

## **How to divide risks, rewards of pensions Assets' uncertain future can complicate your divorce deal**

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Retirement benefits can be the largest assets that a couple divides in a divorce.

If you are in a divorce situation, you'll have to negotiate for your share. And the shifting landscape of pensions has changed many long-held assumptions of negotiations.

"Retirement accounts are certainly not viewed as being as secure or static as they once were," says **Janet Brumley**, a family law attorney and partner at Verner & Brumley in Dallas.

"Where we once viewed each and every retirement account as something that could only grow, we now seem to be coming around to the idea that retirement accounts are changeable assets that can lose value or even disappear, just like they can morph and grow," she says.

If you're already divorced and worried about the future of your ex-spouse's pension, there's not a lot you can do, experts say. But contact your lawyer if you have questions.

If you're in the process of divorcing, consider the following advice, which applies to both husbands and wives.

The first thing to do is make sure you understand the details of your spouse's pension, as well as your own. Ideally, you should have had this information all along, even before you contemplated divorce.

"Identify all the benefits that there are," says Anne Moss, a Washington attorney and consultant who helps lawyers divide pensions in divorce cases. "A highly paid employee will tend to have more retirement plans. Top executives will typically also have nonqualified plans or supplemental plans that are given on top of the regular company plans. Those need to be identified."

### **'A bird in hand'**

Next, view traditional pensions as having an uncertain future and negotiate in that context.

"It's one thing when you divide current assets," says Barbara Handschu, president of the American Academy of Matrimonial Lawyers. "It's another thing when you're doing something in the future based on an account that might become defunct."

One strategy for a nonworking spouse can be to take cash and property of equal value to the working spouse's pension, leaving him or her with the future risk.

"Have an assessment of the plan done so that both parties have a number as to the value of the pension plan today and then take her percentage interest in the community property estate asset of the retirement account in other community property assets, thereby divesting herself of any interest in the pension plan," Ms. Brumley suggests.

However, the other spouse's lawyer may have a different idea.

For any spouse, it's wise not to take the whole pension, says Michael McCurley, a family law lawyer and senior partner at McCurley Orsinger McCurley Nelson & Downing in Dallas.

"It's given new meaning to the saying, 'A bird in the hand is worth two in the bush,'" he says. "You must look suspiciously on any long-term payout in retirement, because it may or may not be there 20 years from

now, 10 years from now or even five years from now."

An important principle that both spouses should be interested in is diversification.

Both parties should be negotiating for a good mix of assets during a divorce, Mr. McCurley says. "You have to look for different avenues of long-term security from both litigants' point of view."

There is a way to evenly split the risks and rewards of a pension. This works particularly well if both spouses have a pension and you don't know whose is more secure.

### **Get a QDRO**

This tool is called a "qualified domestic relations order," or QDRO [pronounced "quadrow"]. It's a court order that recognizes a spouse's right to receive a portion of a pension holder's benefits.

The QDRO is sent to an employee's pension plan so it knows to recognize the spouse as being entitled to a share of the pension.

You could use a QDRO to secure your share in your spouse's pension as of a certain date and certain amount and give him or her a QDRO that "secures his similar interest in her pension plan," Ms. Brumley says.

"This way, they have effectively decided to share the risk and the reward of two plans," she says. "We are now seeing people who are wanting to divide the pension plan and divide the risk."

### **Be assertive**

Make sure you bring up a QDRO with your attorney.

"Most women reasonably assume that their lawyers know all about the many federal and state laws that set the rules for pension-splitting," according to the Women's Institute for a Secure Retirement and the National Center on Women and Aging.

A QDRO is the way to go, says Ms. Handschu of the American Academy of Matrimonial Lawyers.

"I really worry about the ones who took pensions and traded them off against other assets, because now they may be worth a whole lot less or worthless," she says .

"I am really more comfortable with QDROs. They're more protective, rather than letting somebody keep a pension. They're going to bear the future equally, as opposed to one of them keeping a pension and that pension going belly-up."

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