

Retirement Planning for Divorced Couples

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FIFTY PERCENT OF MARRIAGES END IN DIVORCE. We've all heard that famous statistic, but it's only true for first marriages. When it comes to second and third marriages, the divorce rate is much higher. How an ex-spouse's pension will be distributed can have substantial impact on a divorced individual's retirement financial plan.

Distribution of pension benefits to an ex-spouse can differ between states whether you are in the [state with the highest divorce rate \(Nevada\)](#) or the lowest divorce rate (Massachusetts). In this article, we'll navigate the guidelines that New York State uses to calculate an ex-spouse's entitlement to pension benefits.

According to New York State law, any pension benefits that have been earned while married fall into the category of marital property and are subject to equitable distribution upon the dissolution of the marriage. As set forth by the [Majauskas v. Majauskas](#) ruling by the State Court of Appeals in 1984, the typical method for public pension distribution in divorces involves granting an ex-spouse 50 percent of the pension earnings accumulated during the marriage, which is based on the total time employed and the length of the marriage.

The Office of the New York State Comptroller offers a straight-forward way to calculate this "most common equitable distribution formula."

The first step in the Majauskas formula determines what percentage of the member's pension was earned during the marriage (marital share) by dividing years of service credit accrued during the marriage (numerator) by total service credit at retirement (denominator). Then, that percentage is multiplied by 50 percent, so that the member and ex-spouse each receive one half of the marital share percentage.



Consent orders are not mandatory but are highly recommended in order to safeguard the parties' interests post-divorce.

$\frac{\text{Years of service credit accrued during marriage (numerator)}}{\text{Total service credit at time of retirement (denominator)}} = \text{Marital share}$
$\text{Marital share} \times 50\% = \text{Ex-spouse's portion}$

For example, if the member accrued 18 years of service while married and retires with 30 years of total service:

$\frac{18 \text{ Years of service credit accrued while marriage}}{30 \text{ total service credit at time of retirement}} = 60\% \text{ Marital share}$
$60\% \times 50\% = 30\% \text{ Ex-spouse's portion}$

The information above is only intended for educational purposes to show an example of this type of offering.

Please note when an open date field (e.g., xx/xx/xxxx) is utilized for the numerator, the New York State and Local Retirement System (NYSLRS) will determine the amount of service credit amassed throughout the duration of the marriage.

While New York State has determined that the Majauskas formula is an equitable approach to the pension distribution, it does not require the application of this formula. They allow other approaches including:

- Flat dollar amount: The former spouse is entitled to a set fixed monthly payment.
- Flat percentage: The former spouse receives an agreed-upon percentage of the pension member's benefit.
- Modified Majauskas: The parties agree to different factors, such as the percentage amount, to be used in the formula.
- Hypothetical benefit: NYSLRS creates a hypothetical retirement benefit using salary and service as well as other factors to determine what the pension will be, then determines the former spouse's share of that hypothetical amount.

Whatever formula you choose, once you've reached a divorce settlement with your former partner, it is important to have your solicitor draw up a consent order or court order that will turn your financial settlement into a legally binding agreement. When it is approved by the court, it is final, and neither party will be able to make additional claims for money in the future.

In the absence of a formal financial settlement or a consent order, each party retains the ability to stake a claim on the other's financial resources, regardless of how long they have been divorced. There's no time limit for such claims; they can be brought at any time until a consent order is put in place. Although not mandatory, obtaining a consent order is a step I highly recommend that my clients take in order to safeguard their pension interests post-divorce.

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