

MINNESOTA LAWS GOVERNING MARRIAGE DISSOLUTION

ASSIGNABILITY OF PENSION BENEFITS

Minnesota Statutes, section 353.15, states that annuities and benefits payable from PERA are not assignable or subject to execution, levy, attachment, garnishment, or legal process, except as provided in sections 518.58, 518.581 or 518A.53.

Section 518.58, subdivision 3, states in part:

If liquid or readily liquidated marital property other than property representing vested pension benefits or rights is available, the court, so far as possible, shall divide the property representing vested pension benefits or rights by the disposition of an equivalent amount of the liquid or readily liquidated property.

ASSIGNABILITY OF FUTURE BENEFITS

Section 518.58, subdivision 4, states the division of marital property that represents vested public pension benefits or rights in the form of future payments:

1. is payable only to the extent of the amount of the public pension plan benefit payable under the terms of the plan;
2. is not payable for a period that exceeds the time that public pension plan benefits are payable to the public pension plan benefit recipient;
3. is not payable in a lump sum amount from public pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a public pension plan;
4. if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or group of survivors for subsequent apportionment by the trustee; * and
5. in the case of public pension plan benefits or rights, may not commence until the public pension plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

**The Minnesota Attorney General's Office has advised that court marital orders should specify what happens to pension benefits upon the death of a PERA member's ex-spouse. This should be stated as either a term in years or clarify that payments will be made as long as the PERA member is alive.*

BENEFICIARY DESIGNATION

Under Minnesota Statutes, section 524.2-804, any revocable beneficiary designation, which includes beneficiary designations by a PERA member on a PERA account, is automatically revoked upon the dissolution or annulment of marriage. If the former spouse is intended to remain designated as a beneficiary for the marital portion of any refund after the dissolution, the court order must specifically include such a provision.

The language recommended to appear in the court order is:

The Participant shall name the Alternate Payee as designated beneficiary of a portion of (his/her) PERA account to receive one-half of deductions reported during the period of marriage, plus interest.

RELEASING INFORMATION

Under Minnesota Statutes, section 356.49, PERA is required to provide information on pension benefits or rights of the plan member (or former member) to the court and the parties involved in a marriage dissolution action. PERA may release private or confidential data on individuals to the court, the parties to a marriage dissolution, their attorneys, and an actuary under section 518.582, to the extent necessary to comply with the law. This will only be done after PERA has received written authorization from the PERA member or a legal petition showing that an action for marriage dissolution has commenced. A copy of the affidavit of service showing that the petition has been served on the responding party to the action must also be presented.



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The pension information required to be provided under Minnesota Statutes, section 356.49, must include the following:

1. Pension benefits or rights of the PERA member or former member as of the first day of the month following the date of the request (see Deferred pension calculations on page 7).
2. Benefits or rights of the plan member as of the date of valuation of marital assets under section 518.58, if the person requesting the information specifies that date.
3. Accrued service credit of the member.
4. Credited salary of the person for the most current five-year period.
5. Summary of the benefit plan.
6. Any other information relevant to the calculation of the present value of the benefits or rights. (Although PERA will, upon request, provide a “present value” calculation, which is the amount PERA must invest now to fund the member’s pension at retirement age, the calculation may be different from present value figures for a marriage dissolution, as provided by an actuary.)

DEFERRED PENSION CALCULATIONS FOR VALUATION PURPOSES

Except for PERA’s Defined Contribution Plan for elected officials, physicians, and ambulance personnel, PERA’s plans are defined benefit plans. With defined benefit plans, monthly benefits are based on a formula, using a member’s years of service, highest five consecutive years’ average salary, and age at retirement or disability. (Please refer to the appropriate handbook for additional information on the retirement formula used in calculating benefits for the Coordinated, Correctional, and Police and Fire plans.)

In addition, PERA administers several benefit plans for police officers and firefighters whose pension plans have been merged with the Association’s P&F Plan. The benefits for these plans are generally calculated using base pay and years of service, or another formula under Minnesota law or local relief association bylaws. Monthly payments are made for the lifetime of the recipient.

For vested PERA members (three or more years of allowable service credit for members hired through June 30, 2010, and five years of service for members hired thereafter), PERA will calculate an estimated benefit based on the member terminating employment at the end of the current month and monthly pension benefits beginning when the person will reach age 55 (or the first of the month after the date of the request for those age 55 and older).

Additional estimates will be calculated, if requested, including the marital portion of the pension. The marital portion is the part of the pension earned during the period of time a couple was married. The former spouse is generally entitled to one-half of the marital portion, unless another division is made by the court. If a member is not vested, PERA will provide information on the service credit and balance in the account plus interest.

For the purposes of PERA pension law, present value means the balance of the accumulated salary deductions in the account plus interest. (This is different from the “present value” in a marriage dissolution, as calculated by an actuary.) Employer contributions for members of the Coordinated, Basic, Correctional, and Police and Fire plans are not credited to the accounts of the individual members and are never refundable. The court that has jurisdiction over marriage dissolution matters may appoint a qualified person experienced in the valuation of pension benefits and rights to function as an expert witness on these matters. In that event, the court-appointed actuary determines the present value of pension benefits or rights that are marital property of the parties involved in the action. The present value is based on the applicable plan documents of the pension plan and the actuarial assumptions used by the plan in calculating optional forms of the benefit, or the funding of the pension plan, if reasonable, or as specified by the court. As an alternative to appointing an actuary, the parties may stipulate the present value of pension benefits or rights that are marital property.