

YOUR PENSION RIGHTS AT DIVORCE

**What Women
Need to Know**

Third Edition

Anne E. Moss

**PENSION
RIGHTS
CENTER**

Your Pension Rights at Divorce (Third Edition)
Copyright © 1991, 1995, 2006
by the Pension Rights Center.
All rights reserved

Your Pension Rights at Divorce: What Women Need to Know is intended to provide general information about pension rights at divorce. It is being published with the understanding that the Pension Rights Center is not engaged in rendering legal services. This book should not be used as a substitute for legal advice. Individuals with legal problems should consult a lawyer for advice about their specific situations.

Library of Congress Cataloging-in-Publication Data

Moss Anne E.
Your Pension Rights At Divorce/Anne E. Moss. -Rev.
Ed.
Includes index.
ISBN 0-9643 990-0-8 (paper)
1. Pensions-Rights at divorce-United States. 2.
Divorce-Legal rights to pensions. 3. Women's
legal rights at divorce-Division of pensions. Library
of Congress Catalog Card Number: 94-69780

The Pension Rights Center is a nonprofit public interest group organized in 1976 to protect and promote the pension rights of workers, retirees, and their families. The nation's leading pension educator, the Center is also at the forefront of efforts to reform the nation's pension programs, targeting inequities in pension laws, providing policymakers with reasoned analyses of pension issues, and proposing workable solutions to pension problems. The Center's activities are supported by foundation and government grants, sales of publications, and contributions from organizations and individuals. WWW.PENSIONRIGHTS.ORG

The Women's Pension Project is an activity of the Pension Rights Center committed to enhancing the economic security of older women. The Project organizes women throughout the country to advocate effectively in their own interests and provides technical assistance to women's and retiree groups participating in the Women's Pension Coalition. Pension equity provisions in four federal laws are directly traceable to Project initiatives.

Anne E. Moss is a lawyer and nationally recognized expert on pension rights. Now in private practice in Washington, DC, she was the Director of the Women's Pension Project of the Pension Rights Center for nearly a decade. While at the Center, she played a critical role in bringing about reforms to strengthen women's rights to pension benefits. She testified frequently before Congress; provided legal and strategic advice for women's organizations; wrote articles in legal journals; and provided thousands of women with information about their pension rights.

In her private law practice, Anne Moss continues to give legal advice related to divorce, and to share her expertise with the public in speeches, in the press, and through radio and television appearances. She is also the author of *Women, Pensions, & Divorce: Small Reforms that Could Make a Big Difference*, published by AARP. She has written and spoken extensively on pension issues, and testified on many occasions before Congress on pension reform legislation, retirement, and other issues of concern to older women.

She is a graduate of the University of Texas Law School and the University of Chicago, and is a member of the bars of the District of Columbia and California.

ACKNOWLEDGMENTS

Your Pension Rights at Divorce was written by Anne E. Moss while she was Director of the Women's Pension Project to answer the pension questions women most often ask at divorce, and was revised by her in 1995 and 2006. Both the original and revised editions were edited by editorial consultant Heddy F. Reid. Invaluable technical suggestions and comments on selected chapters provided by Edith Fierst, Mary Jane Yarrington, Mary Wurzel, Shirley Taft, Gill Deford, Elizabeth Thurston, and Miriam Chrisler.

The printing costs of original and revised editions were generously underwritten by the American Council of Life Insurers. The following foundations supported the Center's Women's Pension Project while this book was being written:

Ford Foundation
Muskiwinni Foundation
Rockefeller Family Fund
777 Fund

TABLE OF CONTENTS

Introduction	1
Part One – Overview of Retirement	
System Rules	7
Part Two- State Divorce Law and Your Rights: Questions You Need to Answer	17
Part Three- A Guide to Specific Retirement Systems: What Are Your Rights?	47
1. Social Security	49
2. Private Pensions	49
3. Individual Retirement Accounts	65
4. The Federal Civil Retirement System	97
5. The Military Retirement System	121
6. The Railroad Retirement System	149
7. The Foreign Service Retirement System	165
8. State and Local Retirement Systems	187
Appendix: Federal Employees Retirement System.	194
Index	196

INTRODUCTION

About This Handbook

This handbook presents basic information about the pension rights of women upon divorce. It is meant to answer the questions women going through divorce most frequently ask about pensions. The book is aimed at divorcing *women* because they have been more likely than men to lose out on retirement benefits after a marriage ends.

Although major reforms in the laws over the last few years have given new pension protections to homemakers, it is still difficult, in many cases, to get information about all the new rules and regulations, and to learn what you have to do to get your share of a pension. This handbook has been written to help you educate yourself about the laws and how they affect you.

Using This Handbook

Ideally, you should read this handbook *before* you go through a divorce. It will alert you to things that can help you once legal proceedings begin.

The handbook is divided into three parts. *Part One* gives an overview of how retirement systems work. *Part Two* explains how state divorce laws can affect pension rights. *Part Three* discusses the rules of various retirement systems, explaining what they do or don't provide for former wives.

You should first read all of *Parts One* and *Two*. Then read the chapters in *Part Three* that apply to the types of pensions involved in your divorce. (For example, federal civil service or railroad retirement.)

[1]

Note: Many divorcing couples negotiate out-of-court settlements that divide up the marital assets, including pensions. Even if you don't expect to go to court, it's still important to know what the law says about pensions. This knowledge helps you and your lawyer decide what you can reasonably ask for during negotiations, and helps predict what a court might order if you and your husband can't agree. The more you know about your rights at divorce, the better you will be able to work with your lawyer to get your fair share of benefits.

In this handbook, the broader term "retirement system" is often used instead of the more restrictive "pension plan." Although in many cases they are the same thing, the term "retirement system" is more inclusive.

Why You Need a Share of Your Husband's Pension

Many married women assume that their husband's pension plan will take care of both of them at retirement. But divorce can change the picture - you may lose the benefits of your husband's plan both during his lifetime and after he dies.

A wife who has worked in the home for most of her marriage is likely to have no pension of her own and not enough marketable skills or working years left to earn an adequate pension benefit. Wives who have been employed outside the home during marriage can't always depend on earning a secure retirement income, either. Working at low- paid jobs or jobs without pension plans, or taking time off to care for children, translates into meager retirement benefits for many women in their old age.

Although most women eventually receive social security, their average social security retirement benefit of about \$500 a month is not enough to live on comfortably. *If you divorce, it is essential that you protect your rights to a share of your ex-husband's retirement benefits.*

[2]

Pensions Are Marital Assets

Federal and state lawmakers are beginning to recognize marriage as an economic partnership where earnings and property are acquired through the efforts of both husband and wife. If the wife has not worked outside the home, it is likely that her job of homemaker made it possible for her husband to pursue his career fully.

A pension, like wages, is part of a worker's earnings, even though there may be no right to receive the pension until retirement. Since the pension benefits accumulated during a marriage may be one of the greatest assets a couple owns, many courts will consider pensions earned during the marriage to be joint property and divide them between husband and wife when the marriage ends.

Take Steps Now to Get Your Share of the Pension

Despite many new reforms, there is no guarantee that a wife will receive a share of her ex-husband's pension. The social security system is the only retirement system that provides automatic benefits for a divorced spouse. The laws don't require that pension benefits be divided. You have to ask for a share, and see that the necessary legal steps for receiving it are taken *at the time of divorce*, even though you may not be able to actually collect until later when your ex- husband retires or dies.

[3]

Will You Get a Share of the Pension?

Your pension rights at divorce will depend on two different sets of rules: the *rules* of your husband's retirement system and *the divorce laws* of the state in which your divorce takes place.

The rules of the retirement system will tell you what benefits the court *can* give to an ex-wife, while the state divorce, or "domestic relations," laws will say what pension benefits the court *will* give to an ex-wife. This is an important distinction. The fact that a retirement system's rules *allow* state courts to divide pensions does not mean that the retirement system rules *require* courts to divide pensions.

Most retirement systems (pension plans) have rules set up under federal law.* Each retirement system is under a different set of laws. The federal "law" that affects your pension rights at divorce consists mostly of *statutes* (laws) passed by Congress.

Retirement System Rules

Some retirement systems have specific and fairly strict rules about rights at divorce, but other systems have broader and more flexible rules. The rules of the retirement system will ordinarily tell you:

- Whether the retirement system allows a divorce court to divide the pension
- Whether the retirement system allows payment of a pension share directly to a former wife, rather than through the husband.
- Whether the retirement system allows a divorce court to award a widow's pension to a former wife.

* Retirement systems for state and city employees are an exception: They are set up under laws passed by state legislators or city officials.

[4]

State Divorce Laws

State divorce "laws" affecting your pension rights are mainly *statutes* passed by state legislators and *decisions* made by state divorce courts. In your state, you may find that the divorce statutes are very general and do not say much about pensions. On the other hand, there may be a number of court decisions specifically about pension matters.

The divorce laws within a state are usually the same for pensions from all retirement systems. By knowing about the state divorce laws, you can determine:

- Under what conditions the state court will divide a pension.
- How the state court will figure a former wife's pension share.
- How and when the state court will order a former wife's share to be paid.
- Whether a state court will order payment of a widow's pension to a former wife.

Keep in mind: Just because a retirement system says that a wife *may* be awarded a pension share at divorce does not mean that the divorce court *must* award a pension share. The court will divide the pension only if state law also provides for pension division. On the other hand, a divorce court usually cannot divide the pension if the retirement system does not allow division.

Some Cautions and Disclaimers

- Pension laws apply equally to both men and women. This handbook, however, often uses the words "wife" or "widow" in place of "spouse" or "survivor" because the laws discussed here are aimed primarily at providing protections for long-term homemakers, who are mostly women.
- For the sake of space, this handbook doesn't deal with every type of pension or other employee benefit that could be part of a divorce. Be sure to ask your lawyer about what other benefits you might be entitled to, such as health and life insurance, child support or children's benefits paid by your ex-husband's plan, and any other fringe benefits.
- You should also be aware that the laws, regulations, and Court decisions having to do with pensions and divorce are continually changing. Be sure that your lawyer finds out whether there have been any new laws that might affect your situation in the state where you are divorcing.
- *Most important:* This handbook *is not a substitute for legal advice*. Rather, it will provide you with information and suggest questions for you to discuss with your lawyer. Only your lawyer is in a position to evaluate your whole legal situation.