



12 Mistakes Lawyers Make Preparing Pension Orders During a Divorce

1. Doesn't ask soon enough for information about spouse's pension and retirement benefits.

Before you sign a property settlement agreement or go to court, your lawyer should obtain the plan document (set of rules) or the summary plan for each pension plan. The attorney should also ask for the plan's "domestic relations orders" procedures (QDRO), as these may have options or restrictions about when the former spouse's share can be paid. These details make a difference in your negotiations.

Note: You can usually find the rules for most *government* retirement plans (federal, state and local) in publicly available statutes and regulations rather than a "plan document."

2. Fails to prepare any pension order.

If you are entitled to a share of your ex-spouse's retirement benefits, it is important that your lawyer ensures the court signs a pension order *at the time of your divorce*. If you skip this step, you may lose some of the benefits you otherwise would receive if your ex-spouse dies, retires or remarries.

3. Fails to obtain any information for every retirement benefit that might be marital property.

Many employees are covered by more than one pension or retirement plan. For example, an employee in a large company may have a pension plan, a "401(k)" savings plan, and an employee stock ownership plan (ESOP). Benefits under all plans may be marital property. Your lawyer needs information about each of them. Also, check if your spouse has benefits from previous jobs. If necessary, your lawyer can ask the court to issue a subpoena (an order to provide documents or information) to each employer or former employer.

4. Fails to obtain information about all the features of a particular pension plan.

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5. Fails to ask for a survivor benefit or doesn't advise you that none is available.

Be sure to ask whether your ex-spouse's death will affect your benefits. What if your ex-spouse dies before collecting their own benefit? In many situations, a former spouse shares the pension only as long as the pension earner lives, unless the court specifically awarded her a survivor's pension. Some state and local government plans won't pay survivor's pensions to ex-spouses under any circumstances. If you learn that pension benefits won't continue after your spouse's death, you may want to ask him or her to buy a life insurance policy with you as beneficiary to protect your retirement income.

6. Fails to explain how retirement benefits are usually divided under state law.

State marital or community property laws usually specify how to divide pension and retirement benefits in a divorce. How is your marital share figured? When can it be paid? Your lawyer should explain to you how these laws apply to your situation. If state divorce law isn't very helpful, could you negotiate something better? For example, even if state law says you have to wait to collect your pension share until your spouse retires, you may be able to work out an agreement that will let you collect your benefits right away, if that would be more favorable to you.

7. Fails to explain possible acts by the ex-spouse that may reduce or eliminate your benefits.

What if your ex-spouse never applies for his or her pension? What if they are injured or become disabled? What if they waive rights to the pension? Would these or other acts affect your benefits? If so, what legal recourse would you have? Make sure that your property settlement agreement allows you some options if the worst happens. You may want to ask the court to require your former spouse to pay you alimony or other property if they interfere with your right to the pension benefits.

8. Fails to explain what effect your remarriage may have on your benefits.

Some federal, state, and local government employee benefits will stop if the former spouse remarries. Both federal civil service and military survivor pensions terminate if the former spouse remarries prior to age 55. Also, any pension benefits awarded to you as alimony or spousal support, rather than marital property, will likely terminate upon remarriage.

9. Is unaware of unusual requirements or loopholes in the law that could result in the pension order being rejected by the plan administrator.

Some pension and retirement plans are not required to accept court orders transferring benefits to a former spouse, including many benefit plans for highly-paid company executives and “deferred compensation” plans for state and local government employees. Likewise, federal government retirement systems have many unexpected requirements for paying pensions to former spouses. The government won’t pay your awarded share of military retirement unless you were married for at least ten years of your spouse’s military service. Also, a federal civil service survivor pension is usually not available if the pension order is signed by the court after the divorce is final and the employee has retired.

10. Fails to have the proposed pension order pre-approved by the pension plan before sending to court.

You cannot get your pension money until the plan’s administrator officially accepts the order signed by the court. If the order doesn’t follow the rules of the plan, it will likely be rejected. Your lawyer will then have to return to court and get an amended order, acceptable to your plan provider. Avoid unnecessary delay and legal fees by having your lawyer ask the plan administrator in advance whether the proposed order is acceptable. Most company pension plan administrators, as well as many state and local plan officials, will informally review a proposed pension order before the divorcing couple or judge signs it. Federal government plans, however, usually will not review pension orders in advance.

11. Does not ensure the final pension order was sent and officially accepted by the plan administrator.

Your pension order should be signed by the judge at the time of your divorce, or as soon as possible afterward. Your lawyer should mail a copy of the final order to the plan administrator – but that’s not the end of it. Sometimes a pension plan will lose an order or just let orders pile up for months without looking at them. It is important your lawyer ensure that the plan receives your pension order and notifies you in writing that it was accepted, even if you are not expecting to receive your benefits for years.

12. Fails to explain about your rights to Social Security benefits.

Social Security benefits are usually not treated as marital property by state divorce courts, but if you were married at least ten years, then you may be automatically eligible under federal law for Social Security benefits as a divorced spouse. For this reason, it might be a good idea for your lawyer to ask your spouse to provide you with a benefit estimate that can be obtained from the Social Security Administration. You can get information about the rules for collecting benefits by calling Social Security at (800) 772-1213 or visiting www.ssa.gov.

A Final Note of Caution! Don’t leave everything to your lawyer. If you have questions about your pension rights at divorce, get the answers you need before your divorce is final, even if you have to be the one to collect some of the information. It may get frustrating at times, but be persistent. It’s well worth it!