

## Disclaimer

The enclosed sample Family Property Order and Family Property Agreement (collectively, the “Samples”) are provided for general informational purposes only to assist legal counsel in drafting an order or agreement dividing pension benefits under the Universities Academic Pension Plan (the “Plan”, the “UAPP”). They do not constitute legal advice and must not be relied upon as a substitute for advice from a lawyer experienced in pension division matters in Alberta.

The Samples are provided solely as an administrative aid and include illustrative language for the division of a Plan Member’s pension benefits under the Plan. Although the parties and their legal counsel are not obligated to rely on the enclosed Samples, using substantially similar language will generally facilitate and expedite the administrative review and processing of pension division requests.

The Samples are intended solely for use in circumstances involving the division of pension benefits under the Plan. They are not appropriate for, and must not be used in, situations where no division of pension benefits is contemplated, including where other assets are being offset or traded in lieu of dividing benefits under the Plan.

UAPP, and its directors, officers, employees, contractors, consultants, and agents, assume no responsibility or liability for any loss, damage, or consequences arising from the use of, or reliance on, all or any part of the Samples.

## User notes

To divide pension benefits, an enforceable Family Property Order (FPO), generally known as a court order, or a Family Property Agreement (FPA), generally known as a separation agreement, must be filed with the plan administrator. Where an FPA is used, it must be accompanied by the acknowledgements required under section 38 of the Family Property Act (Alberta).

Under the Plan, and in accordance with applicable Alberta pension legislation, there are three (3) options available to divide pension benefits. The applicable option depends on the age of the Plan Member as of the joint accrual end date.

The joint accrual end date is the date of relationship breakdown for the purposes of the Family Property Act (Alberta).

1. **Option A:** Immediate Settlement – Transfer of the Non-Plan Member Spouse’s share.

Condition: The Plan Member must not be in receipt of pension payments as of the joint accrual end date (generally applicable to active or deferred vested members).

2. **Option B:** Delayed Settlement – Transfer of the Non-Plan Member Spouse’s share.

Conditions:

- i) The Plan Member’s pension has not commenced as of the joint accrual end date;
- ii) The Plan Member is eligible to receive an immediate pension (generally age 55 or older) as of the joint accrual end date;  
(this option is generally available, at the election of the parties, to active or deferred vested members who qualify for an immediate pension under the Plan, as an alternative to Option A)

### 3. **Option C:** Division of Pension in Pay

Conditions: The Plan Member must be in receipt of pension payments as of the joint accrual end date. (There is no lump sum transfer under Option C. The Non-Plan Member Spouse share is payable as a separate lifetime pension.)

These options are indicated in *purple* in the enclosed sample.

#### **Mandatory content of the FPO/A**

The FPO/A must clearly identify:

- The start and end dates of the joint accrual period; and
- The percentage of the benefit to be allocated to the Non-Plan Member Spouse, which percentage must not exceed 50% of the benefit earned during the joint accrual period (the “Total Pre Division Benefit”).

Optional Consideration:

As the Plan is a defined benefit pension plan, the value of the benefit may be subject to redetermination in accordance with the Employment Pension Plans Act (Alberta) and its accompanying regulations (collectively, the “EPPA”). As a result, the value of the benefit calculated as of the original valuation date (the joint accrual end date) may be higher or lower than the value ultimately determined as of the date of payment or transfer. Accordingly, the FPO/A may also specify that the Non-Plan Member Spouse’s share is the lesser of a stated percentage and a stated dollar amount. However, a stated dollar amount should not be used on its own without a percentage, as this may render the FPO/A non-compliant under the EPPA.

UAPP may require additional information and/or plan forms to administer a division. UAPP will issue an option statement once an FPO or FPA is filed to indicate how the benefit will be paid.

It may be advisable to submit a draft copy of any proposed FPO/A to ensure that its terms are clear and can be administered.

For additional information, refer to the information sheet “Division and Distribution of Pension Entitlement on Relationship Breakdown,” available on the UAPP website: <https://uapp.ca/publications/information-sheets/>

If you have further questions, contact UAPP at 1.888.339.1546 (toll-free within North America) or 1.780.612.4259 (collect, outside North America), or by mail at #1850, 10303 Jasper Avenue, Edmonton, AB T5J 3N6.

#### **Enclosures:**

- Appendix A: Sample Family Property Order
- Appendix B: Sample Family Property Agreement

**Appendix A**

COURT FILE NUMBER    **[Insert]**

COURT                    **COURT OF KING'S BENCH OF ALBERTA**

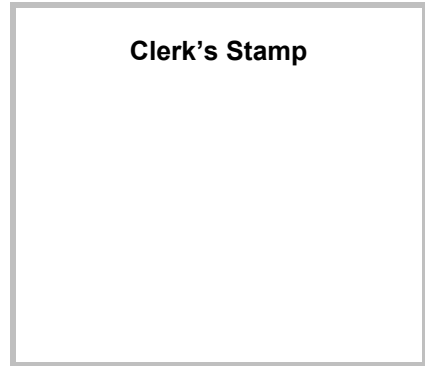
JUDICIAL CENTRE      **[Insert]**

PLAINTIFF              **[Insert]**

DEFENDANT             **[Insert]**

DOCUMENT              **ORDER**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT:              **[Insert]**



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**DATE ON WHICH ORDER WAS PRONOUNCED:**      **[Insert date]**

**NAME OF JUDGE WHO MADE THIS ORDER:**        **[Insert name]**

**LOCATION ORDER GRANTED AT:**                      **[Insert location]**

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This Court has reviewed the pleadings filed herein and is advised as follows:

- (a)     the Plan Member has an employment pension pursuant to the terms of the Universities Academic Pension Plan (the "Pension Plan"); and
  
- (b)     the parties wish to divide the Plan Member's pension and benefits earned during their relationship pursuant to the provisions of the *Employment Pension Plans Act* and its accompanying regulations (collectively the "EPPA") and the *Family Property Act* of Alberta.

**IT IS ORDERED THAT:**

1.     For the purposes of this Order, the "Joint Accrual Period" is agreed to be from **[insert joint accrual start date]** to **[insert the joint accrual end date]**.

## Appendix A

2. For the purposes of this Order, the following terms have the following meanings:

- (a) "Plan Member" means **[insert name of member of the Pension Plan]**; and
- (b) "Non-Plan Member Spouse" means **[insert name of the non pension plan member spouse]**.

***(A) If the Plan Member has not commenced receiving a pension as of the joint accrual end date.***

3. The administrator of the Pension Plan, upon being served with this Order, shall immediately transfer from the Pension Plan in accordance with the direction of the Non-Plan Member Spouse and subject to the requirements of the EPPA **[insert percentage not to exceed 50%]** of the Total Pre Division Benefit, as that term is defined in the EPPA (the "Non-Plan Member Spouse's Share").

Prior to the administrator transferring any part of the Non-Plan Member Spouse's Share from the Plan, the Non-Plan Member Spouse and the Plan Member shall provide to the administrator all information the administrator requires to effect that transfer.

***(B) If the Plan Member is within 10 years of the Normal Retirement Date under the Pension Plan (must be at least 55 years old on the joint accrual end date). Option B is OPTIONAL and an alternative to Option A (in specific circumstances). Option A can be picked even when B is available.***

3. The administrator of the Pension Plan, upon being served with this Order, shall at the time the Plan Member,

- (i) terminates active membership;
- (ii) reaches his or her pension commencement date; or
- (iii) dies,

(whichever occurs first) calculate and transfer from the Pension Plan in accordance with the direction of the Non-Plan Member Spouse and subject to the requirements of the EPPA, **[insert percentage not to exceed 50%]** of the Total Pre Division Benefit, as that term is defined in the EPPA (the "Non-Plan Member Spouse's Share").

Prior to the administrator transferring any part of the Non-Plan Member Spouse's Share from the Plan, the Non-Plan Member Spouse and the Plan Member shall provide to the administrator all information the administrator requires to effect that transfer.

***(C) If the Plan Member is receiving a pension from the Pension Plan as of the joint accrual end date, this Option C is the only option.***

3. The administrator of the Pension Plan, upon being served with this Order shall pay to the Non-Plan Member Spouse a separate pension from the Pension Plan for the Non-Plan Member Spouse's lifetime and such separate pension shall have the same actuarial present value as **[insert percentage not to exceed 50%]** of the Total Pre Division Benefit, as that term is defined in the EPPA (the "Non-Plan Member Spouse's Share").

**Appendix A**

Prior to the administrator paying any part of the Non-Plan Member Spouse's Share from the Pension Plan, the Non-Plan Member Spouse and the Plan Member shall provide to the administrator all information the administrator requires to effect payments.

\*\*\*\*\*END OF SECTION 3 (A, B or C)\*\*\*\*\*

4. The Non-Plan Member Spouse's Share of the Plan Member's Pension Plan benefits is declared to be the Non-Plan Member Spouse's property.
5. Upon the transfer or payment by the administrator of the Pension Plan of the Non-Plan Member Spouse's Share to, or on behalf of, the Non-Plan Member Spouse pursuant to this Order, the Non-Plan Member Spouse shall have no further entitlement to any benefit or any other right under the Pension Plan except for any entitlement expressly provided for under this Order.
6. If one party receives any of the other's share, he or she shall hold such amount in trust for the other party and shall forthwith pay it to the other party.
7. In the event the Non-Plan Member Spouse dies prior to the payment or transfer of all or a portion of the Non-Plan Member Spouse's Share, the Non-Plan Member Spouse's Share remaining in the Plan shall be the property of the Non-Plan Member Spouse's estate.
8. A certified copy of this Order shall be filed with the administrator of the Pension Plan.
9. This Order is a Family Property Order within the meaning of the *Family Property Act* (Alberta).
10. Nothing in this Family Property Order is intended to or does amend, vary, contradict or in any way affect the terms of the Pension Plan as amended from time to time including, without limitation, the creation of any additional entitlement under the Pension Plan or any other benefit plan for either the Non-Plan Member Spouse or the Plan Member.

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JUSTICE OF THE COURT OF KING'S BENCH OF ALBERTA

CONSENTED TO BY:

AND BY:

Per:

Per:

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Solicitors for the Non-Plan Member Spouse

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Solicitors for the Plan Member

Appendix B

**FAMILY PROPERTY AGREEMENT**

BETWEEN:

**[Insert name of non-plan member spouse]**

(the "Non-Plan Member Spouse")

- and -

**[Insert name of plan member spouse]**

(the "Plan Member")

**BACKGROUND:**

- (a) **[insert details of the parties' relationship and separation]**
- (b) The Plan Member has an employment pension pursuant to the terms of the Universities Academic Pension Plan (the "Pension Plan");
- (c) The parties wish to divide the Plan Member's pension and benefits earned during their relationship pursuant to the provisions of the *Employment Pension Plans Act* and its accompanying regulations (collectively the "EPPA") and the *Family Property Act* of Alberta; and
- (d) This Family Property Agreement (the "Agreement") is a final settlement of the parties' rights to the Pension Plan.

**[Insert other recital statements as necessary]**

**IN CONSIDERATION** of the promises exchanged in this Agreement, the **PARTIES AGREE** to the following terms of this Agreement and acknowledge that the recitals to this Agreement are to be incorporated into and form part of this Agreement.

- 1. For the purposes of this Agreement, the "Joint Accrual Period" is agreed to be from **[insert joint accrual start date]** to **[insert the joint accrual end date]**.

**(A) *If the Plan Member has not commenced receiving a pension as of the joint accrual end date.***

- 2. The administrator of the Pension Plan, upon receipt of an executed copy of this Agreement, shall immediately transfer from the Pension Plan in accordance with the direction of the Non-Plan Member Spouse and subject to the requirements of the EPPA **[insert percentage not to exceed 50%]** of the Total Pre Division Benefit, as that term is defined in the EPPA (the "Non-Plan Member Spouse's Share").

Prior to the administrator transferring any part of the Non-Plan Member Spouse's Share from the Plan, the Non-Plan Member Spouse and the Plan Member shall provide to the administrator all information the administrator requires to effect that transfer.

## Appendix B

***(B) If the Plan Member is within 10 years of the Normal Retirement Date under the Pension Plan (must be at least 55 years old on the joint accrual end date). Option B is OPTIONAL and an alternative to Option A (in specific circumstances). Option A can be picked even when B is available.***

2. The administrator of the Pension Plan, upon receipt of an executed copy of this Agreement, shall at the time the Plan Member,

- (i) terminates active membership;
- (ii) reaches his or her pension commencement date; or
- (iii) dies,

(whichever occurs first) calculate and transfer from the Pension Plan in accordance with the direction of the Non-Plan Member Spouse and subject to the requirements of the EPPA, **[insert percentage not to exceed 50%]** of the Total Pre Division Benefit, as that term is defined in the EPPA (the "Non-Plan Member Spouse's Share").

Prior to the administrator transferring any part of the Non-Plan Member Spouse's Share from the Plan, the Non-Plan Member Spouse and the Plan Member shall provide to the administrator all information the administrator requires to effect that transfer.

***(C) If the Plan Member is receiving a pension from the Pension Plan as of the joint accrual end date, this Option C is the only option.***

2. The administrator of the Pension Plan, upon receipt of an executed copy of this Agreement shall pay to the Non-Plan Member Spouse a separate pension from the Pension Plan for the Non-Plan Member Spouse's lifetime and such separate pension shall have the same actuarial present value as **[insert percentage not to exceed 50%]** of the Total Pre Division Benefit, as that term is defined in the EPPA (the "Non-Plan Member Spouse's Share").

Prior to the administrator paying any part of the Non-Plan Member Spouse's Share from the Pension Plan, the Non-Plan Member Spouse and the Plan Member shall provide to the administrator all information the administrator requires to effect payments.

\*\*\*\*\***END OF SECTION 2 (A, B or C)**\*\*\*\*\*

3. The Non-Plan Member Spouse's Share of the Plan Member's Pension Plan benefits is declared to be the Non-Plan Member Spouse's property.

4. Upon the transfer or payment by the administrator of the Pension Plan of the Non-Plan Member Spouse's Share to, or on behalf of, the Non-Plan Member Spouse pursuant to this Agreement, the Non-Plan Member Spouse shall have no further entitlement to any benefit or any other right under the Pension Plan except for any entitlement expressly provided for under this Agreement.

5. If one party receives any of the other's share, he or she shall hold such amount in trust for the other party and shall forthwith pay it to the other party.

6. In the event the Non-Plan Member Spouse dies prior to the payment or transfer of all or a portion of the Non-Plan Member Spouse's Share, the Non-Plan Member Spouse's Share remaining in the Plan shall be the property of the Non-Plan Member Spouse's estate.

**Appendix B**

7. An executed copy of this Agreement shall be filed with the administrator of the Pension Plan.
8. This Agreement is a Family Property Agreement within the meaning of the *Family Property Act* (Alberta).
9. Nothing in this Agreement is intended to or does amend, vary, contradict or in any way affect the terms of the Pension Plan as amended from time to time including, without limitation, the creation of any additional entitlement under the Pension Plan or any other benefit plan for either the Non-Plan Member Spouse or the Plan Member.
10. The laws of Alberta will govern this Agreement.
11. The parties to this Agreement will promptly sign and give to the other and to the administrator of the Pension Plan, all further documents necessary to give effect to the terms of this Agreement.
12. This Agreement contains the whole agreement between the parties regarding the division of the Plan Member's Pension Plan benefits and it replaces any earlier oral or written agreement between the parties dealing with the division of the Plan Member's Pension Plan benefits.
13. This Agreement comes into force when signed by both parties.
14. The terms of this Agreement shall be binding on each of the parties and their respective estates.
15. This Agreement may be executed in counterpart.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**EXECUTION:**

Signed by the Plan Member  
on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

in the presence of:

\_\_\_\_\_  
**[Insert name of witness]**

\_\_\_\_\_  
**[Insert Plan Member's name]**

Signed by the Non-Plan Member Spouse  
on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

in the presence of:

\_\_\_\_\_  
**[Insert name of witness]**

\_\_\_\_\_  
**[Insert Non-Plan Member Spouse's name]**