



RETIREMENT FUND
ISASA

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Your Life Newsletter

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6. Make sure your divorce order is binding on the Fund

Divorce is a traumatic and life-altering experience with wide-ranging implications, especially when it comes to retirement savings. A 'pension interest' deduction allows a non-member spouse to be eligible for a pension benefit from the member spouse's pension from the date of divorce. It doesn't take into consideration the duration of the marriage or whether you were married when you first became a member of the ISASA Retirement Fund. A pension interest distinguishes between pension interest in a retirement annuity fund, and pension interest in any other retirement funds (e.g. a pension fund, provident fund, pension/provident preservation fund).

Section 7 of the Divorce Act, 1979, facilitates the payment of a pension benefit to a member's former spouse with immediate effect. This means that if a member divorces and the parties include the assets of the Retirement Fund in the divorce settlement agreement, the former spouse may immediately claim his or her part of the pension benefit. There are costs involved for the member.

Please note:

In order for the Fund to pay any part of the member's pension interest to the non-member spouse, a final divorce order to that effect must have been granted on a date prior to the member's termination of service due to resignation/retrenchment/dismissal/retirement. If a member exited the Fund prior to the date that his/her final divorce order was granted, the non-member spouse is not entitled to any benefit at date of divorce from the Fund, but may be able to claim directly from the former spouse.

To be binding on the Fund, a divorce order must provide for the following:

- **The Fund must be properly identified** or identifiable from the order, e.g. ISASA Retirement Fund.
- **It must be specifically ordered by the Court** that the Fund should pay the amount concerned to the other party.
- **The amount and/or percentage of** the pension interest that is due or assigned to the non-member spouse, must also be clearly expressed as a % or Rand value, not exceeding 100% of the pension interest. (Tax is payable on this amount by the receiving spouse.)
- **If the above 3 conditions are not met**, the Fund is not legally bound and will not make a payment to the non-member spouse.

Suggested simplified wording for binding divorce order

Instead of the long-winded provisions often found in divorce orders, it is suggested that where a member, non-member spouse or an attorney acting on behalf of either party requests assistance with the wording of a divorce order that is intended to be binding on the fund, the following wording be suggested to them:

"It is recorded that the Plaintiff is a member of the ISASA Retirement Fund. The Plaintiff hereby agrees that the Defendant shall be entitled to a% share of the Plaintiff's pension interest in such fund (as defined in section 1 of the Divorce Act No. 20 of 1979) as at date of divorce.

An endorsement shall be made in the records of the Fund that the Defendant's share of the Plaintiff's pension interest is payable to the Defendant. The Fund shall pay to the Defendant his/her share of the Plaintiff's interest as referred to herein within 60 days of being informed of how the amount must be dealt with in accordance with the Defendant's election."

Who is responsible for the tax?

In terms of the provisions of the Income Tax Act, if the non-member spouse elects to take a cash lump sum, the benefit will be taxed in his/her hands. However, if the benefit is transferred to another retirement fund, the benefit will be transferred tax-free. When the non-member retires or withdraws from that retirement fund, he/she will be liable for tax on the retirement or withdrawal benefit.

Call to Action

Lastly, if you are in the process of a divorce, ensure that the wording of the court order and settlement agreement is in line with legal requirements. If the order is granted and the wording is not competent, the Fund will not be able to give effect to the order. This will require the court to formally amend its original order, which is a lengthy and costly exercise.

