



You are here: [Home](#) > [Pensions](#) > [Asset Transfers](#) > Trust Issues On Plan Transfer/Merger (Transamerica)

[PRINT](#)

FSRA is actively reviewing all FSCO regulatory direction, including but not limited to forms, guidelines and FAQs.

Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.

Trust Issues On Plan Transfer/Merger (Transamerica)

Since the decision of the Ontario Court of Appeal on July 8, 2004 in *Aegon Canada Inc. and Transamerica Life Canada v. ING Canada Inc. (Transamerica)*, FSCO has been reviewing the implications of the decision on transfers of assets between pension plans in Ontario. On December 3, 2004, FSCO posted a notice setting out the situations where the Superintendent of Financial Services (the Superintendent) would not be prevented from considering an application for transfer of assets as a result of the Transamerica decision. That posting noted that "additional circumstances where the Superintendent would consider the benefits of members to be protected may be identified in future web postings or policies."

FSCO staff continued to consider different situations in which asset transfer applications can be consented to, especially in light of the decision of the Ontario Divisional Court in *Baxter et al. v. National Steel Car Limited et al. (Baxter)* in December 2004. Accordingly, the Superintendent is of the view that applications for transfers of assets on sale or merger should now be considered in the circumstances set out in the checklist that follows.

This checklist is intended to assist applicants who are seeking the Superintendent's consent to a transfer of assets between pension plans by identifying the impediments related to trust issues that may need to be considered as a result of the court decisions in Transamerica and Baxter.

Completing the checklist will assist applicants by facilitating FSCO's review and expediting the process. While applicants are not required to use the checklist, if they choose to do so, they must certify that the answers are accurate to the best of their knowledge and belief. If an applicant chooses not to use the checklist, he or she will have to satisfy FSCO staff that its application does not raise any trust-related issues that prevent the Superintendent from consenting to the application in light of the Transamerica and Baxter decisions. Applicants that do not use the checklist should address these issues in the same order as they appear in the checklist.

If an application for the Superintendent's consent has already been filed with FSCO, the applicant must address any trust-related issues by completing the checklist or satisfying FSCO staff in another manner. If the applicant does not submit further documentation regarding any trust-related issues, staff will proceed with the review of the application taking into account the material provided to us with the application. All new applications must address any trust-related issues.

Please note that completing and certifying the checklist does not ensure that the application will be approved. The checklist addresses only the trust-related impediments that may affect asset transfers, and while staff have attempted to identify all of the trust-related issues, the checklist should not be considered

Follow FSCO on social media



- About Pensions** >
- Actuarial** >
- Consultations** >
- Family Law** >

Asset Transfers	>
Financial Hardship	>
Legislation: Act & Regulations	>
Locked-In Accounts (LIFs and LIRAs)	>
Enforcement Actions	>
Other Pension Information	>
Pension Policies	>
Plan Administrators	>
Publications & Resources	>
Archived	>
Careers	>
Explore FSCO	
Contact Us	>

 **Scheduled Online Service**

Disruption Notice

Please consult our [outage schedule](#) for more details.

all-inclusive. In addition, there may be other impediments that must be addressed, such as the terms of a collective bargaining agreement. Finally, applicants are reminded that they must comply with all of the requirements in the PBA and its associated regulations, as well as all applicable FSCO pension policies.

Applicants should review and answer each question on the checklist. Depending on the answers given, the applicant should be able to determine whether there are trust-related issues that prevent consent. If there are any trust-related issues that prevent consent, the applicant can make submissions as to why the Superintendent should consent to the application.

In completing and certifying the checklist, applicants may need to consult legal advisors before answering questions that deal with trust issues, surplus entitlement or whether a court has determined that the transfer of assets is legal and binding and that all rights of appeal have been extinguished. Certification can be in the form of a separate letter or can be included in the checklist.

The checklist applies to all the plans registered with FSCO that are the subject of the asset transfer application.

The following explanatory notes are provided to help applicants answer the specified questions:

Question 1: Do any of the pension plans that are the subject of the transfer application have a defined benefit component, or have any of them had such a component in the past?

- Where there has been a plan conversion from a defined benefit to defined contribution, please note that the plan that is the subject of the asset transfer application may still be treated as a defined benefit plan. If a plan has been converted prior to the transfer application, or if notice of a proposed conversion of the plan from defined benefit to defined contribution is submitted with the transfer application, FSCO staff will review all the circumstances related to the conversion or proposed conversion and determine which type of plan it is for the purposes of the asset transfer.

Question 2: Are any of the relevant pension funds currently, or was any predecessor fund at any time, subject to a trust?

- The applicant must certify whether or not any of the pension funds that are the subject of the application is now or, has been at any time, subject to a trust. This may require a review of the terms of current and past plan texts and may involve a legal opinion.

