


Divorce Claims



It is important to provide the member with the enclosed Robson Savage divorce brochure, as this contains important information regarding the requirements when submitting a divorce claim.

The following supporting documents must be submitted together with the fully completed Robson Savage divorce form:

- Copy of non-member spouse's ID
- Proof of banking details if any part of the benefit is to be paid in cash. (This can be a copy of a bank statement on the bank's letterhead, a copy of a cancelled cheque, or a letter from the bank on the bank's letterhead confirming the account name and the account number.)
- Copy of stamped divorce decree, correct in terms of the Pension Funds Act, if not already provided.

All documentation is to be submitted to the following e-mail address: home@robsav.com

Are you in the process of going through a divorce?

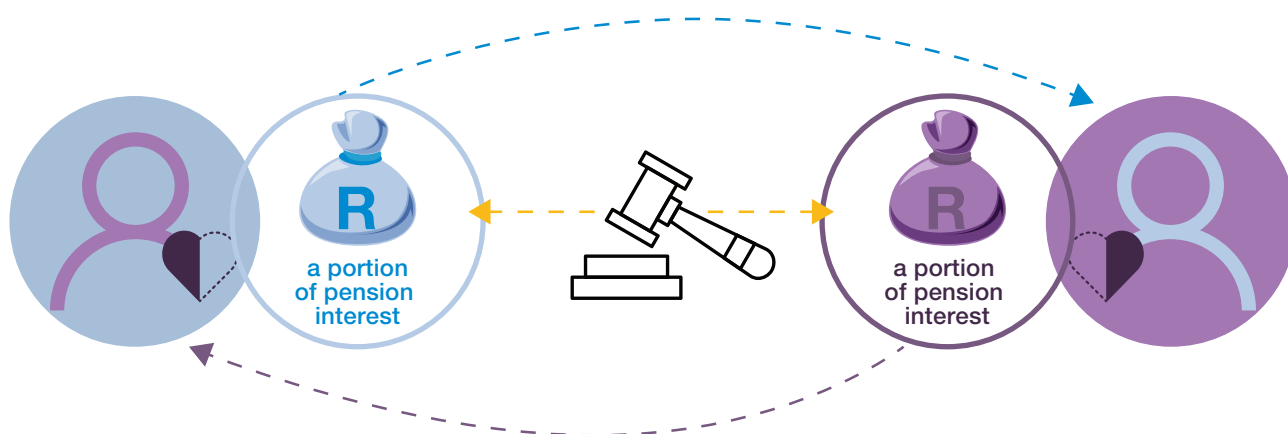


This information piece provides members of retirement funds with all the information they will need to know when a portion of a member's assets in a retirement fund need to be paid to an ex-spouse.

How will a divorce affect a member's assets in a retirement fund?

According to the Divorce Act, a member's pension interest in a retirement fund (pension fund, provident fund, retirement annuity fund or preservation fund) is regarded as part of the member's assets. This means that a member's assets in a retirement fund will be taken into account when determining how the combined assets are divided upon divorce.

A court granting a divorce order, may make an order that a portion of one or both parties' pension interest is to be paid to the other party by the relevant retirement fund. This is done according to the Divorce Act and the Pension Funds Act.





After divorce, can my ex-spouse claim a portion of my retirement fund?

Yes, if the divorce order contains an order in terms of section 7(8) of the Divorce Act and meets certain requirements.

What is pension interest?

In relation to a member of a pension or provident fund, it is defined in the Divorce Act as the benefits to which the member would have been entitled in terms of the rules of the fund if his/her membership had been terminated on the date of divorce as a result of his/her resignation. Simply put, it is the member's withdrawal benefit as at the date of divorce.

Why must the divorce order specifically refer to pension interest?

In terms of legislation, a retirement fund can only make payment to an ex-spouse if section 7(8) of the Divorce Act has been complied with and in terms of section 7(8) of the Divorce Act the court can only award a portion of the member's pension interest to the ex-spouse.

This means that if the divorce order awards anything other than a portion of the member's pension interest to the ex-spouse, it will not be an order in terms of section 7(8) of the Divorce Act and the retirement fund will not be allowed to make payment to the ex-spouse.

What is an example of wording that complies with the requirements?

Example where the member belongs to one fund only:

The *[insert Plaintiff/Defendant]* is a member of the *[insert registered name of retirement fund]* (hereinafter referred to as "the Fund"). The Fund is ordered to pay *[insert percentage or Rand value]* of the *[insert Plaintiff/Defendant]*'s pension interest in the Fund to the *[insert Plaintiff/Defendant]* or to a retirement fund elected by the *[insert Plaintiff/Defendant]* and endorse its records accordingly.

Example where the member belongs to more than one fund:

If a portion of the member's pension interest in more than one fund is awarded to the ex-spouse, a separate paragraph should be used for each fund to avoid any confusion or ambiguity. The following example is for illustrative purposes only: The Plaintiff is a member of the ABC Fund and the XYZ Fund and the court orders that the ex-spouse is entitled to 50% of the member's pension interest in both funds. The following wording will comply with the requirements:

The Plaintiff is a member of the ABC Fund (hereinafter referred to as "the A Fund"). The A Fund is ordered to pay 50% of the Plaintiff's pension interest in the A Fund to the Defendant or to a retirement fund elected by the Defendant and endorse its records accordingly.

The Plaintiff is a member of the XYZ Fund (hereinafter referred to as "the X Fund"). The X Fund is ordered to pay 50% of the Plaintiff's pension interest in the X Fund to the Defendant or to a retirement fund elected by the Defendant and endorse its records accordingly.



What requirements have to be met before payment can be made to my ex-spouse?

The divorce order must meet the following requirements:

Requirement 1:

The relevant fund of which you were a member on the date of divorce must be named in or identifiable from the divorce order.

Requirement 2:

The portion of the pension interest awarded to your ex-spouse must be clear (either expressed as a percentage or a Rand value of pension interest, not exceeding 100%).

Requirement 3:

It must be clear that a portion of pension interest is being awarded.

Requirement 4:

The relevant fund must be expressly ordered to:

- Pay over the awarded portion of your pension interest to your ex-spouse or a fund of your ex-spouse's choice; and
- Endorse its records accordingly.

How much of my pension interest can be awarded to my ex-spouse?

The court granting the divorce order has a discretion in this regard and the portion of pension interest awarded to your ex-spouse can be anything between 0% and 100% (or a Rand amount not exceeding 100% of your pension interest).

How will my ex-spouse know what the value of my pension interest is?

The fund has a duty to protect the personal information of members and, unless required by law, may not provide information to any person other than the member. It is therefore recommended that your spouse requests you as member to obtain the value from the fund.

Note that, as explained above, the value of your pension interest is equal to your resignation benefit on the divorce date and the exact value will therefore not be known before such date – so before the divorce date the fund will only be able to indicate the current value of your resignation benefit, which may differ from the value on the divorce date.

What happens if my employment is terminated before the divorce order is granted?

Since pension interest is defined as the resignation benefit that would be payable in terms of the rules of the fund if you resigned on the date of divorce, there is no pension interest that can be awarded to your ex-spouse in terms of section 7(8) of the Divorce Act if your service is terminated before the date of divorce. This has been confirmed by the Supreme Court of Appeal in *Eskom Pension Fund v Krugel*.



What is an order in terms of section 7(8) of the Divorce Act?

Section 7(8) of the Divorce Act allows the court granting a divorce order to make an order which:

- Awards a specified portion of one of the spouses' (the member's) pension interest in a retirement fund to the ex-spouse; and
- Orders the relevant fund to make payment of it to the ex-spouse.

Is an order in terms of section 7(8) of the Divorce Act always possible?

No, a section 7(8) order cannot be granted if:

- The divorce action is in respect of a marriage out of community of property entered into on or after 1 November 1984 and in terms of which the ante-nuptial contract excludes community of property, community of profit and loss and the accrual system; or
- The member's service with his/her employer was terminated before the date on which the divorce order is granted (because the member will no longer have a pension interest to award as at date of divorce).

Possible reasons why a retirement fund may not be able to make payment to a member's ex-spouse

The Supreme Court of Appeal has confirmed that divorce orders must be worded very carefully to ensure that they comply with the requirements discussed above, failing which the order is not enforceable against the fund.

Some of the common reasons why divorce orders are found to not comply with the requirements are set out below:

Issue	Example(s)	Why is it problematic?
1. The member belongs to a pension fund and a provident fund and the divorce order does not make it clear whether the order is in respect of both funds or only one of them and, if so, which one.	"The Plaintiff is a member of the A Fund and the B Fund. The Defendant is entitled to 50% of the Plaintiff's pension interest in the fund and the fund is ordered to make payment to the Defendant."	If it is not clear which fund(s) has been ordered to make payment to the ex-spouse, Requirement 1 has not been met.
2. No retirement fund has been named in (nor is one identifiable from) the divorce order.	"the Plaintiff's pension fund"	If no fund has been named in (or if no fund is identifiable from) the divorce order, Requirement 1 has not been met.
	"the fund to which the Plaintiff belongs"	
3. The name of the fund stated in the divorce order is so vague that it may relate to any one of a number of funds.	"Free State Provident Fund"	If it is not clear which fund has been ordered to make payment to the ex-spouse, Requirement 1 has not been met.
	"Free State Umbrella Fund"	



Q & A

Issue	Example(s)	Why is it problematic?
4. The portion of pension interest awarded to the ex-spouse is not clear.	"any portion"	If the portion of pension interest awarded to the ex-spouse is not clear, Requirement 2 has not been met.
	"50% or such portion as the court deems just"	
5. It is not clear whether the intention of the parties was to award to the ex-spouse a portion of the member's pension interest (as defined in the Divorce Act) or a portion of some other value/benefit.	"Plaintiff's fund value"	If the divorce order awards something other than pension interest to the ex-spouse, Requirement 3 has not been met.
	"Plaintiff's pension"	
	"Plaintiff's pension interest calculated from date of marriage to date of divorce"	
	"Plaintiff's pension fund interest"	
	"Plaintiff's provident fund interest"	
	"Plaintiff's provident interest"	
	"Plaintiff's interest"	
	"Plaintiff's pension benefit"	
	"Plaintiff's fund number 123456"	
6. It is not clear what has been awarded to the ex-spouse.	"50% net after tax of the Plaintiff's pension interest"	The Pension Funds Adjudicator has confirmed in determinations that this type of wording is ambiguous. If it is not clear what has been awarded to the ex-spouse, Requirement 3 has not been met. (There is no need to refer to tax as any tax will in any event be payable by the ex-spouse.)
	"50% of the Plaintiff's pension interest, after tax"	
	"50% of the Plaintiff's net pension interest"	
7. It is not clear whether the member or the relevant fund is to make payment to the ex-spouse.	"the Plaintiff will make payment to the Defendant"	If it is not clear that the relevant fund (and not the member) is to make payment to the ex-spouse, Requirement 4 has not been met.
8. The relevant fund has not been ordered to make payment to the ex-spouse.	"to be paid to the defendant"	If it is clear that payment is to be made to the ex-spouse, but it is not clear that such payment must be made by the relevant fund, Requirement 4 has not been met.
	"which is payable to the plaintiff"	
	"must be paid directly to the plaintiff"	
9. The relevant fund has been ordered to endorse its records, but has not been ordered to make payment to the ex-spouse.	"The fund is to make an endorsement to reflect the ex-spouse's entitlement."	The Pension Funds Adjudicator has confirmed in determinations that an order for a fund to endorse its records is insufficient; the relevant fund must be ordered to make payment to the ex-spouse otherwise Requirement 4 has not been met.
	"The Plaintiff is ordered to submit a copy of the divorce order to the fund so that its records may be endorsed."	

DIVORCE BENEFITS DUE TO NON-MEMBER SPOUSE – PAYMENT INSTRUCTION

- Please help us to pay your benefit quickly and smoothly by completing all sections in full using CAPITAL letters.
- Indicate all options selected by means of a cross [X].
- Ensure that all information provided is accurate.
- Should you require any assistance with this form please contact Robson Savage (Pty) Ltd on 011 643 4520.

FUND DETAILS

Name of Member's Fund:

Name of Member's Employer/Pay Centre:

MEMBER'S DETAILS

Title: Surname:

First Name(s):

RSA ID Number: Date of Birth:

If no RSA ID Number, Passport Number:

Country of Issue:

NON-MEMBER SPOUSE'S DETAILS

Title: Surname:

First Name(s):

RSA ID Number: Date of Birth:

If no RSA ID Number, Passport Number:

Country of Issue:

Physical Address

Unit Number: Complex Name:

Street Number: Street Name:

Suburb: Town:

Country: Postal Code:

Postal Address: Same as Physical Address (If not, please provide details below)

Postal Code:

Contact Details:

Telephone Numbers: or

E-mail Address:

Preferred Method of Communication: Post E-mail

Income Tax Number:

Current Annual Taxable Salary: R

TYPE OF MARRIAGE CONTRACT

(Please mark the appropriate box below to confirm the type of marriage contract that existed between you and your ex-spouse)

- ☐ Community of Property
- ☐ Ante Nuptial Contract *without* accrual
- ☐ Ante Nuptial Contract *with* accrual

(Please mark the appropriate box and complete the sections as indicated)

Please note that all benefit payments are subject to current tax legislation.

(Complete **Section 1** below)

(Complete **Section 2** below)

(Complete **Section 1** and **2** below)

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Important: Please ensure that the details provided below are for the non-member spouse's own bank account.

[illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible]

- the details provided herein, in particular my banking details (if applicable), are true and correct in every way;
- in the event of any loss suffered as a result of any incorrect details provided herein, neither the fund, the employer nor Robson Savage (Pty) Ltd can be held liable for such losses;
- I understand the options available to me with regards to the payment of my benefit, including the tax implications; and
- I understand and accept that an administration fee of R1680 (inclusive of VAT) will be deducted from my benefit in order to effect the payment.

Date _____

- Copy of non-member spouse's ID
- Proof of banking details if any part of the benefit is to be paid in cash. (This can be a copy of a bank statement on the bank's letterhead, a copy of a cancelled cheque or a letter from the bank on the bank's letterhead confirming the account name and the account number.)
- Copy of stamped divorce decree, correct in terms of the Pension Funds Act, if not already provided