Unlocking Pension Money

A bulletin regarding the unlocking of pensions pursuant to *The Pension Benefits Act, 1992.*

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Introduction

Section 29 of *The Pension Benefits Act, 1992* ("the Act") provides that a plan member entitled to a pension may not withdraw, commute or surrender the pension. Simply put, locked-in pension money must be used to provide the pension plan member with retirement income. Furthermore, in accordance with Section 63 of the Act, locked-in pension money may not be assigned, charged, alienated or anticipated and is exempt from execution, seizure or attachment.

Locking in continues to apply to pension money transferred from a registered pension plan to a locked-in retirement account ("LIRA") in accordance with Section 29 of *The Pension Benefits Regulations, 1993* (the "Regulations").

No one has the authority to grant an exception to the locking-in rules regardless of the plan member's circumstances. The legislation does not provide a release of money to alleviate financial hardship. However, the legislation does allow a payment in cash in lieu of a pension under 12 circumstances. Those circumstances are described below.

This bulletin does not focus on the unlocking options and benefits available under a pooled registered pension plan[1] ("PRPP").

This bulletin has no legal authority and cannot be construed as legal advice. Prior to making any decisions respecting your pension, you should seek the assistance of a lawyer and a trusted, professional financial advisor. The Act and the Regulations should be used to determine specific requirements.

[1] A PRPP is subject to the provisions of *The Pooled Registered Pension Plans (Saskatchewan) Act.*

Unlocking Methods

1. Small Benefit Rule under a Pension Plan

Subsection 39(1) of the Act provides that a pension plan may make a lump sum payment in lieu of a pension where the amounts involved are too small to warrant being administered as a pension. Those amounts are established under subsection 35(2) of the Regulations:

> "35(2) For the purposes of subsection 39(1) of the Act:
>
> (a) the maximum amount of the commuted value is 20% of the Year's Maximum Pensionable Earnings in effect in the year in which the payment occurs; or
>
> (b) the maximum amount of the annual pension is 4% of the Year's Maximum Pensionable Earnings in effect in the year in which the payment occurs."

Clause 35(2)(b) of the Regulations does not apply to a defined contribution plan where a plan member terminates employment prior to becoming eligible to commence a pension. In this case, the small benefit amount would be calculated using clause 35(2)(a) of the Act.

A plan is not required to have the small benefit rule. However, if the plan has the provision, the prescribed maximum amounts must be used. The plan administrator is responsible for ensuring the rule is applied properly.

If a plan has the small benefit rule, the plan can be worded such that the plan administrator can require plan members to take a lump sum payment where the conditions in subsection 39(1) of the Act are met.

The Act and Regulations do not prohibit the commuted value under the small benefit rule to be transferred to a registered retirement savings plan ("RRSP") rather than paid in cash. However, the plan administrator should ensure that this transfer is allowed under the *Income Tax Act* (Canada) (ITA).

The Year's Maximum Pensionable Earnings (YMPE) is a figure determined under the Canada Pension Plan on an annual basis. The YMPE for 2021 is $61,600. Therefore, if a plan member terminates employment or retires, the administrator could make a payment in lieu of a pension where the commuted value of the member's pension under a defined benefit provision or the total value of a member's defined contribution account does not exceed $12,320. If the member is eligible to commence a pension, then the administrator could make a lump sum payment if the member's annual pension is less than $2,464 ($205/month). The YMPE in effect in the year that the payment occurs is used for purposes of the small benefit rule.

2. Small Benefit Rule under a LIRA

Subsection 29(8.1) and (8.2) of the Regulations permit a LIRA contract issuer ("the issuer") to make a lump sum payment where the total value of an individual's locked-in money is too small to warrant being administered as a pension:

> "29(8.1) Notwithstanding subsection (4), but subject to subsection (8.2), the contract may provide for the withdrawal of the locked-in money as a lump sum if the amount of locked-in money in the contract does not exceed 20% of the Year's Maximum Pensionable Earnings in effect in the year in which the withdrawal occurs.
>
> (8.2) The issuer shall not permit a withdrawal pursuant to subsection (8.1) unless the issuer is satisfied that the owner has no other locked-in money."

Subsection 29(8.1) of the Regulations is permissive, not mandatory. The issuer is responsible for administering the small benefit rule and must ensure that the terms of the contract provide for the release of locked-in money pursuant to the small benefit rule.

Subsection 29(8.2) of the Regulations requires the issuer to be satisfied that the LIRA owner has declared all other locked-in money for purposes of applying the small benefit rule under subsection 29(8.1). This includes locked-in money that may be subject to the pension legislation of other jurisdictions. A signed written statement from the owner, for instance, should be sufficient to release the money.

In determining the amount of an individual's total locked-in money, the issuer must include amounts in all LIRAs held by the individual, as well as any deferred pension entitlements the individual has in a pension plan. Such an entitlement is created when a plan member terminates membership in a plan, and does not transfer the entitlement out of the plan.

The YMPE is a figure determined under the Canada Pension Plan on an annual basis. The YMPE for 2021 is $61,600. Therefore, a LIRA contract could provide for the withdrawal of the locked-in money that is subject to Saskatchewan pension legislation as a lump sum if the total amount of an individual's locked-in money from all sources does not exceed $12,320. The YMPE in effect in the year that the payment occurs is used for purposes of the small benefit rule.

Rather than make a lump sum payment under the small benefit rule, the issuer could, but is not required to, transfer the payment to an RRSP, if requested by the owner. However, the issuer should ensure that this transfer is allowed under the ITA.

The annual pension limit under subsection 39(1) of the Act can't be applied to a LIRA contract.

3. Shortened Life Expectancy

Subsections 39(2) and (3) of the Act provide that funds held in a pension plan or a LIRA may be commuted to cash if the member or former member has a condition that is likely to considerably shorten that person's life expectancy. The individual must provide the plan administrator or issuer of the LIRA contract with medical evidence to substantiate the claim.

> "39(2) A plan may provide that, if a person entitled to the benefit has a condition that is likely to shorten considerably the person's life expectancy, the person may, before payment of the pension commences, elect to convert, on the prescribed basis, the pension or part of the pension to a payment or series of payments for a fixed term to the person.
>
> (3) Where a benefit has been transferred to a prescribed RRSP, subsection (2) applies to the RRSP to which the benefit has been transferred.
>
> (4) The condition mentioned in subsection (2) must be certified by a duly qualified medical practitioner who has been approved by the administrator."

Subsection 29(8) of the Regulations requires the LIRA issuer to obtain a spousal waiver, in the form of Form 3, before commuting the funds.

Although the Act and Regulations do not require it, it is recommended that plan administrators obtain a spousal waiver prior to commuting the funds from a pension plan.

The plan administrator or the LIRA issuer is responsible for the administration of the shortened life expectancy provision. The government cannot authorize the release of the money.

4. Non-Residency Unlocking

4.1 Rule under a Pension Plan

Section 26.1 of the Regulations provides that a pension plan may allow a person entitled to a benefit under the plan who has not commenced his or her pension to withdraw an amount equal to the commuted value of his or her pension from the pension plan, if the person meets these requirements:

- the person must be a non-resident of Canada as determined for the purposes of the ITA.
- the person must have not resided in Canada for at least two consecutive years;
- the person must provide the administrator with written evidence that the Canada Revenue Agency (CRA) has determined that the person is a non-resident of Canada for the purposes of the ITA;

- the person must complete and file with the administrator a certificate of non-residency in Form 4; and
- if the person has a spouse, the person must obtain the spouse's consent to withdrawal and waiver of entitlement in Form 5 and file a copy of the completed form with the administrator.

As noted above, the person is required to provide the administrator with written evidence that CRA has determined that the person is a non-resident of Canada for purposes of the ITA. The person can apply to CRA to obtain such written evidence by completing the federal form NR73 – Determination of Non-Residency Status. This form is available on the CRA website. If the person qualifies, CRA will issue a letter to the person confirming that CRA has determined the person to be a non-resident for purposes of the ITA.

Questions respecting non-residency status should be directed to CRA at 1-800-267-5177.

A plan is not required to provide the non-residency unlocking provisions. However, if the plan does provide these provisions, the plan must comply with section 26.1 of the Regulations. The plan may place restrictions on the non-residency unlocking rules; for example, the plan may restrict non-residency unlocking to persons who have not reached the early retirement age prescribed by the plan.

The Act and Regulations do not prohibit the commuted value under the non-residency unlocking provisions to be transferred to an RRSP rather than paid in cash. However, the plan administrator should ensure that this transfer is allowed under the ITA.

<u>Special note respecting a variable benefit account:</u> A variable benefit is a pension that may be paid from a defined contribution plan. Where a former member holds a variable benefit account, he or she is considered to have commenced a pension. Unlocking due to non-residency is not available to persons entitled to benefits under a variable benefit account. However, monies in a variable benefit account can be withdrawn in full.

Form 4: In order to unlock and withdraw pension monies due to non-residency status, the former member of a pension plan must complete Form 4, and file that form with the administrator or issuer of the LIRA contract. When completing Form 4, the former member or contract owner is certifying that he or she has not resided in Canada for at least two consecutive years. In addition, he or she is certifying that he or she has received written confirmation that CRA has determined the person to be a non-resident of Canada for the purposes of the ITA, and that a copy of that confirmation has been attached to Form 4. It is the responsibility of the pension plan administrator to ensure that Form 4 is executed properly and retained on file prior to processing the withdrawal of the pension monies.

Form 5: In order to unlock the pension monies under the non-residency provisions, Form 5, must be completed by the spouse of a former member of a pension plan. Pension plan administrators should ensure that the spouse is fully informed of his or her entitlement to the survivor benefit provided under section 34 of the Act, and is aware of the implications of signing the form. It is the responsibility of the pension plan administrator to ensure that Form 5 is executed properly and retained on file prior to processing the withdrawal of the pension monies.

4.2 Non-Residency Rule under a LIRA

Subsection 29(8.3) of the Regulations provides that a LIRA contract must allow the contract owner to withdraw the amount held in the LIRA, if the contract owner meets these requirements:

- the contract owner must be a non-resident of Canada as determined for the purposes of the ITA;
- the contract owner must have not resided in Canada for at least two consecutive years;
- the contract owner must provide the issuer of the contract with written evidence that the CRA has determined that the contract owner is a non-resident of Canada for the purposes of the ITA;
- the contract owner must complete and file with the issuer of the contract a certificate of non-residency in Form 4; and
- if the contract owner has a spouse, the contract owner must obtain the spouse's consent to withdrawal and waiver of entitlement in Form 5 and file a copy of the completed form with the issuer of the contract.

As noted above, the contract owner is required to provide the issuer of the contract with written evidence that CRA has determined that the contract owner is a non-resident of Canada for purposes of the ITA. The contract owner can apply to CRA to obtain such written evidence by completing the federal form NR73 – Determination of Non-Residency Status. This form is available on the CRA website. If the contract owner qualifies, CRA will issue a letter to the contract owner confirming that CRA has determined the contract owner to be a non-resident for purposes of the ITA.

Questions respecting non-residency status should be directed to CRA at 1-800-267-5177.

Non-residency unlocking is a mandatory provision for LIRA contracts. Even if the LIRA contract does not contain the provision, the provision is deemed to be part of the contract.

Rather than make a lump sum payment under the non-residency unlocking provisions, the issuer could, but is not required to, transfer the payment to an RRSP, if requested by the owner. However, the issuer should ensure that this transfer is allowed under the ITA.

Form 4: In order to unlock and withdraw pension monies due to non-residency status, the owner of a LIRA contract must complete Form 4, and file that form with the administrator or issuer of the LIRA contract. When completing Form 4, the former member or contract owner is certifying that he or she has not resided in Canada for at least two consecutive years. In addition, he or she is certifying that he or she has received written confirmation that CRA has determined the person to be a non-resident of Canada for the purposes of the ITA, and that a copy of that confirmation has been attached to Form 4. It is the responsibility of the financial institution that issued the LIRA contract to ensure that Form 4 is executed properly and retained on file prior to processing the withdrawal of the pension monies.

Form 5: In order to unlock the pension monies under the non-residency provisions, Form 5, must be completed by the spouse of the owner of LIRA contract. Financial institutions that issued to the LIRA contract should ensure that the spouse is fully informed of his or her entitlement to the survivor benefit provided under section 34 of the Act, and is aware of the implications of signing the form. It is the responsibility of the financial institution that issued the LIRA contract to ensure that Form 5 is executed properly and retained on file prior to processing the withdrawal of the pension monies.

4.3 Additional Non-Residency Unlocking Provisions

Please see Appendix A.

5. Pre-Retirement Death Benefits Paid to a Surviving Spouse

Where the death of a plan member or LIRA contract owner occurs prior to retirement, the surviving spouse is entitled to the pre-retirement death benefit payable under the pension plan or the LIRA contract. If there is no surviving spouse, or the spouse has waived entitlement to the pre-retirement death by signing Form 2.1 in the case of a pension plan, or Form 0.1 in the case of a LIRA contract, before the date of death, the death benefit is paid as a lump sum to a designated beneficiary. If there is no designated beneficiary, the death benefit is paid as a lump sum to the estate of the deceased individual.

Subsection 33(3) of the Act and subsection 29(4) of the Regulations provide that the surviving spouse may elect to receive a lump sum payment in lieu of a pension or a transfer to a locked-in retirement arrangement provided under Section 32 of the Act.

For further details concerning the pre-retirement death benefit payable under a pension plan or a LIRA contract, please refer to our publications "*Member Guide*" and "*Retirement Options*".

In the event that the surviving spouse has elected to receive a lump sum payment in lieu of a pension or a transfer to a locked-in arrangement, the Act and Regulations do not prohibit the lump sum payment to be transferred to an RRSP rather than paid in cash. However, the plan administrator or LIRA issuer, as the case may be, should ensure that this transfer is allowed under the ITA.

6. Registered Retirement Income Fund / Pooled Retirement Income Account

Under certain circumstances, pension money may be transferred to a prescribed Registered Retirement Income Fund ("pRRIF") that complies with the requirements of Section 29.1 of the Regulations or to an existing Pooled Retirement Income Account ("PRIA") that complies with the requirements of *The Pooled Registered Pension Plans (Saskatchewan) Act* (the "PRPP Act") and *The Pooled Registered Pension Plans (Saskatchewan) Regulations* (the "PRPP Regulations"). There is no limit on the amount of money that may be withdrawn from a pRRIF or a PRIA.

On attaining age 55[2] or older and with spousal consent using Form 1, an individual may transfer funds to a pRRIF from a LIRA or from a pension plan, if the pension plan permits such a transfer. Further, on attaining age 55 or older and with spousal consent using Form 1.1, an individual may transfer funds to a pRRIF from a PRPP or a pooled registered savings account ("PRSA"). Where a plan member or former plan member passes away leaving a surviving spouse, that spouse can establish a pRRIF at any age. The completion of Form 3 is not required to transfer to a pRRIF.

On attaining age 55 or older and with spousal consent using Form H, an individual may transfer money to an existing PRIA from a LIRA. In order to transfer to a PRIA, the spouse must complete Form 3.

For further information about a pRRIF or a PRIA, please refer to our publication "*Retirement Options"*.

7. Variable Benefit under a Defined Contribution Plan / Variable Payment under a PRPP

Under certain circumstances, pension money may be used upon retirement to establish a Variable Benefit Account ("VBA") that complies with the requirements of Section 29.2 of the Regulations or may be transferred to a PRPP in order to receive variable payments ("PRPP VPs") that comply with the requirements of the PRPP Act. There is no limit on the amount of money that may be withdrawn from a VBA or received from PRPP VPs.

A member or former member of a defined contribution plan that offers a Variable Benefit may establish a VBA when eligible to retire under the plan provisions. The spouse must provide

[2] May be younger if the pension plan from where the money originated provided for retirement at an earlier age.

consent to the transfer using Form 2.01 and complete Form 3, thus waiving an entitlement to the post-retirement survivor benefit provided under Section 34 of the Act. Contact the administrator of your pension plan to determine if your plan offers a Variable Benefit.

A member of a PRPP may commence variable payments at age 55 or older. Prior to transferring pension money to a PRPP, the spouse must complete Form 3, thus waiving an entitlement to the post-retirement survivor benefit provided under Section 34 of the Act. The spouse must provide consent using Form B prior to the commencement of PRPP VPs.

For further information concerning VBAs and PRPP VPs, please refer to our bulletin "*Retirement Options"*.

8. Partial Refund of Member Contributions

Subsection 29(4) of the Act permits a plan to pay a refund of up to 50% of a member's contributions required to be made by the member as of December 31, 1993, together with interest accrued to that day. The refund is available only on the termination of membership in the plan prior to retirement. The refund may reduce the pension payable to the member.

Please note that a pension plan is not required to offer a partial refund of member contributions. The refund option must appear as part of the pension plan text. As well, the provision does not apply to employer contributions or to member contributions made, and interest credited, after December 31, 1993.

9. Excess Member Contributions

Section 31 of the Act provides that where a member of a defined benefit plan is required to make contributions to the plan, those contributions may not fund more than fifty per cent of the cost of the commuted value of the member's pension. This is known as the 50 per cent rule, and is applied upon termination of membership in the plan.

The plan administrator is responsible for calculating the commuted value of the member's defined benefit pension at termination. If it is found that member contributions exceed 50 per cent of that amount, then the excess contributions may be returned to the member or transferred to a registered retirement savings plan, another pension plan or be used to purchase a deferred or immediate pension.

For further details concerning the refund of excess member contributions, please refer to our publication "*Member Guide*".

10. Maintenance Enforcement

The Act and Regulations permit the attachment of pension funds by the Family Justice Services Branch of the Ministry of Justice and Attorney General as a means of enforcing court-ordered maintenance payments. Please refer to our bulletin, "*Enforcement of Maintenance Orders",* for further details.

11. Benefits in Excess of the Income Tax Act Limits

The ITA provides significant tax advantages to the participants of a registered pension plan. To control the amount of the foregone tax, the ITA limits contributions to, and benefits payable from, pension plans.

To avoid a conflict between federal and provincial legislation, Section 42 of the Regulations unlocks money that must be paid as cash pursuant to the ITA:

> "42(1) Where:
>
> (a) a plan provides a benefit or allocates surplus funds with respect to a person entitled to a benefit and the benefit or surplus fund allocation is in excess of the maximum benefit or contribution limit applicable to the plan pursuant to the *Income Tax Act* (Canada); or
>
> (b) the commuted value of a benefit is in excess of the maximum amount that may be transferred to another plan or to an RRSP pursuant to the *Income Tax Act* (Canada);
>
> the amount of that benefit, surplus allocation or commuted value that is in excess of that maximum limit is exempt from subsections 29(1) and (2) of the Act and shall not be treated as being locked-in for the purposes of these regulations."

Contact Us

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Appendix A: Additional Non-Residency Unlocking Provisions

4.3 Non-Residency Unlocking in the event of Death

4.3.1 Pension Plan: Death before Retirement

Where the death of a pension plan member (or former member) occurs prior to retirement, the surviving spouse is entitled to the pre-retirement death benefit payable under the pension plan. Subsection 33(3) of the Act provides that the surviving spouse may elect to receive a lump sum payment in lieu of a pension or a transfer to a locked-in retirement account provided under Section 32 of the Act. A pension plan may be written to allow the surviving spouse to withdraw the survivor's benefit under the non-residency unlocking provisions, so long as the surviving spouse has not commenced a pension and meets the specified non-residency eligibility requirements. This would be applicable to a surviving spouse who chooses to keep the money in the pension plan, and subsequently becomes a non-resident.

4.3.2 Pension Plan: Death after Retirement

Where the death of a pension plan former member occurs after retirement (i.e. the former member is a pensioner), the surviving spouse is entitled to the post-retirement survivor's benefit payable pursuant to the terms of the pension-in-pay (i.e. the pension-in-pay may be one that pays 60% of the monthly benefit to the spouse on the death of the pensioner). A pension plan may not be written to allow the surviving spouse to withdraw the survivor's benefit under the non-residency unlocking provisions, as the surviving spouse would be considered to have commenced a pension.

4.3.3 LIRA: Death before Retirement

Where the death of LIRA contract owner occurs prior to using the funds held under the LIRA contract to provide a pension (i.e. transfer to a prescribed registered retirement income fund (pRRIF) or purchase a life annuity), the surviving spouse is entitled to the pre-retirement death benefit payable under the LIRA contract. Unlocking due to non-residency is not an option for the surviving spouse at the point of death of the LIRA contract owner. Subsection 29(4.1) provides that the surviving spouse may elect to receive a lump sum payment in lieu of a pension or a transfer to a locked-in retirement arrangement provided under Section 32 of the Act. If the surviving spouse chooses to transfer the death benefit to a LIRA, he or she could unlock for non-residency in the future if the eligibility requirements are met.

4.3.4 pRRIF: Death after Retirement

Where the death of pRRIF contract owner occurs, the surviving spouse is entitled to the death benefit payable under the pRRIF contract. Subsection 29.1(4)(h) provides that the balance of the money in the pRRIF contract, to the extent permitted by the ITA, is to be paid to the surviving spouse. As the monies in a pRRIF can be withdrawn in their entirety on death, the Regulations do not provide for non-residency unlocking from a pRRIF.

4.4 Non-Residency Unlocking in the event of Spousal Relationship Breakdown

4.4.1 Pension Plan: Spousal Relationship Breakdown

Where the spouse or former spouse of a member or former member is entitled to a division of the commuted value of a benefit pursuant to Part VI of the Act, the portion of the commuted value to which that person is entitled may be transferred to a LIRA (defined benefit plan or defined contribution plan) or used to provide a pension (defined benefit plan). A pension plan may be written, on spousal relationship breakdown, to allow the spouse or former spouse, who has not commenced a pension, to withdraw that benefit under the non-residency unlocking provisions, so long as the spouse or former spouse meets the specified non-residency eligibility requirements.

4.4.2 LIRA or pRRIF: Spousal Relationship Breakdown

LIRA and pRRIF contracts are subject to the division on spousal relationship breakdown provisions found in the Act, subject to any necessary modification.

The issuer of a LIRA contract is required to allow, subject to Part VI of the Act, the spouse or former spouse of the LIRA contract owner to withdraw the funds held in a LIRA contract, if the former spouse of the owner of the contract meets the specified non-residency eligibility requirements.

The Regulations do not provide for non-residency unlocking from a pRRIF. As such, while a pRRIF contract is subject to the division on spousal relationship breakdown provisions found in the Act, there is no mechanism in the Regulations to allow for pRRIF funds to be unlocked due to non-residency status. However, funds in a pRRIF can be withdrawn in their entirety.