

EPPA Update 00-06

COMMUTATION DUE TO NON-RESIDENCY STATUS

NEW LEGISLATION PROCLAIMED IN FORCE ON MARCH 1, 2000

The *Employment Pension Plans Amendment Act*, proclaimed in force on March 1, 2000, sets out new and revised provisions regarding the commutation of locked-in pension funds under Alberta's jurisdiction.

The revised *Employment Pension Plans Regulation* details the procedure and prescribed waiver form required in order to be able to commute locked-in pension funds due to non-residency status.

NON-RESIDENCY STATUS, Regulation. s. 39(11)

A financial institution *may* include a provision allowing that the money in a locked-in contract may be withdrawn as a lump sum, where an individual *applies to the financial institution* with proof that he has become a non-resident for the purposes of the *Income Tax Act* (Canada). However, once the locked-in funds are commuted, they are no longer protected from creditors.

The individual's status as a non-resident must be confirmed in writing by the Canada Customs and Revenue Agency (CCRA – formerly Revenue Canada). Application may be made to the CCRA by completing CCRA Form NR73E(99) *Determination of Residency Status (Leaving Canada)*. This form can be obtained from any CCRA office or by downloading it from: <http://www.ccra-adrc.gc.ca/menu/EmenuLCA.html>

Once the non-residency status is confirmed, the owner may have the money unlocked upon providing to the financial institution, CCRA's written confirmation and if the owner has a spouse, a signed *Spouse's Declaration to Permit Commutation Due to Shortened Life or Taking Non-Residency Status* (Alberta Form EP 2/02, attached).

For more information please contact:

Alberta Superintendent of Financial Institutions
Alberta Finance
Room 402, 9515 – 107 Street
Edmonton, AB T5K 2C3

Telephone: (780) 427-8322*
Fax: (780) 422-4283

Internet: <http://www.finance.alberta.ca/business/pensions>

* For toll-free dialing, contact your local Alberta Government R.I.T.E. line by calling 310-0000.

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**SPOUSE'S DECLARATION TO PERMIT
COMMUTATION DUE TO SHORTENED LIFE OR
TAKING NON-RESIDENCY STATUS**

I, _____, am the "spouse" (as described below) of _____.
(name of member/owner)

The member/owner earned benefits under a pension plan regulated by the *Employment Pension Plans Act* ("the Act").

Being the member/owner's "spouse" means that , at _____
(insert date when the application to withdraw
the money as a lump sum is made)

I am:

[NOTE: Here, the requirements established by the pension plan for meeting its definition of "spouse" should be set out. If this is a LIRA, LIF or LRIE, the definition of spouse in the *Employment Pension Plans Act* is applied.]

I understand that the Act requires that the benefits earned under the plan must be paid as at least a 60% joint and survivor pension. This means that if the member/owner starts to receive a pension and dies before I do, survivor payments equal to at least 60% of the original amount will continue to me for my lifetime.

However, I understand that if I choose to sign this waiver form and it is filed with the plan administrator/financial institution, I give up my rights to the minimum 60% joint and survivor pension. I further understand that signing this waiver means that the member/owner may elect to take the earned benefits as

- (a) a lump sum cash payment, or
- (b) a series of payments for a fixed period,

and that this may give me no survivor benefit at all.

Nevertheless, I give up my rights to everything under the pension plan.

I certify that

- (a) I have read this form and understand it,
- (b) I have read and reviewed the member's retirement statement or a statement from the financial institution showing the balance in the owner's account and know the amount of the benefit I am giving up,
- (c) I am signing this form of my own free will,
- (d) the member/owner is not present while I am signing this form, and

(e) I realize that

- (i) this form only gives a general description of the legal rights I have under the Act and the regulations under the Act, and
- (ii) if I wish to understand exactly what my legal rights are, I must read the Act and the regulations under the Act and seek legal advice.

To give up my rights mentioned above, I sign this waiver form at _____, _____,
(city/town) (province)

this ____ day of _____, _____

(signature of spouse)

I, _____, of _____
(print name of witness)

(print address of witness)

do witness the signature of the spouse who signed this form before me outside of the presence of the member/owner.

(signature of witness)

COMMENTS AND INSTRUCTIONS

This form must be completed where the member of a pension plan or the owner of a LIRA (Locked-In Retirement Account), LIF (Life Income Fund) or LRIF (Locked-in Retirement Income Fund) wishes to,

- commute his or her benefit due to his or her considerably shortened life, or
- commute his or her benefit due to taking non-resident status (LIRA, LIF and LRIF only).

This form must be:

- completed in its entirety,
- signed by the spouse and witnessed,
- signed outside of the immediate presence of the member/owner, and
- filed with the plan administrator or financial institution.

For further information please contact the plan administrator or financial institution.