

Questions and Answers

IMPORTANT NOTICE:

- Beginning March 1, 2019, common-law partners are permitted to submit Property Division Orders or agreements for division of their Local Authorities Pension Plan (“LAPP”), Public Service Pension Plan (“PSPP”) and Special Forces Pension Plan (“SFPP”) pension benefits.
- Division can now occur through a Property Division Order or an agreement. Please review the form of order or agreement requirements as provided or described on this website to ensure that all terms required by APS to administer the division of your order or agreement are included.
- If you are seeking a division of pension benefits as a common-law partner, you must meet the definition of “pension partner” below to be entitled to share in pension benefits.

“pension partner” means

- i. a person who, at the relevant time, was married to a member or former member and had not been living separate and apart from them for 3 or more consecutive years, or
- ii. if there is no person to whom subclause (i) applies, a person who, as at and up to the relevant time, had lived with the member or former member in a conjugal relationship
 - A. for a continuous period of at least 3 years, or
 - B. of some permanence, if there is a child of the relationship by birth or adoption.

1. What does the legislation say about pension division on relationship breakdown?

The legislation enables non-member spouses/common-law partners to take their share of the member’s pension entitlement in a one-time lump-sum payment. This share cannot exceed 50% of the total pre-division benefit. In most cases, this distribution must be done immediately. However, for the non-member spouses/common-law partners of members who are within 10 years of pensionable age (65 for PSPP), there is also the choice of completing the lump-sum transfer at the earliest of: the date of the payment of the member’s termination benefit, reciprocal transfer to another pension plan, retirement, or death.

The one-time lump-sum payment is **not** necessarily a “cash” payment to the non-member spouse/common-law partner. In most cases, the payment must be made to the non-member spouse/common-law partner’s Locked-in-Retirement Account (“LIRA”).

For pensions that are already in pay, the legislation allows non-member spouses/common-law partners to take their share in the form of a pension up to 50% of the total pre-division benefit.

2. What information must be included in a Property Division Order?

The Property Division Order must set out:

- the name of the pension plan or plans to be divided;
- the beginning and end of the period that pension benefits are considered to have jointly accrued;
- the “division factor”, which is the percentage share of the jointly accrued benefit which is awarded to

- the non-member spouse/common-law partner. This percentage must not exceed 50%;
- where the non-member spouse/common-law partner is eligible, whether or not a delayed division has been chosen.

3. What information must be included in an Agreement?

For a written agreement to be administrable by APS, it must include all of the following:

- the name of the pension plan or plans to be divided;
- the beginning and end of the period that pension benefits are considered to have jointly accrued;
- the “division factor”, which is the percentage share of the jointly accrued benefit which is awarded to the non-member spouse/common-law partner. This percentage must not exceed 50%;
- where the non-member spouse/former common-law partner is eligible, whether or not a delayed division has been chosen; **and**

must also contain the formalities below:

1. a written acknowledgement from each of the spouses/common-law partners, apart from the other spouse or person,
 - a. that the spouse or person is aware of the nature and the effect of the agreement;
 - b. that the spouse or person is aware of the possible future claims to property the spouse or person may have under the *Family Property Act*, *Matrimonial Property Act* or *Adult Interdependent Relationships Act* (whichever legislation is applicable) and that the spouse or person intends to give up these claims to the extent necessary to give effect to the agreement, [whichever legislation is applicable] and
 - c. that the spouse or person is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse or person;

and

2. each acknowledgement referred to in 1) above must be made before a lawyer other than the lawyer acting for the other spouse or person or before whom the acknowledgement is made by the other spouse or person.

4. What are the rules respecting immediate division?

For members whose pensions are not yet in pay, the legislation allows for an immediate lump-sum payment of the non-member spouse/common-law partner’s share of pension entitlements accrued during the relationship to be transferred out of the plan upon the filing of a Property Division Order or agreement. If the non-member spouse/common-law partner’s share is locked-in, the share is not available as a cash payment and must be transferred to the non-member spouse/common-law partner’s LIRA.

5. Who is eligible for a delayed division?

If the member spouse/common-law partner is “vested” (that is, eligible for an immediate or deferred pension) and is within 10 years of pensionable age at “end date” (the end of the period of joint accrual, as set out in the Property Division Order or agreement), the non-member spouse/common-law partner can choose to delay the calculation and distribution of their share until the member spouse/common-law partner triggers a benefit payment upon terminating from the plan, completing a reciprocal transfer (if applicable), retiring or dying. The share will be paid as a lump-sum. If the non-member spouse/common-law partner’s

share is locked-in, the share is not payable as a cash payment and must be transferred to the non-member spouse/common-law partner's LIRA.

Please note that a member becomes vested in PSPP when the member has at least 2 years of pensionable service;

6. What is “pensionable age” under the plan?

Pensionable age is defined as being 65 for PSPP.

7. When does the non-member spouse/common-law partner's share become payable if there is a delayed division?

When the non-member spouse/common-law partner is eligible for and chooses a delayed division, their share is not paid until the “event date”. “Event date” means the time when the member spouse/common-law partner triggers a benefit payment, specifically, the date the first of the following events occurs

- the member spouse/common-law partner terminates and receives a lump-sum payment;
- the member spouse/common-law partner commences a pension;
- the member spouse/common-law partner dies; or
- the member spouse/common-law partner transfers to a new pension plan under a reciprocal agreement (if applicable).

8. What if the member/common-law spouse's pension is already in pay?

If the member spouse/common-law partner is already receiving a monthly pension, the non-member spouse/common-law partner's share will be a portion of the pension being paid to the member spouse/common-law partner. When a pension is already in pay, no lump-sum payment can be made to the non-member spouse/common-law partner.

9. How do you determine non-member spouse/common-law partner's share?

The non-member spouse/common-law partner's share is determined by following the steps below:

- a. Calculate the total pre-division benefit as follows:

$$\mathbf{A = B \times (C/D)}$$

Where:

A is the total pre-division benefit;

B is the total entitlement;

C is the period between the beginning and end dates referred to in the Property Division Order or agreement;

D is the period during which the total entitlement accrued.

- b. Once the above calculation is complete, the “Total Pre-Division Benefit” is multiplied by the “Division Factor”. The Division Factor is a fraction representing the percentage of the total pre-division benefit to which the non-member spouse/common-law partner is entitled (for example, 50%).

10. What assumptions are used to calculate the commuted value?

The assumptions used for calculating the commuted value are consistent with the recommendations of the Canadian Institute of Actuaries for the computation of transfer values from registered pension plans.

11. What information must the plan administrator provide respecting a division of pension benefits on relationship breakdown?

Either the member or the non-member spouse/common-law partner can request information at the point in time when a pension division is being contemplated.

- Upon written request of either party, the plan administrator must provide both parties with a statement containing:
 - o an estimate of total entitlement calculated as of the date of request or an earlier date if specified in the request;
 - o the date the member became a participant in the plan;
 - o the elapsed time (in years) of the period of joint accrual;
 - o the total accrual period (in years).
- APS will provide this statement to both parties once per calendar year.
- At the time a Property Division Order or agreement is being obtained and/or at the time the actual division takes place, the non-member spouse/common-law partner can request information on their share, including information relating to the calculation of that share, in order to verify its accuracy.
- After a division takes place, the plan administrator must provide the member spouse/ common-law partner with a written statement indicating the date the division became effective and a summary and description of the member spouse/common-law partner's remaining benefits.

12. How accurate is the estimate provided by the plan administrator?

The estimate of the Total Entitlement is calculated on the date requested. It is based on the information provided in the request and on the information readily available in the plan administrator's records. The estimated amount can change significantly with changes from month to month in interest assumptions or if the member terminates plan membership.

The information provided on this website is for information purposes only, and is not intended to provide you with specific financial, legal, investment, pension or tax advice.

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