

# Protecting Your Finances during a Divorce

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The June 26, 2015 Supreme Court Ruling in *Obergefell vs. Hodges* provides equal protection for same-sex marriage. This series of fact sheets produced by WISER and SAGE's National Resource Center on LGBT Aging is designed to help LGBT couples understand their finances in relation to marriage, divorce and widowhood, all life events that now have the benefit of equal protection and due process.

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Going through a divorce can be a very emotional and difficult situation to navigate, which can leave individuals financially vulnerable as well. If you are considering a divorce or in the process of one, it is important to focus on your finances and what you need to do to protect yourself *before* your divorce is finalized. Any mistakes made during this critical time can have long-lasting financial consequences.

Once a divorce is initiated, some of the more complicated decisions involve the division of retirement plan assets. Retirement benefits are not automatically split during a divorce. Just like other marital assets, a divorce court judge or an agreement between you and your spouse divides the benefits.

## *Get All the Information You Need Early On*

Find out as much as you can about the benefits earned by you and your spouse during the marriage. Contact your current and former employers to find out about your own benefits, and also find out whether or not your spouse currently receives benefits. You could ask your spouse for information about their benefits, or you could go directly to their current and former employers. Before releasing this information, however, the employers might require your spouse's written authorization or an order from the court.

Retirement benefits come from a variety of employer-provided plans — pension plans, 401(k) plans, deferred compensation plans, 403(b) plans, military plan benefits, and federal, state and local government employee benefits, among others. Keep in mind your spouse may also have assets sitting in an Individual Retirement Account (IRA) if they changed jobs during your marriage and rolled that money over from the employer plan.

★ **Be clear on this critical point: You need to have all the information about your spouse's retirement benefits before you divorce.** It is nearly impossible to go back to court and ask for a share of your ex-spouse's benefit that you learn about after the fact. ★

## *Get a "Qualified Domestic Relations Order" (QDRO)*

The divorce law in just about every state recognizes retirement benefits as joint assets if they were earned during marriage, but they are not split automatically. You need to get a court order called a

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Qualified Domestic Relations Order (QDRO) *before the divorce decree is finalized* to get a share of that money. (Do not wait to ask for it later when your ex-spouse retires; by then it will most likely be too late!) The QDRO establishes your *legal right* to receive a portion of your ex's retirement payouts. The QDRO is usually written by one of the couple's attorneys. It orders the retirement plan to pay you a specified share of the benefits based on the terms of your divorce agreement. Your lawyer will submit the QDRO to the court for a judge's signature. After the judge signs the QDRO, send it to the retirement plan administrator as soon as possible and confirm it was received. Your agreement should specify whether you or your spouse is responsible for preparing the QDRO and paying the related fees. The QDRO should also lay out the details of what happens to retirement funds if either of you remarry, or if your former spouse passes away.

What is important is that either the couple's property settlement agreement addresses all the pension and retirement accounts that the couple has, or that the judge does that in the divorce decree (in a case where the judge decides how the property is to be divided). Usually each plan that is being awarded to the former spouse needs a QDRO. It is a good idea if the QDRO is signed by the judge at the same time that the parties are divorced, but if that's not possible, then it is best to get it signed as soon as possible after the divorce is final. If the case can't be settled prior to the divorce hearing, it would be almost impossible to have the QDRO signed at the time of the divorce, but could be done soon after.

★ **What happens if you don't get a QDRO?** You could end up like thousands of divorcees who reach retirement age only to find out that they won't get what the divorce decree stated because the documentation wasn't handled properly.

### ***Get Help in the Process***

It may be worthwhile to have the retirement plan benefits evaluated by an outside expert. A divorce attorney can help you navigate the process. Even if you and your spouse agree to divorce through mediation, hire a lawyer to advise you along the way. It is an extra expense, but it will cost you a lot more if you make uninformed decisions.

★ **But A Note of Caution!** Don't leave everything to your lawyer. If you have questions about your pension rights at divorce, be sure you 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! To learn more, read WISER's Fact Sheet, *12 Mistakes Lawyers Make Preparing Pension Orders During A Divorce* (available at [wiserwomen.org](http://wiserwomen.org).)

### ***7 Key Questions You Need To Ask BEFORE Your Divorce Is Finalized***

#### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

**For more information  
about divorce and  
retirement benefits,  
visit WISER’s website:  
[wiserwomen.org](http://wiserwomen.org)**