

Spousal settlements put pensions up front

Do you wonder what would happen to your pension assets if your spousal relationship were to break down? The short answer is that the division of your pension assets is based on the Ontario Family Law Act (FLA) and the Ontario Pension Benefits Act (PBA) which were amended recently. The division of pension assets when a spousal relationship breaks down is not mandatory. However, under the new rules, if the concerned parties decide/are required to do so, they must get the Family Law Value of the pension assets from the pension plan administrator. The administrator must give this information to both spouses in a timely manner and by using the required legal forms.

Here's an overview from the provincial regulator, the Financial Services Commission of Ontario (FSCO):

On January 1, 2012, amendments to the PBA and the FLA came into effect regarding the valuation and division of pension assets on the breakdown of a spousal relationship. As a result of these changes, the pension plan administrator is required to calculate the value of the pension assets; ensure that the parties are fully informed of their options; and divide the pension in accordance with the legislation. The application and calculations must be completed on special FSCO Family Law Forms.

If you are a pension plan member (active member, former member, retired member) and/or the married spouse of a member, the first step in obtaining the value of the pension assets is the completion of a form called the Application for Family Law Value (FSCO Family Law Form 1).

In the time specified by the PBA, the pension plan administrator must then complete the pension valuation. The former spouse will not be entitled to more than 50 per cent of the total pension accrued during the period of the spousal relationship. Once the parties have reached an agreement or obtained a court order or family arbitration award, the former spouse may apply to the administrator to have his/her share transferred out of the pension plan.

The new rules apply to all cases except where the settlement instrument (court order, family arbitration award or domestic contract) was made before January 1, 2012. The new rules may also apply in other, limited, circumstances.

More information about the new rules, the forms and transition issues, including frequently-asked questions, is available online at: www.fSCO.gov.on.ca, or by link: http://www.fSCO.gov.on.ca/en/pensions/Family-Law/Pages/marriage_breakdown.aspx.