

# Dividing Retirement Benefits Upon Divorce

**What do retirement benefits include?** Pensions, deferred compensation accounts, 401(k) accounts, Individual Retirement Accounts (IRAs) and other retirement savings plans. For [www.pensionrights.org](http://www.pensionrights.org) for general information about pensions and other types of retirement benefits. A guide about retirement created for women going through divorce is available at [www.wiserwomen.org/pdf\\_files/wiserBroDivorce.pdf](http://www.wiserwomen.org/pdf_files/wiserBroDivorce.pdf).

**Do retirement benefits belong to both spouses?** It depends on whether contributions to the account were made before or after the date of marriage. Contributions made before the marriage are the *separate property* of the spouse who made them. Contributions made during the marriage are the *community property* of both spouses, regardless of whose name is on the account or which spouse contributed through employment. Some retirement accounts are made up of both community and separate property.

**Does it matter how long we were married?** It depends on the type of retirement. Most retirement savings plans (like 401(k)s) can be divided on divorce regardless of the duration of the marriage. For these types of plans, the court is *not* required to split the retirement evenly between the spouses. Pensions, Social Security spousal benefits, and military retirement have different rules for eligibility and for when you are entitled to receive the funds.

**How do I know if my spouse has retirement?** Most contributions to an employer-based retirement program will appear on the spouse's earnings statement/pay stub. Retirement and 401(k) accounts typically send periodic statements by mail and in the New Year before tax time. Government employees usually have a pension.

**How can I keep my spouse from cashing out retirement before we divorce?** Most Texas counties, including Travis, have "standing orders" automatically in effect when a divorce is filed ordering both parties not to withdraw funds from retirement accounts. If your county doesn't have standing orders, ask for a Temporary Restraining Order with the same provisions. A party who disobeys these orders risks being held in contempt of court. If you are thinking about divorce, gather financial information before you file.

**What about my spouse's social security or military retirement?** To be eligible, you must have been married *10 years or longer* and meet other requirements. *Social Security Spousal Benefits* are based on your spouse's work history. The amount of spousal benefits may depend on the social security benefits you'll receive based on your own work history. Contact your local Social Security Office or visit [www.ssa.gov](http://www.ssa.gov). Spousal benefits from *Military Retirement* are based on how long your spouse was in the service while you were married. If eligible, you can receive payments directly from the service member's retired pay. For information, visit [www.dfas.mil/garnishment/usfspa/faqs.html](http://www.dfas.mil/garnishment/usfspa/faqs.html).

**How can I keep my retirement benefits when I divorce?** You and your spouse can agree that each of you will keep the retirement accounts under your own name and not divide them. Or, you can "cash out" your spouse's share as part of the divorce settlement. Another option is to agree to exchange community property equal to the value of your spouse's share of retirement. For example: assume that your employer-based 401(k) account has a balance of \$10,000 accumulated during the marriage. You and your spouse purchased a truck now valued at \$10,000. You exchange your share of the truck (\$5000) for your spouse's share of the 401(k) account (\$5000). Note: Retirement savings plans like 401(k)s are valued as of the date of divorce; similarly, the value of the truck is its fair market value at the time of divorce, not purchase price.

**How can I make sure the plan administrator will send me my share of retirement?** In most cases, you'll need a court order called *Qualified Domestic Relations Order*, or QDRO. A QDRO is an order signed by the judge, separate from your divorce decree that directs your former spouse's employer to divide the retirement benefits according to the decree. If you didn't get a QDRO when your decree was signed, Texas law allows you to go back to the court later to get your QDRO signed.