

Who gets the pension in a divorce?

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Dividing up family property after a divorce, amicable or not, means more than deciding who gets the house. It also means dividing up your pensions.



When a marriage breaks down (or in some provinces, when a common-law relationship ends), family property must be split between the separating partners. Beside things like the matrimonial home and joint bank accounts, family property also includes pensions — both government and private. The value of pensions accumulated during the relationship is often a significant portion of the family's assets.

While the Canada Pension Plan (CPP) and some private pensions (for employees in federally regulated industries such as chartered banks, telecommunications and inter-provincial transport) are federally regulated, the Quebec Pension Plan (QPP) and other private pensions are governed by provincial statutes, so there is a web of often subtle, but important differences among the provinces that you need to be aware of. This is especially important if you or your soon-to-be former spouse worked in more than one province over the course of your relationship.

Therefore, if you and your spouse are planning to separate or divorce, it's important to get legal advice so any agreement or court order dealing with pension splitting reflects both the laws where your pensions were built up and the specific needs of your family.

Here is some basic information about pension credit-splitting in the CPP/QPP, private pension plans and registered retirement savings plans (RRSPs).

CPP/QPP splitting

Since January 1, 1987, legal or common-law spouses (common-law meaning having lived together for at least 12 months) who have separated, divorced or had their marriages annulled have been able to apply to have their CPP contributions split. This is called “credit-splitting.”

Credit-splitting means that the amount of CPP contributions (called credits) you both accumulated during the marriage will be added together and split between the two of you. Credits can be divided even if only one of you made CPP contributions.

Depending on how much each of you earned during the marriage and paid into the plan, this could mean that one partner’s pension will be higher at retirement and the other spouse’s will be lower than they would have been if no split had occurred. One partner does not need the other partner’s permission to apply for a split, but the eventual division may be appealed.

The QPP also adds up the pension accrued in each spouse's name for the period of the relationship and then divides it into two equal parts.

Generally, a spousal agreement does not prevent a CPP or QPP credit split if one partner applies. However, Quebec, Saskatchewan, British Columbia and Alberta currently allow couples to agree not to split CPP or QPP pension credits.

Dividing private pension plans

Funds in employer-sponsored pension plans accumulated during marriage are also family property. However, in all provinces except British Columbia and Manitoba, only legally married spouses are entitled to a family property split when the relationship ends.

Nevertheless, common-law spouses can sign a domestic contract at any time before or during the marriage (and in Quebec, within 12 months of the separation date), agreeing to split some or all of their property, including pensions, in the event of a break-up. This arrangement could also be included in a separation agreement.

When a pension is split, the non-member spouse can opt to transfer the commuted value of a defined-benefit (DB) plan or the lump sum from a defined-contribution (DC) plan to a personal registered retirement savings plan (RRSP) or, depending on the province of jurisdiction, leave the money in the spouse’s plan and receive a pension at retirement. Pension funds that are locked in (meaning you cannot by law take out their cash value) must be transferred into locked-in RRSPs that cannot be accessed until the person receiving the money retires.

If a pension is being paid at the time of separation or divorce, the non-member spouse may be entitled to receive part of the member’s monthly benefits.

In general, the maximum amount payable to a non-member spouse is 50% of the value of the pension or of the monthly benefit. However, in Quebec, British Columbia and New Brunswick, a court can order that a spouse receive more than 50%. A plan member with a

federally regulated pension plan can also assign up to 100% of his or her pension to a former spouse or common-law spouse.

Where there are sufficient family assets, the parties may decide to trade other assets instead of splitting the pension plan. For example, the wife may get to keep the house while the husband retains the full pension.

Defined-benefit pension plans are complex assets and must be valued at the time of separation and divorce. In most provinces, the method of valuation is regulated and plan administrators must provide the separating partners with either a valuation or sufficient information to instruct independent actuaries.

In contrast, RRSPs (both locked-in and non-locked-in) do not need to be valued upon marriage breakdown. This is because RRSPs are simply tax-deferred investment accounts, and their value at any time is equal to the account balance. In many provinces, however, defined-contribution pension plans do have to be valued.

In all cases of separation or divorce where you and your partner have government or private pensions, you should consult a lawyer, so you fully understand your entitlement and transfer options. And regardless of whether you have a pension – and especially if you don't – it's also a good idea to meet with an advisor, so you can make sure you have a financial plan that reflects your new status.