

IRAs and Divorce

[Download](#) as a PDF.

IRAs and Divorce: Tips for Saving Taxes and Time in Dividing IRA Funds

When a couple divorces, Individual Retirement Accounts may be divided by a regular court order or judgment. However, women should be aware of the tax consequences and potential delays involved in the transfer of IRA funds when negotiating their divorce settlement. .

Federal law allows tax-free transfers if:

- The IRA transfer is provided for in your divorce decree or property settlement agreement, AND
- The funds are transferred directly from one spouse's IRA to the other spouse's IRA.

Dividing or transferring IRA funds without following these rules could mean that the IRA holder will owe federal income taxes **plus** a 10% penalty on the transferred amount. If you receive a distribution from an IRA as part of your divorce settlement, rather than an IRA-to-IRA transfer, you will have 60 days to reinvest or "rollover" that distribution to your own IRA. However, 20% of that distribution will be withheld for taxes (as an offset to future income tax liability).

Don't forget that although IRA-to-IRA transfers are tax free, you will be taxed when you withdraw funds from your account. (Qualified distributions from Roth IRAs are tax-free).

To avoid unnecessary delays in the transfer of IRA funds:

- **Check with the IRA financial institution** before the divorce to find out its procedures for IRA transfers and whether you will need a copy of the divorce decree.
- **Make sure the settlement agreement includes detailed and specific information** regarding: the account number and financial institution for each IRA account, how much you will be receiving and in what form.
- **Protect your IRA share** pending the final divorce decree by having your spouse transfer it to a separate low-risk money market account, if possible.
- For a speedier transfer of IRA funds, **consider establishing an IRA at the same institution as your spouse's IRA**. If you find a better investment, you can easily move your account to IRA institution once the funds have been transferred.

IRA Survivor Rights After Divorce:

If your ex-spouse dies without having removed you as the beneficiary of his IRA, you may still be entitled to this asset, even if you had waived your right to participate in any retirement plan as a part of your divorce property settlement. (See *PaineWebber, Inc. v. East*, Md. Court of Appeals, 3/14/01.) Be sure you update the beneficiary designations on your own IRAs, retirement plans and life insurance policies when you divorce.

[\[back to top\]](#)