**KNOW YOUR LEGAL RIGHTS**

**Divorce: Don’t forget to divide your retirement plans – or it may haunt you later**

By Attorney Andrew Laufers

*Know Your Legal Rights* is a bi-monthly column distributed by the State Bar of Wisconsin. It is written by members of theState Bar of Wisconsin’s Lawyer Referral and Information Service (LRIS), which connects Wisconsin residents with lawyers throughout the state. Learn more at [*LRIS.org*](https://www.wisbar.org/forPublic/INeedaLawyer/Pages/i-need-a-lawyer.aspx)*.*

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Imagine this scenario: You just completed your divorce case. The case lasted 120 days and you are anxious to move on with the next phase of your life. You walk out of the courtroom and place your divorce decree in the filing cabinet. “It is done,” you think to yourself, “what a relief.”

It’s not done if you forgot about dividing your retirement accounts.

You may own a 401(k), individual retirement accounts (IRAs), a state pension, federal pension, railroad retirement, or military retired pay that your judgment and decree divided as part of the divorce. The divorce decree itself does not divide the retirement. A supplemental order is necessary to complete the division of the retirement.

**What is a supplemental order?**

A supplemental order is necessary because investment companies like Vanguard and Fidelity, your trade union, your railroad, or the military are not parties to your judgment and decree of divorce.

Because they did not participate in the divorce, they need a supplemental order to divide the retirement. If the plan does not have the required supplemental division order, the retirement plan will not be divided.

The order required to divide the plan depends on the type of retirement plan you own:

* IRAs are typically divided by Letters of Instruction, 401(k)’s, and pensions earned from private industry are divided by Qualified Domestic Relations Orders.
* Pensions or deferred compensation earned from public sector employment, railroad employment, or serving our country in the U.S. military are divided by special separate orders.

A qualified attorney specializing in divorce can help you take the steps to divide your retirement or make sure the retirement is divided as part of the divorce.

It is important that the division of retirement steps are taken immediately following the divorce. If retirements are not divided immediately the consequences can be expensive and dire.

**What do the courts say about dividing retirement plans?**

I served as counsel for one of the parties in the Wisconsin Supreme Court case of *Schwab v. Schwab*. In Schwab, Ms. Schwab asked to divide Mr. Schwab’s military retired pay more than 20 years following the parties divorce. Ms. Schwab asked that Mr. Schwab be found in contempt and Mr. Schwab argued that Ms. Schwab waited too long, and her requests were barred by Wisconsin statute. Ultimately, the Supreme Court found that the military retired pay could be divided - but as the Milwaukee County Circuit Court commented in the circuit court hearing, this could have been avoided if the parties divided the military retired pay near or at the time of the divorce.

**Divide now or pay later**

Besides the cost, stress and uncertainty of litigation, other risks exist from waiting to divide retirements. For example, one party could spend the retirement leaving nothing to divide.

Additionally, there are significant changes in value over time in a retirement and dividing the retirement years after a decree is difficult and more expensive. Finally, waiting to divide a retirement can cause problems in your own retirement planning as you are thinking you own assets that are yet to be divided.

**Your next steps**

If you are in the middle of a divorce or just completed one, you should contact or work with a qualified family law attorney to help divide your retirements so you can truly and confidently move on. The Lawyer Referral and Information Service at the State Bar is happy to provide you with a referral to an attorney.

*Andrew Laufers has more than 25 years of experience practicing divorce, family law and probate law in Wisconsin and Minnesota.* *He is a member of the State Bar of Wisconsin Lawyer Referral and Information Service, which connects Wisconsin residents with lawyers throughout the state. Learn more at* [wislaw.org](http://www.wislaw.org).