Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Spousal Rights
INDEX NO.:	S500-307
TITLE:	Joint and Survivor Pension or Annuity – Entitlement, Waiver and Cancellation - PBA ss. 1(1), 1.1(1), 44, 46 and 47 - Regulation 909 ss. 22(1)(e), 44 and 64(a)
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This policy replaces S500-306 (Joint and Survivor Pension or Annuity – Entitlement, Waiver and Cancellation) as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.

Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at www.fsco.gov.on.ca. *All pension policies can be accessed from the* **Pensions** *section of the website through the* **Pension Policies** *link.*

This policy explains:

- the rights of the spouse of a retired member[1] to a joint and survivor pension payable under a pension plan;
- the rights of the spouse of an annuitant to a joint and survivor annuity payable from an insurance company, where the annuity was purchased with money that was transferred from a registered pension plan; and
- the PBA requirements for waiving the joint and survivor pension benefit before retirement and cancelling the waiver.

[1] The term "retired member" is defined in section 1.1(1) of the PBA.

Joint and Survivor Pension or Annuity

The purpose of a joint and survivor pension or annuity is to provide a lifetime survivor pension to the retired member's or annuitant's surviving spouse. A retired member or an annuitant is entitled to receive payment of a pension or annuity for his or her lifetime. Only the joint and survivor form of pension or annuity provides both the retired member or annuitant and his or her surviving spouse with a lifetime pension.

Section 44 of the PBA provides that every pension that begins payment on or after January 1, 1988, and is being paid to a member who has a spouse that is not living separate and apart from the member when the pension starts, must automatically be paid in the joint and survivor form. However, section 44 does not apply if the retiring member and his or her spouse waive their right to this entitlement before the first instalment of the pension is due. Similarly, section 22(1)(e) of the Regulation provides that an annuity must be paid in the form of a joint and survivor annuity unless the annuitant and the spouse waive their right to this entitlement before the first instalment of the annuity is due.

Upon the death of the retired member or annuitant, the pension payable to his or her surviving spouse cannot be less than 60 percent of the pension or annuity that was in pay to the retired member or annuitant immediately before his or her death. However, any bridging benefits provided under a pension plan may be excluded from the calculation of the survivor pension in accordance with section 64(a) of the Regulation.

The person who qualified as the spouse of the retired member or annuitant on the date when the first instalment of the pension or annuity was due has the ultimate right to receive the survivor pension, even if there is a subsequent breakdown in the spousal relationship. Should the spouse die before the retired member, a pension plan may, but is not required to, pay a survivor pension to any subsequent spouse of the retired member. The terms of the pension plan may specify the rights of any subsequent spouse and any conditions that he or she must satisfy in order to be eligible for a survivor pension.

If the retired member's spouse dies before the retired member, there is no requirement under the PBA for a plan administrator to recalculate the pension. The retired member will continue to receive the same pension unless the pension plan provides otherwise.

Example 1:

Jill was married to Jack on the date when the first instalment of her pension was due. Jack had an unfortunate accident and died. After Jack's death, Jill married Peter. Jill's pension plan does not provide for the payment of a survivor pension to a subsequent spouse. As a result, Peter would not be entitled to receive the survivor pension after Jill's death since he was not her spouse on the date when the first instalment of her pension was due.

Who is Entitled to Receive a Lifetime Survivor Pension?

After the death of the retired member or annuitant, the person who was his or her spouse on the date when the first instalment of the pension or annuity was due is entitled to receive a survivor pension provided that the spouse:

- has not previously waived his or her right to the joint and survivor pension or annuity within the 12 month period prior to the commencement of the pension or annuity; and
- is not living separate and apart from the retired member or annuitant by reason of a breakdown of their spousal relationship on the date when the first instalment of the pension or annuity was due.

In order to qualify as the "spouse" of the retired member or annuitant, this person must meet the definition of "spouse" under section 1(1) of the PBA. In the PBA, "spouse" means, except where otherwise indicated in this [PBA], either of two persons who,

(a) are married to each other, or
(b) are not married to each other and are living together in a conjugal relationship,
(i) continuously for a period of not less than three years, or
(ii) in a relationship of some permanence, if they are the parents of a child as set out in section 4 of the *Children's Law Reform Act*."

Example 2:
Wilma is Fred's spouse. Fred is retiring from his job as a crane operator. They cannot live together on the date when the first instalment of Fred's pension is due because of Wilma's work obligations. Wilma has not waived her right to the joint and survivor pension. Although they are living apart, it is not due to a breakdown in their spousal relationship. Therefore, Wilma will be entitled to a survivor pension if Fred dies before her.

The Normal Form of Pension

The normal form of pension must be defined under the plan terms that describe what benefits, if any, are payable after the death of the retired member to his or her surviving spouse, designated beneficiary or estate.

A pension plan may have more than one normal form of pension – a normal form for a member with a spouse and a normal form for a member who does not have a spouse.

A pension plan may allow its retiring members to choose a pension that is different from the normal form, e.g. a single life pension with a guarantee period. The commuted value of such optional form of pension must not be less than the commuted value of the normal form of pension payable under the pension plan.

In accordance with section 44 of the Regulation, when a member informs the plan administrator of his or her intention to retire, the administrator must advise the retiring member about any options available to him or her under the pension plan. The administrator must also inform the member of the estimated dollar amounts attached to each of the available options such that the member and his or her spouse can make an informed choice. The retiring member and his or her spouse may be required to sign a waiver to elect the option; the administrator must inform them if a waiver is required.

Below is an example that shows how the different forms result in different pension amounts.

Example 3[2]**:**

Ricky is Lucy's spouse. Lucy has decided to retire so that she can spend more time with Ricky. Lucy's pension plan provides that the normal form of pension for a member with a spouse on the date when the first instalment of the pension is due, is a 60 percent joint and survivor pension. Lucy will be entitled to receive $850 per month during her lifetime. On Lucy's death, $510 per month (60 percent of $850) will be payable to Ricky for the remainder of his life. If Ricky dies before Lucy, Lucy will continue to receive $850 per month for her lifetime.

Instead of the 60 percent joint and survivor pension, Lucy's pension plan would also allow her to elect one of the following options:

- A single life pension with no guarantee period that will pay Lucy $1,000 per month for her lifetime. Payments stop on her death.
- A single life pension with a guarantee period of 10 years that will pay Lucy $930 per month for her lifetime. If she dies before the end of the 10 years, her designated beneficiary will receive the same monthly pension of $930 for the remainder of the 10-year period.[3] However, if Lucy lives more than 10 years after retirement, payments will stop on her death.

In this example, the optional forms of pension have the same commuted value as the 60 percent joint and survivor pension. Lucy may only elect one of the optional forms of pension if she and Ricky decide to waive the joint and survivor pension (see **Waiving the Joint and Survivor Pension Benefit Before Retirement** section below).

Payment of the Survivor Pension

Upon the death of the retired member or the annuitant, his or her surviving spouse must inform the plan administrator or insurance company (as applicable) of the death. Payment of the survivor pension will then commence. The administrator or insurance company will usually require a certified copy of a death certificate, which may be obtained from the funeral director.

The surviving spouse will receive the survivor pension for the remainder of his or her life. Section 47 of the PBA provides that the payment of the survivor pension continues even if the surviving spouse were to subsequently remarry.

Example 4:

[2] The amounts shown in this example are for illustrative purposes only. The actual amount of pension payable to a retired member depends on the actuarial assumptions and plan provisions that apply specifically to that individual and his or her spouse.

[3] If Lucy selects the second option she may still designate Ricky as the beneficiary.

Juliet was married to Romeo on the date when the first instalment of her pension was due. Juliet died of a heart condition. Romeo contacted the plan administrator about Juliet's death, and he started to receive a survivor pension.

Romeo was lonely and decided to marry Rosaline. The survivor pension will continue to be paid to Romeo from Juliet's pension plan for the remainder of his life.

Waiving the Joint and Survivor Pension Benefit Before Retirement

Section 44 of the PBA provides that the pension payable to the retired member's or annuitant's surviving spouse cannot be less than 60 percent of the pension or annuity that was in pay to the retired member or annuitant immediately before his or her death. However, section 46 of the PBA allows a retiring member and his or her spouse to waive their right to this entitlement before retirement. There are two ways of doing this:

- by completing FSCO's Form 3 - Waiver of Joint and Survivor Pension (the Waiver Form); or
- by including the waiver in a certified copy of a domestic contract.

In order for the waiver to be effective, the Waiver Form or domestic contract must be delivered to the plan administrator or insurance company (as applicable), within the twelve months preceding the commencement of pension or annuity payments. Otherwise, the administrator or insurance company is required to pay the pension or annuity in the joint and survivor form.

If the 60 percent joint and survivor pension or annuity is waived, the form of pension or annuity that is subsequently chosen by the retired member will then determine what his or her surviving spouse will be entitled to receive after his or her death.

Retiring members and spouses of retiring members should consider obtaining independent legal advice about their individual rights and the effect of waiving the joint and survivor pension benefit.

Example 5:

Luke has decided to retire as of January 1. The terms of Luke's pension plan provide that all monthly instalments of a pension are payable at the end of the month. Therefore, Luke is entitled to receive his first pension payment on January 31.

Luke and his wife, Laura, decided to waive entitlement to the joint and survivor pension by completing FSCO's Form 3 - Waiver of Joint and Survivor Pension (Waiver Form).

In order for the waiver to be effective, Luke and Laura must ensure that the Waiver Form is dated, signed and delivered to Luke's plan administrator before January 31.

It is important for retiring members to complete and deliver their retirement forms to their plan administrator or insurance company (as applicable) several months before they retire in order to avoid any delays in the processing of their pension or annuity.
Retiring members should contact their plan administrator or insurance company for information about the forms that must be completed and when they need to complete these forms.

Cancelling the Waiver

Section 46(3) of the PBA provides that the persons who have delivered a waiver to the plan administrator or insurance company (as applicable), in respect of the survivor pension under section 44 of the PBA, may also jointly cancel it if they deliver a written and signed notice of the cancellation to the administrator or the insurance company, before the pension or annuity payments start.

There is no approved FSCO form to cancel a waiver.