

FREE CHECKLIST

Divorce and Your Pension

10 things to check before you sign

By **Roy Bregman**, admitted attorney with over 51 years' experience in family law and divorce. Updated 18 October 2026.

Since 9 October 2026, a divorce court may take a spouse's pension, provident fund or retirement annuity into account in **every** marriage out of community of property without accrual, whatever the date of the marriage. The Constitutional Court made this possible in *GD v Minister of Home Affairs and Others* [2026] ZACC 39. Retirement savings are often the biggest asset in a marriage, so use this checklist before you sign a settlement or file court papers, whether you want a share of a pension or want to protect your own. Tick each box as you go.

Part 1: Know where you stand

- ☐ **1. Confirm your marriage regime.**
Find your antenuptial contract, the marriage contract signed before a notary before the wedding. Check whether it excludes accrual (the sharing of growth during the marriage) and note the date you married. If there is no contract, you are married in community of property and pensions are usually shared equally.
- ☐ **2. Check whether your divorce is final or still pending.**
A divorce finalised before 9 October 2026 is not reopened. If your divorce is still pending, ask your attorney whether your claim should now be amended to include the pension.
- ☐ **3. Understand what a redistribution order needs.**
In a marriage without accrual, nothing is shared automatically. The court may transfer part of a pension only if it is just and equitable, meaning fair, because of what the receiving spouse contributed during the marriage.

Part 2: Gather the information

- ☐ **4. List every retirement product, for both spouses.**
Include pension, provident and preservation funds, retirement annuities and the Government Employees Pension Fund. Do not forget funds from previous employers.
- ☐ **5. Record the full name and membership number of each fund.**
The divorce order must identify each fund exactly. A wrong or incomplete name is one of the most common reasons a fund refuses to pay.
- ☐ **6. Ask each fund for a pension interest statement.**
The pension interest is the value a divorce court may consider: for a pension or provident fund, what the member would receive on resigning on the date of divorce; for a retirement annuity, broadly the contributions plus interest set by law. Ask for the figure as at a specific date.
- ☐ **7. Gather proof of your contributions.**
Keep records of running the home, raising the children, unpaid work in the family business and money paid into the household. The spouse asking for a share must prove these contributions.

Part 3: Before you sign

☐ 8. Look at the whole picture, not only pensions.

Property, business interests, trusts, maintenance and debts all affect what a fair settlement looks like. A pension is one part of it.

☐ 9. Decide between cash and a transfer.

A cash payment from your spouse's fund is generally taxed in your hands. A transfer into a retirement fund of your own usually defers the tax until you retire. Ask a tax adviser before you choose.

☐ 10. Make sure the order wording is specific.

The order must name the fund, state the percentage or amount, and direct the fund to record the award. Use the sample wording below as a guide for your attorney.

What to request from each fund

Request	Why you need it
Pension interest statement at a stated date	Shows the value the court may consider.
Full registered name of the fund and administrator	The order must name the fund exactly.
Member's membership or policy number	Lets the fund match the order to the right account.
Benefit statement for the last two years	Reveals recent withdrawals or changes in contributions.
The fund's requirements for divorce orders	Some funds publish a checklist of wording they will accept.

Sample order wording (for your attorney)

"It is ordered that [__]% of the pension interest of the [Plaintiff / Defendant] in the [full name of fund], membership number [____], as at the date of this order, be paid to the [Plaintiff / Defendant], and that the fund is directed to endorse its records accordingly in terms of section 7(8) of the Divorce Act 70 of 1979."

This is a guide only. The correct wording depends on your marriage regime, the type of fund and the settlement. Have your attorney check it, and if possible confirm with the fund before the order is made.

After the divorce

☐ Serve the order on the fund promptly and make your choice.

Send the fund a certified copy of the divorce order and settlement. Once you choose cash or a transfer, the fund must generally pay within 60 days of your choice. Follow up in writing if it does not.

Not sure where you stand? Speak to us before you sign.

Whether you are claiming a share of a pension or protecting your own retirement savings, we will tell you plainly where you stand and what your options cost.

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This checklist is general information, not legal advice. Every divorce turns on its own facts. Bregman Moodley Attorneys Inc., Suite 316, Third Floor, Office Towers, Killarney Mall, 60 Riviera Road, Killarney, Johannesburg.