DIVISION OF PENSION ON RELATIONSHIP BREAKDOWN BEFORE RETIREMENT

This publication will assist members or their representatives with the division of pension benefits on relationship breakdown. **If there is any discrepancy between this information and the Plans, the provisions of the *Teachers' Pension Plans Act* and applicable legislation will determine entitlements and options available.**

1. RESTRICTIONS ON ASSIGNMENT AND SURRENDER

A member's benefits may not be given to another person, used as security or forfeited. However, pensions are considered family property and may be divided as the result of a Family Property Order (FPO) where relationship breakdown has occurred. The regulations regarding division of pensions on relationship breakdown apply to members who were either legally married or were in a common-law relationship for more than three years.

Pension division following relationship breakdown for individuals in a common-law relationship applies to individuals who were in a common-law relationship for at least three years and whose relationship ended on or after January 1, 2020 when the *Family Property Act* came into effect. Note: The common-law relationship must be for at least three years in order to meet the definition of pension partner found in the *Teachers' and Private School Teachers' Pension Plan* regulation.

The definition of pension partner is:

- a person who is married to the member and has not been living separate and apart from the member for three or more consecutive years, or
- a person who has been living with the member in a conjugal relationship for a continuous period of at least three years and was, during that period, held out by the member in the community in which they lived as being in that conjugal relationship.

To divide pension benefits, a court-filed and court-certified FPO that complies with Section 45 of the *Teachers' Pension Plans (Legislative Provisions) Regulation* (Legislative Provisions) must be filed with the Alberta Teachers' Retirement Fund Board (ATRF). **Since ATRF must comply with all Legislative Provisions, ATRF should be given the opportunity to review a draft of the FPO before it is finalized.**

Two Ways of Sharing

Family property can be divided by:

- an immediate one-time lump-sum payment of a portion of the pension benefit, or
- the member giving up ownership to other family property to offset the value of the pension benefit.

If No Claim Will Be Made

If the former pension partner agrees not to make a claim through the courts to divide the pension benefit, ATRF requires a copy of the legal agreement in which the claim was relinquished or waived. It should state that there will be no claim made against the member's ATRF pension.

2. DIVIDING THE PENSION ENTITLEMENT

The Legislative Provisions allow that the member's former pension partner is entitled to a portion of the pension benefit earned by the member (total entitlement) during the period of joint accrual. The period of joint accrual is typically from the beginning of the relationship to the date of separation, but can be any dates agreed upon by both parties.

Total Entitlement

The total entitlement is dependent on the member's age and whether or not the member was vested as of the end date of the period of joint accrual, i.e. had sufficient pensionable service to be eligible for a pension. A member is vested with:

- 5 years of pensionable service after August 31, 1992, or
- 5 years of pensionable service that includes a period of pensionable service in each of the 1991-92 and 1992-93 school years, or
- 10 years of pre-1992 pensionable service.

The total entitlement includes any service transferred in from another pension plan that relates to service during the period of joint accrual, and all other purchased service to the extent it was paid for during the period of joint accrual. However, it does not include service transferred in from another pension plan outside of the period of joint accrual and prior service purchased outside of the period of joint accrual.

How the Benefit is Divided

The former pension partner is entitled to not more than 50% of the member's total entitlement accrued during the period of joint accrual. This is calculated by prorating the member's total entitlement by the pensionable service earned during the period of joint accrual which is then prorated by the division factor (which is the percentage of the pension payable to the former pension partner as stated in the FPO and cannot exceed 50%).

$$\text{Total Entitlement} \times \frac{\text{Pensionable service during period of joint accrual}}{\text{Total pensionable service}} \times \text{Division Factor}$$

A. Non Vested Members

If a member was not vested at the end date of the period of joint accrual, then the member's total entitlement is the member's contributions. The former pension partner is entitled to an immediate lump-sum payment not to exceed 50% of the contributions for the period of joint accrual and can be paid as follows:

- in cash, less tax withholding, or
- transferred to a Registered Retirement Savings Plan (RRSP).

B. Vested Members

Not yet within ten years of age 65

If at the end date of the period of joint accrual, the member was vested but not yet within ten years of age 65, the member's total entitlement is the greater of the value of the member's contributions or the commuted value of the pension, calculated as if the member terminated from the Plan at the end of the period of joint accrual and was entitled to commence receiving a pension at age 65. The former pension partner is entitled to an immediate lump-sum payment, not to exceed 50% of the member's total entitlement for the period of joint accrual. This benefit must be transferred to a locked-in retirement account (LIRA).

The commuted value is the lump-sum of money which must be set aside today, at current market interest rates, to provide you with a future benefit similar to the pension you've earned from the Plans.

Within ten years of age 65 or 65 years or older

If at the end date of the period of joint accrual, the member is vested and within ten years of age 65, or is age 65 or older but not yet receiving a pension, the former pension partner has a one-time option of:

- taking an immediate lump-sum amount that would be transferred to a LIRA, or
- delaying the division until the member removes their benefit from the plan, either the member's retirement, reciprocal transfer to another plan, or death.

Immediate Division

The member's total entitlement is the greater of the value of the member's contributions or the commuted value of the pension, calculated as if the member had terminated from the Plan at the end of the period of joint accrual and was entitled to commence receiving a pension at age 65, or, where the member is over 65, at the current date.

The former pension partner is entitled to a lump sum amount that is not to exceed 50% of the member's total entitlement for the period of joint accrual. This benefit must be transferred to a LIRA.

Delayed Division

Before deciding between an immediate and a delayed division, the following should be considered:

- Changes to interest rates and long-term government bond rates can cause the commuted value of the pension to fluctuate by large amounts. A delay could cause an increase or a decrease to the amount payable.

- The member's total entitlement is the commuted value of the pension as at the pension commencement date. If the member dies before pension commencement, or transfers to another plan, the former pension partner would be entitled to a portion, not to exceed 50%, of the actual amount payable or transferable on the member's behalf.

- If the former pension partner elects to delay the division, a lump-sum payment, not to exceed 50% of the member's total entitlement at the time the member's pension commences, must be transferred to a LIRA.

- If the member was 65 or older as of the end date of the period of joint accrual, the FPO should also include the date to be used in calculating the total entitlement. If no date is mentioned in the FPO, ATRF will use the first day of the month following the date on which the order is filed with ATRF.

Death before Retirement

If the member dies before pension commencement, a death benefit will be payable from the Plan. The value of the death benefit varies and could be significantly less than the value that was originally available as an immediate payout. The death benefit could be as small as the value of the member's contributions and interest, of which the former pension partner will only receive a portion.

If the member has a new pension partner at the time of death, the death benefit would normally be a monthly pension based on the Guaranteed Joint Equal pension option. However, because there is a new pension partner ATRF will value the amount of the pension and pay the former pension partner their share in a lump sum that must be transferred to a Locked in Retirement Account (LIRA). The balance would be transferred to a LIRA for the member's new pension partner.

If the member did not have a new pension partner at the time of death but had dependent minor children, the death benefit payable would be twice the value of the member's contributions and interest. The former pension partner would receive a portion of this amount rather than a portion of the value of a pension. The balance would be paid in trust for the dependent minor children.

If the member did not have a new pension partner at the time of death or dependent minor children, the death benefit payable would be the value of the member's contributions and interest. The former pension partner would receive a portion of this amount rather than a portion of the value of the pension.

3. REQUESTS FOR A STATEMENT OF BENEFIT ENTITLEMENT

Requests from Members or their Non-member Pension Partner

The Legislative Provisions require ATRF to provide pension information to both the member and the former pension partner on receipt of a written request from either party. It is recommended that you contact ATRF for a statement prior to obtaining a draft FPO. If you require information about your own pension, or your former pension partner's pension, you must complete either the **Request for Statement of Benefit Entitlement** included with this publication, or provide ATRF with a signed written request that includes the following:

- your full name, mailing address and telephone number,
- if you are the former pension partner, the member's full name,
- if you are the member, your former pension partner's full name and mailing address, and
- the start and end date of the period of joint accrual.

ATRF will provide both parties with a statement, not more than once in a calendar year, containing:

a) the start date of the period of joint accrual,
b) the end date of the period of joint accrual,
c) the amount of pensionable service accumulated during the period of joint accrual,
d) the amount of pensionable service accumulated by the member up to the end date,
e) the first date of accumulation of pensionable service by the member under the Plan,
f) the latest date of pensionable service accumulated by the member,
g) an estimate of the total entitlement as of the end date of the period of joint accrual, and
h) an estimate of the total entitlement as of the date the statement was prepared.

120 Day Statement Calculation Date

Changes to interest rates and long term government bond rates may cause the benefit value to fluctuate significantly from month to month. ATRF will use the rates in effect as of the date of the total entitlement statement for 120 days regardless of any change made to the division factor or retroactive changes reported by the member's employer. The period of joint accrual can be changed as long as the end date does not go beyond the date of this statement. If it does, the value will be recalculated based on the rates in effect at the time of the recalculation. If ATRF is ordered to divide the pension entitlement but all documentation required to process the division is not received within 120 days, the value will be recalculated when it is received.

4. INSTRUCTIONS FOR YOU AND YOUR LAWYER

Section 31(1) of the Legislative Provisions provides that notwithstanding the *Family Property Act* or any other rule of law or equity to the contrary, the Court shall not make an FPO dividing or distributing a benefit or any portion of a benefit except in a manner that complies with Part 2 of the Legislative Provisions.

Third Party Requests

If you are requesting the information on behalf of your client, we require a signed release from the member or the member's former pension partner (as appropriate) permitting ATRF to release the information to you. It should include:

- your name,
- the name of the person you are representing,
- the information outlined in section **3** that is required for any request for pension information, and
- the name of your law firm, mailing address and telephone number.

What if you filed a MPO under the previous laws and wish to take advantage of the new provisions?

Prior to May 1, 2004, the division of a member's pension benefit could only occur on retirement, termination or death. Since May 1, 2004 providing the pension has not yet commenced, a member's former pension partner may be entitled to an immediate one-time lump sum payment of a portion of the member's benefits under the Plan.

Any MPOs or FPOs filed with ATRF on or after May 1, 2010 must be in accordance with the May 1, 2004 Regulations, which provide for a lump sum payment division unless the pension is already on pay.

If you had filed an MPO under the previous legislation and wish instead to take advantage of the lump-sum payout provisions, you must obtain a new FPO which states that the previous MPO filed with ATRF is null and void. In addition, it must contain all of the requirements of the Legislative Provisions as outlined in our sample FPO.

5. THE FAMILY PROPERTY ORDER (FPO)

Form of FPO

Individual samples of each type of FPO are also on ATRF's website at www.atrf.com, Life Events, Relationship Breakdown. ATRF should be given the opportunity to review any FPO before it is finalized.

A. Information that must be included in the FPO

The FPO must include**:**

- The start and end dates of the period that the benefit is considered to have jointly accrued for the purposes of the *Family Property Act*.
- The "division factor", which is the percentage share of the jointly accrued benefit which is awarded to the former pension partner. This percentage must not exceed 50%.
- Whether or not there is a delayed division if that option is available.
- If the member was 65 or older as of the end date of the period of joint accrual, it should also include the date to be used in calculating the total entitlement. If no date is mentioned in the FPO, ATRF will use the first day of the month following the day on which the order is made.

The FPO cannot include a dollar amount under any circumstance.

B. What happens if ATRF is unable to comply with a filed FPO?

It is the responsibility of the member and the former pension partner to obtain an FPO that is in compliance with the legislation. If we are unable to comply with an FPO because it is incomplete or there is doubt as to what exactly must be done in order to comply with it, under Section 42 of the Legislative Provisions ATRF may apply to the Court to redress the situation. The costs of this application will be borne by both or either of the pension partners as directed by the Court, and ATRF has the right to offset its costs against any benefit payable to the pension partners.

C. Is there a fee for dividing a pension?

A fee of $250 is to be paid by each person when ATRF divides the pension. This fee is applied by reducing the benefit payable to each.

6. IMPACT TO MEMBER'S PENSION AFTER THE PAYOUT

What happens to the member's entitlements after the former partner has been paid out?

Where the former pension partner has chosen an immediate payout, the member's entitlements are reduced to account for the payment that was made to the former pension partner. All future benefit statements, i.e. the annual Plan Member Statement, pension estimates, etc. will reflect the member's reduced benefit entitlement. When the member applies for pension, ATRF will calculate the monthly pension normally, and will then reduce it by a “pension offset” amount.

The pension offset will be increased to reflect cost-of-living adjustments for deferred pensions or decreased to reflect the plan member taking early retirement.

After an immediate payout has occurred, ATRF will provide the member with a statement containing:

- the amount of the lump sum that has been paid to the former pension partner, and
- a summary and description of the remaining benefits to which the member will be entitled after the distribution of the former pension partner's share.