



SECTION:	Surplus
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TITLE:	Surplus Distribution - The Role of Legal Counsel in Obtaining Written Consent - Regulation 909 s. 8
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This policy is supplemental to S900-510 (Application by Employer for Payment of Surplus on Full Wind Up of a Pension Plan) and S-900-511 (Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan) which replaced S900-509 effective September 30, 2004.

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.*

The Role of Legal Counsel in Obtaining Written Consent Pursuant to Section 8 of Regulation 909

When some or all of the members, former members and other persons affected by a surplus withdrawal application are represented by legal counsel, they may choose to have their legal counsel negotiate an acceptable distribution. This administrative practice governs such situations.

Instead of receiving individual notice of the surplus application under section 78(2), those represented by legal counsel may instruct the administrator, through counsel or otherwise, to transmit the notice of application and surplus distribution proposal to their legal counsel. They may also authorize counsel to consent to a surplus distribution proposal on their behalf. This administrative practice does not establish guidelines respecting the scope of a legal counsel's authority to act on behalf of clients. However, if counsel purports to represent individuals entitled to share in a surplus distribution, the Superintendent of Financial Services will require counsel to provide the Superintendent with an affidavit setting out the following:

- the names of the persons represented by legal counsel including a description of their status in the pension plan (i.e., member, former member, other person);
- legal counsel's role in obtaining written consent (e.g., negotiate or negotiate and consent);
- where applicable, that the clients instructed the administrator to transmit notice of the application and the surplus distribution proposal to their legal counsel; and
- where applicable, that the clients of the legal counsel authorized the legal counsel to consent to the surplus distribution proposal on their behalf.