

FROM THE DESK OF

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Legal Partition and Railroad Retirement Employee Annuities

Like private sector pension plans, select components of a railroad retirement *employee* annuity may be considered as marital property subject to legal partition in a state court action for divorce, annulment, or legal separation, if certain conditions are met.

The following questions and answers describe those conditions and how legal partition is established in compliance with the Railroad Retirement Act (RRA) and the regulations of the Railroad Retirement Board (RRB).

1. What is legal partition, as it relates to the RRB, and how does it differ from garnishment?

Under a legal partition order, *select* components of a railroad retirement *employee* annuity are characterized as marital property and divided, with a portion of those annuity components being paid on a regular, monthly basis directly to a former spouse, in court proceedings related to divorce or annulment, or to a spouse, in cases of legal separation. Railroad retirement spouse, divorced spouse, and survivor annuities are *not* subject to legal partition, nor are the sickness and unemployment benefits paid under the Railroad Unemployment Insurance Act (RUIA).

In contrast, under an order of garnishment, certain percentages of a railroad retirement *employee, spouse, or survivor* annuity may be subject to legal process (garnishment), up to a maximum percentage amount, **solely** to enforce an obligation for child support and/or alimony payments. Sickness and unemployment benefits paid under the RUIA may also be subject to garnishment for this purpose.

2. Is the RRB obligated to comply with a valid legal partition order?

Yes. The RRA requires that the RRB comply with the legal partition of the **non-tier I** components of a railroad retirement employee annuity. (Railroad retirement employee annuities are comprised of two tiers and, for annuitants who meet eligibility requirements that include having at least one month of compensated railroad service prior to October 1981, may include a supplemental annuity. A railroad retirement annuitant's tier II and supplemental annuity may be eligible for partition as detailed in Question 6.)

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3. What criteria must a partition request meet to be considered a valid legal partition order by the RRB?

Divorce procedures vary by state, but the RRB will accept a court order of competent jurisdiction, such as a divorce or separation judgment, along with any incorporated court orders or property settlements. No matter what court document is used to order partition, it must meet the RRB's criteria for validity. The RRB will honor a partition order which meets **all** of the criteria below:

- is a recently certified copy of the court order (divorce decree, property settlement, etc.) filed with the state court;
- clearly identifies the employee and former spouse or spouse;
- provides that the former spouse or spouse is awarded partition payments from the railroad retirement annuity components payable to the railroad employee;
- specifies an amount, or a formula to compute an amount, from the *divisible railroad retirement annuity components* to be paid to the former spouse or spouse (divisible benefits are interpreted by the RRB as the tier II component and, if applicable, the supplemental annuity); and
- obligates the RRB, rather than the employee, to make partition payments directly to the former spouse or spouse.

4. What must a former spouse or spouse do to receive partition payments from the RRB?

To receive payment of a partition award, a former spouse or spouse must forward a recently certified copy of the appropriate court order(s) to the RRB's Office of General Counsel (OGC). The certified copy or copies can be emailed to LAW@rrb.gov, faxed to (312) 751-7102, or mailed to the following address:

Office of General Counsel
U.S. Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611-1275

The accompanying correspondence must identify the employee by name and social security number and should include the **current** mailing addresses of the employee and former spouse or spouse and/or their legal counsel.

Upon receipt of the information and after confirmation of its compliance with all legal requirements, the OGC will send an *Agreement of Spouse or Former Spouse* form to the former spouse or spouse to complete. They must enroll for direct deposit, unless a waiver is granted, and, if applicable, inform their local RRB field office of a change in mailing address to ensure notification of entitlement to partition payments. The change of address notification should include the railroad employee's social security number.

It is important to be aware that partition payments will **not** be disbursed to the former spouse or spouse until **all** required supporting documentation has been furnished to and deemed acceptable by the OGC. If the supplied information does not comply with agency regulations, the OGC will notify the former spouse or spouse of its deficiencies and explain how to remedy them.

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5. Does the length of a former spouse's or spouse's marriage to a railroad employee affect entitlement to partition payments?

No. Unlike entitlement to a railroad retirement divorced spouse annuity which, among other criteria, requires that the length of the marriage between the railroad employee and divorced spouse be at least 10 years, the length of the former spouse's or spouse's marriage to the railroad employee is irrelevant as to whether a railroad employee's annuity components are subject to partition.

6. Which railroad retirement employee annuity components can be partitioned?

Only *select* components of a railroad retirement employee age and service or disability annuity can be partitioned. (Railroad retirement disability annuities may be exempt from partition if expressly prohibited by the applicable court order. However, in such cases, if the disability annuitant attains full retirement age, their annuity converts to an age and service annuity and partition is applied at that time.)

Under the RRA, the tier I component of a railroad retirement employee annuity is **not** subject to partition. Consequently, the RRB will disregard any part of a court order that directs payment of a portion of a railroad employee annuitant's tier I to a former spouse or spouse. (Tier I is not exempt from an order of garnishment.)

However, the tier II component of a railroad retirement employee annuity and a railroad retirement supplemental annuity may be subject to partition with a portion of **both** benefits being paid to the former spouse or spouse - unless partition is restricted by the court order to **either** the tier II or the supplemental annuity.

7. How much of a railroad retirement employee annuitant's tier II component and/or supplemental annuity can be paid to a former spouse or spouse?

The court order will determine what portion of the tier II component and/or supplemental annuity will be paid to the former spouse or spouse as a monthly partition payment. The amount may be a fixed dollar amount or computed as a ratio, percentage, or fraction of the annuity components selected for partition. No matter how the amount is determined, it may not be less than $1, and must conform to the following conditions:

- If a dollar amount is *greater* than the total amount of the employee annuity components that are eligible for partition, the lesser amount will be paid. Any increase in the components awarded to the former spouse or spouse will be paid to that individual until the amount ordered by the court is reached. If the dollar amount is *less* than the total amount of the employee annuity components that are eligible for partition, the dollar amount will be paid.
- If the partition amount is determined as a ratio of the length of the marriage to the length of railroad service, the periods will be determined in months, not years. If the court *overstated* the number of railroad service months, the actual number will be used. If the court *understated* the number of railroad service months, the figure stated by the court will be used.

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Neither the employee nor the former spouse or spouse can appeal the amount of the partition with the RRB. Any dispute about the partition amount must be resolved by the state court that issued the partition award.

8. How long can legal partition be applied to a railroad retirement employee annuity?

The duration of legal partition is dictated by the applicable court order that was submitted to the OGC. **The RRB may begin withholding partition payments** from the employee on the earliest of the following: the employee's railroad retirement annuity beginning date; a date specified in the court order; or the first month both the employee and former spouse or spouse attain (or would have attained) age 62. It is important to note that withholding of partition payments cannot begin before the month in which the OGC receives a valid court order. In addition, disbursement of the withheld partition payments to the former spouse or spouse cannot occur until they submit **all** required supporting documentation to the OGC as explained in Question 4.

The RRB will stop partition payments on the last day of the month prior to the month in which the former spouse or spouse dies. (The RRA allows for the continuation of partition payments after the *railroad employee's* death unless otherwise noted in the applicable court order.) Partition payments may also end if the court order establishing partition is rescinded, or an event that is specified in the court order (or applicable state law) as terminating the partition occurs.

9. Are there restrictions to partition payments made to a former spouse or spouse?

Yes. A partition payment is **not** payable for any month for which payment of a railroad employee's annuity is suspended due to work, earnings, or to recover an overpayment. However, partition payments can continue after an employee's death, unless the applicable court order states otherwise.

10. Does the former spouse's remarriage stop payment of the partition amount?

No. Remarriage does not stop payment of the partition amount unless the court order that granted the partition states otherwise.

11. What happens to a partitioned annuity upon the death of the railroad employee or former spouse or spouse?

The RRA allows for the continued payment of a partition award after a railroad retirement employee annuitant's death. The payment will not terminate until the death of the separated/former spouse, unless the decree or order provides for an earlier termination date. The RRA also permits payment of a partition award when a railroad employee, whether alive or deceased, is not entitled to a railroad retirement annuity. However, these partition payments may not begin before the month in which the following conditions are met: the employee has completed 10 years of railroad service (or 5 years of railroad service after 1995); the former spouse is age 62; and the employee is also 62, or if deceased, would have been 62.

If a former spouse or spouse dies before the railroad employee, payment of the partition amount that they were receiving, or could receive under the partition order, reverts to the railroad employee as their property. It does **not** become the property of the former spouse's or spouse's estate.

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12. Are there differences between a divorced spouse annuity and a partition award?

Yes. The eligibility requirements for a railroad retirement divorced spouse annuity are dictated solely by the RRA. A state court cannot mandate or prohibit eligibility to a divorced spouse annuity. Also, a divorced spouse annuity is limited to the tier I component, and may be payable even if a railroad employee's annuity is not payable due to work or earnings. In addition, the payment of a divorced spouse annuity does **not** reduce the amount of a railroad employee's retirement annuity.

In contrast, entitlement to a partition award is determined by a state court, with a railroad retirement employee annuitant's non-tier I components (the tier II component and/or, if applicable, a railroad retirement supplemental annuity) subject to partition, as described in Question 6. A partition award is **not** payable for any month in which a railroad retirement employee annuity is suspended due to work, earnings, or to recover an overpayment. In addition, payment of a partition award **does reduce** the amount of a railroad retirement employee annuity.

13. Where can someone get more information about how legal partition affects railroad retirement employee annuities?

General information about how legal partition affects railroad retirement employee annuities is available by calling an RRB field office toll-free at 1-877-772-5772. RRB field offices also offer in-person service. While individuals seeking in-office assistance are encouraged to schedule an appointment with their local field office by calling the agency's toll-free number, those without appointments will not be refused service. However, they may be asked to schedule an appointment for a later time if there is no immediate availability. Individuals should bring a photo ID when visiting a field office. The address of the agency office serving their area can be found by clicking on the Field Office Locator tab at RRB.gov or by calling the agency's toll-free number. RRB field offices are generally open Monday through Friday from 9:00 a.m. to 3:00 p.m., except for federal holidays. Individuals can also send a secure message to their local RRB field office by accessing Field Office Locator and clicking on the link at the bottom of their local office's page.

In addition, individuals or their legal counsel who need more specific information or guidance regarding legal partition of railroad retirement employee annuities, including review of a draft of a partition order to confirm its compliance with RRB regulations, can contact the OGC as described in Question 4. The RRB publication *Attorney's Guide to the Partition of Railroad Retirement Annuities* is also available online at RRB.gov under the **Resources** tab by clicking on **Legal Information**, and then **Partition of Railroad Retirement Annuities**.

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