



ATTORNEY'S GUIDE TO THE PARTITION OF RAILROAD RETIREMENT ANNUITIES

OFFICE OF GENERAL COUNSEL THE UNITED STATES RAILROAD RETIREMENT BOARD
844 N. Rush St. Chicago, IL 60611

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Purpose

This is a guide to dividing railroad retirement annuities in a divorce, annulment, or legal separation. This guide explains how to properly divide (partition) an annuity to comply with the agency's legal requirements.

This publication is *not* a guide for private rail industry employer pension plans.

You may send any questions or comments about the information in this guide to:

Mailing Address:
United States Railroad Retirement Board
Office of the General Counsel
844 N. Rush St
Chicago, IL 60611

Email:
law@rrb.gov

The Railroad Retirement Annuity

The Railroad Retirement Act (RRA) replaces the Social Security Act for the rail industry. It provides monthly annuities to rail employees based on age and service or on disability. The Railroad Retirement Board, an independent federal agency, administers the RRA.

An employee's railroad retirement annuity is a monthly benefit with several components. There are restrictions on which components are divisible.

Non-divisible Annuity Component

The Tier I component is the same benefit amount that the Social Security Act would provide if the employee's railroad employment had been covered under that act. The RRA specifically exempts the Tier I component from property division. *See* 45 U.S.C. § 231m.

Divisible Annuity Components

The RRA does not prohibit division of the following components:

Tier II Component

An employee's Tier II component is based solely upon rail industry service and earnings.

Supplemental Annuity

An employee who completes 25 years of railroad service and who had railroad service before 1981 may receive a supplemental annuity under section 2(b) of the RRA, which ranges from \$23 to a maximum of \$43 per month.

Vested Dual Benefit

A vested dual benefit is an additional amount available to railroad employees who meet certain vesting requirements and were fully insured under both the RRA and the Social Security Act prior to 1975.

Overall Minimum Increase

In some cases, an employee's annuity under the RRA may be less than the amount he or she could receive under the Social Security Act. The annuity may be increased so that the employee receives at least as much as they would have under the Social Security Act. The amount of this increase is divisible.

Note: The Tier II component, supplemental annuity, and vested dual benefit may continue to be paid as part of a partition award after the death of the employee. The overall minimum increase is not payable after the death of the employee as part of a partition award.

Important: The Employee Retirement Income Security Act (ERISA) does not apply to RRA annuities.

Funding Railroad Retirement Annuities

Railroad employees and employers pay employment taxes under the Railroad Retirement Tax Act to fund the annuities. *See* 26 U.S.C. §§ 3201-3241.

Railroad retirement taxes are not held in individual employee accounts. A railroad employee's length of service and earnings from covered railroad employment determine the amount of the annuity.

Note: The agency cannot establish a separate account for the share of the employee's future annuity awarded as property to a separated/former spouse.

Important: A court order that divides an employee's account instead of his or her retirement annuity is not valid under the RRA.

Agency Partition Approval Process

While the agency will honor a compliant decree of divorce, legal separation, annulment or a related, court-approved property settlement, the agency's Office of General Counsel must review and approve the document before the agency will process the property division. *See* 20 C.F.R. §295.4.

Note: Any provision of an order that attempts to divide an employee's Tier I component or that requires payment of a divorced spouse benefit or a survivor benefit under the RRA will be disregarded. Any provision contrary to the RRA will also be disregarded.

The following steps **must** be taken before the property division will be put in place:

1) Submission of certified copy of the order

A certified copy of any decree awarding a separated spouse or former spouse a property interest in an employee's benefits must be sent to:

Mailing Address:
United States Railroad Retirement Board
Office of the General Counsel
844 N. Rush St
Chicago, IL 60611-1275

Email:
law@rrb.gov

Note: The name and social security number of the employee and the current mailing address of both parties and/or their counsel must be included in the submission.

2) Approval Letter from the Office of General Counsel

If the Office of General Counsel determines the submitted order is compliant, the parties and their counsel will receive an approval letter from the Office of General Counsel. The letter will also include a separated/former spouse agreement and direct deposit form. Both forms must be completed and returned before payments may begin.

Note: The separated/former spouse agreement is updated on a regular basis. A blank form will be sent upon document approval, do not include a pre-drafted form in the initial paperwork submission.

Important: If the Office of General Counsel determines that the submitted order is not compliant, or if the partition language contains an unresolvable ambiguity, the parties will receive a non-compliance letter that will explain the issues preventing approval.

Requirements for a Compliant Partition Order

The agency will honor a decree of divorce, legal separation, annulment or a related, court-approved property settlement that complies with the agency's regulations. See 20 C.F.R. pt. 295.

The key provisions of the regulations are as follows:

Final Decree

The decree or order must be final and issued in accordance with the laws of the jurisdiction of that court and which provides for the division of property. 20 C.F.R. § 295.2.

Statutory Authority

The decree or order must state that it provides for the division of the employee's benefits under the Railroad Retirement Act. The decree or order must obligate the Railroad Retirement Board to pay the separated/former spouse, and the decree or order must specify the amount the separated/former spouse is to be paid. 20 C.F.R. § 295.3(a)(1)-(3).

Statement of Award

A decree or order must clearly state the partition award as a percentage, fixed dollar amount, or as a fraction of the employee's benefits subject to division. Sample language is provided in the *Sample Language* section.

Under the RRA there is no defined marital portion. The parties, not the agency, determine the amount of the partition award.

The agency will deduct any amount or fraction allowed under state law, but the agency will not deduct an amount greater than the total benefits.

Final Disposition of Property

The decree or order must divide the employee's benefits as part of a final disposition of property between the parties. 20 C.F.R. § 295.3.

The benefits cannot be assigned from the employee to the separated/former spouse.

The decree or order may *not* divide the Tier I component. 20 C.F.R. §§ 295.1(b) and 295.5(a).

The agency will only apply a decree or order to the employee's non-Tier I benefits regardless of the decree or order's language. 20 C.F.R. § 295.4(b).

The divisible components cannot be used to award spousal support, maintenance, or alimony.

Note: The Divorced Spouse Annuity is a separate benefit that a former spouse must apply for through the agency's field offices. The Office of General Counsel is not involved in the application process for these benefits. A court cannot award a Divorced Spouse Annuity as part of a divorce decree or property settlement. To be eligible for a Divorced Spouse Annuity, the former spouse must meet the statutory requirements. *See FAQ #9.*

Additional Considerations

Divisible Components

The agency will apply a valid partition award to the sum of all of the divisible components which make up the employee's monthly annuity, unless the court order specifies otherwise.

If the parties wish to restrict the award to only one divisible component, the parties must specifically state which divisible component the parties wish to divide.

Disability Annuity

Unless the decree order expressly excludes a disability annuity from partition, the agency will apply a partition award to both a retirement and a disability annuity.

The parties may exclude partition of a disability annuity through language such as: "The parties expressly agree that this paragraph shall not apply to any disability annuity paid by the Railroad Retirement Board."

If the exclusionary language is present in the document, the agency will not partition the employee's disability annuity. The partition will begin when the disability annuity is converted to an age and service annuity when the rail employee reaches full retirement age.

Cost-of-living Adjustments

Calculations will vary depending on how the awarded is stated in the decree or order.

Fixed Dollar Amount Award

Under a Fixed Dollar Amount Award, cost-of-living increases do not accrue to the separated/former spouse where the award is in a fixed dollar amount.

Formula Award

Under a Formula Award, a proportional share of any cost-of-living increase in the employee's divisible benefits would also accrue to the separated/former spouse through the month prior to the month of the employee's death.

Percentage Award

Under a Percentage Award, a proportional share of any cost-of-living increase in the employee's divisible benefits would also accrue to the separated/former spouse through the month prior to the employee's death, because the amount awarded is not awarded as of a particular point in time.

Beginning of Partitioned Annuity Payments

From a procedural standpoint, two things must occur before partition payments may begin. First, the annuity must be in pay status. Second, the partition must be fully processed by the agency.

Note: The agency will process partitions at any time, and it is common for a partition to be in place many years before the railroad employee is even considering retirement.

No partition payment will begin until the agency's Office of General Counsel reviews and approves the partition, the agency has received both the signed separated/former spouse agreement and the completed direct deposit form, and the agency's Retirement/Survivor Benefits Division has processed all the paperwork.

Depending on the circumstances, payments on fully approved and processed partitions will begin:

1. When the employee begins to receive an annuity;
2. On a date specified in the decree;
3. In the month the Office of General Counsel receives and approves the decree/court order; or
4. The first month in which both parties turn (or would have turned) 62.

Important: The agency strongly recommends returning the completed paperwork as soon as possible to ensure that no partition payments are missed. The agency does not make back payments in situations where a partition is approved but the required paperwork has not been returned until after an annuity has begun.

Note: The Office of General Counsel is only able to answer questions regarding the property division. Any questions about processing status, payment amounts, other annuity specific

questions should be directed to the Retirement/Survivor Benefits Division at:
RISRetirementInitialSectionGroupMailbox@rrb.gov

Questions related to the Divorced Spouse Annuity should be directed to an agency Field Office.

Sample Award Language to Include in a Divorce Decree

A partition award paragraph may be included directly in the divorce decree itself. Below are three sample paragraphs containing compliant partition award language:

Formula Award

[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 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.

Note: This example provides an equal division of property in proportion to the period of the marriage, but parties may revise the formula to produce a different division.

Percentage Award

[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 which may be divided as provided by section 14 of that Act. 45 U.S.C. § 231m. [SPOUSE'S NAME] share shall be computed as an amount equal to [PERCENTAGE] of [EMPLOYEE'S NAME] monthly divisible benefits.

Note: When using the Percentage Award language, make sure the award will produce the intended result. If the order provides for a percentage award but does not specify a particular point in time, the award will be based on all railroad service throughout the employee's career, regardless of the period of the marriage. If the order specifies that the percentage is awarded as of a specific date, the award will be based on the employee's railroad service through the specified date, regardless of the period of the marriage AND the award will be converted to a fixed dollar award (see below).

Fixed Dollar Award

[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 which may be divided as provided by section 14 of that Act. 45 U.S.C. § 231m. [SPOUSE'S NAME] share shall be computed as an amount equal to [DOLLAR AMOUNT] of [EMPLOYEE'S NAME] monthly divisible benefits.

Sample Separate Court Order (QDRO)

If a partition was contemplated in the court decree, but compliant language was not included, then a separate court order is necessary to partition the divisible portion of the employee's annuity.

[CASE CAPTION]

ORDER DIVIDING RAILROAD RETIREMENT BENEFITS

1. The purpose of this order is to divide [EMPLOYEE'S NAME] non-Tier I benefits under the Railroad Retirement Act as part of a final distribution of property between the parties. The parties in this action were divorced by order of this court entered [DATE].

2. The court finds in accord with the law of this state that [EMPLOYEE'S NAME] non-Tier I benefits under the Railroad Retirement Act are marital/community property between the parties and may be allocated by order of this court. The Railroad Retirement Act prohibits any allocation of [EMPLOYEE'S NAME] Tier I benefits. The Railroad Retirement Board administers the Railroad Retirement Act.

3a. The name and address of the employee are: [INSERT EMPLOYEE'S NAME AND ADDRESS]

3b. The name and address of the spouse/former spouse are: [INSERT SPOUSE'S NAME AND ADDRESS]

It is therefore ordered that: [Insert sample award paragraph; see Sample Award Language to Include in a Divorce Decree]

5. A court-certified copy of this order shall be served upon:

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

6. So Ordered this _____ of _____, _____.
[insert date]

Judge

Attorney for employee

[INSERT NAME AND ADDRESS OF LAW FIRM, if law firm was used]

Attorney for spouse

[INSERT NAME AND ADDRESS OF LAW FIRM, if law firm was used]

Partition Payment Termination

The payment of a partition award to a separated/former spouse will terminate on:

1. Specified Court Ordered Date -- The first day of the month in which a terminating event specified in the decree occurs; or
2. Separated/former Spouse Death -- The month prior to the month in which the separated/former spouse died.

The RRA allows for the continued payment of a partition award after the employee's death until the death of the separated/former spouse, unless the decree or order provides for an earlier termination date. *See* 45 U.S.C. 231m.

The continued payment will be in the same amount of the month prior to the month of the employee's death, plus any other divisible annuity components included in the partition award (e.g., supplemental annuity, vested dual benefit).

Cost-of-living adjustments will continue after the death of the employee if it was in the partition award (e.g. a formula award or a percentage award is in place).

Note: The overall minimum increase is not payable after the employee's death.

Name and Address Changes

It is the separated/former spouse's responsibility to notify the agency of any changes in their name and/or their mailing address.

The Office of General Counsel is not involved in the name or address change process. Any name or address changes must be submitted to an agency Field Office.

The changes must be submitted with the employee's name and social security number. This ensures proper filing and notification.

Failure to report a name or address change without referring to the employee's social security number may result in missed payments.

Disclosure of Employee Benefit Information

The agency cannot estimate the present value of future benefits. The agency will only provide information that is maintained in its official records. However, the agency will only provide information about the employee to another party if the employee authorizes the release.

Information concerning an individual is not subject to disclosure through subpoena. The agency treats a subpoena as a request for a benefit report or estimate. *See* 20 CFR §§ 200.8 and 295.6. *See also Hubbard v. Southern Railway Company*, 179 F. Supp. 244 (D.C. M.D. Ga., 1959).

Information Available to Assist in Dividing Benefits

Statement of Railroad Retirement Benefits

If the employee is retired, the agency will provide a report of the amount of the monthly annuity. This will include a breakdown of the divisible and non-divisible components.

Estimate of Railroad Retirement Benefits

If the employee is not retired, but has completed 10 years of railroad service, or 5 years of railroad service after 1995, the agency will provide an estimate of the divisible and non-divisible monthly benefit amounts that would be payable if the employee had reached retirement age.

Basis of Estimate

The benefit estimates are based on the record of the employee's service and earnings. The agency's records are updated annually from employer reports of employee service and earnings for the previous year. Benefit estimates are gross annuity amounts before any reductions, such as age reduction for early retirement, reduction for additional benefit entitlement, deductions for work, Medicare premium deductions, etc. Estimates are computed in June for the preceding calendar year. For example, estimates that include employee service in 2022 were not available until June 2023.

Creditable Service and Compensation Report

Each year, the agency issues a Certificate of Service Months and Compensation (Form BA-6) to railroad employees. This report shows the employee's service for the previous calendar year and their total creditable railroad service and compensation.

Note: The amount of creditable railroad compensation does not in any way reflect the "value" of the employee's railroad retirement benefits.

Enforcement of Support Obligations

An employee's annuity, including Tier I benefits, is subject to support enforcement, accounting for applicable state and federal exemptions. See 20 C.F.R pt.350.

RRA annuity payments (and payments under the Railroad Unemployment Insurance Act) may be subject to an employee's legal obligation to provide child support or alimony (maintenance). Documents related to child support, alimony, or maintenance should be directed to:

Mailing Address:
United States Railroad Retirement Board
Office of the General Counsel
844 N. Rush St
Chicago, IL 60611-1275

Email:
law@rrb.gov

Federal law prohibits disclosure of the employee's current address or any other information. However, upon request, the agency may provide benefit payment information, if the information is necessary to implement/enforce a court ordered support obligation.

The Parent Locator Service has the authority to obtain address information in certain cases and can be reached at:

Parent Locator Service
Office of Child Support Enforcement
Department of Health and Human Services
Aerospace Building
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Telephone: (202) 401-9373

Web site: www.acf.hhs.gov

Frequently Asked Questions

1. Does the employee have a divisible account balance?

An employee does not have a divisible account balance with respect to any specific time period. The agency cannot establish a separate account for the share awarded to a separated spouse or former spouse.

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

The RRA allows for the continued payment of a partition award after the employee'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 continued payment will be in the same amount as the month prior to the month of the employee's death, plus any other divisible annuity components included in the partition award (e.g., supplemental annuity, vested dual benefit) except for the overall minimum increase, which is not payable after the employee's death.

Cost-of-living adjustments will be made to the partition award after the employee's death where the partition is calculated as a percentage of the employee's divisible benefits.

If the separated/former spouse dies first, the amount of the partition award goes back to the employee as his or her property and does not become the property of the spouse's or former spouse's estate.

After an employee's death, the separated/former spouse may qualify for payment of a survivor annuity. The estimated amount of the survivor annuity is equal to the Tier I annuity component minus any social security benefit to which the surviving divorced spouse may be eligible to receive. Questions about the survivor annuity should be directed to an agency Field Office.

The agency will disregard any state court determination as to who is the surviving divorced spouse.

3. When may partition award payments begin?

Assuming the agency has fully processed the partition, the partition awards payments cannot begin before the month in which the following three conditions are met:

- The employee has completed 10 years of railroad service (or 5 years of railroad service after December 31, 1995);
- The employee is 62, or if deceased, would have been 62; and
- The separated/former spouse is age 62.

4. What is the maximum amount that can be awarded in a state court order partitioning the employee's benefits?

The RRA does not limit the amount that a court may award to a separated/former spouse as their share of the employee's divisible benefits.

Note: A court cannot award an amount greater than 100% of divisible benefits.

5. Can the agency be joined as a party to a divorce action?

No. The agency cannot be joined as a party to any action for divorce, separation, or annulment. As a federal agency, the agency is immune from suit in state domestic relations actions, and the records it maintains are not subject to subpoena by the court.

6. Can the agency report whether an employee has a profit-sharing plan, 401(k) plan, or other similar asset through his or her railroad employer?

No. The agency does not maintain that information. Questions about stock options, deferred savings plans, employee stock ownership plans, life insurance, etc., should be directed to the railroad employer.

The agency can only supply information about the employee's actual or potential right to receive an annuity under the RRA.

The amount of any actual or estimated annuity payments under the RRA may also be reported in connection with a divorce, legal separation, or annulment.

7. Does a former spouse's remarriage affect payment of the amount of the partition?

Remarriage has no effect unless the court order granting the partition requires termination of payment upon remarriage.

The partitioned amount is an award of property and not a benefit that could be affected by remarriage of either party.

8. Does an employee's marriage have to last at least 10 years before a court can order a partition of his or her annuity?

No. The length of the parties' marriage is not relevant to whether an employee's annuity is divisible.

9. What is the difference between a Divorced Spouse Annuity and a partition award?

Under the RRA the former spouse of an employee may become independently eligible for a Divorced Spouse Annuity. Federal law provides for a Divorced Spouse Annuity, which does not reduce a railroad employee's retirement annuity. In addition, a state court cannot determine whether a person is entitled to a Divorced Spouse Annuity. In order to be eligible for a Divorced Spouse Annuity, the former spouse must meet the statutory requirements. The statutory requirements can be found here: [General Conditions Under Which a Person is Entitled to a Railroad Retirement Divorced Spouse Annuity | RRB.Gov.](#)

The Divorced Spouse Annuity is not payable if the former spouse is remarried. The Divorced Spouse Annuity may be payable even though the employee is not yet entitled to an annuity under the RRA, or is entitled but the employee's annuity is not payable due to work or earnings.

In contrast, a partition award is a specified payment of a part of the employee's annuity pursuant to a court order, reducing the annuity paid to the employee. A partition award is not payable for any month in which payment of the employee's annuity is suspended due to work, earnings, or to recover an overpayment.

10. Can a separated/former spouse or surviving divorced spouse receive both a partition award and an annuity?

Yes. The separated spouse, divorced spouse or surviving Divorced Spouse Annuity is payable to qualified individuals based upon the provisions of the RRA, and a court cannot affect entitlement to such annuity. The partition award is payable according to the terms of a valid court decree or order and is not affected by the payment of an annuity under the RRA to the separated spouse or former spouse. A spouse, divorced spouse or surviving Divorced Spouse Annuity is payable to qualified individuals based upon the RRA.

11. Will the Office of General Counsel pre-approve a draft court order dividing an employee's annuity under the RRA?

Yes, the Office of General Counsel will review draft orders.

12. What is the difference between a Surviving Divorced Spouse Annuity and a partition payable after the employee's death?

A Surviving Divorced Spouse Annuity is similar to a Divorced Spouse Annuity. It is a monthly benefit payable to an eligible surviving former spouse based on the provisions of the RRA. See 20 C.F.R. § 216.62.

13. What happens if the employee is not yet entitled to an annuity, but the partition is approved?

If the employee is not yet entitled to an annuity, the agency will file the approved order in its official records under the employee's social security number. (If returned, it will also file the signed separated/former spouse agreement and direct deposit form).

When the employee becomes entitled to an annuity, or the age and service conditions are met, the agency will send notice to the separated/former spouse at the most current address in the agency's records. If the partition has been fully processed, partition payments will begin as soon as the annuity is in pay status.

If the agency does not have a separated/former spouse agreement and direct deposit sign-up form on file, the agency will send the same notice, but also include a separated/former spouse agreement and direct deposit sign-up form. The agency will withhold the partition award for three months from the notice. If the completed forms are not returned, the partition award will revert to the employee.

14. What happens if the partition is approved (and processed) but the employee dies before becoming entitled to an annuity?

If a separated/former spouse agreement has been returned and the employee dies before becoming entitled to an annuity, payment of the partition award can still occur and will begin in the month the following three conditions are met: 1) the employee completed 5 years of railroad service (or 10 years of railroad service if before December 31, 1995); 2) the separated/former spouse is age 62; and 3) the employee would have been age 62.

15. How are railroad retirement annuities funded?

Under the Railroad Retirement Tax Act (RRTA), railroad employees and railroad employers pay employment taxes that fund payment of railroad retirement annuities. *See* 26 U.S.C. §§ 3201-3241). The Internal Revenue Service collects RRTA taxes. RRTA taxes are similar to contributions under the Federal Insurance Contributions Act (FICA). Like FICA contributions, properly collected RRTA taxes are not refundable.

16. Does the agency administer any private pensions?

The agency does not administer any private pensions. Any questions regarding stock options, deferred savings plan, employee stock ownership plan, life insurance, etc., should be directed to the railroad employer.