

# THE UNIVERSITY OF MANITOBA PENSION PLAN (1993) APPOINTMENT OF TRUSTEE FOR A MINOR BENEFICIARY

JANUARY 2017

*Do not use this form if your Will provides for a Trustee for your minor beneficiary.*

I, \_\_\_\_\_ DO HEREBY APPOINT \_\_\_\_\_

as Trustee to receive and to hold in trust any amount due to any beneficiary I may have designated who, at the time of my death, is under the age of legal majority in the jurisdiction in which they reside. I declare the receipt of payment by such Trustee shall be sufficient discharge to The University of Manitoba Pension Plan (1993) and the Pension Committee from further liability. If the designated beneficiary has already attained the age of legal majority then the proceeds are to be paid directly to them.

I HEREBY authorize such Trustee, within his or her absolute discretion to use and expend all or any portion of such amount, whether income or capital, as they deem necessary from time to time for the health, welfare, education or benefit of such minor. Any income not paid out in a given year is to be added to capital to form part thereof.

AND I CONFIRM the trust shall terminate once the minor has attained the age of legal majority in the jurisdiction in which they reside and at that time the Trustee shall deliver to the beneficiary all assets held in trust.

Trustee Name \_\_\_\_\_

Trustee Mailing Address \_\_\_\_\_  
\_\_\_\_\_

Relationship to Member \_\_\_\_\_

I reserve the right to change the Trustee.

Date \_\_\_\_\_

Member Signature \_\_\_\_\_

Member Name (print) \_\_\_\_\_

*Note: It is recommended that a copy of this Appointment be provided to the Trustee.*

**Return completed form to: Pension Office • 180 Extended Education Complex • Winnipeg, MB R3T 2N2**

# APPOINTMENT OF TRUSTEE FOR A MINOR BENEFICIARY (or a Non-minor Beneficiary who lacks legal capacity)

JANUARY 2017

## MINOR BENEFICIARY

A minor is anyone under the age of minority and as such lacks any legal capacity. The age of legal majority in most Canadian provinces, including Manitoba, is 18. If you name a minor as beneficiary, they will not have ready access to any proceeds of your pension plan death benefit until reaching the age of legal majority, unless you appoint a trustee. If you do not appoint a trustee, a court application may have to be brought to have a family member appointed to handle the money, or the money may have to be taken out of the control of the Public Trustee or official guardian in the jurisdiction where the beneficiary resides. There are several good reasons to appoint a beneficiary. It is also possible to appoint a beneficiary through clauses that might be customized by a lawyer on your behalf, instead of using the Pension form, you are free to hire a lawyer of your choosing if you wish to consider or pursue that option.

In order for a payment to be made to a trustee in trust for a minor beneficiary, the minor should have a Social Insurance Number (SIN). For this reason, it is important that a SIN be obtained prior to, or coincident with, designating a minor as beneficiary. In the event that a SIN has not been obtained prior to the member's death, the appointed trustee may apply on behalf of the minor for a SIN. In the event that a SIN is not obtained, the death benefit payment may be made without a SIN, however this practice is not recommended.

The following is an example of how the death benefit payment would be made to a trustee: *"John Smith, Trustee - In Trust for Carol Brown"*. The payment would reference the SIN of the minor and a tax form in the name of the minor will be issued. The payment will have federal tax withheld.

## NON-MINOR BENEFICIARY WHO LACKS LEGAL CAPACITY

If you name a beneficiary who is over the age of majority, but who lacks legal capacity, you may appoint a trustee. The trustee responsibilities are the same as those for a trustee for a minor beneficiary, however, the transfer of assets to the named beneficiary from the trustee may only take place if such beneficiary attains full legal capacity to give a valid discharge.

**WARNING:** *The appointment of a trustee and the payment of the death benefit may be possible in a way which will maintain continued eligibility to provincial government support and programming. If you wish to ensure that the death benefit does not disrupt such entitlement, you should consult a lawyer in the jurisdiction where the beneficiary resides.*

## TRUSTEE RESPONSIBILITIES

An appointed trustee will receive and hold in trust, on behalf of the minor beneficiary, money payable to the minor under the University pension plan. Such money shall not be co-mingled with any other funds belonging to the minor or any other person. The trustee shall act prudently and may use the money, including any returns on it or investments made, for the education and/or maintenance of the minor. The appointed trustee will have no additional responsibilities outside of those specifically related to the trust money unless such person has been duly appointed separately for other responsibilities such as a legal guardian.

For the year in which the lump sum death benefit is paid, if the lump sum payment exceeds the income on which income tax is payable, an income tax return will have to be filed on behalf of the minor and the appropriate tax paid from the money in trust. In subsequent years, income tax returns will have to be filed on behalf of the minor if the trust money generates enough income to require an income tax return.

It is recommended that the trustee keep detailed records of how all trust money is spent.

On the minor's attainment of the age of legal majority, the trustee will issue a payment to the beneficiary equal to the full amount of the money held in trust. The trustee will normally be entitled to take a reasonable fee for their time and trouble, but only with the consent of the beneficiary or the approval of the court. That normally means waiting until the beneficiary attains the age of legal majority then asking them to concur on the fee. The fee can be waived. Other than a approved fee, the trustee cannot spend any money from the trust for the trustee's own benefit. The only exception to that is their entitlement to reimburse themselves for out of pocket expenses they might be forced to incur for the direct benefit of the minor.

## CHOOSING A TRUSTEE FOR A MINOR BENEFICIARY

Who to appoint as a trustee must be thought through carefully. Choose an individual who will carry out their duties in a competent manner exercising judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of another. The concept is that an ordinary prudent person would take less risk with the property of another person than he or she would take with his or her own property. It will generally be advisable if the trustee resides in the same jurisdiction as the beneficiary. If the beneficiary resides in Canada, the use of a Canadian resident as trustee is strongly recommended.

Prior to appointing a trustee, discuss with such person their willingness to be a trustee and ensure that the trustee responsibilities are clearly understood. You might want to discuss your expectations with them relating to fees and ensure they do not plan to take a fee that you would object to if living.

## IF YOU DESIGNATE A MINOR BENEFICIARY AND YOU DO NOT APPOINT A TRUSTEE

If you don't appoint a trustee (or the trustee you appointed dies prior to your death and another trustee is not appointed), the pension plan can pay the benefit to a legal guardian for the estate of the minor beneficiary who has been appointed by the court in a special court application. If no guardian is appointed, the benefit can be paid to the Public Trustee who will hold the money until the minor reaches the age of legal majority. At that point, the minor can withdraw the funds by filling an affidavit proving his or her age.

## WHAT HAPPENS IF THE BENEFICIARY(IES) AND/OR THE TRUSTEE YOU NAME IN YOUR WILL CONFLICTS WITH THAT ON YOUR PENSION PLAN BENEFICIARY/TRUSTEE DESIGNATION?

Unless your will refers either generally or specifically to your University of Manitoba pension plan benefit, the beneficiary and/or trustee on record with the University Pension Office will apply. If your will does refer to your University pension benefit, the date it was signed will determine whether it overrides the beneficiary(ies) and/or trustee on record. In such an event, a copy of the applicable section of your will should be provided to the Pension Office and a revised designation/appointment should be made to ensure that the record on file with the Pension Office corresponds with your will.

Similarly, a revocation in a will of a designation/appointment is effective to revoke the designation/appointment only if the revocation refers specifically to your University pension plan benefit.

## ADMINISTRATOR'S JOB

The Administrator's job is to ensure that death benefits are paid out according to the terms of the pension plan and the law. If there is a dispute over your death benefit, the Administrator has no choice but to withhold payment until the dispute is resolved, to make payment directly to the court or Public Trustee or withhold payment until the minor reaches the age of legal majority.