effective May 25, 2005, no amount may be paid out of a LIF or LRIF as temporary income. However, an owner who prior to May 25, 2005 was entitled to be paid temporary income from his or her LIF or LRIF in 2005 and does not make an application for a “prescribed transfer” from that LIF or LRIF, may continue to be paid temporary income until the end of 2005 based on the method of payment in that LIF or LRIF contract. Should the owner however subsequently make an application for a “prescribed transfer” from that LIF or LRIF, no further temporary income can be paid despite any provisions that apply to that LIF or LRIF contract.

Financial institutions currently on the Superintendent’s List of Financial Institutions with approved forms of LIF or LRIF contracts that include temporary income are required to remove the temporary income provisions from their standard form of contract when the contracts are next amended. In the interim, institutions must administer these contracts as required by the new legislation.

Financial institutions will not be required to file a standard form of prescribed RRIF contract with the Pension Commission in order to accept prescribed transfers, but must ensure the contract complies with the regulation.

**If you are applying for a one-time transfer or prescribed transfer of up to 50% of the balance in one or more LIF or LRIF to a prescribed RRIF, here are the steps you must follow:**

**STEP ONE**

Applicant must request from financial institution that manages the fund(s) that s/he would like to make a prescribed transfer. Applicant must provide:

- Information on whether or not there has been a previous prescribed transfer
- Information sufficient to identify the fund(s) from which the transfer is to be made
- Name of Applicant's cohabiting spouse or common-law partner, if any
- Other information to facilitate transfer

\*If the applicant is seeking a prescribed transfer from funds with multiple financial institutions, a separate request must be made to each

**STEP TWO**

Financial Institution upon receipt of request must be satisfied that:

- Applicant is at least 55 years old
- Financial Institution has no prior involvement in past prescribed transfer and unaware of any other prescribed transfer requests
- Whether Maximum amount available for transfer is subject to Pension Act credit split, Garnishment Act or Family Maintenance Act

**STEP THREE**

Financial Institution once satisfied must:

- Provide applicant with application form for prescribed transfer
- Provide information to applicant and cohabiting spouse or common-law partner, if any

**STEP FOUR**

Applicant must complete the application form and submit a signed copy, including consent, if required, to the Superintendent of Pensions within 30 days after receiving information from the financial institution under Step Three.

- Applicant must request a written statement from the Superintendent indicating satisfaction that no previous prescribed transfer has been made
- Other information Superintendent requires to be satisfied that no previous transfer has been made

\*If prescribed transfer is from funds managed by more than one institution, all application forms must be submitted at the same time

**STEP FIVE**

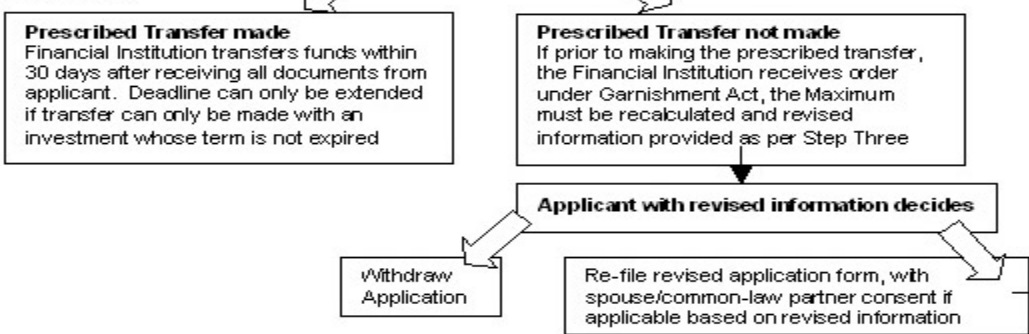
Superintendent once satisfied that there is no previous prescribed transfer must provide written statement to applicant indicating so (unless such a statement has been issued in the preceding 75 days).

**STEP SIX**

Applicant must file with financial institution within 75 days after receiving information from institution under Step Three:

- Application form, including written consent of applicant's spouse or common-law partner, if applicable
- Statement from Superintendent
- Other documentation that will facilitate the process

**STEP SEVEN**



### **STEP ONE - Applicant's request to financial institution for a prescribed transfer**

The applicant must request the financial institution that manages his or her LIF or LRIF make a prescribed transfer and must provide the financial institution with:

- information regarding whether or not the applicant has previously made a prescribed transfer
- information sufficient to identify his or her fund or funds managed by the financial institution. NOTE: The applicant may wish to request the assistance of the financial institution to ensure all funds managed by that institution are identified
- if the applicant was a plan member, the name of his or her cohabiting spouse or common-law partner, if any
- any other information the institution may require to facilitate the transfer

Note: For purposes of Step Two and in order to facilitate the transfer, if the applicant was a pension plan member the institution must determine if the applicant is living separate and apart from a spouse or common-law partner by reason of a breakdown of their relationship at the time the applicant is applying for a prescribed transfer.

The Act and regulation define "spouse" and "common-law partner" as follows:

"Spouse" means a person who is married to a member or former member.

"Common-law partner" of a member or former member means:

- (a) a person who, with the member or former member, registered a common-law relationship under section 13.1 of The Vital Statistics Act, or
- (b) a person who, not being married to the member or former member, is cohabiting with him or her in a conjugal relationship and has cohabited
  - (i) for a period of at least three years, if either of them is married, or
  - (ii) for a period of at least one year, if neither of them is married.

### **STEP TWO - Financial institution must be satisfied**

Upon receipt of the request for a prescribed transfer, the financial institution must satisfy itself

- that the applicant is at least 55 years old
- that the institution has not been involved in a previous prescribed transfer made by the applicant and, according to the information available to it, that it is not aware of any other prescribed transfer made by the applicant
- whether the fund may be subject to:
  - a maintenance order under The Garnishment Act
  - preservation order under section 59.3 of The Family Maintenance Act, or
  - a division under the credit splitting provisions under section 31(2) of The Pension Benefits Act

in order to calculate the maximum amount that may be transferred according to section 21.4(4) of the Act.

If there are any amounts required to be paid by the financial institution in respect of an order under section 14.1 of The Garnishment Act out of the Applicant's LIF or LRIF, the maximum amount available for a prescribed transfer must be reduced in relation to the order.

If an order under section 59.3 of The Family Maintenance Act exists directing that the Applicant's LIF or LRIF be preserved, the applicant may be prevented from making an application for a prescribed transfer from that LIF or LRIF where the amount in the preservation order is equal to or greater than the amount permitted under section 21.4 of The Pension Benefits Act of Manitoba.

The Maintenance Enforcement Program, Manitoba Justice is located at 225 - 405 Broadway, Winnipeg and may be contacted at 945-7133, or 1-866-479-2717 toll-free in Manitoba.

If the applicant is living separate and apart from a spouse or common-law partner at the time the applicant is applying for a prescribed transfer by reason of a breakdown of their relationship, the financial institution must determine if there is an order under The Family Property Act (or Marital Property Act as it was formerly known), or a written agreement between the parties, dividing family assets. Should either exist, the amount available for the prescribed transfer must be reduced by the amount payable to the spouse or common-law partner under section 31(2) of The Pension Benefits Act.

An outline for calculating the maximum amount is included at the end of this update.

### **STEP THREE - Financial institution must provide**

Upon being satisfied that all of the requirements under Step Two have been satisfied, the financial institution must provide the applicant with

- an application form which must include:
- the name, address and age of the applicant
- the name and address of the institution to which the application is being made
- a signed statement that the applicant has not previously made a prescribed transfer
- a statement of the maximum amount that may be transferred from each fund
- a statement of the amount the applicant wishes to transfer, and if the transfer is from more than one fund, the amount to be transferred from each fund
- a statement by the applicant that either:
  - he or she does not have a spouse or common-law partner whose consent is required by subsection 21.4(5), or
  - he or she does have a spouse or common-law partner whose consent is required by subsection 21.4(5)
- the name and address of the financial institution that will manage the prescribed RRIF
- a statement that unless the completed application, along with any other required documentation is filed with the financial institution within 75 days after the day the information specified in subsection 18.2(5.4) of the regulation below in this Step Three is provided to the applicant, the application will be void and the transfer will not be made
- any other information required by the institution to facilitate this transfer

A sample application form is available on the Commission's website to assist institutions in preparing their application form at <http://www.gov.mb.ca/labour/pension/forms/pdf/PRRIFapplication.pdf>. Institutions are nevertheless advised to review the regulation when preparing their application forms.

**NOTE:** An applicant who wishes to make a prescribed transfer from funds managed by different financial institutions must make a separate application to each institution.

The financial institution must provide the applicant and, if applicable, to the applicant's cohabiting spouse or common-law partner, the **information specified in subsection 18.2(5.4) of the regulation** for each fund of the applicant that is managed by the institution which the applicant identified under Step One, which includes

- the fund balance at the date the request under Step One was made
- the maximum amount available for a prescribed transfer determined in accordance with subsection 21.4(4) of the Act
- a projection of the maximum amount of income that may be paid from the fund in the following year if the maximum prescribed transfer was made. For purposes of the projection, the LIF maximum must be based on a reference rate of 6% and for the LRIF based on the first year of the fund calculation (i.e. 6% of the fund)
- a statement describing the effect the prescribed transfer will have on the amount available to the cohabiting spouse or common-law partner on either the death of the applicant or in the event of the breakdown of their relationship, and the income that may be paid from the LIF or LRIF in future years.

A prescribed transfer cannot be made by an applicant who was a pension plan member unless the spouse or common-law partner consents in writing by completing the consent form. The consent must be:

- completed after the spouse or partner has reviewed the applicant's completed and signed application form, and the information specified in section 18.2(5.4) of the regulation for each LIF or LRIF in respect of which an application for a prescribed transfer is being made
- completed in its entirety and signed by the spouse or common-law partner, in the presence of a witness and not in the presence of the applicant
- signed by the spouse or common-law partner within 75 days of the applicant filing it with the financial institution to which an application is being made for a prescribed transfer
- given by the spouse or common-law partner for each application separately in the case where the applicant wishes to make an application for a prescribed transfer from LIFs or LRIFs managed by different institutions.

#### **STEP FOUR - Applicant's request to Superintendent**

Within 30 days after receiving the information specified by the regulation from the financial institution under Step Three, the applicant must complete the application form and submit a signed copy to the Superintendent including, if required, the written consent of the cohabiting spouse or common-law partner, along with

- a request that the Superintendent issue a written statement that he or she is satisfied that the applicant has not previously made a prescribed transfer
- any other information the Superintendent requires to be satisfied that a transfer has never previously been made by the applicant

**NOTE:** If the applicant has completed separate applications to two or more financial institutions for a prescribed transfer, he or she must provide the Superintendent with completed and signed copies of all the applications at the same time.

**The above documents must be mailed to the Pension Commission of Manitoba at the address indicated below. Originals should not be mailed as none of the above documents will be returned.**

*Superintendent of Pensions  
Pension Commission of Manitoba  
1004 - 401 York Avenue,  
Winnipeg MB R3C 0P8*

**STEP FIVE - Superintendent to provide written statement**

Upon being satisfied that the applicant had not previously made a prescribed transfer, the Superintendent must provide a written statement to the applicant confirming that fact, unless a statement had been issued to the applicant within the preceding 75 days.

This statement is only valid for one prescribed transfer from each of the financial institutions named in the statement and ceases to be valid on the date specified in the statement.

**STEP SIX - Applicant must file with financial institution**

Within 75 days after receiving the information specified by the regulation from the financial institution under Step Three, the applicant must file with the financial institution:

- the completed application form signed by the applicant, including, if required, the written consent of the cohabiting spouse or common-law partner
- the written statement of satisfaction of the Superintendent provided under Step Five
- any other documentation the financial institution requires to facilitate the prescribed transfer

**STEP SEVEN - Financial institution to make prescribed transfer**

The financial institution must make the prescribed transfer within 30 days after receiving

- the completed application form signed by the applicant
- the statement of satisfaction from the Superintendent
- any other information the institution may require to affect the transfer

**Effect of orders under The Garnishment Act served prior to transfer**

If before making the prescribed transfer, the financial institution is served with an order under section 14.1 of The Garnishment Act that affects the information specified by the regulation provided to the applicant under Step Three, the institution must provide revised information to the applicant and the spouse or common-law partner, if any, whose consent was required.

The applicant may either withdraw the application or file a revised application form which must include the consent of the spouse or common-law partner obtained after he or she was provided with the revised information specified by the regulation.

The revised application form must be filed within the 75 day period referenced under Step Six or within 30 days after the revised information specified by the regulation was provided to the applicant.

If the applicant made a request to the Superintendent for the written statement under Step Four, before being provided with the revised information specified by the regulation, the applicant is not required to make another request in respect of the revised application.

### Sample maximum calculation

The maximum amount is calculated as 50% of the net fund balance of the LIF or LRIF for which an application is being made. The net fund balance is determined as the balance of the LIF or LRIF at the date of making the request, less amounts payable to the spouse or common-law partner under section 31(2) of The Pension Benefits Act and amounts required to be paid in respect of an order under section 14.1 of The Garnishment Act out of any LIF or LRIF for which this application is being made.

This maximum amount may be reduced if there is an order under section 59.3 of The Family Maintenance Act directing the preservation of any LIF or LRIF for which this application is being made. If such an order exists and if the amount in the preservation order is equal to or greater than the maximum amount, the applicant may be prevented from making an application for the entire prescribed transfer amount from that LIF or LRIF

<b>Sample Calculation</b>	
1. Account balance on the Date of Application:	\$ _____
LESS: the amount, if any, that is to be paid out of the LIF or LRIF under subsection 31(2) of the Act	\$ _____
LESS: the amount, if any, that is to be paid out of the LIF or LRIF to satisfy an order under section 14.1 of The Garnishment Act of Manitoba:	\$ _____
Net balance:	\$ _____
2. Maximum amount available for a prescribed transfer (50% of net balance identified above):	\$ _____
LESS: the amount, if any, of the LIF or LRIF assets to be preserved to satisfy an order under section 59.3 of The Family Maintenance Act of Manitoba:	\$ _____
Revised net amount available to be transferred to a prescribed RRIF:	\$ _____
3. Amount requested to be transferred to the prescribed RRIF: (this amount can not exceed the net amount in 2 above)	\$ _____

### Who to contact for information

If you have any questions regarding this update you may contact us at:

Manitoba Pension Commission  
1004 – 401 York Avenue  
Winnipeg MB R3C 0S9  
Phone: (204) 945-2740  
e-mail: [pensions@gov.mb.ca](mailto:pensions@gov.mb.ca)

*This update has no legal authority. The Pension Benefits Act of Manitoba and The Pension Benefits Regulation, 188/87 R amended should be used to determine specific requirements.*