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The Pitfalls of Pension Funds Retirement Annuities in Divorces

The frustration of divorcees, especially in the last couple of years of the “do it yourself” divorce, have increased dramatically when dealing with Pension Fund Administrators. This is wholly caused by the absence of correct reference, or any reference at all, on how the parties Pension interests should be divided.

In terms of the definitions of Section 1 of the Divorce Act¹, Pension Interest of a person is deemed part of the assets that the other party may be partially entitled to in terms of a marriage in community of property or in calculation of an accrual claim. There is also a substantial difference in how the Pension interest is calculated. For example when dealing with a retirement annuity, the value of the annuity for purposes of the divorce is calculated by the sum of all contributions and interest thereon in terms of the section 1(2) of the Prescribed Rate of Interest Act². Pension fund administrators have routinely been refusing to enforce Court Orders with (according to their interpretation) incorrect reference to the pension fund itself, reference and identification of the policy and member, the percentages and amounts payable as well as when and how the amounts need to be paid. Direct reference to Section 7(7) and 7(8) of the Divorce Act is necessary.

Parties in a Divorce Action, where a pension fund administrator is refusing to conform to a Court order, are then left with the arduous task to either take the administrator to Court/Pension Fund Adjudicator or attempt to rectify the order to the Administrator’s liking. The only other option is to try and claim what is yours, when the policies matures, directly from your ex but this can be very risky. Most choose to try and rectify the Court Order as it is the most time and cost effective way with, essentially, guaranteed result. The one major problem with the latter procedure is that, unsurprisingly, parties in divorces are often at odds and should there be no agreement or the situation be used to frustrate the party seeking relief, it will be very difficult to rectify the order. For parties married in community of Property, if there cannot be an amicable rectification of the Court Order, the Parties will have no other choice than to approach the Divorce Court in order for a Liquidator and Receiver to be assigned to wind up the parties joint estate and in which a correct order can be obtained empowering the Liquidator to deal with the parties pension interest. Such a liquidator will of course take his payment for the Court Ordained service provided.

This is just one of the pitfalls in divorce litigation that is totally avoidable. It is therefore highly advisable to obtain the assistance of a Divorce Attorney to assist or deal with the matter on your behalf. We at Louise Tonkin inc can professionally assist you with all your Divorce/Family Law related queries.

¹ Act 70 of 1979 as amended. See Also Ndaba v Ndaba in the SCA (Ndaba v Ndaba (600/2015) [2016] ZASCA 162.)

² Act 55 of 1975;



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