



# Select Info *to* Know

## Family Law and Your Pension

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### Ending a Spousal Relationship

Ending a spousal relationship is a major life change that may require you and your former spouse to make important decisions about your assets, including your pension. This material provides information for OPTrust Select members whose marriage or common-law relationship has ended and who are considering or are in the process of addressing how their family assets may be divided.

Decisions regarding the valuation and division of your pension can be complicated. To ensure you understand your legal rights and options, OPTrust strongly recommends that you and your former spouse seek independent legal advice before you apply for a family law value or decide to divide your pension. OPTrust cannot provide you or your former spouse with legal or financial advice.

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### Ontario Legislation and Your Pension

Ontario's *Family Law Act* and *Pension Benefits Act* set out rules and procedures for dealing with pension assets when a plan member's spousal relationship ends. OPTrust Select members may choose or be required to pay a portion of their pension to their former spouse.

The law sets out the steps you and your former spouse must follow to value and divide your pension from OPTrust.

Ontario's pension regulator, the Financial Services Regulatory Authority of Ontario (FSRA) regulates this process. Links to useful information and the family law forms that you, your former spouse and OPTrust must use are available on [FSRA's website](#).



## Former spouse's eligibility to receive part of your pension

Under Ontario's pension legislation, a "spouse" is someone who you are married to or have been living with in a common-law relationship continuously for at least three years, or a shorter period if you are in a relationship of some permanence and are the parents of a child.

To be eligible to receive a portion of your pension, your former spouse must have met this definition of spouse on or before your family law valuation date.

For common-law relationships, there is no legal requirement to divide family property, and you cannot be required to divide your pension with your former spouse, unless you agree to it.



## Amount that can be paid to your former spouse

Ontario's pension legislation limits the portion of your pension that can be paid to your former spouse to a maximum of 50 per cent of the family law value\* of the pension earned during your spousal relationship. This includes any pension you earned between the date your spousal relationship began and your family law valuation date\*\*, as well as any past service that you may have bought back during this period.

Any portion of your pension that you earned either before the start date of your spousal relationship or after your family law valuation date is not included in your family law value and cannot be divided with your former spouse.

### Definitions

**\*Family Law Value:** the total value of the pension benefit accrued by the OPTrust Select member during the spousal relationship. Spouses can, but do not have to, use up to 50 per cent of this value to equalize Net Family Property.

**\*\*Family Law Valuation Date:** the date your spousal relationship ended. This date could be:

- the date you separate with no reasonable prospect that you will resume cohabitation,
- the date a divorce was granted (if applicable), or
- a date jointly agreed to by both parties.



## How Pension Assets are Divided

If you and your former spouse choose to divide your pension through OPTrust, the terms of the division must be specified in your settlement instrument. Your settlement instrument must also include additional information as required by law before OPTrust can administer it.

The payment options available to your former spouse will depend on whether the family law valuation date occurs before or after you retire and start receiving your OPTrust Select pension.

## If your spousal relationship ends before retirement: lump sum payment

If your family law valuation date occurs **before** you retire and your pension is to be divided, payment will be made by transferring the lump sum value of your former spouse's share of your pension to either:

1. a locked-in retirement account (LIRA), or
2. a life income fund (LIF), or
3. another Canadian registered pension plan, if that plan will accept the transfer.

Depending on the terms of your settlement instrument, the payment to your former spouse may be adjusted to include interest for the period between the family law valuation date and the date the payment is made to your former spouse.

The amount paid to your former spouse will reduce your future pension when you retire or leave OPTrust Select.



## If your spousal relationship ends after retirement: monthly pension payments

If your family law valuation date occurs **after** you retire and start receiving your pension and your pension is to be divided, your former spouse's share of your pension will be paid to them as a monthly pension from OPTrust.

Your monthly pension payments from OPTrust will be reduced accordingly to reflect the amount that is paid to your former spouse.

**Arrears:** If you received your full pension payments between the family law valuation date and the month your pension payments are divided, the law requires that your former spouse be paid their portion of these amounts. Unless it is specifically waived in your settlement instrument, payment of these arrears is mandatory and will result in an increase to your former spouse's pension and a corresponding decrease to your monthly pension.

**Payment ends:** If you divide your pension, the monthly pension paid to your former spouse will be paid until the earlier of your date of death or your former spouse's date of death. This means if your former spouse predeceases you, the portion of your pension that was being paid to your former spouse will revert back to being paid to you, unless a settlement instrument or court order explicitly provides for payments to continue to your spouse's estate after their death. If you predecease your former spouse, payments to you and your former spouse will stop, and your former spouse would then be eligible for a survivor pension from OPTrust unless they waived their right to a survivor pension.



## Valuing and Dividing Your Pension: Five Key Steps

To proceed with valuing and dividing your pension, [FSRA's website](#) provides the family law forms you must complete and submit to OPTrust. FSRA also provides a guide for members and their spouses to help you complete each form. The following pages provide a brief summary of each step in the process. Not all steps may apply to you.



### **STEP 1: Applying for a Family Law Valuation**

If you require a family law valuation, you or your former spouse will need to complete a FSRA *Application for Family Law Value (Family Law Form FL-1)* and send it to OPTrust. If you were in a common-law relationship, only you can complete the FSRA Family Law Form FL-1; it cannot be completed by your former common-law spouse. The FSRA Family Law Form FL-1 provides information about each of the supporting documents that you will also need to provide to OPTrust.

To authorize a third party, such as a lawyer, to communicate with OPTrust about your family law value, OPTrust requires your written authorization to disclose information. Your former spouse can also provide written authorization to OPTrust to communicate with their lawyer or another third party.

OPTrust must receive the completed application – including all required supporting documents – before we can prepare a valuation.

### **STEP 2: OPTrust Provides the Statement of Family Law Value**

OPTrust will send you and your former spouse a FSRA *Statement of Family Law Value* within 60 days of receiving your completed application.

This statement will provide you with the family law value of your pension and the maximum amount that may be paid to your former spouse if you decide to divide your pension.

### **STEP 3: Deciding Whether and How to Divide Your Pension**

If you and your former spouse decide to divide your pension, the details – including the portion of the family law value to be paid to your former spouse – must be set out in your settlement instrument.

If you decide your pension will not be divided, you can notify OPTrust.

### **STEP 4: Applying to Divide Your Pension**

If you and your former spouse decide to divide your pension, **your former spouse** will need to complete the applicable FSRA family law application form and forward it to OPTrust, together with a certified copy of your settlement instrument and any other supporting documents that may be required.

- If your spousal relationship ended before you retired, your former spouse will need to complete and submit a FSRA *Spouse's Application for Transfer of a Lump Sum (Family Law Form FL-5)* to OPTrust.
- If your spousal relationship ended after you retired, your former spouse will need to complete and submit a FSRA *Spouse's Application to Divide a Retired Member's Pension (Family Law Form FL-6)* to OPTrust.

## STEP 5: OPTrust Divides Your Pension

Once OPTrust has received your former spouse's complete application, including the required supporting documents, we will arrange to i) transfer a lump sum amount, or ii) begin monthly pension payments to your former spouse within 60 days, as required.

If a lump sum is paid out, your pension will be adjusted on the date you terminate your plan membership or retire. The estimated adjustment to your future pension entitlement will be shown on the *Annual Pension Statement* you receive from OPTrust each spring.

If you have already retired and are receiving a pension from OPTrust, your pension will be adjusted immediately. Your adjusted monthly pension amount will be shown on the *Retired Member Statement* you receive from OPTrust every other year.



## Completing Pension Plan Information on the Family Law Forms

Each of the family law forms includes a section where you must provide information about OPTrust and OPTrust Select. Here is a sample of the information you should enter on each form:

Pension Plan Information	
Name of Pension Plan	Registration Number
OPSEU Pension Plan (OPTrust Select)	1012046
Name of Employer/Union/Professional Association	
[Insert name of your employer]	
Plan Administrator	
OPSEU Pension Trust (OPTrust)	



## For More Information

Detailed information about the process and legal requirements for obtaining a valuation and dividing your pension if your spousal relationship ends, and copies of the required forms and instructions for completing them, are available on [FSRA's website](#).

If you have questions or need additional information, please contact OPTrust or speak with a trusted legal advisor.



# Frequently Asked Questions: Family Law and Your Pension

**Q: Do I have to divide my pension if my marriage ends?**

**A:** No. It is not mandatory to divide your pension if your marriage ends. However, depending on your circumstances, you may choose or be required to divide your pension when you split your family property with your former spouse.

**Q: Do I have to value or divide my pension if my common-law relationship ends?**

**A:** No. It is not mandatory to value or divide your pension if your common-law relationship ends. However, depending on your circumstances, you may have your pension valued and divided if you and your former spouse agree.

**Q: Do I need to get a family law valuation before dividing my pension?**

**A:** Yes. OPTrust cannot pay your former spouse part of the value of your pension unless you have applied for and received a FSRA *Statement of Family Law Value* from OPTrust. To divide your pension, your settlement instrument must use a family law value amount based on the information that is provided to you and your former spouse by OPTrust on this form.

**Q: Do I need to use the family law forms to apply for the family law value or to divide my pension?**

**A:** Yes. Under the law, you and your former spouse **must** use the FSRA family law forms at each step in the pension valuation and division process. The forms and information about how to complete them are available on [FSRA's website](#). Once you have completed each form, it should be sent to OPTrust directly, not to FSRA.

**Q: Do I need to submit all the additional documents listed on the family law forms?**

**A:** Yes. You and your former spouse must provide OPTrust with valid copies of each of the required documents listed on each applicable FSRA family law form before your application is considered complete. OPTrust cannot process your application until we have received all the required documents.

**Q: The FSRA family law form says I need to provide a "certified copy" of various documents. What does this mean?**

**A:** A "certified copy" is a copy of the original document that is certified by a lawyer, notary public or commissioner of oaths as being a "true copy" of the original document. A photocopy of one of these documents that is not certified by an authorized person will not be accepted.

**Q: Can I arrange for my lawyer to communicate with OPTrust on my behalf?**

**A:** Yes. If you want to authorize your lawyer or another third party to communicate with OPTrust about the valuation and division of your pension on your behalf, you can complete the [Authorization for the Release of Personal Information \(S3004\)](#) form and submit it to OPTrust or send us authorization in writing. Your former spouse can also provide OPTrust with written authorization to communicate with their lawyer or another third party.



**Q: How is the “start date” of a spousal relationship determined?**

**A:** The start date of your spousal relationship is a date agreed to by you and your former spouse. This date cannot be earlier than the day you began living together in a common-law relationship or later than the date you were legally married (if applicable). You and your former spouse can confirm the start date of your spousal relationship by providing OPTrust with one of the proof documents listed in the *FSRA Application for Family Law Value (Family Law Form FL-1)*. This could be either a certified copy of your marriage certificate, a certified copy of your settlement instrument specifying the start date of your spousal relationship, or a completed Appendix A - Joint Declaration of Period of Spousal Relationship.

**Q: How do I provide confirmation of my family law valuation date to OPTrust?**

**A:** You and your former spouse must agree on your family law valuation date before OPTrust can calculate the family law value of your pension. You can confirm your family law valuation date when applying for a family law valuation by providing OPTrust with one of the proof documents listed on the FSRA Family Law Form FL-1 such as a certified copy of your settlement instrument specifying the date or a completed Appendix A - Joint Declaration of Period of Spousal Relationship.

If you cannot agree on your family law valuation date, you and your former spouse can request that OPTrust provide family law values for your pension based on two different dates, using the Appendix B - Request for Two Family Law Values. Your final domestic contract, court order, or family law arbitration award that provides for the division of your pension must refer to one of the family law valuation dates included in the Appendix B. Otherwise, if the dates don't match you will have to apply to OPTrust again for a revised family law valuation based on the final date.

**Q: Does OPTrust charge a fee for preparing a family law valuation?**

**A:** No. OPTrust does not currently charge a fee for providing you and your former spouse with a statement of the family law value of your pension.

**Q: Are there time limits for applying for a family law valuation and dividing my pension?**

**A:** No, there are no deadlines for submitting your application(s). However, if you will be dividing your pension, it is advisable to complete the process as soon as possible, as you or your former spouse's circumstances may change. If applicable, interest or arrears may also be deducted from your share of your pension for the period between your family law valuation date and the date your pension assets are divided.

**Q: I am a retired member and owe arrears to my former spouse. Do I have to repay this amount to OPTrust?**

**A:** No, you do not need to repay any arrears to OPTrust. When your pension is divided your monthly pension will be adjusted on a go-forward basis to account for any arrears owing to your former spouse.

**Q: Will OPTrust notify me if there is a problem with my application for a valuation or division of my pension?**

**A:** Yes. We will notify you and your former spouse if we do not have all the required information and supporting documents needed to process your application. To avoid delays, please be sure to complete the required sections of each FSRA family law form and review the list of required documents and information provided on [FSRA's website](#).



**Q: How much of my pension can be paid to my former spouse?**

**A:** By law, your former spouse cannot receive more than 50 per cent of the family law value of the pension you earned during your spousal relationship. Depending on the terms of your settlement instrument, OPTrust may also be required to pay interest and/or arrears for the period between your family law valuation date and the date on which your pension assets are divided. In this case, your share of your pension would be adjusted to reflect these payments.

**Q: I bought back a period of past service during our spousal relationship. Will this service be included in the family law value that can be divided with my former spouse?**

**A:** Yes. All pension service that you earned and paid for during your spousal relationship is included when OPTrust calculates the family law value of your pension. This includes regular contributory service as well as service for any periods of previous employment that you bought back during your spousal relationship.

**Q: Can I buy back the pension amount that is paid to my former spouse after my pension is divided?**

**A:** No. Under the *Income Tax Act*, you cannot buy back any portion of your pension that is paid to your former spouse by OPTrust.

**Q: Is my former spouse eligible for a survivor pension from OPTrust after a pension division?**

**A:** This depends on whether your spousal relationship ends before or after you retire. If you separate or divorce before you retire, your former spouse will not be eligible for a survivor pension from OPTrust Select when you die.

If you separate from your spouse after you retire and start receiving your pension, your former spouse's monthly payments for their share of your divided pension will stop when you die and they will be eligible to receive a survivor pension from OPTrust Select, unless they waived the right to a survivor pension.

**Q: Can my former spouse waive the right to a survivor pension if our spousal relationship ended after I retired and started my pension?**

**A:** Yes. Your former spouse may choose to waive their right to a survivor pension after your retirement. In this case, if applicable, any survivor benefits would be payable to your designated beneficiaries or to your estate. To waive the survivor pension, you and your former spouse must submit a completed FSRA *Post-retirement Waiver of Survivor Pension After Separation (Optional Family Law Form FL-8)* to OPTrust. Please note that any reduction made to your pension at retirement is permanent and will continue even if your former spouse later waives their right to a survivor pension.



## For more information contact OPTrust

This Select Info to Know provides a summary of certain provisions of the OPSEU Pension Plan text (Plan text) and applicable legislation. Both the Plan text and legislation contain numerous provisions not described here that may apply to you. In the event of any conflict between this document and the Plan text and/or applicable legislation, the Plan text and legislation will govern.

### How to Reach Us

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