

Pension Commission

Update #6 New Ruling on Common-Law Partner Declarations

Revised August 2004

Effective February 1, 1991, the Pension Commission will no longer require a common-law partner declaration to be filed with the plan administrator in order for a spouse or common-law partner to be eligible for survivorship benefits. Entitlement to survivorship benefits will now be dependent upon the spouses' or partners' ability to establish the existence of the relationship to the satisfaction of the plan administrator and/or the courts.

This change came about in response to a legal review undertaken by the Manitoba Pension Commission, following a complaint about the common-law partner declaration policy.

The legal opinion concludes that the filing of a common-law partner declaration was intended to establish the period of the common-law relationship for credit splitting purposes. It was not meant to establish the existence of the relationship. Reliance on the declaration for other than credit splitting purposes may cause a spouse or common-law partner to lose survivor benefits. In some cases these benefits were available prior to pension reform and the new legislation was not meant to terminate rights to previous benefits. Given that plan texts may state that a common-law partner declaration form is necessary to establish the existence of such a relationship and therefore entitlement to survivorship benefits, an amendment incorporating this policy change is required. Recognizing that the plan is to be administered in accordance with the policy outlined above, the Commission will permit the plan text to be amended at the first available opportunity.

This policy clarification is effective immediately for all cases where settlement of benefits are not finalized.

Effective June 30, 2004

The Common-law Partners' Property and Related Amendments Act, S.M. 2002, c. 48 (CPPRA Act), received Royal Assent on August 9, 2002 and is effective June 30, 2004. The CPPRA Act amended Manitoba legislation, including *The Pension Benefits Act*, to extend the property rights and obligations of spouses to common-law partners. Essentially, on the death of one of the partners, the surviving partner is entitled to the property accumulated during the relationship, and on the breakdown of the relationship, the partners will be able to share in the property accumulated during the relationship.

Entitlement under *The Pension Benefits Act* is dependent upon the parties' ability to establish the existence of the relationship to the satisfaction of the plan administrator or provide proof to the administrator of its registration under *The Vital Statistics Act*, as applicable.

Common-law partners are no longer required to file written declarations regarding the existence and termination of a common-law relationship in order that pension benefits be subjected to an equal division under the Act, as subsections 31(5) and 31(7) of the Act have been repealed.

Pension plans should be amended as soon as possible to reflect the amended provisions of *The Pension Benefits Act*, and where a plan has not been so amended, the plan is deemed to include the required provision and the plan administrator should act accordingly.

This update has no legal authority. The Pension Benefits Act of Manitoba and The Pension Benefits Regulation, 188/87 R amended should be used to determine specific requirements.