



Divorce & Community Property

Matrimonial matters include premarital planning as well as divorce proceedings. Protection of property rights of individuals prior to marriage or upon dissolution of marriage is an important consideration for any member. The perennial problems of family law include deciding what constitutes marital property and dividing the property at divorce.

Prenuptial Agreements

Louisiana is a community property state. This concept assumes that all earnings, and accumulations from earnings are the property of both the husband and wife. However, state law allows prospective spouses to elect to continue under the separate property regime they had as unmarried persons.

This allows each spouse to claim all assets, including retirement benefits, as their separate property without accounting to the other spouse concerning the accrual, treatment or disposal of assets. Members should contact an attorney to carefully examine the legal and tax consequences of this option.

Community Property

Pension benefits, including DROP funds received or accumulated during marriage, are community property. These benefits are one of the more controversial issues that are handled by the LASERS Legal Department. Members should be aware that an ex-spouse might be entitled to a portion of the retirement benefit according to that spouse's community property interest.

LASERS requires that a legally correct and acceptable Court Order be on file before any community assets are divided. If LASERS does not receive such an Order, the agency will not be held responsible for the accountability of community funds. Again, members should contact an attorney to make sure that their interests are protected.

Remarriage

Members who enter into successive marriages without settling the community property interest of the former spouse sometimes create complex and vexing valuation problems. If you find yourself in this particular situation, settling this issue may prevent protracted civil litigation concerning your retirement benefits. More importantly, members must be aware that community property issues do not "go away" after a certain time period.

Common Law Marriages

Louisiana does not recognize common law marriages. Pension assets of the member remain the separate property of the member. However, in the event of the member's death, minor children of the union may be entitled to certain benefits.

Spousal Consent

If a member decides to select an option that does not provide a monthly benefit for his/her spouse or name a beneficiary that is someone other than his spouse, he must obtain his spouse's approval no sooner than 90 days prior to the effective date of retirement:

Spousal Consent is not required when there is:

1. Judgment of Divorce¹
2. Interdiction or Court order appointing a guardian [in which case, the guardian (curator) may sign].²
3. Abandonment: In this case the member will need the following:
 - a) A notarized affidavit attesting to the fact that the member has been abandoned and has taken steps to locate the spouse. The methods used to locate the spouse should be detailed in the affidavit, and
 - b) A certificate from the local newspaper certifying that a legal notice has been run for three (3) days requesting information on the whereabouts of the spouse.

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Or

c) A certified Court Order declaring that the spouse is an absentee or has abandoned the member.

Conclusion

As a general rule, changes in your marital status require changes in your retirement benefits. In other words, members should be prepared to address these issues and be aware of the potential impact these changes may have on their financial well being.

¹ Legal separation was replaced by Louisiana Civil Code Article 102. A "102" divorce requires that a member file the Petition for Divorce first, then wait 180 days for the final Divorce Decree, provided the parties have not reconciled during this waiting period. LASERS will honor any Judgment of Separation secured prior to the change in the law. However, it is important for the member to realize that they are still legally married.

² If the member is the court-appointed legal guardian or curator, that member may be allowed to sign spousal consent form.

Frequently Asked Questions (FAQ's)

Can my pension be attached or garnished?

During the 2004 Legislative Session Act 706 was passed expanding the reach of garnishment and court-ordered assignment to pay child support. LASERS retirement allowance benefits or refunds of accumulated contributions that are paid to a LASERS member, former member or retiree are subject to garnishment or court-ordered assignment to pay child support. Act 706 now provides explicitly that any such LASERS benefit or refund of accumulated contributions paid to a spouse or former spouse as part of a court-ordered community property division will now also be subject to garnishment or

court-ordered assignment to pay child support.

My spouse has a pension plan with his employer. Does that mean that I get to keep my plan upon the divorce?

Not necessarily. Although it is not uncommon for spouses to keep their own pensions, it is also not uncommon for pension plans to be divided upon a divorce. It might be better to give up rights to the retirement plan(s) in return for more cash or other liquid assets. The valuation of each plan is the key to whether you will walk away with 100% of your benefit or whether it will be divided. An attorney or financial professional will be needed to help you with this decision.

I have been divorced for ten years. Will my spouse be entitled to a part of my pension?

Yes. Any contributions to a retirement plan made during the marriage will be viewed as community property by a Louisiana court and subject to division.

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