

Dividing Retirement Benefits at Divorce

TIPS FOR SELF-REPRESENTED INDIVIDUALS

At the time you're going through your divorce, retirement may be the last thing on your mind. However, retirement benefits are very valuable and can ensure your economic security in old age. It's important to know that you can ask for a share of your spouse's retirement benefit in your divorce.

Even if your divorce decree awards you a share of the retirement benefit, though, you might still not be able to receive it unless you take certain additional steps after your divorce. If you wait too long after your divorce, obtaining a share of your former spouse's retirement benefits may become more difficult or even impossible. This guide gives you some tips on how to be sure you receive any benefits you were awarded at divorce.

Can a divorce court award you a share of your (former) spouse's retirement benefit?

Yes, except for Social Security (see box on the next page). The two main types of plans to know about are employer-sponsored plans and individual plans. Individual plans, like IRAs (see box on the next page), are easier for the court to handle because you or your spouse controls the account. So once the court decides on a division, it can order you or your spouse to move funds as needed.

Employer plans work differently, but the court can divide them, too. (The court can also divide retirement benefits through a union plan.) The most common employer plans are pensions and 401(k) plans, but there are others. The divorce court can award you a share of that benefit for you to use when you retire. In some situations, this money can be used now to care for your children. Your divorce decree must clearly state what the court is awarding you for the benefit to be

divided. This includes both lifetime benefits (a share of the payout that your spouse receives while alive) and survivor benefits (benefits set aside for you if you outlive your spouse).

TYPES OF RETIREMENT BENEFITS

Social Security is a program run by the U.S. government under federal law. The divorce court cannot do anything with Social Security benefits. You may be entitled to benefits through your former spouse if you were married for more than ten years. (You don't need to have done anything during the divorce.) Visit the Social Security Administration's website to learn more: <https://www.ssa.gov/planners/retire/divspouse.html>

IRA means an Individual Retirement Account, a special type of account that lets you save money for retirement with certain tax benefits.

Individual account plan means an account held through your employer where you set aside money for retirement. The most common types are called 401(k) and 403(b) plans.

Pension is a benefit some employers and unions provide, which pays a specific amount at retirement (usually each month).

Special considerations for individuals in controlling or abusive relationships

If you have experienced, or are currently experiencing, controlling behavior from your spouse/ex-spouse, this might affect your ability to secure access to pension benefits under his/her plan. For example, your spouse/ex-spouse may:

- *Pressure you to sign legal or financial documents* but refuse to explain what those documents mean
- *Fail to include the retirement benefits* on financial forms that usually must be filed in the divorce case
- *Lie to his/her pension plan about being married to you*, in order to claim all of the pension funds for him or herself (without giving you a portion to which you may be legally entitled)
- *Designate someone other than you to receive pension benefits that you are legally entitled to under your divorce decree*
- *Cash out the retirement benefit*, including the portion legally owed to you, before your divorce is final

If you have experienced any of these situations, reach out to resources that can help. Make sure to inform the court and the retirement plan if you believe this is happening. You can also contact the Pension Rights Center at (202) 296-3776 for more information about your rights to spousal benefits in divorce. For legal advocacy and support in your area related to domestic violence, visit <https://www.womenslaw.org/> (a project of the National Network to End Domestic Violence).

What should you do to protect your right to retirement benefits during your divorce?

The court will require you and your spouse to disclose any retirement benefits you have earned. It is still possible your spouse will not provide all the information needed to fairly divide the retirement benefits. This may be intentional, or your spouse may not know all of the information about the retirement benefits. Try to gather as much information as you can about your spouse's retirement benefits. While you are still married (until the final divorce decree is filed), you can request information and documents directly from your spouse's retirement plan.

Try to get everything you need to understand what the retirement benefit is worth, such as a recent benefit statement from the plan. Knowing the value of the retirement benefits will help you make the right choice if your spouse asks you to give up your right to a share of the retirement benefits in exchange for something else.

Once the divorce is final, what must you do to make sure you receive the retirement benefits awarded to you in your divorce decree?

To receive a share of a former spouse's retirement benefit and/or survivor benefits, your divorce decree must clearly state that you are entitled to receive them, but this alone is not enough for employer plans. **You must also obtain something known as a qualified domestic relations order or QDRO.** A **QDRO** is an additional court order that helps explain to the retirement plan exactly what it is expected to do in order to divide

the retirement benefit correctly.

(Note that for some types of retirement plans, like retirement plans for government employees, the name and requirements for this type of order may be different. Contact the agency that administers the specific plan about how to handle a division of benefits in a divorce).

How do you obtain a QDRO?

QDROs tend to be highly technical, so the best option is to find a QDRO-drafting specialist. Not all divorce attorneys have QDRO drafting expertise and many will not draft a QDRO for you. Note also that QDRO-drafting specialists charge money for their services; however, QDRO-drafting specialists commonly charge a one-time flat fee. The specialist can draft a QDRO for you based on your divorce decree.

To locate a QDRO-drafting specialist contact the Pension Rights Center at (202) 296-3776. The Pension Rights Center is able to make referrals to QDRO-drafting specialists in many states.

If you cannot locate or afford a QDRO-drafting specialist to help you, consider asking the retirement plan itself for a **model QDRO**. Not all plans offer model QDROs, but many do. You may be able to work with a divorce attorney, court, self-help center, or legal aid attorney to create a QDRO based on the plan's model QDRO. Even if you are working with a QDRO-drafting specialist, it's a good idea to obtain the retirement plan's model QDRO, if it has one, and share it with the specialist.

What should you do once you have a QDRO?

Once you have a QDRO, the court must review

it to be sure it correctly reflects what was decided in the divorce decree. The court must then sign it and file it in your divorce case. Your former spouse has a right to review the QDRO and may have the right to approve or object to it. The exact process varies depending on what state or court you are in. If you don't have a lawyer, you can ask the court for instructions. You may also find help at your court's self-help center.

Once the QDRO is filed by the court, it is important to submit the QDRO to the retirement plan right away. **Do not wait until retirement or some other life event to submit your QDRO.** Until the QDRO is on file with the retirement plan, you are not considered to have any right to your former spouse's benefits. So, if your former spouse dies, remarries, or withdraws money from the plan and the plan does not have a QDRO on file, this could prevent you from receiving the benefits you were awarded in your divorce decree.

Retirement plans have a right to review a QDRO to make sure that the QDRO does not order the plan to do anything it is not required to do and that the QDRO's instructions are clear enough for the plan to understand. If the plan does not accept the QDRO, it is important to go back to whomever helped you draft your

QDRO and resubmit it to the plan. Some plans may be willing to review your QDRO for you and provide feedback before you formally submit it.

Retirement plans often charge QDRO submission fees; however, these fees are usually taken out of the benefit itself and do not result in an up-front charge. Some retirement plans, however, may charge a fee for reviewing the QDRO before it is submitted or refuse to review the QDRO before you submit it to tell you whether it is acceptable or not. Do not simply assume that the retirement plan has accepted your QDRO once it is submitted – make sure.

Conclusion

Getting your share of retirement benefits can make a big difference to how you're able to live your life after a divorce. Waiting until you retire, though, is too late. Taking the steps in this guide will help you protect your interests now for a better future.

If you have questions, please feel free to visit the Pension Rights Center's website at www.pensionrights.org or call the Pension Rights Center at (202) 296-3776. Thank you!

