



FSCO Family Law Form 8

Post-retirement Waiver of Joint and Survivor Pension by the Former Spouse of a Retired Member on Spousal Relationship Breakdown

Q1. What is the Waiver Form used for?

A1. If you are the former spouse of a retired pension plan member (Retired Member), you must use the Waiver Form if you want to waive your right to receive a survivor benefit upon the death of the Retired Member as part of your family law settlement, as provided in section 67.4(8) of the Ontario Pension Benefits Act and section 35(3) of Ontario Regulation 287/11.

By completing this Waiver Form, you are not waiving your right to receive a share of the Retired Member's pension. You are only waiving your right to receiving a survivor benefit, including any guarantee payments that are attached to the joint and survivor pension.

If you are entitled to receive a share of the pension as set out under the terms of your final settlement instrument (court order, family arbitration award or domestic contract), you will receive your share of the pension while the Retired Member is alive, but you will not be entitled to a survivor benefit from the pension plan after his or her death. -03/2016

Q2. Who can complete this Waiver Form?

A2. You can complete the Waiver Form if you are the former spouse of the Retired Member and **all** of the following conditions apply:

- There has been a breakdown in your spousal relationship.
- You were the spouse of the Retired Member on the date when the first instalment of his or her pension was due.
- The pension valuation and division rules that came into effect on January 1, 2012 apply to you. This means that you have a settlement instrument (court order, family arbitration award or domestic contract) that is made on or after January 1, 2012, or a settlement instrument that was made before January 1, 2012, which did not deal with the pension assets.
- You have received your **Statement of Family Law Value (FSCO Family Law Form 4E)** and you are identified as the spouse in **Part D (Spouse/Former Spouse of Retired Member Information)**.
- The waiver is included in your final settlement instrument.
- The pension has not already been divided.

You should get independent legal advice before completing the Waiver Form. -03/2016

Q3. What is a joint and survivor pension?

A3. If a pension plan member has a spouse at retirement, section 44 of the Ontario Pension Benefits Act requires the pension to be paid in the joint and survivor form unless the member and his or her spouse waive this right. A joint and survivor pension allows a surviving spouse to receive his or her own lifetime pension after a retired member dies. The surviving spouse is entitled to receive a survivor benefit that is at least 60 percent of the pension that was in pay to the retired member immediately prior to his or her death. -03/2016

Q4. My former spouse (the Retired Member) and I did not apply for a Statement of Family Law Value (FSCO Family Law Form 4E). May I still complete the Waiver Form?

A4. No. You and your former spouse must have received your **Statement of Family Law Value** before you may complete the Waiver Form.

Part A (Family Law Value Summary) of the **Statement of Family Law Value** provides the Family Law Value of your former spouse's pension and your survivor benefit. You need this information in order to make an informed decision.

You should consider getting independent legal advice before waiving your right to the joint and survivor pension. -03/2016

Q5. How do I know if I am entitled to a survivor benefit?

A5. Under section 44 of the Ontario Pension Benefits Act, you are entitled to a survivor benefit if you were the spouse of a retired member on the date when the first instalment of the joint and survivor pension was due and you have not waived your right to receive it.

If you are entitled to a survivor benefit, this should be shown in **Part A (Family Law Value Summary)** of the **Statement of Family Law Value (FSCO Family Law Form 4E)**.

If you have any questions, contact the Plan Administrator as noted in **Part B** of the **Statement of Family Law Value**. -03/2016

Q6. The terms of my former spouse's pension plan do not mention anything about a post-retirement waiver option. Can I still waive my right to receive a survivor benefit if our marriage has broken down?

A6. Yes. The waiver option is set out in section 67.4(8) of the Ontario Pension Benefits Act. It is a legislated minimum standard and applies to spouses (whose spousal relationship has broken down after retirement) who are subject to the pension valuation and division rules that came into effect on January 1, 2012.

Plan Administrators must provide the post-retirement waiver option in the circumstances set out above whether or not the terms of the pension plan include it. -03/2016

Q7. Do I have to waive my survivor benefit if my former spouse (the Retired Member) and I have separated?

A7. No, you are not required to waive your survivor benefit. You are entitled to the survivor benefit after the death of your former spouse, even though you are separated.

Before you consider waiving your right, you should consider seeking independent legal advice in order to ensure that you understand your rights and what effect, if any, the waiver will have.

Depending on the terms of the pension plan, waiving the joint and survivor pension may not benefit you or your former spouse. -03/2016

Q8. May I cancel the Waiver Form after I send it to the Plan Administrator?

A8. No. Once the Plan Administrator receives your Waiver Form, it cannot be cancelled. -03/2016

Q9. When must the Waiver Form be provided to the Plan Administrator?

A9. If you are dividing your former spouse's (the Retired Member's) pension as part of your family law settlement, the completed Waiver Form must be provided to the Plan Administrator, along with a certified copy of your final settlement instrument (court order, family arbitration award or domestic contract), no later than the time you send in your **Application to Divide a Retired Member's Pension (FSCO Family Law Form 6)**.

If you are not dividing your former spouse's pension as part of your family law settlement, send your completed Waiver Form to the Plan Administrator, along with a certified copy of your final settlement instrument.

In all cases, the waiver of the joint and survivor pension must also be included in your final settlement instrument. -03/2016

Q10. If my former spouse (the Retired Member) and I are not dividing the retirement pension, can the survivor benefit still be waived?

A10. Yes, as long as there has been a breakdown in your spousal relationship, the waiver forms part of your family law settlement (as set out in your court order, family arbitration award or domestic contract) and you are otherwise eligible.

If your pension is not going to be divided and you want to waive your right to the survivor benefit, send your Waiver Form, along with a certified copy of your final settlement instrument, to the Plan Administrator. -03/2016

Q11. Will my former spouse's (the Retired Member's) pension be automatically increased if the joint and survivor pension is waived?

A11. The Ontario Pension Benefits Act does not require a pension plan to re-allocate the value of the survivor benefit in order to increase the Retired Member's pension. Any adjustment to the Retired Member's pension resulting from the waiver must be administered in accordance with the terms of the pension plan. The plan terms will therefore be important to both you and your former spouse, as you will want to know the effect of the waiver before you consider it as part of your family law settlement.

You and your lawyer should confirm with the Plan Administrator how the waiver is addressed under the terms of the pension plan, and the effect on your share of the pension if the joint and survivor pension is waived. Depending on the terms of the pension plan, waiving the joint and survivor pension may not result in the Retired Member's pension increasing. -03/2016

Q12. If I complete the Waiver Form, can a new spouse be designated by my former spouse (the Retired Member) as the spouse to receive the survivor benefit?

A12. The answer to this question will depend on the terms of the pension plan. The Ontario Pension Benefits Act allows for, but does not require, such an option.

Check with the Plan Administrator (who is identified in **Part B** of the **Statement of Family Law Value (FSCO Family Law Form 4E)** to find out if the plan permits this. -03/2016

Q13. If I want to waive my right to the joint and survivor pension, am I required to complete the Waiver Form?

A13. The Waiver Form was approved and required for use effective March 1, 2016 by the Superintendent of Financial Services, in accordance with section 35(3) of Ontario Regulation 287/11 (Family Law Matters) and section 113.2 of the Ontario Pension Benefits Act (PBA).

As of March 1, 2016, if you are the former spouse of a retired member and you want to waive your right to receive a survivor benefit on the death of the retired member, you must complete the Waiver Form in addition to having waived your right to the survivor benefit in your settlement instrument (court order, family arbitration award or domestic contract). A settlement instrument cannot override the requirements of the PBA.

If you waived your right to receive a survivor benefit under a settlement instrument made prior to March 1, 2016, you do not have to complete FSCO's Waiver Form. -03/2016

Q14. If I am completing the Waiver Form, why does the waiver have to be mentioned in my final settlement instrument (court order, family arbitration award, or domestic contract)?

A14. The waiver under section 67.4(8) of the Ontario Pension Benefits Act can only be exercised on spousal relationship breakdown, as evidenced by a final settlement instrument. -03/2016

Q15. Once I have completed the Waiver Form, is the Plan Administrator required to send me an updated Statement of Family Law Value (FSCO Family Law Form 4E) to reflect the waiver?

A15. No. The Statement of Family Law Value only reflects the pension that was in pay as of the Family Law Valuation Date, and therefore, the information provided will not change as a result of the waiver. -03/2016

Q16. To whom do I send the Waiver Form?

A16. You must send the Waiver Form to the Plan Administrator. See **Part B** of the **Statement of Family Law Value (FSCO Family Law Form 4E)** for the Plan Administrator's contact information.

Do not send the Waiver Form to the Financial Services Commission of Ontario (FSCO). If you do, it will be returned to you. -03/2016

Q17. Can I send the Waiver Form electronically to the Plan Administrator?

A17. Ask the Plan Administrator if it will accept the Waiver Form and related documents in electronic format. Note that electronic delivery may not be secure. -03/2016