

Happily Ever After Pension Division?

After the family home, the division of pension is the biggest and most emotionally-laden asset to divide during a divorce. Most spouses marry believing that they will live happily, not to mention financially securely, ever after. Moreover, most people go through their working lives looking forward to a comfortable retirement. It is therefore not surprising that when unhappiness in a marriage leads to divorce, the division of pensions and retirement assets is a stressful experience. Whether one spouse was the primary breadwinner, if both were in the workplace pursuing careers, each spouse begins to stake out claims to his or her slice of the pension pie.

When one considers the complications that arise when the division of property assets is done in conjunction with the division of pension, one will likewise understand the benefits of having a Certified Divorce Financial Analyst (CDFA) working on the divorce. One of these complications is known as double dipping, which can occur when pension assets are valued along with other assets to determine the Net Family Property as well as the equalization payment. If the supporting spouse is allowed to keep his or her pension, but is required to pay spousal support while he or she is employed and after his or her retirement, the pension asset changes to a source of income. The result is double dipping; the supported spouse will receive the same benefit twice, once as an asset factored into the Net Family Property, and a second time as a source of income. Although this is very unfair, it is currently the law. A CDFA can expose this

complication to both of the divorcing parties, and help them to understand exactly what they are agreeing to at the time of settlement.

A recent trend is to regard the supported spouse's assets, transferred as part of the equalization of Net Family Property, as a source of income for his or her own support when the supporting spouse retires. Only the portion of the supporting spouse's capital which was not subject to the original equalization order, in other words, the pension earned after the breakdown of the marriage, should be considered when assessing appropriate amounts of support for the supported spouse.

Although the "if and when" settlement is a popular option with lawyers, clients do not usually understand the implications of this type of settlement on their financial security. It means that the supported spouse is not entitled to any information pertaining to the supported spouse's pension plan. If the supporting spouse should die or be laid off before the date of retirement, an "if and when" settlement is not substantial enough, as it may not even be enforceable under the Pension Benefits Act.

Another source of contention between separating parties is the date of valuation. In assessing the value of a pension, an actuary must make a number of assumptions, some of which can be problematic. One such assumption that can negatively affect the value chosen for the pension is the date of the pension plan member's retirement. A CDFA can help both parties to understand the differences in pension valuation based on the age of retirement, and thus make the settlement offer more comprehensible to both clients.

The more information given to clients to help them to understand their future financial situations, the easier it will be to arrive at a settlement during divorce. During the collaborative process, the information offered by a CDFA can be invaluable in helping to make a decision that is reasonable and equitable for both parties.