

## Breaking Up Is Hard To Do

By Tammy Flanagan

March 10, 2016

Sometimes, life comes with unpleasant surprises. From a financial planning and retirement preparation perspective, one of the most difficult is divorce. This week, I asked [Dan Jamison](#), a CPA and retired FBI special agent, to share some information that might help those going through this process. Dan specializes in assisting federal employees and annuitants with the division of retirement benefits in divorce and also has written the popular [FERS Retirement and Benefits Guide](#).

The number one misunderstanding, in Dan's experience, occurs when a former spouse of a federal employee is granted a pro-rata award of a federal retirement benefit and also a survivor annuity without the level of survivor annuity being defined. In such cases, the Office of Personnel Management interprets it as a full survivor annuity.

This situation can lead to two unfortunate outcomes:

- It might make the annuitant worth more dead than alive to the former spouse.
- It means that no survivor annuity is available to the current spouse if the employee or annuitant remarried after divorce.

Many times, employees don't fully understand this until after retirement. After the retirement or death of the employee, the survivor annuity portion of a divorce agreement or court order can't be modified.

Another problem can arise if the former spouse was awarded full survivor benefits and the employee remarries. The survivor annuity is paid on a "first come, first served" basis, which means the former spouse will receive the court-ordered benefit and there may be little to nothing left for the new spouse if the employee dies before either of them. Experts say that in this situation you should elect the survivor benefit for your current spouse that you would have chosen if there wasn't a court-ordered award to your former spouse. Remember that your current spouse will not receive the benefit, however, unless the former spouse loses entitlement due to his or her death -- or remarriage before age 55 (unless your marriage had lasted 30 years or more).

You also can choose an "insurable interest" survivor election at retirement so your current spouse would be entitled to 55 percent of your reduced retirement benefit, even if the former spouse is eligible for the court-ordered benefit. This would cause your retirement to be reduced twice, so it can get expensive. You must select the insurable interest survivor benefit at the time of retirement and prove your insurability -- that is, your good health. Remember, if your current spouse is not entitled to a spousal survivor annuity, they also might lose entitlement to health benefits if you die first (unless they are entitled under their own federal employment or retirement benefit). If an employee provides an insurable interest survivor annuity and the former spouse subsequently loses title to their survivor annuity, the insurable interest survivor annuity can be converted by OPM back to a normal spousal survivor annuity.

Dan says that in most cases the intent of the parties in a divorce is to award a survivor benefit in the same amount as the annuity award, so that the former spouse receives the same amount of annuity award regardless of whether the retiree is alive or deceased. For example, if the portion of the retirement annuity payable to former spouse is \$20,000 per year, then the survivor annuity is often spelled out in the divorce agreement as the same amount. As long as the employee has not yet retired, the divorce decree can be superseded at OPM by a new court order with revised survivor annuity terms.

### Follow-Through Failure

Another area of concern, according to Dan, is the lack of follow-through after a divorce is finalized. Upon finalization of a divorce in which a portion of a retirement annuity and/or Thrift Savings Plan funds are awarded to the former spouse, separate court orders for the TSP and OPM must be prepared to divide the funds. The dividing order for the TSP is called a Retirement Benefits Court Order. The order for OPM to divide the annuity is called a Court Order Acceptable for Processing. A COAP may award several retirement-related benefits, including a survivor annuity, refunds of retirement contributions, health benefits, assignment of life insurance, as well as a portion of the retirement.

If you have been through a divorce, take a moment to locate a copy of your decree and/or settlement agreement. Ensure that the appropriate court orders have been obtained and sent to the appropriate agencies at least one year prior to your anticipated retirement. OPM will mail a determination letter out to both parties after receipt of a COAP. Locate that letter as well and make sure it reflects your understanding of the award.

Another mistake employees sometimes make is failing to inform their Federal Employees Health Benefits Program carrier about their divorce. Dan said he recently talked to someone who had been divorced for two years and was still carrying his ex-wife on his self and family FEHBP enrollment. This is not allowed. Upon the issuance of a divorce decree, only your current spouse and your dependent children can be covered under your FEHBP plan. I know of divorced feds who are being sued for tens of thousands of dollars by FEHBP carriers for this mistake. A former spouse may have rights to carry FEHBP coverage through spouse equity provisions of the law, but he or she has to enroll in their own plan and pay both the employer and the employee share of the premium.

## Causes for Delay

Here are a few additional divorce-related factors that can cause delays in processing a retirement application:

- OPM automatically rejects a court order that isn't a certified copy, and an applicant may not even know this has occurred. If you're unsure if a court order sent to OPM is certified, call the agency's Court Order Benefits Branch at 202-606-0222 or email them at [retire@opm.gov](mailto:retire@opm.gov).
- OPM does not automatically start annuity payments to a former spouse upon an employee's retirement. The former spouse must apply to OPM by written letter, confirming their marital status, personal identifiers and the status of the COAP.
- Many former spouses fail to continue health insurance under the FEHBP's temporary continuation of coverage program or coverage under the spouse equity provisions of the Federal Employees Retirement System within the prescribed 60-day period after the marriage ends. This can leave the former spouse without health insurance benefits.

You must notify your agency's human resources office and you need to complete [SF 2809](#), the Health Benefits Election Form, if you want to change your enrollment from self and family or self plus one to self only (or vice versa). You must let the health plan know the date of the divorce so that your ex-spouse can be removed from your enrollment.

If you're facing the possibility of divorce or if you've already gone through the process, OPM provides a publication that may come in handy: [Court Order Benefits for Former Spouses](#). In addition, the TSP provides a booklet, [Court Orders and Powers of Attorney](#).

*Photo: Flickr user [Daniel Littlewood](#)*

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<http://www.govexec.com/pay-benefits/retirement-planning/2016/03/breaking-hard-do/126594/>