

The Divorced Woman's Right to Pension Benefits

What to Know and How to Apply for Part or All of Your Ex-Spouse's Pension

Not only is a pension earned during marriage a marital asset, retirement benefits are often one of the largest property divisions in divorce. –Women's Institute for a Secure Retirement

The Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1968 allow a former spouse (or other dependent) to have rights to an ex-spouse's pension benefits. Pension rights at divorce depend on two sets of rules:

- the rules of your ex-spouse's retirement system; and
- the divorce laws of the state in which your divorce takes place. State laws on pension rights at divorce are usually the same for pensions from all retirement systems.

Types of Pensions

Pensions vary within private and public sectors and within individual plans. The specific plan determines when you can receive benefits, how much money you receive, how often you receive money and for how long. You and your divorce lawyer must base your options on the provisions in the plan.

Private Sector Pension

There are two types of plans: **defined contribution** and **defined benefit**.

Defined Contribution: A private tax-deferred savings plan established by a company or individual to provide a monthly or lump sum income to an individual upon retirement. An example is the popular 401(k) plan.

Note: If you are awarded a lump sum payment, you must put the sum into an Individual Retirement Account (IRA) or similar entity to avoid significant penalties.



WOMEN WORK!
The National Network for Women's Employment

** This tip sheet is strictly for informational purposes and does not constitute legal advice or representation. For legal advice, consult an attorney who has thorough knowledge of current laws and your issues of concern.*

Defined Benefit: A defined benefit is a plan established by a company, union or individual to provide a monthly income for life to an individual upon retirement

Note: Benefits must be stipulated in monthly amounts. You cannot receive a lump sum payment.

A Qualified Domestic Relations Order (QDRO) **MUST** be filed for you to receive benefits from a private sector pension. (Refer to page 2 for more information.)

Public Sector Pension

If your ex-spouse is a Federal government employee, he is a member of either the *Civil Service Retirement System* or the *Federal Employee's Retirement System*. Instead of filing a QDRO, a **Court Order Acceptable for Processing** must be filed by your lawyer.

If your ex-spouse is employed by the State/Local Government or is a Teacher, a **domestic relations order** must be filed by your lawyer.

Note: Some public sector pension plans only pay benefits to you for as long as your ex-spouse is alive.

Military Pension

The *Uniformed Services Former Spouses Protection Act*, 10 U.S.C. 1408, has specific provisions for the division of a military pension. You should know:

- For equitable distribution of the benefits, you must have been married for at least 10 years while your spouse was in active duty. If you were not married for 10 years during active duty, the order for division of benefits must be written as **spousal support payments**.
- The maximum amount awarded is 50% of benefits. If combined with child support or alimony payments, then 65% of benefits may be awarded to you.

If your ex-spouse is eligible for a military pension, you must file a **Retired Pay Court Order**. The Retired Pay Court Order **MUST** be filed during a divorce or as part of a property settlement, not post-divorce.

You will also need to apply for payment by completing *DD Form 2293*, which can be obtained through the Defense Finance and Accounting Service. Include a copy of the applicable court order **certified** by the Clerk of the Court within 90 days of sending, your former spouse's social security number and your contact information. Mail or fax this information to:

Defense Finance and Accounting Service
Cleveland Center-L
P.O. Box 998002 Cleveland, OH 44199-8002
Phone: (216) 522-5301 / Fax: (216) 522-6960

If you divorced **after** your spouse became eligible to receive retired pay you may be eligible for coverage under the **Survivor Benefit Plan (SBP)**. Although your former spouse has the ability to designate you as the recipient of this coverage, you can initiate it yourself.

To do this, you must:

- ✓ Make an appeal *within one year* from when the court order requiring SBP coverage was issued.
- ✓ Contact the Retirement Office of the Defense Finance and Accounting Service to learn more about SBP.

Retired Pay Operations
Attn: Code PRRB (for retired members)
Or

Attn: Code PRRABA (for active duty and reservists)
PO Box 99191, Cleveland, OH 44199
Phone: (800) 321-1080 *toll free*
Website: www.dod.mil/dfas/
E-mail: CCL-MB-DFAS-Cleveland@dfas.mil

Addresses for DFAS change frequently. Call prior to sending materials.

* If the former spouse remarries before the age of 55, coverage is suspended. If the subsequent marriage is ended by death or divorce, the coverage is resumed.



Qualified Domestic Relations Order (QDRO)

A general domestic relations order is a legal order filed with a court in relation to child support, alimony or marital property rights. A *qualified* domestic relations order (QDRO, pronounced quadro) is a legal order filed with the court that establishes the right of a related individual to pension benefits.

The legal term for the person named in this order as the recipient of the benefits is the **alternate payee**. An alternate payee may be a spouse, former spouse, child or other dependent. You do not have to be named in your ex-spouse's plan to be designated as the alternate payee.

STEP 1: Filing a QDRO

A state court or agency with the authority to issue orders may award part or all of a pension benefit.

It is your lawyer's responsibility to draft the QDRO. All domestic relations orders, including QDROS, should be issued as part of a divorce proceeding.

Talk to your lawyer about filing a QDRO in your early meeting with her/him about your divorce. Depending on the state, it is possible to apply after a divorce has taken place, but is typically very costly. In some situations an alternate payee may receive payments before the pension holder (ex-spouse) has access to his benefits.

STEP 2: Qualifying for a QDRO

To "qualify" according to pension plan rules, the order should contain:

- √ Alternate payee's name and address
- √ Plan holder's name and last known address
- √ Name of the pension plan(s)
- √ Amount or method of determining the benefit
- √ The number of payments or time period for which the order applies
- √ Pension plan information.

The other information contained in a QDRO is specific to the pension plan. Your lawyer should contact the plan's administrator to obtain this information. You may also want to include your social security number and your date of birth. Also include the plan holder's social security number (if known), date of birth, occupation, employer; and date of your marriage and divorce.

STEP 3: Obtaining Pension Plan Information

Obtain pension plan documents and participant benefit information to help prepare for the QDRO. All pension plans must have written procedures for determining whether or not a domestic relations order is "qualified." The administrator of the pension plan will have this information.

The administrator is often located in the human resources department but can be the employer, a committee or a board of trustees. If the administrator is unknown, contact the employer. Some administrators will informally review your order before it is submitted to the court and tell you if it will be accepted under the plan's guidelines. This could save you future legal fees.

STEP 4: Submitting the Order

Your lawyer will submit the completed order to the court. After the order is approved, it will be sent to the plan administrator. The administrator must determine qualification within a reasonable period of time and notify all parties. The administrators are NOT permitted to charge for determining the qualification of an order. Follow-up on your order with the administrator – *if your lawyer doesn't, make sure you do.*

Questions to Ask Your Lawyer

Ask your lawyer to explain all of your rights and options. **There is no guarantee that a wife will receive a portion of her husband's pension.** Only Social Security provides automatic benefits to a divorced spouse.



- **Do you qualify for Social Security benefits?**
If you were married for at least 10 years, are 62 years or older and currently unmarried, **you are eligible for some of your ex-spouse's benefits.** If you have been divorced for at least two years, you can collect benefits. However, your ex-spouse must have enough credits to qualify for benefits and be 62 years or older. Contact the **Social Security Administration** for more information at (800) 772-1213.
- **How does your ex-spouse's death affect your benefits? What benefits can you receive after your ex-spouse dies?**
Some plans provide benefits only if your ex-spouse is living. These plans require a separately-awarded survivor pension. Survivor benefits **MUST** be filed separately, but at the same time as filing for other pension benefits.

- **If your ex-spouse is now collecting benefits, how much does he actually receive?**
- **What happens if your ex-husband never applied for his pension, is injured or disabled on the job, or waives his right to a pension?**
- **Does your state law treat pensions as marital property?**
- **What happens if you remarry?**

Some benefits will terminate if you remarry. Federal civil service and military survivor benefits stop if you remarry before age 55.

Organizations

Pension Rights Center, 1350 Connecticut Ave, NW, Suite 206, Washington, DC 20036; (202) 296-3776; www.pensionrights.org

U.S. Department of Labor, Pensions and Welfare Benefits Administration; Regional offices located in every state. For more information: (866) 444-3272 or www.dol.gov/ebsa

