

# Dissolution of Marriage and Your Pension

As a member of the Los Angeles Fire and Police Pension (LAFPP) system, it is important that you understand the impact a dissolution of marriage may have on one of your largest assets - your pension. In California, any asset acquired, or income earned while married is considered community property. As part of this, pension benefits and contributions are subject to community property laws and, as assets, may be subject to division upon dissolution of marriage. If the court awards part of your pension to an ex-spouse, LAFPP must adhere to state law in the disposition (settlement) of your pension. This brochure provides an overview of how your pension benefits can be affected by a dissolution of marriage and what actions you need to take as the LAFPP Plan member.

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## DIVIDING YOUR PENSION

While LAFPP generally pays retirement benefits only to members and their qualified survivors, California state law establishes an exception in the event of a dissolution of marriage. Your pension benefit is subject to community property, which generally includes the time between the date of marriage through the date of separation.

In its division of the assets, the court could decide to award an “in-kind” division of the pension – usually a 50:50 split of the community property share – assigning each party a percentage interest to be paid upon the member’s retirement, termination, or death.

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## WHAT YOU SHOULD KNOW

- Your ex-spouse may be entitled to a portion of your Deferred Retirement Option Plan (DROP) account and/or subsequent monthly pension benefit
- If you are legally separated, your spouse may be entitled to a portion of your DROP account and/or subsequent monthly pension benefit
- If you remarry, your ex-spouse’s community property share remains
- If your ex-spouse predeceases you, his/her share may be passed on to his/her beneficiary or estate
- Pursuant to California Supreme Court case *In re Marriage of Gilmore (1981) cal.3d 418*, your ex-spouse may exercise his/her right to their community property interest when you become eligible to retire
- If you die leaving a Qualified Surviving Spouse/Qualified Surviving Domestic Partner, your ex-spouse may receive part of the survivorship pension payable to him/her
- If your divorce/dissolution documents do not mention your pension, your ex-spouse may re-open the case

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# WHAT TO CONSIDER IN THE EVENT OF A DISSOLUTION OF MARRIAGE

To prepare yourself and to ensure you fully understand the impact your dissolution of marriage may have on your LAFPP benefits, you are encouraged to discuss the following issues with your legal counselor:

- Do your dissolution documents mention your pension?
- Do your dissolution documents address a DROP account?
- Was LAFPP joined in the dissolution?
- Do you understand the terms of the division of assets?
- Does your Qualified Domestic Relations Order (QDRO) state that your pension was divided or was your pension fully awarded to you? If not, be aware that your ex-spouse can still make a claim.
- If you are awarded your entire LAFPP pension and DROP account, the final judgment must specify that you are to receive your full pension and DROP account upon retirement, termination, or death.
- Does the dissolution judgment state what happens to your ex-spouse's share in the event of his/her death?
- Does the dissolution judgment state the date of marriage and the separation date?

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## WHAT DOCUMENTS MUST BE SUBMITTED TO LAFPP

LAFPP must be “joined” in your dissolution of marriage proceeding to legally distribute pension benefits granted to an ex-spouse. A Joinder, which is the legal process that includes the LAFPP Plan as a third party in a dissolution, must be filed with the Court and submitted to LAFPP. Once LAFPP is joined, it will be bound by the court order and will be required to distribute a former spouse's community property share of your pension or contributions. If the pension is not divided or awarded for community property, LAFPP will request all documents to be reviewed by the Office of the City Attorney.

Once the marriage is dissolved, you must ensure that you have final copies of all dissolution records. LAFPP requires copies which must contain all pages, along with the Clerk's stamp and Judge or Commissioner's signature. Prior to retirement/DROP entry, the member must provide a copy of the final dissolution decree to LAFPP for any prior marriages.

The following documents must be submitted to LAFPP prior to retirement/DROP entry:

1. **Joinder** — specific documents filed with the court to make LAFPP a party to the divorce action. LAFPP cannot comply with a court order to divide your pension benefits or contributions until it becomes a party to the divorce action. If both parties are LAFPP members, only one joinder needs to be filed.
2. **Judgment of Dissolution of Marriage/Legal Separation signed by the Judge** — Court orders requiring LAFPP to recognize a community property interest in an account must specifically refer to “Los Angeles Fire and Police Pensions”. The court order must also provide the following information:
  - Date of Marriage
  - Date of Separation
  - Names
3. **Qualified Domestic Relations Order (QDRO/DRO), Marital Settlement, or Stipulation Order** — A court order that instructs LAFPP how to divide your pension benefit or contributions, typically drafted by the attorney preparing the court documents or an attorney who specializes in QDRO/DRO preparation. This must be filed in addition to a dissolution

decree, even if the decree clearly states that the pension benefit should be divided.



LAFPP strongly urges the parties to submit a proposed QDRO to be forwarded to the City Attorney’s Office for review and preapproval before filing it with the court to avoid future potential problems and/or delays. If LAFPP is unable to comply with the conformed copy of a QDRO, amendments

may be necessary. You or your attorney may obtain a copy of the sample dissolution language the Department uses. Please email LAFPP ([pensions@lafpp.com](mailto:pensions@lafpp.com)) to obtain the sample. The City Attorney’s review and preapproval is provided as a courtesy in order to determine whether LAFPP can comply with the terms of division, but this should not be considered legal advice. LAFPP is a neutral third party in any dissolution proceeding.

# HOW IS COMMUNITY PROPERTY CALCULATED

Community property is made up of assets that are acquired during the marriage through any means other than an inheritance or gift. Assets acquired by either spouse during the marriage, regardless of how those assets are titled, are viewed as community property assets.

Most settlements use the time-rule formula to determine community property:

<b>Marital Period</b> (while employed)	÷	<b>Employment Period</b>	×	<b>Pension</b>
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## COMMUNITY PROPERTY EXAMPLE – MONTHLY PENSION

The following are scenarios for a member with two marital dissolutions. In these examples, the member and each ex-spouse are entitled to half of the community property portion, divided as follows:

### Dissolution #1

ASSUMPTIONS:

- 8 years of marriage (while employed)
- 26 years of service
- \$6,500 monthly pension
- 50/50 split of the community property portion

$$8 \text{ yrs. } \div 26 \text{ yrs. } \times \$6,500$$

$$\text{Community Property} = \$2,000$$

$$\$2,000 \div 2 = \$1,000$$

→ **Member's pension is reduced to \$5,500/month** (\$6,500 - \$1,000)

→ **Ex-spouse #1 receives \$1,000/month**

### Dissolution #2:

ASSUMPTIONS:

- 6 years of marriage (while employed)
- 26 years of service
- \$6,500 monthly pension



- 50/50 split of the community property portion

$$6 \text{ yrs. } \div 26 \text{ yrs. } \times \$6,500$$

$$\text{Community Property} = \$1,500$$

$$\$1,500 \div 2 = \$750$$

→ **Member's** portion is now reduced to **\$4,750/month** (\$5,500 - \$750)

→ **Ex-spouse #2** receives **\$750/month**

### COMMUNITY PROPERTY EXAMPLE – WHEN A MEMBER PASSES AWAY

The following is a scenario for a deceased member leaving behind a surviving spouse and an ex-spouse. The Qualified Surviving Spouse is entitled to 55% of the deceased member's monthly pension. The ex-spouse is entitled to half of the community property portion of the surviving spouse's monthly pension, divided as follows.

#### Current Spouse

ASSUMPTIONS:

- Deceased member's monthly pension is \$8,500

$$55\% \times \$8,500 = \$4,675$$

**Qualified Surviving Spouse Monthly Pension = \$4,675**

#### Ex-Spouse

ASSUMPTIONS:

- 15 years of marriage (while employed)
- 30 years of service
- \$4,675 Survivor monthly pension
- 50/50 split of the community property portion

## COMMUNITY PROPERTY FORMULA

<b>Marital Period</b> (while employed)	÷	<b>Employment Period</b>	×	<b>Pension</b>
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$$15 \div 30 \times \$4,675 = \$2,337.50$$

$$\text{Community Property} = \$2,337.50$$

$$\$2,337.50 \div 2 = \$1,168.75$$

- **Ex-spouse's Monthly Pension = \$1,168.75**
- **Qualified Surviving Spouse's** portion is now reduced to **\$3,506.25/month**  
(\$4,675 - \$1,168.75)

## COMMUNITY PROPERTY EXAMPLE – REFUND OF MEMBER CONTRIBUTIONS

In the event your employment is terminated, you may request a refund of your contributions and interest. Your contributions made during the marital period are viewed as community property assets. The following formula will be used in the event of a refund of contributions.

<b>Member Pension Contributions</b> (during marital period)	+	<b>Interest Earned</b>	÷	<b>2</b>
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### ASSUMPTIONS:

- 7 years of marriage (while employed)
- Total contributions (during marital period), including interest: \$69,182.23  
\$55,383.83 contributions + \$13,798.40 interest ÷ 2 = **\$34,591.12**

- **Ex-spouse's portion = \$34,591.12**

Should you have any questions on pension entitlement or dissolution of marriage, please contact:

- **Active Members** — Active Member Services Section at (213) 279-3140 or (844) 88-LAFPP, ext. 93140. Email: [amssection@lafpp.com](mailto:amssection@lafpp.com)
- **DROP Members** — DROP/Service Pensions Section at (213) 279-3100 or (844) 88-LAFPP, ext. 93100. Email: [dropsp@lafpp.com](mailto:dropsp@lafpp.com)
- **Retired Members** — Retirement Services Section at (213) 279-3125 or (844) 88-LAFPP, ext. 93125. Email: [rs@lafpp.com](mailto:rs@lafpp.com)

# FREQUENTLY ASKED QUESTIONS

**Q. I just got divorced, is there anything I should be doing for my pension?**

**A.** Submit a conformed copy of your dissolution documents to LAFPP. You should also consider updating your LAFPP beneficiary designations. Please visit our website, [www.LAFPP.com](http://www.LAFPP.com), to learn how to submit an updated Beneficiary Designation and to download the form.

**Q. How do I obtain the value of my pension?**

**A.** LAFPP does not provide pension values. The value of your pension or the “accrued pension benefit” must be determined by an actuary. However, we can provide the following:

**ACTIVE MEMBERS** — A *Divorce Contribution Letter* which contains information to help calculate the value of your pension benefit. Submit a written, signed request containing the member’s name, last four digits of your social security number, date of marriage, and date of separation to:

**LAFPP - Active Member Services Section**

701 E. 3rd Street, Suite 200  
Los Angeles, CA 90013  
Fax: (213) 628-7716  
Email: [amssection@lafpp.com](mailto:amssection@lafpp.com)

**DROP MEMBERS/RETIREEES** — A *Community Property Estimate* which is an estimated division of your pension. Submit a written, signed request containing the member’s name, last four digits of your social security number, date of marriage, and date of separation to:

**LAFPP - DROP/Service Pensions Section**

701 E. 3rd Street, Suite 200  
Los Angeles, CA 90013  
Fax: (213) 628-7716  
Email: [drops@lafpp.com](mailto:drops@lafpp.com)

**LAFPP - Retirement Services Section**

701 E. 3rd Street, Suite 200  
Los Angeles, CA 90013  
Fax: (213) 628-7716  
Email: [rs@lafpp.com](mailto:rs@lafpp.com)

LAFPP will respond to written requests from the member, the spouse or either party’s attorney within 7-10 business days. Requests from an attorney should be on letterhead and indicate the party represented. Subpoenas are not required.

**Q. If I was married and divorced before I joined LAFD/LAPD/Harbor/Airports, is my “ex” spouse entitled to part of my LAFPP pension?**

**A.** No. An ex-spouse from a marriage terminated prior to membership in the pension system has no claim against your pension because there was no community property period for the pension benefit.

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**Q. I am now divorced from a person to whom I was married while a sworn member of the LAFD/LAPD/Harbor/Airports. What effect will this have on my pension?**

**A.** Your ex-spouse may have a community property interest in your pension and DROP account up until your date of separation. Your final dissolution decree and any accompanying marital settlement or order should indicate the court’s final decision concerning the division of your pension.

If your judgment states that your entire pension and DROP account are awarded to you, LAFPP will honor that court order and pay you your full monthly pension benefit and DROP account when you retire.

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**Q. What if my ex-spouse waived off his/her community property portion of my pension?**

**A.** LAFPP will distribute your pension according to the conditions stipulated in your final dissolution decree. The Judgment of Dissolution must specify that your former spouse has waived all rights and interest in your pension benefit or state that your LAFPP benefits are your sole and separate property. In this case, you will receive your full pension payment when you retire.

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**Q. What if my divorce documents did not mention my pension?**

**A.** This can be a problem. An ex-spouse may return to court and re-open this issue by claiming that the pension was “forgotten” in the divorce. Therefore, you are encouraged to seek legal counsel.

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**Q. Why is my ex-spouse’s entitlement based on my present retirement benefit instead of what I was making when we separated?**

**A.** The community property interest is based on the benefit payable when you retire because of the California Supreme Court’s decision *In re Marriage of Lehman* (1998) 18 Cal.4th 169. Therefore, your ex-spouse’s entitlement is based on the retirement benefit you are eligible for when you retire.

**Q. Will my ex-spouse receive any of my DROP money?**

**A.** Some or all of your DROP account and/or subsequent monthly pension benefit may be subject to division of community property pursuant to your dissolution judgment or order because of the California Supreme Court's decision *In re Marriage of Lehman* (1998) 18 Cal.4th 169. Recent court orders are more likely to address the community property division of a member's service pension entitlement and his/her DROP account. However, most orders issued in the past do not address a DROP account.

The City Attorney will need to review the language in your court order. You are encouraged to submit a copy of your court order to us before you decide to enter DROP. **Your DROP account will not be distributed until your dissolution(s) is on file with LAFPP and the City Attorney has advised us how your benefits should be allocated.**

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**Q. If my ex-spouse remarries, will his/her share of the pension come back to me?**

**A.** Generally, no. As with other divided property, the ex-spouse's share of the pension remains his/her property. The pension is payable to an ex-spouse for as long as your pension is being paid to you or your qualified survivor.

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**Q. If my ex-spouse dies before I do, does his/her portion of the pension come back to me?**

**A.** It depends on the dissolution decree. As with other divided property, the ex-spouse's share of the pension remains his/her property. Without an agreement to return your ex-spouse's share to you, the law provides for the ex-spouse's share to be passed on to the beneficiary of the ex-spouse, or his/her estate. If this is the case, the beneficiary or estate will continue to receive the ex-spouse's share of your pension as long as you or your qualified survivor are receiving a pension.

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**Q. Can my ex-spouse collect part of my pension before I retire?**

**A.** Not from LAFPP. However, according to the California Supreme Court case *In re Marriage of Gilmore* (1981) 29 Cal.3d 418, pursuant to court order, in California, ex-spouses can claim their community property share from a member when the member is eligible to retire:

- At 20 years of service for Tier 2 and Tier 4 members;
- At age 50 with 10 years of service for Tier 3 members; and
- At age 50 with 20 years of service for Tier 5 and Tier 6 members.

If this happens and you continue to work past your retirement eligibility date, the court may require you, as the member, to make the payments directly to your former spouse, provided he/she has a Gilmore order. (See *In re Marriage of Gilmore (1981) 29 Cal.3d 418.*) Pursuant to California Family Code Section 2610, a court cannot require a retirement plan to make payment of benefits to any party at any time before the member retires. Therefore, LAFPP cannot be compelled to pay the ex-spouse before the member actually retires. Following your retirement, however, LAFPP will make the payments directly to the former spouse, provided there is a Domestic Relations Order (DRO) or Gilmore order on file. If not, LAFPP will hold the former spouse's amount until such order is received. Meanwhile, your pension payment will still be distributed to you, minus the portion payable to your former spouse.

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**Q. If I die leaving a spouse who is eligible for a survivorship pension, will my former spouse receive part of the pension payable to my surviving spouse?**

**A.** Yes, after January 1, 1987, unless there is wording to the contrary in the dissolution decree. A former spouse has a right to claim his/her community property share of any survivor benefits being paid to your qualified survivors.

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**Q. How do I obtain a copy of my divorce decree?**

**A.** You must contact the court that issued your decree.

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**Q. How will my Deferred Comp money be affected?**

**A.** LAFPP does not administer the Deferred Compensation Plan. Please contact the City's Deferred Compensation Office at (213) 978-1601.

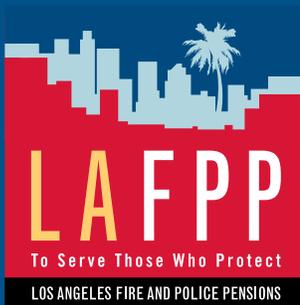
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**Q. What if I terminate City employment before I retire?**

**A.** If you were a member in Tiers 2, 3, 5 or 6, you may elect to withdraw and receive a refund of your contributions, plus interest. However, if there is an adverse claim on your file, we will hold one-half of the contributions and interest attributable to the marital period in abeyance, pending the final judgment in the dissolution proceedings.

This guide is for informational purposes only. LAFPP cannot provide legal advice. This information should not be considered legal advice and you should not rely solely on the information provided herein. For specific advice regarding your personal situation, please consult an attorney.

Although every effort was made to summarize applicable law, this guide may not be used to estop LAFPP, nor may any provision of this guide be read as contradicting case law or statute.



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213-279-3000



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