

A NON-MEMBER SPOUSE'S ENTITLEMENT TO THE MEMBER'S PENSION INTEREST

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SUMMARY

It is important that married couples seek legal advice with regard to the assets falling within their joint estate, more particularly their retirement benefits. This article reflects on the entitlement (if any) of non-member spouses to their spouses' retirement fund benefits. Pension benefits can be due before, during or after divorce, and parties to the marriage should be aware of their rights with regard to the accruing pension benefits of their spouses. While it is settled law that non-member spouses are entitled to receive a portion of their member spouses' pension benefits (known as "pension interest") immediately on divorce, it is not particularly clear whether non-member spouses are also entitled to receive the same before or sometime after divorce. In this article I provide a contextual understanding of the entitlements (if any) which spouses or former spouses of members of pension funds have on such member spouses' retirement benefits. Furthermore, it is shown in this article that various divisions of South African High Courts have been inconsistent in how they have approached the issue of the pension interest between divorcing spouses or divorced ex-spouses.

KEYWORDS: Entitlement; pension interest; non-member spouse; member spouse; clean break principle; divorce; joint estate.

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