

PARTITION OF ANNUITIES BY COURT DECREE

Information on this form is provided to assist individuals in partitioning Railroad Retirement Act annuities in connection with certain court related property settlements.

1. Annuities under the Railroad Retirement Act are composed of independently calculated segments known as "tiers." Tier I is calculated using social security benefit formulas and includes both earnings in the railroad industry and in employment covered by the Social Security Act. Tier II is based on railroad retirement earnings alone. An employee may also receive a "supplemental annuity" ranging from \$23.00 to \$43.00 per month. Finally, certain employees insured under both the Railroad Retirement Act and the Social Security Act as of 1974 may receive a vested dual benefit component.
2. The United States Supreme Court has previously held that section 14 of the Railroad Retirement Act (45 U.S.C. § 231m) prohibited a court from awarding one spouse a property interest in any benefits, whether present or expected in the future, to which the other spouse may become entitled under the Railroad Retirement Act. (Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979).

However, Public Law 98-76 amended section 14 with respect to benefits payable for months after August 1983, by adding new section 14(b)(2). The Railroad Retirement Board (RRB) has published regulations implementing section 14(b)(2) at Title 20 of the Code of Federal Regulations (CFR), Part 295. The RRB will honor a decree of divorce, legal separation or annulment (or a court-approved property settlement incident to such a decree) which complies with these regulations. The following provisions in particular are noteworthy:

- a. The decree must be final, and issued in accordance with the laws of the jurisdiction of that court (20 CFR 295.2).
- b. The decree must provide for the division of the employee's benefits under the Railroad Retirement Act, as distinguished from payments under any private pension (20 CFR 295.3 (a)(1)).
- c. The decree must provide for the division of the employee's benefits as part of a final disposition of property between the parties, rather than as an award of spousal support (20 CFR 295.2).
- d. The decree must obligate the RRB rather than the employee to make direct payments to the spouse (20 CFR 295.3(a)).
- e. The decree may not divide the Tier I amount (20 CFR §§ 295.1(b) and 295.5(a)). The RRB applies a property award only to the employee's non-Tier I benefits without regard to the wording of the decree (20 CFR 295.4(b)).
- f. The RRB's *Office of General Counsel* in Chicago must receive a properly worded decree (20 CFR 295.3(d)).

A decree may state the award as a dollar amount or as a fraction of the employee's benefits subject to division. The RRB will deduct any amount or fraction allowed under state law, but cannot deduct an amount greater than the total benefits subject to division payable to the employee for any month.

A model paragraph for a decree which complies with the RRB regulations and which awards to each spouse an equal share of divisible benefits proportionate to the period of the marriage is as follows:

"(Spouse's name) is awarded, and the Railroad Retirement Board is directed to pay, an interest in the portion of (Employee's name) benefits under the Railroad Retirement Act (45 U.S.C. § 231), which may be divided as provided by section 14 of that Act (45 U.S.C. § 231m). (Spouse's name) share shall be computed by multiplying the divisible portion of (Employee's name) monthly benefit by a fraction, the numerator of which is the number of months (Employee's name) worked for a railroad employer during the period of the marriage (month/year through month/year), and the denominator of which shall be (Employee's name) total number of months employed by a railroad employer at retirement, and then dividing the product by two."

A certified copy of any decree awarding the spouse an interest in the employee's benefits should be forwarded to: *Office of General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092*. Any correspondence should reference the employee's social security number and contain the current address of both parties or their counsel.

3. Previously, an employee had to be entitled to an annuity in order for a partition award to become payable. Furthermore, payments awarded to a former spouse pursuant to a property division terminated upon the death of either party, whichever occurred first. Amended section 5 of the Railroad Retirement Act allows for payment to continue to the former surviving spouse, unless the court order requires termination upon the death of the employee.
4. In addition to the above, payments may be made prior to the employee's entitlement to an annuity. These payments may not begin before the month in which the following three conditions are met.
 - a. The employee has completed ten years of railroad service (or five years of railroad service after December 31, 1995).
 - b. The former spouse is age 62.
 - c. The employee also is 62, or if deceased, would have been 62.

Proof of age must be on file with the RRB for both the employee and the spouse.

5. Payments also may be made after the death of the employee. Just as with partition payments made prior to the employee's entitlement to an annuity, these payments may not begin before the month in which the following three conditions are met.
 - a. The employee has completed ten years of railroad service (or five years of railroad service after December 31, 1995).
 - b. The former spouse is age 62.
 - c. The employee also is 62, or if deceased, would have been 62.

Proof of age must be on file with the RRB for both the employee and the spouse.

6. The divorced spouse may also be eligible to receive a survivor's benefit under sections 2(c)(4) and 2(d)(1)(v) of the Act (45 U.S.C. §§ 231a(c)(4) and 231a(d)(1)(v)) if the employee predeceases the former spouse. The estimated amount of this annuity is equal to the Tier I annuity component minus any social security benefit to which the divorced spouse may be entitled to receive. Any state court determination as to who is the surviving divorced spouse would be disregarded by the RRB in their decision as to who qualifies as a surviving divorced spouse. (20 CFR 295.1(b)).