

Marriage Breakdown – Bill 133

Frequently Asked Questions

Many of these questions are written as if the Plan member asked them and the answers respond to the member. If you are not a Plan member, please be aware of this as you review the information. As well, OMERS is aware that in some cases, both spouses may be OMERS members. This website information has not been written specifically for that situation. If you and your spouse are both OMERS members and you have questions about how the marriage breakdown provisions affect you, contact OMERS Client Services.

Family Law Terminology

Q: What is the definition of “former spouse”? Who are “the parties”?

A: The marriage breakdown information on the OMERS website uses the term “former spouse” to refer to the non-member spouse of an OMERS member, whether or not the separation or divorce is officially completed. When the website information refers to “the parties,” it refers to both the member and his or her former spouse.

Q: What is a “Family Law Value” (FLV)?

A: Family Law Value (FLV) is a new term used by the Financial Services Commission of Ontario (FSCO) on their forms to describe the value of the pension for family law purposes. A pension valuation is the process to calculate the FLV (e.g., using earnings and credited service as at the FLV Date, a prescribed formula, and the terms of the Plan).

If the member and former spouse decide to divide the pension, the settlement from OMERS cannot be greater than 50% of the FLV.

Q: What is the Family Law Valuation Date (FLV Date)?

A: The FLV Date is generally the separation date agreed to by the parties for the purpose of dividing family property. The new rules require the FLV Date to be set out in the FSCO Form 1 and in the corresponding court order, family arbitration award or domestic contract.

Q: What is the *Statement of Family Law Value* (FLV)?

A: The Statement of FLV is a prescribed FSCO Form (Form 4) that is prepared and provided by OMERS, as the plan administrator, to both the member and the former spouse. The Form specifies the FLV described above. In order for OMERS to provide a Statement of FLV, there must be a complete application (FSCO Form 1) provided to OMERS.

Q: What does “equalization payment” mean?

A: This is a family law term which refers to the “payment” one spouse will owe to the other to account for the difference between the net family property they accumulated during their spousal relationship.

Family Law Process

Q: Do I have to fill out the FSCO forms, or can I just send in the divorce decree?

A: The regulations require the use of the proper forms developed by FSCO. Read more at www.fSCO.gov.on.ca under “Pensions” > “Family Law” > “Family Law Forms”. Please note that specific documents must accompany the forms to make the application valid.

Q: Can I use the Retirement Income Estimator on myOMERS to get an estimate for the purpose of separation (marriage breakdown)?

A: No. The Retirement Income Estimator is not designed to perform these calculations.

Q: If I apply for a Statement of FLV, will my former spouse receive a copy of the report?

A: Yes. Regardless of which party applies for the Statement of FLV, OMERS is required to send this statement to both parties. Contact information for both parties must be provided to OMERS as part of the application process. (Note that a common-law spouse of a member may not apply for a Statement of FLV; only the member in a common-law relationship may apply. This is a requirement of the applicable legislation.)

Q: What is OMERS administration fee for the Statement of FLV?

A: The first Statement of FLV issued to you or your spouse on or after March 1, 2015 will be provided at no cost – any subsequent requests made by you or your spouse will cost \$600 per statement.

Note: If you request a Statement of FLV for more than one date, the first statement issued will be provided at no cost. The Statement of FLV for the second date would cost \$600.

Q: How should I make out the cheque for the fee?

A: The cheque should be made payable to OMERS Administration Corporation.

Q: How exactly does someone submit two FLV Dates?

A: If you and your former spouse cannot come to an agreement or have not determined your FLV Date, please fill out Appendix A attached to your application for a Statement of FLV (Form 1). However, you and your former spouse must confirm one FLV Date if and when you are ready to transfer/divide your OMERS pension. That date must correspond with one of the dates in the Form 1 Appendix A.

Q: Once I submit the initial application to OMERS, when should I expect to receive my Statement of FLV?

A: OMERS will send a Statement of FLV within 60 days of receiving a complete application and obtaining the necessary data to complete the calculations. All necessary forms, information, fee (if applicable) and proper certifications must accompany the application. OMERS will contact the applicant directly if information is missing or incomplete. All factors will be taken into account when determining the 60-day deadline – for example, OMERS may need to request confirmation of service and earnings up to the FLV Date from the member’s employer.

Q: Is there a way for me to tell whether it’s in my best interest to opt for the immediate payout from OMERS, or to try to resolve it directly with my ex-spouse using other assets? Will OMERS provide me with an estimate of the potential impact?

A: As reference, the Statement of FLV will have full disclosure of the value and the pension accrued as at the FLV Date. OMERS cannot provide legal or financial advice. We suggest that you consult a lawyer about details of the division of your family property.

Q: Where do I send my Form 1 – Application for Family Law Value?

A: Forward the application to OMERS, One University Avenue, Suite 400, Toronto, ON, M5J 2P1.

Important! To avoid delays, be sure to include all necessary forms, information, proper certifications and a cheque to cover the cost of the fee (if applicable).

Method of Valuing a Pension Benefit

Q: What assumptions will be used to calculate the FLV?

A: The assumptions used will be disclosed on the Statement of FLV. The FLV must be calculated according to requirements established by legislation. This means the methods and formulas are standardized.

Q: Can I get a “second opinion” or an alternate valuation, or must I use the information provided by OMERS?

A: The new rules specifically refer to an amount calculated by the plan administrator (OMERS) and reported on the Statement of FLV. While you are not precluded from obtaining a second opinion at your own expense; it would not be accepted by OMERS as a basis for the equalization of property valuation.

Q: Can I or my spouse dispute the Statement of FLV from OMERS?

A: OMERS determination of the FLV will comply with the requirements established by legislation. This means prescribed formulas and methods are used in the calculating the value of your pension. If you believe that the information used in the calculation of the FLV is incorrect, then you can contact OMERS or FSCO.

Marriage Breakdown Documents

Q: Will OMERS accept a “separation agreement” or do I have to provide a court order, family arbitration award or domestic contract?

A: A “separation agreement” is an example of a domestic contract. There are three types of domestic contracts: marriage contract, cohabitation agreements and separation agreements. Separation agreements are the most common type of domestic contract negotiated between couples.

Note: The separation agreement will need to be certified for it to be accepted by OMERS as a valid document for FLV applications.

Q: If OMERS already has my marriage breakdown documents on file, do I need to provide a new document after the changes take effect?

A: No. If the court order, family arbitration award or domestic contract was made before January 1, 2012, the old rules apply and you do not have to send in a new document. If the date that the applicable document was made is prior to January 1, 2012, see the “Old Marriage Breakdown Rules” on www.omers.com. If the date that the applicable document was made is after December 31, 2011, see the “New Marriage Breakdown Rules” on www.omers.com.

You will have to seek independent legal advice to determine whether the old documents can be handled under the new rules.

Q: Will OMERS accept faxed, scanned or email delivered copies of documents?

A: OMERS is required to accept only originals or certified copies of the required documents.

Q: What is a “certified copy”?

A: A “certified copy” is a copy of the original document with the signature and official stamp of an appropriate authority indicating that they have viewed the original document and that the copy they are signing is a true copy. According to FSCO’s website, HR personnel are suitable persons to certify a document.

Retired Members

Q: If I’m retired and already drawing my pension effective January 1, 2012, will the new legislation apply to me and my spouse?

A: Yes. The new rules will apply if you execute your marriage breakdown documents on or after January 1, 2012. The key date is the date that the court order, family arbitration award or domestic contract was made. The date your pension started is not the determining factor. However, membership status (active, deferred, or retired), at the FLV Date will determine the payment options if your FLV is divided as part of an equalization payment.

Common-Law Spouses

Q: Can a common-law spouse apply for a Statement of FLV?

A: No. A common-law spouse of a member is not considered an eligible applicant. An eligible applicant includes a member of the Plan who is active, deferred or retired or a former spouse who was legally married to the member. This is a requirement of the legislation.

Q: Does this mean a common-law spouse can't obtain part of his or her spouse's pension?

A: No. It means that the member must initiate the process by requesting a Statement of FLV from OMERS. If the member does not submit the application, then the member's pension benefit remains intact. If the member does make application for a Statement of FLV, then a common-law former spouse will be treated the same as a married former spouse. After a statement of FLV has been obtained, the common-law former spouse can apply to either transfer the lump sum or divide the pension when it comes time to do so.

Old Rules vs. New Rules

Q: Is it the date of separation or the date the forms are submitted to OMERS that determines whether my agreement falls under the "new rules" or the "old rules"?

A: Neither. It is the date that both parties have signed the domestic contract or the date that the court order or family arbitration award is executed.

Personal Information

Q: Can my former spouse request information without my consent?

A: Yes and no. A former married spouse can apply for a Statement of FLV by filing an application with OMERS. A common-law spouse cannot. OMERS will provide a Statement of FLV to both the member and the spouse (or designated contact person, if applicable), regardless of which party applied for it – this is a requirement of the legislation. However, OMERS will not provide your personal information including your pension records, to any person without your written consent. If the former spouse is making the application, he or she must still provide full contact information for the member. Other pertinent documents such as proof of age and joint declaration of the period of the spousal relationship must also be included with the application. An application will be considered incomplete if the required documentation is missing.

Death Benefits

Q: What happens to my pension if I die while payments are being made to my former spouse? Do survivor benefits still apply to my former spouse?

A: If you were retired at the time of your FLV Date (separation date), and you were living with your former spouse when the pension started, then the split pension being paid to your former spouse stops on your death. Your former spouse will then receive the full survivor benefit (determined according to the rules of the OMERS Plan text and applicable legislation).

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