



7 Key Questions You Need to Ask BEFORE Your Divorce is Finalized

1. Does your spouse have more than one pension or retirement plan from his or her current or previous job?

Your spouse may be eligible for (or may already be receiving) retirement benefits from any current or previous job. Your settlement must refer to each plan in order for you to get benefits from each. Your spouse may, for example, have a traditional pension plan and also a 401(k) plan. Both types of plans can be divided at divorce.

2. Has your spouse worked long enough to earn a legal right to the pension?

Most plans now provide benefits after 5 years of work (some might be sooner). However, if your spouse has worked for the federal, state, or local government, you will have to find out about the different rules that apply to those pensions.

3. Do you know how much your spouse has earned or “accrued” in pension benefits under each plan?

Almost no plan will give one spouse a benefit statement for the other spouse’s plan, but your attorney can request that the participant-spouse obtain that information or authorize the plan to provide it. If that does not work, your attorney can ask the Court to issue a subpoena to the plan administrator for the information. The important thing is to get as much information about the benefits as possible before the divorce is final. You should also request a summary plan description (SPD), which will describe the key features and rules of the plan. The SPD will tell you if the plan provides for cost of living adjustments.

4. Do you need to have the benefit valued?

Sometimes the pension is worth more or is more complicated than the amount that appears on the annual statement. You may want to have a pension actuary or an accountant calculate the lump sum present value of the monthly pension.

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5. Do you know what information needs to be in the court order, decree, or property settlement before the pension plan will pay the benefits directly to you?

The court order required to divide a company pension plan is a Qualified Domestic Relations Order (QDRO). As soon as divorce proceedings start, have your attorney 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.

6. Does the order clearly specify what amount is to be paid to you?

How your share is specified in the QDRO is based on what is provided in the divorce decree or property settlement agreement, which, in turn, will be based on how the marital property law in your state divides retirement benefits. The exact language for specifying your share of the retirement benefits will depend on the QDRO requirements for the plan that is involved. The amount can be stated as a fraction or percentage of the pension. It can be based on the total benefit earned as of the separation date, the date of divorce, the retirement eligibility date, or the actual retirement date.

7. Does the order provide for survivor benefits, so that your benefits can continue if your ex-spouse should die first?

Traditional, company pension plans provide a survivor's benefit of 50% of the amount the spouse received. Ex-spouses can receive these benefits, but they must be specifically included in the order or the benefits may stop when their ex-spouse dies.