

ALBUQUERQUE DIVORCE LAWYER BLOG

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ATTORNEYS AT LAW

Retirement Plan Issues in Your New Mexico Divorce

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For many working families, retirement savings can be one of the biggest assets in a marriage, which makes them a very important issue to be addressed during a divorce. Given that New Mexico is a community property state, each spouse is entitled to one-half (1/2) of the retirement earned or contributed to during the marriage.

There are a variety of different types of retirement plans, including pension plans, 401(k) accounts and IRAs. Each can give rise to its own set of issues. Here are some common issues that arise when dividing retirement accounts during a divorce:

1. Loans Against Plans

Sometimes, employers have plans in place where employees can take out loans against contributions they've made to these plans. This is a secured liability that can reduce the value of your assets (and consequently, reduce the value of the marital estate). Such loans not only reduce the value of the plan, but some plans will not let the account be divided or liquidated until the loan has been satisfied.

2. Timing

The time when a spouse obtained a retirement account, and when contributions were made to the plan, are important in determining how much of a retirement account is community property to be divided during a divorce. For instance, any retirement contributions made to a pension plan before the parties married is not considered community property in New Mexico and should be left out of the community property division. Tracking down all deposits and account earnings by time period can be a complex process. You might need the help of experts who can make these calculations for you. However, when it comes to pension amounts, there is a simple formula: Months of Marriage divided by Months of Employment x Pension Amount = Community Portion

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3. Vesting

The vesting period is the period of time that an employee must stay in their position at work before they become entitled to the benefits of the company pension plan. The Employment Retirement Income Security Act of 1974 (ERISA) shortened the vesting period time for defined benefit plans in order to ensure that employers did not get unjustly enriched as a result of the rapidly mobile workforce. When valuating community property for purposes of a divorce, there can be a question of whether the pension benefits that accrued before the vesting period should be included in the marital estate.

4. QDRO

Once the parties have agreed how the retirement plans will be divided, most plans require the Court to enter a Qualified Domestic Relations Order (called a QDRO for short) which orders the company servicing the retirement plan to divide the asset. QDROs can be complicated documents because they must include instructions based on the parties' divorce settlement as well as the internal requirements of the company servicing the retirement plan and ERISA regulations.

Given the intricacies involved in valuing and distributing retirement plans in a divorce, it is extremely important to consult a divorce attorney in order to ensure that the account is properly divided.

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