



## Divorce and Your Retirement Fund – What You Should Know

Recent changes to the law affect how the Columbus Retirement Fund manages divorce orders. If you are going through a divorce (or may in future), here are the key points explained simply.

### What has changed?

From 1 September 2024, South Africa introduced the two-pot retirement system. This allows members limited access to a savings pot before retirement.

At the same time, the rules around divorce orders and retirement fund benefits changed. The most important point is that different rules apply depending on when the divorce order was granted.

- **Divorce orders granted on or after 1 September 2024**

If your divorce order is dated 1 September 2024 or later, any amount payable to your ex-spouse will be deducted proportionately across all the member's retirement pots, namely:

- the retirement pot
- the savings pot
- the vested pot (if applicable)

This means the divorce payment is not taken from only one pot. Instead, each pot contributes in the same proportion as its value makes up of the member's total retirement benefit on the date of divorce.

Importantly, *unlike before 1 September 2024*, if a member has already left the Fund there can still be a court order ordering pension interest to be paid by the Fund as long as there is money left in the Fund.

If the parties want the Fund to pay then the court order must:

- Refer to "pension interest" as defined in the Pension Funds Act (not the Divorce Act). Other wording such as "provident interest" or "fund credit" is not acceptable.
- State the Rand amount or percentage of the pension interest that must be paid by the Fund.
- Clearly name the Fund specifically in the order: "Columbus Retirement Fund."
- Order the Fund (not the administrator) to make payment from the Fund.

Tip 1: keep the wording simple. The order does not have to specify how the amount must be taxed, when it must be paid, that pension interest is as at date of divorce or whether it will be taken as cash or transferred to another fund - as all of that is already dealt with in the Pension Funds Act and will automatically apply.

Tip 2: you do not need to refer to the different pots in the order.

Tip 3: keep the wording simple: some suggested wording is included below. Please note that the Fund does not take responsibility for the wording and it must be discussed with your attorney to take your own circumstances into account.



- “The defendant/ plaintiff is a member of the Columbus Retirement Fund (“the Fund”).
- The plaintiff/ defendant is entitled to [insert] percentage of the defendant’s/plaintiff’s pension interest in the Fund, as defined in section 1 of the Pension Funds Act.
- The Fund is ordered to pay or transfer the assigned portion of the pension interest to the plaintiff/defendant, or to an approved fund on the plaintiff’s/ defendant’s behalf, in terms of section 37D(4)(b)(iii) of the Pension Funds Act.”

Please provide these guidelines to your attorney.

If the wording is not correct the Fund will not be able to pay and you will have to approach the court again. This causes unnecessary emotional turmoil and additional cost.

- **Divorce orders granted before 1 September 2024**

Older divorce orders are treated differently. In these cases, the amount payable is based on the value of your benefit as if you had resigned on the date of divorce.

The member must have been active in the Fund at the time, and the court order must still meet legal requirements similar to those indicated above.

### **Important to know**

- If there are other legal deductions (such as a housing loan), these are deducted first, which reduces the amount available to pay the ex-spouse.
- The ex-spouse is not a member of the Fund and only earns interest from the date the deduction is made (which is usually the date that the ex-spouse tells the Fund how they want the benefit paid).
- The Fund must act on a valid court order and does not need the member’s consent to make payment.

### **How long does the process take?**

- The Fund will ask the ex-spouse to choose cash or transfer within 45 days
- The ex-spouse has 120 days to respond
- The administrator of the Fund will ask the ex-spouse to complete a form and provide documentation, including the court order. Payment or transfer to another fund (at the ex-spouse’s choice) is made once all documents are received and verified.

### **What about tax?**

- The ex-spouse pays the tax if they choose to take the amount in cash; or
- The ex-spouse may choose to transfer the amount tax-free to another approved retirement fund.
- These tax consequences cannot be changed by agreement or in the order. That will just make the order unenforceable.

### **How does divorce affect my savings pot?**

A deduction made to pay an ex-spouse in terms of a valid divorce order is not treated as a member withdrawing from the savings pot and, you will therefore be allowed to make a savings pot withdrawal in the same tax year as the divorce settlement was paid out.



### **A Warning on "Paper Divorces" and "Strategic" Settlements !**

An emerging trend involves so-called "paper" or "strategic" divorces, where members legally divorce solely to trigger a "pension interest" payout while continuing their relationship in a domestic partnership.

Members are advised that the Financial Sector Conduct Authority (FSCA) and the South African Revenue Service (SARS) regard "sham" divorces as a serious matter. The submission of a divorce decree that does not reflect a bona fide breakdown of the marriage may be investigated and could constitute fraud.

In addition to the legal risks, a divorce order is a final court decree with permanent consequences. It may result in the loss of important spousal rights and benefits, including inheritance rights and medical aid dependency. Furthermore, accessing retirement funds prematurely may trigger significant tax liabilities and undermine the long-term compounding effect of your investment, potentially resulting in a substantial shortfall at retirement.

The Fund strongly discourages the use of legal proceedings as a mechanism for early withdrawal. The long-term legal and financial consequences are likely to far outweigh any short-term financial benefit.

#### **A final word**

- Make sure your divorce order is worded correctly.
- Provide this document to your attorney.
- Your divorce order must clearly name the Columbus Retirement Fund.

An ID number alone is not enough, especially if you belong to more than one fund.

---

**PD THERON**  
**PRINCIPAL OFFICER**