

Retirement benefits include:

- Pension plans
- Deferred compensation accounts
- 401(k) accounts
- IRAs

Do retirement benefits belong to both spouses?

Yes, in most cases retirement benefits are community property. That means they belong equally to both of you – even if only one of the spouses earned them.

If you each have retirement benefits, you usually each get half of the total benefits.

But some retirement accounts have community property *and* separate property funds because some of the funds were earned before or after the marriage. In those cases, each spouse has the right to half of the benefits earned *during* the marriage.

How do I know if my spouse has retirement benefits?

Not all employers give retirement benefits. If you are not sure, ask your spouse or your spouse's employer for a statement of benefits. Or look at your spouse's pay stub. If you are still not sure, ask your lawyer to get a statement of benefits.

Do I need a lawyer?

It's a good idea to hire a lawyer to help you divide the retirement benefits. You have to follow state and federal laws and the tax code. If you don't do it right, you could owe a lot of taxes. And, if your spouse remarries or dies, you may not be able to get your share of the pension. (Some lawyers charge a flat fee for this service.)

Do I need a court order to get part of my spouse's retirement benefits?

Yes. You will need a court order called a *Qualified Domestic Relations Order*, called QDRO, for short.

How do I ask for a QDRO?

Once you have a judgment of divorce or separation, follow these steps:

- Ask the employer for a QDRO form and instructions.
- Fill it out and send it back to the employer to confirm that everything is correct.
- Then both spouses sign the QDRO and file it at court.

After the judge signs it, the clerk will send you a copy. Send a copy to the employer.

What if my spouse cashes out the retirement account?

California law says that if you write to the employer or pension plan saying the retirement account may belong partly to you, they must freeze it until your case is settled.

If they let your spouse cash out the benefits, they will have to pay you.

Protect yourself! Send a letter to the employer right away asking them to freeze the account until your divorce is settled.

Is there a form I can use to tell the employer to freeze the account?

If your case is already filed in court, ask a lawyer to help you fill out joinder forms.

What if I am already divorced or separated, but I forgot about the retirement benefits?

Talk to a lawyer. In most cases, you can still ask the court to divide a "missed asset."

Can I spend the retirement funds?

Retirement funds are still *retirement* benefits. They are intended to be used when the employee retires or reaches the age indicated in the plan. If you take money out of a retirement plan before the eligible age, there will be a huge tax penalty.

What if I want more information?

Contact the employer, the pension plan, or a lawyer. You can also read California Family Code §§ 2610 and 755.