

Marriage... Divorce... Retirement

Understand what happens to your retirement benefits if you divorce your spouse



Your pension or provident fund savings form part of your overall assets. This is something that needs to be taken into consideration if you and your spouse decide to divorce. While divorce is extremely stressful no matter what, it can become even more so if there are financial or legal complications that you weren't prepared for.



Please Note: If you were married out of community of property without accrual after 1 November 1984, your spouse has no claim to your retirement savings.

But what does this mean? Basically, there are three general 'types' of marriage:

1

Marriage out of community of property without accrual – you have an antenuptial contract with your spouse, where you both are only eligible for your own assets and liabilities, exactly as if you were two single people. *Neither of you owe the other anything.*

2

Marriage out of community of property with accrual – you have an antenuptial contract with your spouse, where the spouse with the larger accrual must pay the difference to the other spouse, so that both partners' accruals are equalised. *For example, if your accrual is R600 000 and your spouse's accrual is R400 000, you need to pay over R100 000.*

3

Marriage in community of property – you and your spouse each have a claim to 50% of your combined assets and liabilities. *Everything is split exactly down the middle.*

If you belong to **category 2 or 3** and your spouse chooses to take a cash benefit from your retirement savings, then he/she will need to pay tax on the benefit. However, if the benefit is transferred to another retirement fund, the benefit will be transferred tax-free, and only taxed at exit from the fund.



Please Note: Your fund can only pay over a portion to your ex-spouse if the Divorce Order complies with certain requirements, as stipulated in Section 7(8) of the Divorce Act. If the Divorce Order is not in line with the requirements below, you will need to refile, which can be both costly and time consuming.

- **The Fund must be named in full**, e.g. *Defendant is a member of the XYZ Retirement Fund.*
- **The Divorce Order must clearly state the percentage or rand value of the pension interest (the value of the benefit as at the date of the divorce) to be paid to the ex-spouse**, e.g. *The parties agreed that the said Fund be ordered to pay 50 per cent of the pension interest of the Defendant in the Fund to the Plaintiff or to a retirement fund elected by the Plaintiff.*
- **The Fund must be ordered to pay over the awarded portion to the ex-spouse and endorse its records accordingly**, e.g. *A certified copy of the divorce order must be submitted to the said Fund or its administrator so that the Fund's records can be endorsed accordingly.*

It is your responsibility to notify the Fund of a Divorce Order. This should happen as soon as possible after your date of divorce.

Don't allow a difficult situation to become any more complicated than it needs to be – make sure you get things right the first time round.

Disclaimer:

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