

PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

REGULATION NO. 7

APPLICATION OF COURT RULING ABOLISHING COMMON LAW MARRIAGES

WHEREAS, The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 22-107 of the City of Philadelphia Public Employees Retirement Code ("Retirement Code") to make all necessary regulations to carry into effect the provisions of the Retirement Code; and

WHEREAS, Sections 22-304, 22-306, 22-307, 22-501, 22-502, 22-701, and 22-702 of the Retirement Code all refer to benefits that may be paid to a person who qualifies as a "spouse"; and

WHEREAS, The Board has long determined the status of "spouse" as requiring either proof of a ceremonial marriage under the Marriage Law, or a "common-law" marriage under applicable court decisions; and

WHEREAS, On September 17, 2003 the Commonwealth Court issued its decision in PNC Bank Corporation v. Workers' Compensation Appeal Board (Stamos), 831 A.2d 1269 (Pa. Commw. September 17, 2003) holding that "the time has come to abolish the doctrine [of common law marriage], but that this decision should be given purely prospective effect"; and

WHEREAS, Although the Court in PNC Bank held that "Accordingly, henceforth, this court will recognize as valid only those Pennsylvania marriages entered into pursuant to the Marriage Law procedures," the court's ruling that the decision should be given "purely prospective effect" requires interpretation; and

WHEREAS, the Court also stated that: "The benefits of the new rule will generally only be felt in the future no matter how it is applied. Persons can arrange their affairs only for the present and future; retroactive application will not cure mistakes made in the past based on misunderstanding of the old law." Accordingly, the Board has determined to adopt a regulation to guide the members of the Retirement System, the public, the bar, and the courts as to its interpretation of this language;

NOW THEREFORE, The Board of Pensions and Retirement hereby adopts this Regulation No. 7, relating to the "Application Of Court Ruling Abolishing Common Law Marriages."

7.1 "Measuring Date." All actions requiring application of the PNC Bank opinion shall be applied with respect to a "Measuring Date," which shall be the date 30 days after this regulation becomes effective under Section 8-407 of the Home Rule Charter. The Board notes that this date will be more than a full year after the PNC Bank opinion and more than six months after the Board's June 25, 2004 newsletter that contained an article discussing the opinion.

7.2 Application. From now on, any application for benefits that depends on the applicant proving the status of "spouse" in relation to a Retirement System member will be denied if the application depends on a common law marriage and any of the following conditions exist:

- a. The member irrevocably enrolled in DROP after the Measuring Date.
- b. The member retired after the Measuring Date.
- c. The application is based on the death of an employee, other than a retiree or DROP enrollee, and the death is after the Measuring Date.

7.3 General Rule. In addition to the provisions of Section 7.2 above, in no case will any person be determined to be a "spouse" based on an asserted common-law marriage, where the evidence of such status is that the intended "marriage" commenced on or after October 18, 2003.

7.4 Limitation. Nothing in this Regulation shall be interpreted to override any deadline or other provision in the Retirement Code, such as the requirements in Section 22-306 that marriage must occur at least 2 years prior to retirement for a "spouse" to be eligible for an Option 4 survivorship benefit.

Approved by the Board September 16, 2004
Became effective October 22, 2004