FLORIDA RETIREMENT SYSTEM PENSION PLANS

DIVORCE

DECREASING TERM INSURANCE AS A SUBSTITUTE FOR SURVIVOR ANNUITY PROTECTION FOR A FORMER SPOUSE

The focus of this article is a State of Florida Retirement Plan (FRS) that prevents a Survivor Spouse designation for a Former Spouse. A reading of the applicable statute reveals that a "Former Spouse" is not included in the definition of "Joint Annuitant". As a result, in Florida the divorced spouse of a FRS Employee cannot be a designated as a "surviving spouse beneficiary" in a Domestic Relations Order. Upon the death of the Employee, all pension payments to the Former Spouse terminate. In effect the Former Spouse's award is limited to a contingent interest.

The foundation for this treatment of a divorcing Former Spouse

is found at: Florida Statutes, Public Officers, Employees and Records, Chapter 121 at §121.021(28). This section provides in relevant part:

"Joint annuitant" means any person designated by the member to receive a retirement benefit upon the member's death who is:

(a) The spouse of the member;…

Consider This.

Because Florida by statute, does not permit a Former Spouse to be the surviving spouse of a Florida Employee, the inevitable conclusion is that such Former Spouse has only been awarded a "Contingent Future Interest", subject to the survival of the Employee. The participant's death at any time subsequent to retirement extinguishes Former Spouse's portion of the retirement benefit.[1]

Suggested Mitigation.

Decreasing Term Life Insurance.

The reader will note deliberate use of the term "mitigation" not "solution". A comprehensive solution providing a "dollar of protection" for "dollar of benefits" is unavailable (see Charts Below). What is offered in this article is a palliative to minimize the Former Spouse's loss of critical economic succor at a time when child care and other financial obligations are most burdensome.

Significance of this Lost Benefit to a Former Spouse.

This potential for a significant financial debacle is best discussed by reference to a simple illustration that graphically represents the magnitude of this loss to a Former Spouse. The illustrations are based on a Florida Employee divorcing at age 48. The Former Spouse's age was 47.

Fact Background

Plan: Florida Special Risk Class (Law Enforcement)

Employee : Tom Walther

Spouse: Jane Walther

Tom's Date of Birth: 2/1/1970

Jane's Date of Birth: 2/1/1971

Date of Marriage: 2/1/1994

Tom's Hire Date: 2/1/1993

Date Action for Divorce Filed (DAF): 2/1/2018

Tom's Age at DAF: 48

Jane's Age at DAF: 47

Tom's Monthly Accrued Benefit at DAF:[2] $6,875.00

Coverture Fraction: 96%

(24 yrs. ÷ 25 yrs.)

Jane's Monthly Award: $3,300.00

($6,875.00 * 96% * 50%)

Clarification:

This plan does not permit a Lump Sum Option, so Jane cannot receive the "Actuarial Equivalent" or present cash value of her above indicated monthly benefit of $3,300.00. Alternatively, were this matter to settle pursuant to the Immediate Offset method, Jane would have been awarded an asset equivalent to $482,006.42. This statistic represents the present cash value of the monthly benefit of $3,300.00, on the valuation date of February 1, 2018.

Jane's Pension Award.

Unfortunately for Jane, as the divorced spouse of a State of Florida Employee is by statute not eligible for any survivor benefit from Tom's pension. Jane's award is simply a "contingent" interest that becomes payable upon Tom's retirement. Jane's stream of benefits are totally dependent on Tom's survival. Moreover, should Tom die prior to retirement, Jane receives nothing from the pension (recall the Florida Retirement System does not offer a Preretirement Survivor Annuity). If Tom dies after retirement, Jane receives a monthly benefit only up to Tom's death, then nothing.

Clarification and Comparison.

If this case had settled pursuant to the Immediate Offset Method, Jane would have received the actuarial equivalent of her interest in Tom's plan:

Jane' Share of Tom's EMPLOYEE Pension expressed as a

Present value: $482,006.42

However, since the matter has settled pursuant to a Domestic Relations Order, Jane's value is a function of the number of payments received from Tom. Thus, if Tom immediately retired, what would be the value of Jane's awarded based on a Deferred Distribution or Annuitized award. We show five years of value.

If Tom Survived One Year $39,600.00

($3,300.00 * 12)

If Tom Survived Two Years $79,200.00

($3,300.00 * 24)

If Tom Survived Three Years $118,800.00

($3,300.00 * 36)

If Tom Survived Four Years $158,400.00

($3,300.00 * 48)

If Tom Survived Five Years $198,000.00

($3,300.00 * 60)

It would take Jane more than ten years to attain a sum equal to what she would receive in an Immediate Offset settlement (deposit of her present value award with growth at 3%).

This inequity, solely attributable to the absence of Survivor Protection for a Former Spouse must be understood by Courts as well as attorneys representing a Former Spouse. Obviously in matters involving such plans, the best option (other factors notwithstanding) is for a Former Spouse to avoid a Deferred Distribution Settlement. However, it is in the best interest of the Employee Spouse to argue for a Deferred Distribution Settlement.

Commentary.

The informed practitioner recognizes that an active State Employee is given basic life insurance in the amount of $25,000.00. The Employee has the option to elect a multiple of this equal to seven times earnings. For Tom as an active Employee with annual compensation of $110,000.00, his insured death benefit could be in excess of $700,000.00. Upon retirement, this coverage drops to $10,000.00. For this article it is assumed that Tom, being eligible for full retirement benefits, elected to retire as soon as he became retirement eligible.

Admission.

This Retirement assumption, keeps the mathematics simple. The mathematical algorithms employed for an active Employee are somewhat more complex, and would require many more calculations. For your specific matter involving an active State Employee request specific calculations from Troyan.

Jane's Insurance Needs

Calculation of the Value of Jane's Interest in Tom's Retirement Benefit.

For this article we assumed Jane's age at divorce was 47. Jane has two dependent children living with her:

An eighteen year old physically challenged daughter
A fifteen year old son attending high school
Pursuant to the divorce settlement Jane is to receive from Tom's monthly Retirement Allowance, $3,300.00. [3] This monthly check from Tom's pension is essential to Jane's family sustenance. Because receipt of this monthly pension benefit is contingent upon Tom's survival, Jane's attorney seeks to insure the continuance of this benefit should Tom die using Decreasing Term Life Insurance.

Commentary:

Whole Life Insurance has many advantages over Term Life Insurance. However, it has one significant disadvantage, high fixed cost. Because of the significantly higher cost of Whole Life Insurance, this article's discussion is limited to less costly Decreasing Term Life Insurance.

Clarification.

The purpose of this Life Insurance is to have available to Jane, should Tom predecease Jane, a single sum (Life Insurance death benefit) that will to the extent available and affordable approximate the present cash value of the monthly benefit Jane is receiving from Tom. This is the sum that Jane would then use to purchase an income annuity equal to her lost monthly award of $3,300.00. For example as shown at Chart # 1 below, the amount needed by Jane at her age 60 to equal a monthly pension of $3,300.00 for the balance of her life is:

$431,196.39

This calculation of the amount of Term Life Insurance necessary to replace the worth of Jane's share of Tom's EMPLOYEE pension should be made at the time of divorce.

Jane's monthly award: $3,300.00

Valuation Date Worth of Jane's monthly benefit; $482,002.46 [4]

(Form of Insurance is 30 Year Decreasing Term)

A Technical Aside.

Thus, to insulate Jane from penury, $482,002.46 is required, as of the date of Divorce. The worth of this initial "decreasing term" insurance over time is shown in the two Charts below

ILLUSTRATIONS.

Two charts are offered. The Headings of the three parts to each Chart are:

Jane's Age

Pension Value

Insurance

Clarification of Table Headings.

Jane's Age. Self-Explanatory.

Pension Value.

For example: At Jane's age 52, the present cash worth or cost to buy an equivalent annuity shown on Chart # 1 is: $466,954.39.

Insurance.

This statistic represents the amount of "death benefit" that would be paid to Jane if Tom died at

Jane's age 52. The death benefit paid to Jane shown on Chart # 1 is: $401,668.72.

Thus it is shown, based on the chart below, that there would be a loss to Jane of $65,295.68. Moreover, this GAP between Jane's Need and the amount paid continues to grow each year. Because of the growing shortfall to Jane, it becomes clear why the term "palliative" was used above rather than the term "solution".

Life Expectancy and Jane's Loss of Pension Benefits.

Based on the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System. National Vital Statistics Reports, Vol. 66, No.3, April 11, 2017, at age 77,Jane's life expectancy is 10.9 years. From this point forward, Jane is without any mitigation as a result of the Tom's death.

Reason for Chart # 2.

To the dismay of the Former Spouse, the chart clearly indicates that after one year of the payment of the retirement benefit the remaining Decreasing Term Insurance is no longer sufficient to replace the annuity stream paid to the Former Spouse.

After five years the Term Insurance Shortfall is

Chart # 1 13.98%

Chart # 2 No Loss

After ten years the Term Insurance Shortfall is

Chart # 1 27.97%

Chart # 2 10.34%

The significance of Chart # 2 it to make clear that only with enhanced Life Insurance protection is Jane able to maintain parity between the present cash value of her retirement annuity benefit and the death benefit payable. Even at age 65 Jane's enhanced amount Life Insurance covers close to 60% of the cost of an annuity Jane would have to purchase to equal her monthly retirement benefit.

Conclusion.

To mitigate the impact of the loss of an Alternate Payee's right to a Former Spouse Survivor Annuity, the attorney representing this disadvantaged spouse is urged to consider use of an "appropriately" calculated amount of Decreasing Term Insurance. This is, as either Chart reflects, not a total solution, rather it is a best effort to mitigate the harsh impact of a Florida Statute.

Finally Consider This: if Tom, retired, remarried and died one year subsequent to his divorce from Jane, his NEW spouse of one year would collect a "Full Spouse Survivor Annuity". For Jane, Nothing!

CHART # 1

Jane's Age	Present Value	Insurance
47	$482,002.46	$482,002.46
48	$479,562.50	$465,935.71
49	$476,634.85	$449,868.96
50	$473,500.62	$433,802.21
51	$470,145.22	$417,735.47
52	$466,964.39	$401,668.72
53	$463,147.79	$385,601.97
54	$459,061.87	$369,535.22
55	$455,188.52	$353,468.47
56	$451,073.16	$337,401.72
57	$446,135.23	$321,334.97
58	$441,454.19	$305,268.22
59	$436,480.67	$289,201.48
60	$431,196.39	$273,134.73
61	$425,581.94	$257,067.98
62	$419,616.68	$241,001.23
63	$413,278.69	$224,934.48
64	$407,408.93	$208,867.73
65	$400,308.17	$192,800.98

66 $392,763.74 $176,734.24

67 $385,776.66 $160,667.49

68 $377,324.26 $144,600.74

69 $369,496.29 $128,533.99

70 $361,241.98 $112,467.24

71 $352,538.11 $96,400.49

72 $343,360.20 $80,333.74

73 $333,682.42 $64,266.99

74 $323,477.56 $48,200.25

75 $314,289.29 $32,133.50

76 $303,028.21 $16,066.75

77 $292,888.94 $0.00

CHART # 2

Jane's Age Present Value Insurance

47 $482,002.46 $600,000.00

48 $479,562.50 $580,000.00

49 $476,634.85 $560,000.00

50 $473,500.62 $540,000.00

51 $470,145.22 $520,000.00

52 $466,964.39 $500,000.00

53 $463,147.79 $480,000.00

54 $459,061.87 $460,000.00

55 $455,188.52 $440,000.00

56 $451,073.16 $420,000.00

57 $446,135.23 $400,000.00

58 $441,454.19 $380,000.00

59 $436,480.67 $360,000.00

60 $431,196.39 $340,000.00

61 $425,581.94 $320,000.00

62 $419,616.68 $300,000.00

63 $413,278.69 $280,000.00

64 $407,408.93 $260,000.00

65 $400,308.17 $240,000.00

66 $392,763.74 $220,000.00

67 $385,776.66 $200,000.00

68 $377,324.26 $180,000.00

69 $369,496.29 $160,000.00

70 $361,241.98 $140,000.00

71 $352,538.11 $120,000.00

72 $343,360.20 $100,000.00

73 $333,682.42 $80,000.00

74 $323,477.56 $60,000.00

75 $314,289.29 $40,000.00

76 $303,028.21 $20,000.00

77 $292,888.94 $0.00

[1] For this plan a "preretirement" survivor benefit does not exist.

[2] For ease of illustration, we have retired Tom with 25 years of service. Fortunately this occurred on the date the Action for Divorce was filed.

[3] Retirement Allowance is a synonym for "Pension".

[4] Based on Retirement System's current actuarial investment rate of return (7.60%).