

**ALBERTA SHEET METAL WORKERS' RETIREMENT TRUST FUND  
DELINQUENT EMPLOYER POLICY  
MARCH 2023**

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**1. INTRODUCTION**

1.1 This Policy describes and sets out:

- (a) the duties, powers and discretion of the Board of Trustees of Alberta Sheet Metal Workers' Retirement Trust Fund (the "Pension Plan") regarding the collection of contributions owing by participating Employers in the Pension Plan to the Trust Fund; and
- (b) the procedures for the Administrator, Legal Counsel, and other persons that assist the Trustees in the collection of delinquent contributions owing by participating Employers in the Pension Plan.

1.2 All capitalized words not specifically defined in this Policy have the same meaning as set out in the Trust Agreement for the Pension Plan amended November 12, 2019 (the "**Trust Agreement**").

1.3 The Provincial Sheet Metal Collective Agreement in force from time to time (the "**Collective Agreement**") requires employers who are bound by the Collective Agreement to make contributions to the Pension Plan at the rates specified in the Collective Agreement.

1.4 Article 3.05 of the Trust Agreement for the Pension Plan provides that the Trustees shall have all powers reasonable and necessary to achieve the purpose of the Pension Plan. In order to achieve the purpose of the Pension Plan, contributions required by the Collective Agreement and the Trust Agreement must be made by Employers promptly.

1.5 To the extent that an Employer's contributions are not received by the Pension Plan, an employee participating in the Pension Plan (a "**Member**") will not receive credit for the hours worked by that Member. An Employer that does not pay the contributions which are required to be paid by the Collective Agreement to the Pension Plan may be liable to those members for any loss or damage that the Members may suffer as a result of that delinquency.

**2. THE TRUSTEES DUTIES, POWERS AND DISCRETION UNDER THE TRUST AGREEMENT**

2.1 It is important to the Trustees to balance the significance to a Member of collecting contributions with the expense incurred by the Pension Plan in seeking to collect from a delinquent Employer such outstanding contributions. In some cases, the Trustees will not be able, in any event, to collect those contributions, due to the insolvency of the Employer **or other circumstances.**

2.2 The Collective Agreement provides that interest shall accrue and be payable by an Employer (a "**Delinquent Employer**") who has not remitted contributions in a timely and full manner.

2.3 The Trustees also have the power, as provided in Articles 18.08 and 19.09 of the Collective Agreement, to conduct an inspection or audit of an Employer's payroll records to ensure

compliance with that Employer's obligation to make timely and full contributions to the Pension Plan as required by the applicable Collective Agreement.

- 2.4 All reasonable costs incurred by the Pension Plan, including its legal expenses and payroll audit or review expenses, in connection with an inspection or audit of an Employer's payroll records, obtaining access to such records, and in enforcing the obligation of an Employer to make contributions on a timely basis, will be sought and recovered from that Employer.

### **3. PROCEDURE FOR COLLECTING CONTRIBUTIONS**

#### The Administration of the Trust Fund and Employers' Reports of Contributions

- 3.1 An administrative service provider (the "**Administrator**") has been contracted by the Trustees to conduct the day to day administration of the Pension Plan, including the collection of contributions from Employers. Each Employer is to return a report in the form required by the Administrator, along with payment of contributions on or before the 15th day of the month following the month in which employment occurs.

#### When Reports of Contributions and Payments are Due

- 3.2 The Employer's Report of Contributions and payment are due **on or** before the 15<sup>th</sup> day of the month following the month in which employment occurred (the "**due date**").
- 3.3 In the event an Employer does not submit a Report of Contributions and/or payment of Contributions by the due date, the Administrator shall, no later than 15 days following the due date, send a Reminder Notice to the Employer.
- 3.4 The Reminder Notice sent to the Employer will state that if the report and/or contributions due are not received within 30 days after the due date, the Employer will be deemed delinquent. The Administrator shall forward a copy of the Reminder Notice to the Local Union representing the Employer's employees (the "Local").

#### Communication with Local

- 3.5 At the time the Administrator sends a copy of the Reminder Notice to the Local, the Administrator shall request from the Local a list of all Members working for the Employer or those Members dispatched by the Local to the applicable Employer in the relevant month. In that communication, the Administrator shall also advise the Local of the names of Members who received pension contributions for the month prior to the relevant month.

#### Follow-Up Communication to be made to Delinquent Employers

- 3.6 Within five (5) business days after the Reminder Notice, the Administrator will contact the Employer by telephone or email communication.

#### Delinquency Notice to be sent to Delinquent Employers

- 3.7 If the Employer's Report of Contributions and/or payment is not received within thirty (30) days following the due date, that Employer is deemed to be delinquent. The Administrator shall send a Delinquency Notice to the Employer (with a copy of the letter to the Local's

office). A copy of the Delinquent Employer Policy will be sent out with the Delinquency Notice.

Letters to the Members advising of the Delinquency

- 3.8 If an Employer is delinquent in paying the required contributions to the Pension Plan for more than 30 days, the Administrator shall send to each Member who, to the knowledge of the Administrator, was employed by that delinquent Employer during the month of delinquency, a letter advising the Member that the Employer is delinquent in paying the contributions to the Plan.

Registration of a Financing Statement under Section 60 of the *Employment Pension Plans Act*

- 3.9 If the Employer's Report of Contributions and/or payment is not received within forty five (45) days following the due date, or suitable arrangements for the payment of outstanding contributions have not been made between the Administrator and the Employer and the Administrator determines there are outstanding contributions, then the Administrator shall, **as soon as is practicable**, prepare a Financing Statement, identifying the corporate name of the Employer (not the trade name) which shall be registered by the Pension Plan's legal counsel ("**Legal Counsel**") pursuant to Section 60 of the Alberta *Employment Pension Plans Act*. That provision grants to a pension plan a security interest in all of the Employer's real and personal property as collateral security for the payment of contributions owing to an Alberta pension plan. The Administrator should only instruct Legal Counsel to register a financing statement if the Administrator has reason to believe that the Employer is owing the Pension Plan for outstanding contributions or the Administrator has exhausted all methods to determine if the Employer is owing the Pension Plan for outstanding contributions. The Administrator should not instruct Legal Counsel to register a financing statement unless the Administrator has made all reasonable efforts to determine whether there is an amount owing to the Pension Plan by the Employer. In the event a financing statement is registered in accordance with this paragraph, a copy of the financing statement shall be sent to the delinquent Employer and the Local's office.

Payment towards the Health & Welfare Fund but not to the Pension Fund

- 3.10 If an Employer makes full or partial payment of any arrears to the Alberta Sheet Metal Workers' Health & Welfare Trust Fund (the "**Health & Welfare Fund**"), but an amount remains due and owing to the Pension Plan, the Administrator shall advise the Employer that a financing statement will be registered immediately if the full amount of arrears is not paid within five (5) business days.

Duration that Financing Statements remain Registered

- 3.11 If a financing statement is registered pursuant to Section 60 of the Alberta *Employment Pension Plans Act* as against an Employer and the Employer subsequently makes all payments of arrears for contributions owing to the Pension Plan, plus interest at the rate of 10% per annum and all legal expenses incurred by the Pension Plan in collecting the arrears, Legal Counsel shall discharge the financing statement as against the Employer unless otherwise instructed by the Trustees.

Legal Action

- 3.12 In the event contributions are still outstanding after forty-five days of their due date, the Administrator shall seek instructions from the Board of Trustees for commencing a court action. In the event the Board of Trustees instruct that a legal action is to be commenced to collect the outstanding contributions, then:
- (a) the Administrator is directed to instruct Legal Counsel to commence a legal action to recover any arrears of contributions which may be owing by an Employer. The Administrator shall not instruct Legal Counsel to commence a legal action to recover such arrears unless the amount of arrears can be determined from the Employer's report of contributions submitted by the Employer, or if such Employer's reports of contributions have not been submitted, the Administrator can otherwise reasonably determine the approximate amount owing to the Pension Plan based on past Employer's Reports submitted in prior months and advice from the Local regarding the employees dispatched during the relevant month; and
  - (b) if the Administrator or the Local is aware with reasonable certainty of the owner or general contractor with whom the Delinquent Employer has contracted to do the work then, and in such case, the Administrator may, where the Board of Trustees in its discretion deems appropriate, contact the owner or general contractor to advise that:
    - (i) the Delinquent Employer failed to pay contributions to the Pension Plan on behalf of Members as required by the Collective Agreement; and
    - (ii) the Delinquent Employer working on the job failed to submit its Employer report of contributions to the Administrator in the event the Delinquent Employer is working on the job and has failed to submit its Employer Report of contributions to the Administrator within the required time period.

Actions to be taken by Legal Counsel

- 3.13 In the event that Legal Counsel has been instructed to commence a legal action to recover any arrears of contributions which may be owing by an Employer, as provided for in Section 3.12, Legal Counsel may take the following steps to collect such arrears of Contributions, inclusive of interest and legal expenses:
- (a) if the Delinquent Employer does not file a defence to the Statement of Claim of the Pension Plan within the prescribed period of twenty days from the date of service of the Statement of Claim, Legal Counsel may enter Default Judgment as against the Delinquent Employer;
  - (b) if the Delinquent Employer files a defence to the Statement of Claim of the Pension Plan, Legal Counsel may make an application to the Court for Summary Judgment if Legal Counsel considers it to be appropriate and reasonable to do so;
  - (c) if the Delinquent Employer provides a schedule or plan for repaying the outstanding amount owing to the Pension Plan, plus all interest at the rate of 10% per annum and all legal expenses incurred by the Pension Plan in collecting the outstanding

Contributions, Legal Counsel will review the repayment schedule with the Board of Trustees and upon instructions from the Board of Trustees, will accept the repayment schedule. Legal Counsel may request that the Delinquent Employer or counsel for the Delinquent Employer execute any additional document that Legal Counsel may consider to be required in order to enforce the repayment schedule, including, but not limited to a Consent Judgment and an undertaking of the Delinquent Employer to pay all future Contributions and file all Reports of Contributions as such Contributions and Reports of Contributions become due;

- (d) if Judgment is obtained as against the Delinquent Employer, Legal Counsel may file a Writ of Attachment as against the Delinquent Employer in the Personal Property Registry of Alberta and in other jurisdictions where the Delinquent Employer may carry on business; and
- (e) if Judgment is obtained as against the Delinquent Employer, Legal Counsel may perform any collection steps that Legal Counsel, in its discretion considers to be appropriate, including, but not limited to garnishing the Delinquent Employer's bank accounts.

#### Request by Employers to be Considered Dormant

- 3.14 If an Employers' Report of Contributions is returned indicating that Employer wishes to be considered "dormant" as an Employer, then the Local must provide confirmation to the Administrator prior to the Administrator accepting the Employer's request to be considered dormant. An Employer will not be considered to be dormant until the Local provides such confirmation.

#### Void Cheques and Banking Information

- 3.15 When an Employer has failed to pay its Contributions when such Contributions become due, the Administrator shall request from the Employer, a copy of a void cheque of the Employer's bank account in order to assist Legal Counsel in collecting from such Employer if collection steps may be required in the future.

#### Procedures to follow when payment by a Delinquent Employer is Received by the Administrator

- 3.16 When a Delinquent Employer provides to the Administrator a cheque towards payment of any unpaid contributions owing to the Pension Plan the Administrator shall maintain a copy of the front and the back of the cheque and shall provide such copy, together with any correspondence that may accompany that cheque to Legal Counsel prior to depositing such cheque. The Administrator should not deposit the cheque without receiving Legal Counsel's confirmation that the deposit of such cheque would not constitute agreement by the Pension Plan to accept from the Employer any amount less than the full outstanding amount owing to the Pension Plan, plus all interest and legal expenses owing to the Pension Plan.

#### **4. CALLED AUDITS**

- 4.1 Called audits are performed by the Administrator on a Delinquent Employer after authorization by the Board of Trustees. Delinquent Employers may be recommended for audit by a Local's Business Manager, the Administrator, or a Trustee.
- 4.2 Audits **shall** be automatically considered by the Trustees if an Employer is delinquent for at least two consecutive months or three times in a twelve consecutive month period and the estimated amount owing to the Pension Plan is \$5,000.00 or more.

#### **5. DIRECTIONS OF THE BOARD OF TRUSTEES**

- 5.1 The Trustees will determine what steps should reasonably be taken to collect a Delinquent Employer's unpaid contributions when the Administrator or Legal Counsel request direction from the Trustees. In determining the steps to take, the Trustees may consider, in addition to the recommendations of the Administrator and Legal Counsel:
- (a) the knowledge which an individual Trustee or the Local may have of the current and anticipated financial health of the Employer and such other information regarding any Employer that the Local or any individual Trustee may provide;
  - (b) representations of the Employer provided to the Administrator, Legal Counsel, or the Trustees;
  - (c) the impact on individual Employees (Members) of the Delinquent Employer if the Contributions are not recovered in full from the Delinquent Employer and the expense that has been or will be borne by the Pension Plan in seeking or continuing collection;
  - (d) the impact on not collecting contributions in a timely manner or in full on other participating Employers; and
  - (e) any relevant policy considerations that may impact on the Trust Fund, the Pension Plan or its Members if a particular course of action is followed.
- 5.2 The Trustees may resolve to cease collection of unpaid Contributions from a Delinquent Employer if:
- (a) the cost of collecting the unpaid Contributions is likely to exceed the amount of the unpaid contributions;
  - (b) the likelihood of successfully collecting the unpaid contributions is, in the opinion of the Administrator or Legal Counsel, unlikely or will incur unreasonable expense or time;
  - (c) the financial or legal circumstances of the Employer, such as a receivership or bankruptcy of the Employer, preclude collection; or
  - (d) such other considerations as may be applicable in the circumstances.

In the event that:

- (e) an Employer remits contributions for both the Pension Plan and for the Health & Welfare Plan, but the remitted amount is not sufficient to pay all of the contributions owing to the Pension Plan and to the Health & Welfare Plan; and
- (f) the Employer has not specified how the amount remitted is to be allocated between the Pension Plan and the Health & Welfare Plan;

then and in such event the Administrator will contact the Employer to obtain direction from the Employer respecting how the contributions are to be allocated between the Pension Plan and the Health & Welfare Fund. If the Administrator is unable to receive direction from the Employer, or if the direction from the Employer does not provide that the contributions are to be allocated between the Pension Plan and the Health & Welfare Plan on a pro-rata basis, then and in such event the Administrator shall seek direction from the Chairman and Vice-Chairman of each of the Pension Plan and the Health & Welfare Plan as to whether the contributions are to be returned or are to be dealt with in a manner agreed upon by the Chairman and Co-Chairman of both the Pension Plan and the Health & Welfare Plan.

The procedures set out above shall not:

- (a) be deemed to allow an Employer to preferentially direct the remitted amount between the Health & Welfare Plan and the Pension Plan;
- (b) waive or defer any other required collection steps set out in this Policy; nor
- (c) waive or defer the requirement of each Employer to remit contributions in full and on time to the Pension Plan.

## **6. PERIODIC REVIEW**

- 6.1 The Board of Trustees shall periodically review this Policy and the effectiveness of this Policy.
- 6.2 The Administrator or Legal Counsel may request from time to time a consideration or amendment by the Trustees of this Policy.

**ADOPTED AND APPROVED BY THE BOARD OF TRUSTEES this 22 day of March, 2023.**

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Chairman

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Vice-Chairman