Guidance

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Execution and Seizure

Execution refers to the enforcement of a money judgment by seizing the judgment debtor's property. Seizure refers to the act of taking possession of property by legal right or process.

There is no specific section in the *Pension Benefits Standards Act, 1985* (PBSA) that prohibits the execution or seizure of pension benefits; however, common law principles and in some instances provincial legislation may prevent the execution and seizure of pension benefits held in a pension fund or in a locked-in RRSP as such benefits cannot be unlocked except in accordance with the PBSA. In addition, the PBSA prohibits benefits from being charged, assigned or given as security.

While the PBSA does not specifically exempt pension funds from execution or seizure, subsection 18(1) of the PBSA provides that subject to section 23(5)1 and 25(4)2 of the PBSA, pension benefits cannot be assigned, charged, anticipated, given as security, commuted or surrendered. Subsection 18(1) is aimed at preventing those with an interest in a pension plan (member, former member, etc.) from assigning, charging, anticipating or giving as security, etc., their benefits under the plan. Subsection 36(2) of the PBSA also prevents a plan member from assigning their pension benefit by providing that "any agreement to assign, charge, anticipate or give as security"

any benefit or money withdrawn under section 26 of the PBSA is void. Therefore, benefits cannot be seized if the seizure is based on an assignment, charge, anticipation or security in respect of any benefit under the plan or money withdrawn under section 26 of the PBSA.

Garnishment

The process by which a judgment creditor seizes money, which is owed to the judgment debtor, from a third party, is known as garnishment. The PBSA is silent in respect of the garnishment of pension benefits in pay. OSFI therefore maintains that pension benefits in pay would be subject to a garnishee order issued by the courts, but would be subject to limits and prohibitions set by provincial law.

Replaces article published in PBSA Update, Issue No. 9 June 1993.

1 Surrender of a death benefit to a dependant

2 Subsection 25(4) of the PBSA applies to court orders or agreements that divide family property on a marriage break down or on the break down of a common law relationship.