

Unlocking Pension Money

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

Table of Contents

Introduction.....	3
1. Financial Hardship Unlocking under a Locked-In Retirement Account.....	4
Low Expected Income.....	6
Medical Expenses	6
Arrears on Rent Payments.....	7
Arrears on Mortgage Payments	8
Funds to Secure New Principal Rental Residence	8
2. Small Benefit Rule.....	9
Pension Plan Specifics	9
LIRA Specifics	10
3. Shortened Life Expectancy	11
4. Registered Retirement Income Fund.....	12
5. Variable Benefit under a Defined Contribution Plan.....	12
6. Non-Residency Unlocking.....	13
Non-Residency Unlocking in the event of Death.....	14
Non-Residency Unlocking in the event of Spousal Relationship Breakdown.....	15
Contact Us	16



Introduction

The purpose of this bulletin is to provide an overview of the circumstances when pension funds in a pension plan or locked-in retirement account (“LIRA”) that are subject to *The Pension Benefits Act, 1992* (“the Act”) can be unlocked.

The Act provides that except as otherwise provided in the Act or *The Pension Benefit Regulations, 1993* (“the Regulations”), no person entitled to a pension may withdraw or surrender during their lifetime any pension, any interest in a pension or any commuted value of a pension, and any transaction that purports to effect such a withdrawal or surrender is void.

Simply put, locked-in pension money must be used to provide the plan member with retirement income. Locking-in continues to apply to pension money transferred from a pension plan to a LIRA.

However, as mentioned above, the Act does permit unlocking in certain circumstances. Those circumstances are described in this bulletin.

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



1. Financial Hardship Unlocking under a Locked-In Retirement Account

Amendments to the Regulations to allow Locked-In Retirement Account (LIRA) contract owners to apply to financial institutions to unlock money from their LIRA for financial hardship reasons will come into force on March 18, 2022. This means that funds in a LIRA cannot be unlocked for financial hardship reasons until March 18, 2022.

Subsection 29(8.4) and sections 29.01 to 29.06 of the Regulations provide that, effective March 18, 2022, a LIRA contract must allow the LIRA contract owner (“the LIRA owner”) to withdraw an amount within a prescribed limit if they meet one of the following criteria:

- Have low expected income in the upcoming year
- Have incurred or expect to incur medical expenses
- Are in arrears on rent payments and could be evicted if the rent remains unpaid
- Are in arrears on mortgage payments and the residence could be foreclosed if the mortgage remains unpaid
- Require funds to secure a new principal rental residence

Each of the above criteria are explained further beginning on page 6.

There are separate applications for each criterion (collectively referred to as “Application”):

1. Form FHU 1 – Application for Low Expected Income
2. Form FHU 2 – Application for Medical Expenses
3. Form FHU 3 – Application for Rent Arrears
4. Form FHU 4 – Application for Mortgage Default
5. Form FHU 5 – Application for First Month’s Rent, Security Deposit or Pet Damage Deposit for a Principal Residence

The Application will be available in early 2022.

Neither the Financial and Consumer Affairs Authority nor the Government of Saskatchewan is involved in the review of the Application. The LIRA owner would submit the Application and Form 6: Spouse’s Consent to Withdrawal and Waiver of Entitlements Pursuant to a LIRA Contract for Financial Hardship (“Spousal Waiver”), where applicable, to the financial institution who issued the LIRA (“the LIRA issuer”) to apply to unlock money from their LIRA for financial hardship reasons.

The Application cannot be dated more than 90 days before the date on which the Application is received by the LIRA issuer.



The Application includes a statement signed by the LIRA owner, indicating that the LIRA owner understands that any money withdrawn for financial hardship will not be exempt from execution, seizure or attachment pursuant to section 63 of the Act. For greater clarity, any money that is unlocked from a LIRA contract will lose creditor protection.

For all types of financial hardship unlocking, the spouse¹ is determined based on the definition in the Act. The Spousal Waiver must be signed by the owner's spouse in the presence of a witness and outside the presence of the owner not more than 90 days before the date of the withdrawal. It is the responsibility of the LIRA issuer to ensure that Form 6 is executed properly and retained on file prior to processing the withdrawal of the pension monies.

Financial hardship unlocking provisions are mandatory for LIRA contracts. Even if the LIRA contract does not contain the provisions, they are deemed to be part of the LIRA contract. If the Application and Spousal Waiver, where applicable, meet the requirements set out in the Regulations, the LIRA issuer must unlock the money and make the payment to the LIRA owner.

Rather than make a lump sum payment to the LIRA owner, the LIRA issuer could transfer the payment to a registered retirement savings plan ("RRSP"), if requested by the LIRA owner. However, the LIRA issuer should ensure that this transfer is allowed under the *Income Tax Act* (Canada) ("the ITA").

Applications to unlock for financial hardship reasons are limited to one time per reason per contract in each calendar year. However, there is an exception for financial hardship unlocking due to medical expenses, where an Application could be made more than one time per reason per contract in a calendar year. If the unlocking is due to medical expenses, an Application could be made for each of the LIRA owner, the LIRA owner's spouse, and a dependant of either the LIRA owner or the LIRA owner's spouse in each calendar year.

Any money that is unlocked and withdrawn may be subject to withholding tax, as determined under the ITA. The maximum amount that can be withdrawn is the amount supported by the information provided in the Application, plus the amount of tax that must be withheld. For example, assume the following:

- The balance in the LIRA is \$20,000;
- The prescribed information accompanying the Application due to medical expenses supports a withdrawal to cover expenses of \$5,000; and
- The tax that must be withheld from the withdrawal is \$500.

¹ Under the Act, spouse means:

(i) a person who is married to a member or former member; or

(ii) if a member or former member is not married, a person with whom the member or former member is cohabiting as spouses at the relevant time and who has been cohabiting continuously with the member or former member as his or her spouse for at least one year prior to the relevant time.



The LIRA owner would be entitled to receive \$5,000, less any fees charged by the LIRA issuer as illustrated below:

Amount Withdrawn:	\$5,500
Amount of tax deducted and remitted to Canada Revenue Agency (CRA):	\$500
Amount the LIRA owner is entitled to (less any fees):	\$5,000

Low Expected Income

A LIRA owner's expected total income in the 12-month period following the date of Application must not be more than 2/3 of the YMPE² in the calendar year in which the Application is signed in order to qualify under this criterion. The YMPE for 2022 is \$64,900; therefore, to qualify to unlock under this criterion, for an Application signed in 2022, expected total income in the 12-month period following the date the Application is signed could not be more than \$43,267.

If a LIRA owner qualifies to unlock, the maximum amount that can be unlocked would be determined by subtracting 75% of total expected income from 50% of the YMPE (50% of the YMPE in 2022 is \$32,450).

For example, if we assume a person's expected total income is \$30,000, the maximum amount which could be unlocked based on an Application signed in 2022 is \$9,950 (plus the amount of withholding tax, if any). This is determined as follows:

Expected income over the next year:	\$30,000 (A)
Multiply A by 0.75:	\$22,500 (B)
\$32,450 (50% of YMPE) minus B:	\$ 9,950 (C)

Expected total income includes income from all sources before tax. However, the amount being withdrawn from the LIRA contract for financial hardship is not included in income.

Medical Expenses

If the LIRA owner, their spouse, or a dependant of either has medical expenses that were incurred in the one-year period prior to the date the Application is signed, or to be incurred in the one-year period following the date the Application is signed, an Application can be made to withdraw funds from the LIRA. If payment of the medical cost has been made by, or is reimbursed by, a third party, then the LIRA money cannot be withdrawn. A third party would include an insurance company, a benefit plan, or a government support program.

A medical practitioner includes a physician or dentist licensed in any jurisdiction in Canada to practice medicine or dentistry, as the case may be.

² YMPE means Years Maximum Pensionable Earnings. The YMPE is set each year by the Government of Canada.



The medical expenses must be with respect to expenses for goods and services that are medical or dental in nature and expenses incurred or that will be incurred for renovations to the principal residence of an owner, an owner's spouse or a dependant and any additional expenses incurred in the construction of a principal residence made necessary by the illness or disability of the owner, the owner's spouse, or a dependant.

The most that could be withdrawn from the LIRA under this criterion is the total medical expense in the last one-year period not already withdrawn plus the estimated cost for the next one-year period. Money cannot be withdrawn from a contract to cover travel-related costs to pursue medical or dental treatments.

If the Application and spousal waiver, where applicable, meet the requirements set out in the Regulations, the full amount of the medical expenses which the LIRA owner applied to unlock can be withdrawn, without a limit.

A person is a dependant if they were dependent on the LIRA owner or the LIRA owner's spouse for support at some time during the calendar year in which the application is signed or during the previous calendar year.

The documents which would have to be submitted to the LIRA issuer with the Application to unlock are:

- A statement signed by a physician or dentist, as applicable, indicating that, in the physician or dentist's opinion, as the case may be, the expenses claimed are or were necessary for the person's treatment; and
- A copy of an estimate or a receipt, dated not more than 12 months prior to the date the Application is received by the issuer, for the medical or dental treatment, prescription or home renovation.

Arrears on Rent Payments

If the LIRA owner or their spouse has received a written demand for rent payments for the LIRA owner's or their spouse's principal rental residence, and they could be evicted if the rent remains unpaid, the LIRA owner could apply to unlock the amount of the rent arrears, plus any directly related enforcement costs that are required to be paid by the LIRA owner or their spouse.

The LIRA owner would have to provide the LIRA issuer with a copy of a written demand which states the amount of the rent arrears. The copy of a written demand must be dated not more than 12 months before the date on which the Application is received by the issuer of the contract. The LIRA owner would also have to provide evidence of enforcement fees, if any, if they are applying to have that amount included in the withdrawal.



If the Application and spousal waiver, where applicable, meet the requirements in the Regulations, the full amount of the rent arrears and enforcement fees can be withdrawn, without a limit. The Regulations limit the number of Applications that can be made in a calendar year to one. Other than that, the Regulations do not place a limit on the amount of times a LIRA owner can apply to unlock due to threat of eviction. For example, a LIRA owner could be approved to unlock this year and could apply again two years later if a written demand for rent arrears has been issued to the LIRA owner or their spouse.

Arrears on Mortgage Payments

If the LIRA owner or their spouse has received a written demand with respect to a default on a debt that is secured against the LIRA owner's or the spouse's principal residence, and the LIRA owner or spouse could face eviction or legal action if the amount in default remains unpaid, the LIRA owner could apply to unlock the amount of the mortgage arrears, plus any directly related enforcement costs that are required to be paid by the LIRA owner or their spouse.

The LIRA owner would have to provide the LIRA issuer with a copy of a written demand which states the amount of the mortgage arrears. The copy of a written demand must be dated not more than 12 months before the date on which the Application is received by the issuer of the contract. The LIRA owner would also have to provide evidence of enforcement fees, if any, if they are applying to have that amount included in the withdrawal.

If the Application and spousal waiver, where applicable, meets the requirements in the Regulations, the full amount of the mortgage arrears and enforcement fees can be withdrawn, without a limit. The Regulations do not place a limit on the amount of times a LIRA owner can apply to unlock due to mortgage arrears. Other than that, the Regulations do not place a limit on the amount of times a LIRA owner can apply to unlock due to threat of eviction or legal action. For example, a LIRA owner could be approved to unlock this year and could apply again two years later if a written demand has been issued with respect to a default on a debt that is secured against the LIRA owner's or the spouse's principal residence.

Funds to Secure New Principal Rental Residence

The LIRA owner could apply to withdraw an amount necessary for them or their spouse to obtain a new principal rental residence. The maximum amount which could be withdrawn is equal to the first months' rent, security deposit and pet damage deposit. The LIRA owner would have to provide the LIRA issuer with a copy of the lease or rental agreement, if applicable. The lease or rental agreement must be dated not more than 12 months before the date the Application is received by the issuer.



2. Small Benefit Rule

If the pension plan or LIRA contract allow for it, the Act allows the member to unlock their entire benefit and receive a lump sum if their pension benefit is determined to be a small amount. For a pension plan or LIRA, the legislation permits the member to receive their benefit entitlement in cash if the pension funds do not exceed 20% of the YMPE.

The YMPE in effect in the year that the payment occurs is used for purposes of the small benefit rule. The YMPE for 2021 is \$61,600. Therefore, the plan administrator or LIRA issuer could make a lump sum payment where the member's benefit does not exceed \$12,320.

The Act and Regulations do not prohibit the funds under the small benefit rule from being transferred to a RRSP rather than paid in cash. However, the plan administrator or LIRA issuer should ensure that this transfer is allowed under the ITA.

Pension Plan Specifics

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:

Subsection 35(2) provides that 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.

If the member is eligible to commence a pension from a defined benefit plan, then the plan administrator could make a lump sum payment if the member's annual pension is less than \$2,464 (\$205/month). This is due to the fact that the annual pension would be less than 4% of the YMPE.

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.

LIRA Specifics

Subsection 29(8.1) and (8.2) of the Regulations permit 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 YMPE 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 LIRA 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 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 the LIRA issuer 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.

Where a benefit has been transferred to a LIRA, subsection (2) applies to the LIRA to which the benefit has been transferred.

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. Neither the FCAA nor the Government of Saskatchewan can authorize the release of the money.

The Act and Regulations do not prohibit the funds under the shortened life expectancy rule from being transferred to a RRSP rather than paid in cash. However, the plan administrator or LIRA issuer should ensure that this transfer is allowed under the ITA.



4. Registered Retirement Income Fund

On attaining age 55³ or older, 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.

Since there is no limit on the amount of money that may be withdrawn from a pRRIF, a consent form must be signed by the spouse prior to the transfer of money. The consent form for this purpose, Form 1 - Spouse's Consent to Transfer to a Registered Retirement Income Fund Contract, is prescribed by subclause 29.1(4)(b)(ii) of the Regulations. The completion of Form 3 - Spouse's Waiver of 60% Post-Retirement Survivor Benefit, is not required to transfer to a pRRIF.

Where a plan member or former plan member passes away leaving a surviving spouse, that spouse can establish a pRRIF at any age.

For further information about a pRRIF, please refer to our publication “*Retirement Options*”.

5. Variable Benefit under a Defined Contribution Plan

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. 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.

Since there is no limit on the amount of money that may be withdrawn from a VBA, the spouse must provide consent to the transfer using Form 2.01 - Spouse's Consent to Transfer to a Variable Benefit Account and complete Form 3 - Spouse's Waiver of 60% Post-Retirement Survivor Benefit, thus waiving an entitlement to the post-retirement survivor benefit provided under Section 34 of the Act.

For further information concerning VBAs, please refer to our bulletin “*Retirement Options*”.

³ May be younger if the pension plan from where the money originated provided for retirement at an earlier age.



6. Non-Residency Unlocking

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 certain requirements.

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

The requirements for non-residency unlocking from a pension plan and a LIRA are listed below:

- 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 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 or LIRA issuer 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.

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.



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

A variable benefit is a pension that may be paid from a defined contribution plan. Where a former member holds a VBA, 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 VBA. However, monies in a VBA can be withdrawn in full.

As noted above, in order to unlock and withdraw pension monies due to non-residency status, the former member of a pension plan or LIRA owner must complete Form 4, and file that form with the plan administrator or LIRA issuer. When completing Form 4, the former member or LIRA 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 or LIRA issuer to ensure that Form 4 is executed properly and retained on file prior to processing the withdrawal of the pension monies.

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 or LIRA owner. Form 5 must be signed by the owner's spouse in the presence of a witness and outside the presence of the owner not more than 90 days before the date of the withdrawal. It is the responsibility of the pension plan administrator or LIRA issuer to ensure that Form 5 is executed properly and retained on file prior to processing the withdrawal of the pension monies.

Non-Residency Unlocking in the event of Death

a) 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. 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 an arrangement 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 applies to a surviving spouse who elects to keep the money in the plan, and subsequently becomes a non-resident.



b) 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.

c) LIRA: Death before Retirement

Where the death of LIRA owner occurs prior to using the funds held under the LIRA contract to provide a pension (i.e. transfer to a 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 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 an 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.

d) pRRIF: Death after Retirement

Where the death of a pRRIF 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.

Non-Residency Unlocking in the event of Spousal Relationship Breakdown

a) 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 that person is entitled to 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 requirements.



b) 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 LIRA issuer is required to allow, subject to Part VI of the Act, the spouse or former spouse of the LIRA 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.

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