

NOTICE CONCERNING RETIREMENT BENEFITS

In accordance with the provisions of NRS 125.150(c) the court is required to provide an explanation of any provision relating to the disposition of pension or retirement benefits to be included in a divorce or other final order in Nevada.

Many jobs/careers include some sort of pension/retirement benefits. These benefits can be in the form of monthly payments after retirement by a "Defined Benefit Plan" or can be in the form of a "Defined Contribution Plan" account balance made up of contributions made by the employee, the employer, or both. Some description of the most common retirement plans is set out below. Some people have several different retirement plans.

If retirement benefits accrued during a marriage, they are generally considered community property even if they are in the name of only one party. Retirement benefits are often the most valuable asset of a marriage. Nevada law requires a court to equally divide the marital portion of those benefits upon divorce unless it makes written findings of a compelling reason to do otherwise.

Most retirement plans require a special form of order in addition to a divorce decree to distribute benefits, often known as a "QDRO," or "COAP," or "OID." If the divorce court orders such benefits divided, someone will have to prepare such an order, which then has to be signed by the judge and then served on the Plan Administrator. Failure to do so could result in the loss of the benefits.

Exactly what kind of benefits there are varies from Plan to Plan, but generally includes the monthly payment or account balance, and may include survivor benefits, accrued sick or vacation pay, medical benefits, and disability benefits. All such benefits should be addressed in the order.

If any such benefits are involved in your case, they should be addressed in the final order, and the required QDRO or other special order should be entered as soon as possible to make sure the distribution ordered actually occurs.

DEFINED BENEFIT PLANS: Union pensions (for example, Culinary or Teamsters), military retirement, and state and local government pensions (for law enforcement officers, teachers, postal workers, or other public employees) are all examples of Defined Benefit Plans.

After a number of years established by the individual plan, the employee becomes vested and upon reaching the retirement age specified by the Plan, benefits are paid to the employee, usually monthly for the remainder of their life. If the benefits are divided upon divorce, each former spouse gets a portion of the monthly payment and any of the other benefits addressed in the order.

Prior to the completion of a case, the many details to all such plans should be thoroughly investigated by a litigant or an attorney knowledgeable about how to address the benefits.

DEFINED CONTRIBUTION PLANS: Some employers allow contributions to a Plan that either grows tax deferred (Traditional Plan) or tax free (ROTH Plan). The Plan might be called a 401(k), 403(b), Thrift Savings Plan (TSP), 457, or IRA. The employer may or may not make additional contributions (matching funds). Usually, the benefits can be invested in stocks or other assets so the plan benefits can grow over time.

Once an employee has been employed for the required period of time, the employee becomes vested and all of the funds in that employee's account become the property of the employee. These Plans can also be divided at divorce, with some of the account balance going to each spouse. If done correctly, there is no tax penalty or liability to the division.

CAUTION: The division of retirement benefits can be complicated. Some information is available in books or on-line, but it is your responsibility to seek out the information or obtain the assistance of experts to explain what retirement and other benefits can be divided and in the drafting of a QDRO or other necessary special order(s).