

DIVORCE - DIVISION OF MARITAL ASSETS – PENSIONS

In the State of New York, when married couples get divorced, each spouse is often entitled to a portion of the pension of the other spouse. This is because pensions and other retirement assets which accrue during the marriage are considered “marital assets.”

For example, if the wife (pensioned spouse) worked as a teacher in a public school, and received a New York State pension as a benefit of employment, the husband (non-pensioned spouse) would be entitled to a portion of it.

How much is the non-pensioned spouse actually entitled to? Simply stated, the non-pensioned spouse is entitled to a percentage of the pension equal to ½ of the pension benefit that accrued while the parties were married. As you can imagine, figuring out exactly how much the non-pensioned spouse is entitled to requires the utilization of a mathematical formula.

Preparing the document which divides the pension typically comes at the end of the divorce process, either after a trial or by settlement. After the Judgement of Divorce is signed by the judge and entered with the clerk of the court, another court order, called a Qualified Domestic Relations Order (QDRO) or sometimes simply a Domestic Relations Order (DRO), must be prepared by your attorney, approved by the applicable pension administrator, signed by the Court and ultimately filed with the pension fund. This Order relates solely to the division of each spouse's pension or other retirement assets. (The Judgment of Divorce is the document which officially and legally proves you are divorced, and is signed before the QDRO or DRO is finalized).

The guiding principle in the preparation of this document is that each spouse is entitled to 50% of the pension benefits of the other spouse that accrued during the time of the marriage.

Here is the basic formula:

$$50\% \times \frac{\text{Number of months of the marriage}}{\text{Number of months the pensioned spouse was employed}}$$

The longer the pensioned spouse was accruing pension time before the marriage and the longer the pensioned spouse works after the date the summons and complaint was filed, the smaller the percentage of the non-pensioned spouse receives when the pension attains pay out status. It should be noted that the cutoff date for computing the length of the marriage is typically the date the divorce action was filed with the court of appropriate jurisdiction.

Often, pension plans will only implement the language of a QDRO or DRO that complies with a certain format. Because of this, as well as the difficulty in factoring in market values and other variables, the QDRO or DRO is usually prepared by a specialist in drafting these orders under the guidance of the attorneys for the parties, and with the pre-approval of the applicable pension plan administrator.

Once the QDRO or DRO is prepared, pre-approved by the fund, and signed by the court, it becomes a court order. Thus, once filed with the applicable pension fund, the fund will be compelled to implement its language and divide pension payments between the parties accordingly.

If you truly believe that your marriage needs to be dissolved, please let us help you.

Call us today.