

Law Navigator



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Divorce Order Deductions

This edition of Law Navigator is the fourth in the series focusing on allowable deductions in alignment with the Pension Funds Act. In this issue, we examine deductions in terms of binding divorce orders.

We examine the recent legislative changes relating to these deductions, focusing in particular on the differing definitions of ‘pension interest’ in the Divorce Act and the Pension Funds Act. We outline the conditions that must be met for a divorce order to be binding on a fund, clarify the options available to a non-member spouse and point out the restrictions that apply when there is a divorce claim.

What a fund may deduct from a member’s benefit

Section 37D(1)(d)(i) of the Pension Funds Act allows a fund to deduct the portion of a member’s pension interest assigned to their non-member spouse in terms of a divorce order from the member’s pension benefit.

The Divorce Act definition of ‘pension interest’ differentiates between pension and provident funds and retirement annuity funds. For pension and provident funds, it is understood as the benefit the member would have received had they resigned on the date of their divorce, i.e. their resignation benefit. For retirement annuity funds, it is the total contributions made to the fund plus annual simple interest equal to the repo rate plus 3.5% per annum. The Divorce Act definition does not refer to preservation funds.

The Pension Funds Amendment Act introduced a different definition for ‘pension interest’ from 1 September 2024. For all three types of retirement funds, pension interest is the member’s benefit in the fund on the date of divorce. This applies to divorce orders under the Divorce Act as well as orders granted for the division of assets of a marriage according to the tenets of a religion, such as a Muslim marriage, and includes paid-up members and in-fund pensioners.

Members of SURF must be careful which definition is referred to in their divorce order. With the implementation of the two-pot system, a member is no longer entitled to their total benefit on resignation; their

retirement component only becomes payable on retirement. If the divorce order refers to the division of the member’s pension interest as defined in the Divorce Act, the member’s retirement component will be excluded, resulting in a lesser amount allocated to their non-member spouse.

SURF will make the deduction proportionately across the member’s vested, savings and retirement components.

Requirements for a binding divorce order deduction

SURF will only give effect to a divorce order deduction if:

1. The order was issued by a South African court. An order issued by a court in another country must first be made an order by a South African court and must refer to a deduction against the member’s benefit in SURF in terms of the Pension Funds Act;
2. The order names or identifies SURF. The order must reflect the correct name of SURF –
 - Sygnia Umbrella Retirement Fund (Pension Section)
 - Sygnia Umbrella Retirement Fund (Provident Section)
 - Sygnia Umbrella Retirement Fund (Managed Pension Section)
 - Sygnia Umbrella Retirement Fund (Managed Provident Section);
3. The order clearly states the portion of the member’s pension interest allocated to the non-member spouse that must be deducted and paid to the non-member spouse. The allocated portion can be expressed as a percentage of the member’s pension interest or a specific amount; and
4. SURF must be specifically ordered to make the deduction in favour of the non-member spouse.

Non-member spouse’s options

A non-member spouse can choose to either receive the allocated portion of the member’s pension interest in cash, in which case it will be taxed in the non-member spouse’s hands as a withdrawal benefit, or to have the allocated amount transferred to an approved fund of their choice.

The non-member spouse is not entitled to split the allocated amount, i.e. to receive a portion of the allocated amount in cash and transfer the balance to another fund.

Restrictions when there is a divorce claim

If SURF receives notice and proof from either the member or the non-member spouse of a pending divorce order that involves the division of the member's pension interest, SURF may not grant a housing guarantee in respect of the member.

Where SURF has already issued a housing guarantee for a member, the divorce order deduction in favour of a non-member spouse will be limited to the remainder of the member's benefit in SURF after the outstanding housing loan amount has been deducted.

For example:

- The member has a benefit of R500 000 and an outstanding housing loan for which SURF has issued a housing guarantee of R200 000.
- The non-member spouse is entitled to R350 000 of the member's pension interest in terms of a divorce order.
- SURF may only make a deduction against the balance of the member's benefit after the outstanding housing loan amount has been subtracted. SURF may therefore only deduct R300 000 from the member's benefit in favour of the non-member spouse. The non-member spouse must then claim the remaining R50 000 directly from the member.

If SURF receives written notice from the member or the non-member spouse of a pending divorce order that involves the division of the member's pension interest, SURF may only allow the member to make a savings withdrawal with the non-member spouse's consent.

Important considerations

Retirement benefits are intended to provide an income for the member when they retire. In the event of a divorce, the member should protect their pension interest and instead allocate a different asset of equivalent value to their non-member spouse.

If however, there is no other alternative, the member should alert their attorney to the difference between 'pension interest' as defined in the Divorce Act vs the definition of that term in the Pension Funds Act to ensure that the parties' intention is correctly reflected in the divorce order. If possible, the definition in the Pension Funds Act should be used.

It is important to ensure that the wording of the divorce order relating to the division of the member's pension interest is binding on SURF. If a court order is issued and later found not to be binding on SURF, the parties will need to return to court to amend the order, which would be both costly and time-consuming.

The Financial Services Tribunal confirmed that matters relating to divorce order deductions do not fall within the jurisdiction of the Pension Funds Adjudicator. These matters must be referred to the courts and cannot be dealt through the pension fund complaints process. In the case of *Komape v Masakhane Provident Fund and Others (PFA33/2025) FST (12 August 2025)*, the Financial Services Tribunal Adjudicator, referring to the matters of *Rakgoale v Pension Funds Adjudicator and Others (PFA59/2022) [2023] ZAFST 8 (31 January 2023)* and *Bhokani v Eskom Pension And Provident Fund and Another (PFA56/2022) [2023] ZAFST 3 (23 January 2023)*, confirmed that the Adjudicator "does not have the jurisdiction to reinvestigate court matters or to enforce court orders or to deal with the consequences of a failure to comply with a court order."

Looking ahead

In the next edition of Law Navigator, we will focus on deductions in favour of an employer.