

Minnesota Statutes 2004, Table of ChaptersTable of contents for Chapter 424A**424A.02 Volunteer firefighters; service pensions.****Subd. 6. Payment of service pensions; nonassignability.**

The method of calculating service pensions shall be applied uniformly for all years of active service and credit shall be given for all years of active service, except as otherwise provided in this section. No service pension shall be paid to any person while the person remains an active member of the respective fire department, and no person who is receiving a service pension shall be entitled to receive any other benefits from the special fund of the relief association. No service pension or ancillary benefits paid or payable from the special fund of a relief association to any person receiving or entitled to receive a service pension or ancillary benefits shall be subject to garnishment, judgment, execution, or other legal process, except as provided in section 518.58, 518.581, or 518.6111. No person entitled to a service pension or ancillary benefits from the special fund of a relief association may assign any service pension or ancillary benefit payments, nor shall the association have the authority to recognize any assignment or pay over any sum which has been assigned.

Minnesota Statutes 2003, Table of ChaptersTable of contents for Chapter 518**518.58 Division of marital property.**

Subdivision 1. **General.** Upon a dissolution of a marriage, an annulment, or in a proceeding for disposition of property following a dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property and which has since acquired jurisdiction, the court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property. The court shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife. The court may also award to either spouse the household goods and furniture of the parties, whether or not acquired during the marriage. The court shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable. If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.

Subd. 1a. **Transfer, encumbrance, concealment, or disposition of marital assets.** During the pendency of a marriage dissolution, separation, or annulment proceeding, or in contemplation of commencing a marriage dissolution, separation, or annulment proceeding, each party owes a fiduciary duty to the other for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets. If the court finds that a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution, separation, or annulment proceeding, transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred. The burden of proof under this subdivision is on the party claiming that the other party transferred, encumbered, concealed, or disposed of marital assets in contemplation of commencing or during the pendency of the current dissolution, separation, or annulment proceeding, without consent of the claiming party, and that the transfer, encumbrance, concealment, or disposal was not in the usual course of business or for the necessities of life. In compensating a party under this section, the court, in dividing the marital property, may impute the entire value of an asset and a fair return on the asset to the party who transferred, encumbered, concealed, or disposed of it. Use of a power of attorney, or the absence of a restraining order against the transfer, encumbrance, concealment, or disposal of marital property is not available as a defense under this subdivision.

Subd. 2. **Award of nonmarital property.** If the court finds that either spouse's resources or property, including the spouse's portion of the marital property as defined in section 518.54, subdivision 5, are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 518.54, subdivision 5, clauses (a) to (d), to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage

of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

Subd. 3. **Sale or distribution while proceeding pending.**

(a) If the court finds that it is necessary to preserve the marital assets of the parties, the court may order the sale of the homestead of the parties or the sale of other marital assets, as the individual circumstances may require, during the pendency of a proceeding for a dissolution of marriage or an annulment. If the court orders a sale, it may further provide for the disposition of the funds received from the sale during the pendency of the proceeding. If liquid or readily liquidated marital property other than property representing vested pension benefits or rights is available, the court, so far as possible, shall divide the property representing vested pension benefits or rights by the disposition of an equivalent amount of the liquid or readily liquidated property.

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(b) The court may order a partial distribution of marital assets during the pendency of a proceeding for a dissolution of marriage or an annulment for good cause shown or upon the request of both parties, provided that the court shall fully protect the interests of the other party.

Subd. 4. **Pension plans.** (a) The division of marital property that represents pension plan benefits or rights in the form of future pension plan payments:

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(1) is payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;

(2) is not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;

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(3) is not payable in a lump sum amount from pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a pension plan;

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(4) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and

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(5) in the case of public pension plan benefits or rights, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

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(b) The individual retirement account plans established under chapter 354B may provide in its plan document, if published and made generally available, for an alternative marital property division or distribution of individual retirement account plan assets. If an alternative division or distribution procedure is provided, it applies in place of paragraph (a), clause (5).

HIST: 1951 c 551 s 5; 1974 c 107 s 22; 1978 c 772 s 53; 1979 c 259 s 27; 1979 c 289 s 8; 1981 c 349 s 7; 1982 c 464 s 2; 1986 c 444; 1987 c 157 s 17; 1988 c 590 s 2; 1988 c 668 s 20; 1989 c 248 s 8; 1991 c 266 s 4,5; 1992 c 548 s 6; 1993 c 239 art 4 s 1

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Minnesota Statutes 2004, Table of ChaptersTable of contents for Chapter 518**518.581 Surviving spouse benefit.**

Subdivision 1. **Award of benefit.** If a current or former employee's marriage is dissolved, the court may order the employee, the employee's pension plan, or both, to pay amounts as part of the division of pension rights that the court may make under section 518.58, or as an award of maintenance in the form of a percentage of periodic or other payments or in the form of a fixed dollar amount. The court may, as part of the order, award a former spouse all or part of a survivor benefit unless the plan does not allow by law the payment of a surviving spouse benefit to a former spouse.

Subd. 2. **Payment of funds by retirement plan.** (a) If the court has ordered that a spouse has an interest in a pension plan, the court may order the pension plan to withhold payment of a refund upon termination of employment or lump sum distribution to the extent of the spouse's interest in the plan, or to provide survivor benefits ordered by the court.

(b) The court may not order the pension plan to:

(1) pay more than the equivalent of one surviving spouse benefit, regardless of the number of spouses or former spouses who may be sharing in a portion of the total benefit;

(2) pay surviving spouse benefits under circumstances where the plan member does not have a right to elect surviving spouse benefits;

(3) pay surviving spouse benefits to a former spouse if the former spouse would not be eligible for benefits under the terms of the plan; or

(4) order survivor benefits which, when combined with the annuity or benefit payable to the pension plan member, exceed the actuarial equivalent value of the normal retirement annuity form, determined under the plan documents of the pension plan then in effect and the actuarial assumptions then in effect for calculating optional annuity forms by the pension plan or for calculating the funding requirements of the pension plan if no optional annuity forms are provided by the pension plan.

(c) If more than one spouse or former spouse is entitled to a surviving spouse benefit, the pension plan shall pay each spouse a portion of the benefit based on the ratio of the number of years the spouse was married to the plan member to the total number of years the plan member was married to spouses who are entitled to the benefit.

Subd. 3. **Notice to former spouse.** A pension plan shall notify a former spouse of an application by the employee for a refund of pension benefits if the former spouse has filed with the pension plan:

(1) a copy of the court order, including a withholding order, determining the former spouse's rights;

(2) the name and last known address of the employee; and

(3) the name and address of the former spouse.

A pension plan shall comply with an order, including a withholding order, issued by a court having jurisdiction over dissolution of marriage that is served on the pension plan, if the order states the name, last known address of the payees, and

name and address of the former spouse, or if the names and addresses are provided to the pension plan with service of the order.

Subd. 4. **Definitions.** For purposes of this section, the following terms have the meanings given in this subdivision.

(a) "Current or former employee" or "employee" means an individual who has an interest in a pension plan.

(b) "Surviving spouse benefit" means (1) a benefit a surviving spouse may be eligible for under the laws and bylaws of the pension plan if the employee dies before retirement, or (2) a benefit selected for or available to a surviving spouse under the laws and bylaws of the pension plan upon the death of the employee after retirement.

HIST: 1987 c 157 s 18; 1988 c 668 s 21; 1994 c 386 s 1

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