

Policy Bulletin #35 Pension Partner Waiver Forms

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The *Employment Pension Plans Act* (the Act) entitles the pension partner of a plan member or of an original owner* of a Locked – In Retirement Account (LIRA) or Life Income Fund (LIF) to certain benefits on the death of that member or original owner. Recognizing the need for people to manage their own affairs, however, the Act permits the pension partner to waive (give up) some or all of those entitlements by signing the relevant waiver, in the form prescribed in Schedule 1 of the *Employment Pension Plans Regulation* (the Regulation). That signed form must be filed with the plan administrator or LIRA or LIF issuer (the financial institution in which the account is held), as the case may be.

This Bulletin has no legal authority. The Act and the Regulation should be used to determine specific legal requirements.

Who is a Pension Partner

A pension partner is a married or common-law spouse. The Act defines “pension partner” as a person who

- (i) was married to the plan member or original owner and had not been living separate and apart from that other person for 3 or more consecutive years, or
- (ii) if there is no person to whom sub-clause applies, a person who, had lived with the member or original owner 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.

It is also important to determine whether someone meets the criteria for a pension partner at **the relevant time**, meaning

- (i) In the case of a LIRA, or where a person dies prior to retirement from a pension plan, the person who meets one of the criteria described above at the date that the member or original owner dies , or
- (ii) in the case of a pension plan or LIF, the person who meets/met the criteria described above on the date that the member or original owner chooses to commence to receive pension or retirement income payments.

Note: If a surviving spouse or an ex-spouse of a pension plan member

* An original owner is a pension plan member who has transferred funds out of a pension plan to a LIRA or a LIF (or from the LIRA to the LIF).

is receiving survivor pension payments or has a LIRA or LIF in their name, their new spouse, if they have one, is not a “pension partner” for the purposes of the Act and has no right or obligation under the Act. Nothing in this Bulletin or in the Act or Regulation applies to these spouses.

Form 3 Waiver of Pre-Retirement Death Benefits

A person who is the pension partner of an active or deferred plan member or original owner of a LIRA, and who is therefore potentially eligible for death benefits, may, prior to the member’s/owner’s death, sign a [Form 3](#) and thereby give up any entitlement to the pre-retirement death benefit which the Act would otherwise require to be paid.

Where this waiver is signed and filed with the plan administrator or LIRA issuer, the member or original owner may designate another party to receive any pre-retirement death benefit payable from the plan or LIRA.

Waiver of pre-retirement death benefits does not automatically nullify the entitlement of the pension partner to any other benefits (e.g. post-retirement survivor benefits). The applicable waivers regarding those benefits must be signed, at the appropriate times, if the pension partner wishes to waive those benefits.

Form 4 Waiver of Post Retirement Benefits (Defined Benefit Plans)

Within the 90-day period prior to the commencement of pension from a defined benefit provision of a pension plan, the pension partner of a plan member may waive entitlement to the 60% joint life form of pension by signing Part 1 of [Form 4](#).

Where this part of the waiver is signed, the plan member may choose any other form of pension offered by the plan. Where that other form provides for some form of death benefit, the pension partner must be designated as the beneficiary of that benefit (subject to the following paragraph).

In addition to waiving the joint life pension entitlement, the pension partner may, but is not required to, waive entitlement to be designated as the beneficiary of any “other” post-retirement death benefit payable from the plan by signing Part 2 of [Form 4](#). This part may be signed at the same time as Part 1, or at any time thereafter, as long as it is prior to the member’s death. A pension partner may also

revoke the Part 2 waiver at any time prior to the member's death. While the Part 2 waiver is in force, the member may designate anyone other than the pension partner to be the beneficiary of any death benefit payable from the plan.

Note: [Form 4](#) is used only for defined benefit provisions and only if the member will be receiving pension payments from the pension plan (including where a plan administrator is funding those pension benefits by purchasing annuities).

Form 5 Waiver with Respect to Short Life and Non-Residency Commutation

Where a plan provides, or in the case of a LIRA, LIF or DC RIA, a member or owner is entitled to commute and unlock benefits due to that member/owner

- (a) having a considerably shortened life expectancy as certified by a doctor, or
- (b) having become a non-resident of Canada under the *Income Tax Act* (Canada).

In the case of a member or an original owner with a pension partner

- (a) at the date of application under a pension plan (other than the DC RIA provision of a pension plan) or a LIRA, or
- (b) at the date that retirement income commenced under a LIF or a DC RIA,

funds may be commuted and unlocked for either of the above reasons if the plan administrator or LIRA/LIF issuer first receives a signed [Form 5](#) in which the pension partner gives up all entitlement to any of the benefit.

Form 6 Waiver of Entitlements On Transfer to A LIF, Annuity or DC RIA

Where the member of a pension plan or the original owner of a LIRA wishes to receive retirement income by electing to transfer the value of their benefit/account to a LIF, a DC RIA, or an insurance company to purchase an annuity (**other than** a joint life annuity providing at least a 60% survivor benefit), the member/owner cannot make that transfer unless Option 2 of Part 1 of [Form 6](#) is signed by the pension partner. This must be done no later than 90 days before retirement income is to commence.

In addition, these persons are entitled to choose to unlock up to 50%

of the value of the benefit/account at the time that funds are transferred to purchase a LIF, DC RIA, or annuity. Where such a choice is made, if the member or original owner has a pension partner, that pension partner must sign Option 1 of Part 1 of [Form 6](#) to enable the unlocking to proceed.

Finally, the pension partner of a member or original owner may, at the time of the transfer to the LIF, DC RIA, or annuity (**other than** to 60% joint life annuity), or at any time thereafter, but before the death of the member or original owner, sign Option 3 of Part 2 of [Form 6](#), thereby giving up the entitlement to be the beneficiary of any death benefit payable from the LIF, DC RIA or annuity. The pension partner may revoke the Option 3 waiver at any time prior to the member's/original owner's death.

To be valid, a waiver must include the pension partner's signature both in the section waiving the entitlement, and in the certification section. It must also be signed by the person witnessing the signatures.

The certification section states that the pension partner

- (a) understands what is being waived,
- (b) has signed the waiver outside of the presence of the member/owner,
- (c) is signing of his/her own free will, and
- (d) has received independent advice with respect to waiving the benefit.

For further information please contact:

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