

## Pensions and Divorce

Under the divorce laws of every state, a pension earned during a marriage is considered to be a joint asset or the marital property of both spouses. (For the purpose of this fact sheet, pension refers to any type of retirement plan account.) This means that it can be divided during a divorce. However, it is not divided automatically. You must specifically ask for a share of the pension at the time of your divorce and follow a specific procedure so that the court awards it to you.

### **What Should I Do to Protect Myself During the Divorce?**

In order to receive a portion of your spouse's pension(s), you must ask for your share at the time of divorce – not later when your spouse retires.

The court can then award you a share as part of the divorce or legal separation proceeding. (See information below about QDROs)

If your spouse has more than one pension (for instance a 401(k) plan and a traditional pension), your settlement must refer to each plan in order to get benefits from both.

You should obtain as much information as possible from your spouse's company benefits office. Under the law, you are a beneficiary with the right to receive the information. However, often the pension plan will not send the information without a letter from your lawyer.

You should also notify the pension plan administrator in writing that you are in the process of a divorce in order to prevent the plan from paying out your share of the pension to your spouse before the divorce is finalized.

### **QDRO: The Ticket You Need to Get Part of Your Ex's Benefits**

To make sure the pension plan recognizes your right to a portion of your spouse's pension after the divorce, you need to obtain a separate court order to present to the pension plan.

This special order is called a "qualified domestic relations order" or QDRO (pronounced "quadrow").

When the court issues a domestic relations order awarding you a share of your spouse's pension, a copy must be sent to the pension plan immediately.

Generally, the plan will want to make sure of two things:

1. the court order contains all the necessary information so the plan can determine who, what and when to pay, and
2. the court order does not require the plan to pay you in a form or at a time that would not otherwise be permitted under the plan. For example, a lump-sum or single payment if the plan does not allow employees to draw their pensions this way.

As soon as the divorce proceedings begin, have your lawyer contact your spouse's plan administrator for the

QDRO procedures. Each pension plan is different, and many companies have developed their own QDRO forms to make it easier for the court and the ex-spouse.

Settle all of the pension issues before the court finalizes your divorce. If the pension is mentioned in your property settlement, but you do not get a QDRO at the time of your divorce, then you will have to go back to court later to obtain a QDRO, pay additional court and legal fees, and possibly run the risk of losing your share of the pension.

Beware of tradeoffs offered by your spouse - the value of your share of the pension may be higher than the value of the assets you are offered.

### **Survivors or Widow's Benefit**

A pension may be divided in many ways. However, if you want to receive a survivor's pension, you will need to ask for that specifically, since it must be separately mentioned in the same divorce decree or property settlement.

If your spouse chose a survivor's benefit for you when s/he set up the pension, you are entitled to receive it regardless of the divorce (unless it's a government pension).

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