

How are retirement accounts divided in a Georgia divorce?

Written by Australian Business

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More empty nesters are filing for divorce. Since child custody issues are no longer a point of contention, property division is often the most difficult part of a divorce. Retirement and investment accounts often account for a sizeable portion of the marital property.

Georgia courts divide marital property equitably between the spouses. This means that the division is not always equal, but the court strives to create a fair division of property. Generally, all property acquired during a marriage is marital and divided. An exception exists for separate property. For example, contributions to a military retirement account before the marriage are separate and will not be divided.

In any divorce, an important first step is to locate all accounts. Marital property may include a 401(k), 403(b), 457, pension, military retirement, IRA (traditional or Roth with after-tax contributions), permanent life insurance or an annuity. A Federal Survivor Benefit Plan annuity or unvested retirement benefits may also be marital property. Social Security may also provide retirement benefits, if the marriage lasted longer than 10 years.

These accounts can be broken into two broad categories: defined contribution (an employer-provided 401(k)) or defined benefit (a government pension). Each type of account needs to be treated differently. With a defined contribution account, it is possible to determine the balance as of a certain date. This can make division easier. A defined benefit plan will require the years of service and often a more complicated formula.

Tax consequences also come into play. Taking money out of most retirement accounts requires paying income tax and may trigger a 10 percent penalty. One way around the early-withdrawal penalty is a Qualified Domestic Relations Order. What is a QDRO and how does it work?

A QDRO assigns to a former spouse the right to receive a portion of a retirement plan. To work, a QDRO must satisfy many complex and technical rules. An underlying order, judgment or decree must approve the settlement agreement. A method for allocating the benefits is

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necessary including the number of payments or amount of time. These are just a few of the requirements. Different forms should be used for a defined contribution versus a defined benefit plan.

An easy mistake would be to agree to divide a retirement account equally. A potential problem could be if the QDRO for a 401(k) lists the dollar amount, i.e. \$50,000 to one spouse of an account with a value of \$100,000. If the value of the 401(k) decreases to \$60,000 before filing the QDRO, the account would not be divided equally.

Mistakes made at the time of a divorce can have long lasting effects and may even delay retirement. If you are considering divorce, contact an experienced family law attorney to discuss your situation. Filing documentation with a retirement plan administrator is often necessary to receive a portion of a retirement account. A lawyer will be able to properly draft forms and make sure this step is not overlooked.