

How Do Social Security Benefits Work in Divorce?



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Introduction

Going through a divorce is never an easy task. Divorces can get messy and volatile, leaving remnant emotions of hurt, anger or relief. The term “divorce” stemmed from the Latin word *divortium*, meaning separation or dissolution of marriage.

For whatever reasons a husband or wife feel compelled to get divorced, separate or split, assets and family members apart can be a tender topic to discuss. As you probably know, many things are affected by a divorce, but do you know how are you or your spouse’s Social Security benefits are affected by a divorce?

How Social Security benefits are affected during and after a divorce depends on a few things, such as:

- ✔ Later changes in marital status
- ✔ Your age
- ✔ You and your spouse’s retirement and/or work status, and
- ✔ The duration of your marriage

As the Social Security Administration’s functions and reach have grown and changed, so, too, have the stipulations for receiving benefits. One of the stipulations that has been modified is the duration of the marriage required for ex-spousal benefit eligibility.

Originally, Social Security benefits were awarded to a divorced person or widower if they were married for twenty or more years. More recently, that length of time has been altered to a minimum of ten years of marriage for ex-spouses to keep receiving Social Security benefits, or to begin receiving them, in the event of a divorce.



Introduction *(cont.)*

If you are currently collecting Social Security benefits on your spouse's record and you go through a divorce, you will continue receiving benefits on that record. Also, if you happen to re-marry, your family maximum benefit rate will not be affected in any way by benefits you receive on an ex-spouse's record.

Many states recognize a unique type of marriage called common law marriage. This refers to situations in which a couple—typically a man and woman—has lived together for a period of time and recognize themselves as being “married” to their family, friends and community, yet they have never gone through the formality of a ceremony or filing for/ getting a marriage license.

Not all states acknowledge *common law marriage* as two people being legally married; Florida does not recognize common-law marriages entered after January 1, 1968. However, for the states that do acknowledge common law marriage as a legal marital entity, the Social Security Administration provides a list of fundamental requirements on the “Policy requirements for a common-law marriage” section of their website.

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Introduction *(cont.)*

These requirements include things such as:

- ✔ The union must be entered into by mutual consent of both parties and is not solemnized via marriage
- ✔ Both parties must have the intent to marry
- ✔ Both parties must recognize themselves as husband and wife
- ✔ Both parties must be legally capable of entering into a valid marriage
- ✔ The marriage must be contracted in a State where common-law marriages are recognized
- ✔ In some states, the parties must cohabit and hold themselves out to the public as husband and wife

Now that some of the broad basics have been discussed relating to how your Social Security benefits are affected by a divorce, we'll delve deeper into how your Social Security benefits affected during the property division process of a divorce.



Divorce and Social Security Benefits During Property Division

Picking and choosing who gets what during the divorce process will often increase tension among ex-spouses. Not only can it create an environment full of hurt and pain for any children you may have, but also, when dividing financial income, property and assets between two people it can become volatile and hostile at times.

As you may know, your ex-spouse's benefits are not subject to property division when going through a divorce. Some of you may be asking, "what does property division entail exactly?" States vary on what they consider property division to include and the formulas used to decide how to divide property.

In Florida, property division is equitable, or fair/equal, between the spouses. Judges in these cases have the authority to decide whether or not an exact equal division would be fair. Judges consider all the factors involved, such as economic circumstances, duration of marriage, spousal contributions or interruptions for school or work, as well as other factors which you can read about [here](#).

If you live in Florida and you or your ex-spouse's Social Security benefits that have already been paid are in a shared account, they will likely be considered marital property and split equally based on the state's property division laws and the Social Security Administration's requirements and conditions.



Monthly Benefits (SSDI)

When you are going through a divorce, what are the specific qualifications that the Social Security Administration is looking for? Does your age or the length of your marriage matter? What if you are with child; will you still be eligible to receive your ex-spouse's monthly benefits or are there different requirements for eligibility for an expectant mother?

Don't worry, ex-spouses are eligible to continue receiving benefits on their ex's Social Security account; however, as previously stated, there are certain qualifications that your ex-spouse must meet in order to be eligible for Social Security benefits.

To continue receiving benefits, the specific qualifications as outlined by the Social Security administration are:

- ✔ Your marriage lasted 10 years
- ✔ Your ex-spouse must be at least 62 years of age, or have a child of yours under the age of 16 in his/her care
- ✔ Your ex-spouse is unmarried
- ✔ Your ex-spouse is not eligible for an equal or higher benefit on his or her own record
- ✔ Your ex-spouse is not eligible for an equal or higher benefit from anyone else's Social Security, such as a spouse from another marriages, record

Also, whether or not you are married, your ex-spouse's benefits that are on your record **will not affect** your benefits or those of your current spouse.



Monthly Benefits (SSDI) (cont.)

Of course, eligibility for you or your ex-spouse to receive Social Security benefits isn't as black and white as a bulleted list; there are additions and exceptions to some of the above qualifications. For example, there are exceptions based on whether or not there are children involved. In the event that your ex-spouse is responsible for a child, both age and marriage length requirements are ignored when the child he or she is caring for is under sixteen and on your record. This exception is also applicable if the child being cared for is disabled as well, regardless of age.

As you may know, there are some very important distinctions between the types of benefits offered from the Social Security Administration. Social Security Disability Insurance (SSDI) is tied to the Social Security retirement program; however, it is for workers who become disabled before retirement age. On the other hand, Social Security Income (SSI) is a program that provides benefits to low-income people who are 65 years of age or older or blind or disabled.

Both SSDI and SSI are benefits offered by the Social Security Administration's disability program. However, if you are a recipient of either of these benefits, one of the most important things to remember when going through a divorce is that **SSDI benefits can be garnished to pay court-ordered alimonies; SSI benefits cannot.**

Since SSI is a needs-based program, monthly benefits after a divorce can vary. Depending on your needs, you may be entitled to *more* benefits than prior to your divorce, as the income of your now ex-spouse is no longer considered.

Also, you should understand that the Social Security Administration does consider support or alimony payments from a spouse to be unearned, countable income. In turn, this can affect monthly SSI payments. Note that child support payments are considered to be income of the child and **not** of the ex-spouse.

SSDI benefits can be garnished to pay court-ordered alimonies; SSI benefits cannot



Social Security Benefits for Widows and Widowers

What if you didn't get divorced; what if your spouse who was receiving Social Security benefits passed on?

While a divorce can be a painful process, losing your spouse of several years due to injury, accident, age or etc. can feel one hundred times worse. In the unfortunate event that your spouse, who was collecting Social Security benefits, passes, the SSA offers what is called survivor benefits.

Generally, your former spouse's Social Security benefits would be converted into survivor benefits upon their death. Again, there are varying specifications for survivor benefits, just like ex-spouse benefits.

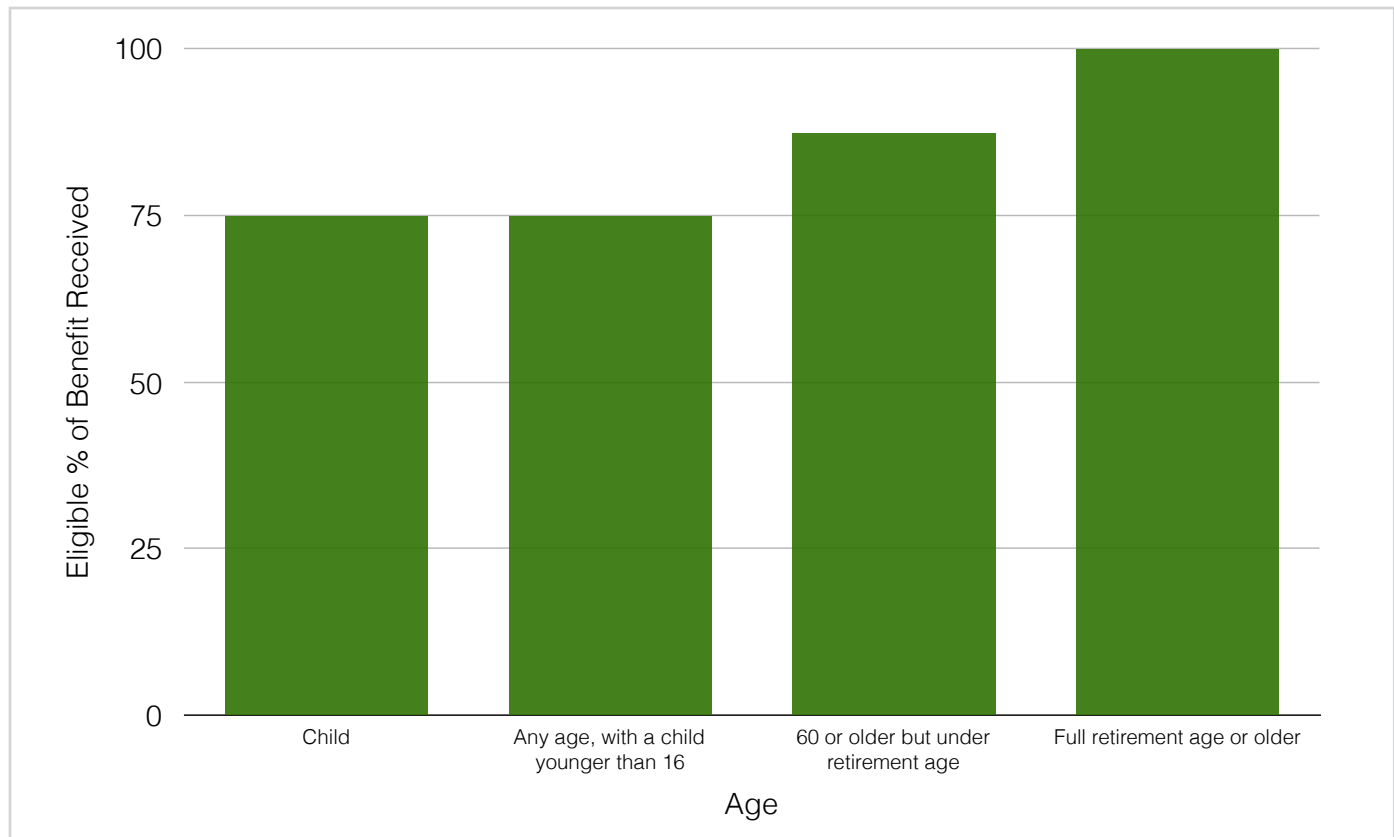
The Social Security Administration offers survivor benefits through an earned credit system, and varies based one's wage or self-employment income. According to the SSA, "a worker can earn up to four credits each year. For example, your spouse can earn one credit for each \$1,220 of wages or self-employment income. When your spouse has earned \$4,880, he or she has earned his or her four credits for the year. The number of credits needed to provide benefits for survivors depends on the worker's age when he or she dies."

Widows and widowers currently receiving benefits on their own record may be eligible for more aid through survivor benefits than on their own record. Survivor benefits are determined by the earnings of the person who died and their contributions to Social Security.



Social Security Benefits for Widows and Widowers *(cont.)*

Below is a table detailing the widow(er)'s benefit percentage that they are eligible for based on his or her age.



Not that the above percentages are subject to the family maximum amount payable on the Social Security record.



Benefits and Ex-spouse's Death

When your spouse passes, it can be a difficult time—financially and emotionally—and the Social Security Administration recognizes the need for benefit recipients to continue receiving their deceased spouse's benefits (if not at least a percentage of their benefits).

Likewise, it can also be financially and emotionally unravelling when an ex-spouse passes. Will the Social Security Administration still honor an ex-spouse's benefits as well? The answer is yes; however, there are eligibility requirements for these benefits as well.

If you are **currently receiving benefits on your ex-spouse's record and he or she passes**, you are **still eligible for benefits on their record** as long as you meet all of the following criteria:

- ✔ You were married to your ex-spouse for at least ten years
- ✔ You are unmarried
- ✔ You do not receive more than their benefit rate on your own Social Security record
- ✔ You are at least sixty years of age or at least fifty years of age and are disabled

Similar to a widow(er)'s Social Security benefits, the age and marriage length requirements are ignored if your ex-spouse is caring for a child under sixteen or is disabled and on your record.

Also, if you remarry after sixty years of age—or after fifty years of age and have a disability—the Social Security Administration will still provide benefits on your ex-spouse's record if the other conditions are met.



Social Security: Divorce and Same Sex Marriage

Until 2015, the legalization of same sex marriage was dependent on state jurisdiction; however, on June 26, 2015, same sex marriage became part of federal law and is legally recognized in all fifty states and some territories.

The Social Security Administration determines ex-spouse and widow(er) benefits based on state law; however, due to the newness of same sex marriage as a federal law, the Social Security Administration is still in the process of modifying same-sex Social Security benefits.

It can be assumed that rules for benefits will be generally the same when states have worked out the details of same-sex marriage, cohabitation and other unique details.



Special Scenarios and Social Security Benefits

Qualifications for receiving Social Security benefits in the event of a divorce vary from an ex-spouse to current or ex-spouse widows and same-sex marriage. There are also some more special scenarios that require varying benefit eligibility qualifications that the Social Security Administration provides. Some of these special scenarios are the following:

Deemed Marriage

The Social Security Administration defines a deemed marriage as “a woman who is not validly married to an insured individual and became entitled to benefits as [a man’s] “wife” on the basis of the “deemed marriage” provisions of section 216(h)(1)(B) of the Social Security Act but was not “living in the same household” with such individual at time of his death, held the women may not, upon the insured individual’s death, be found entitled to widow’s insurance benefits on his earnings account.”

Incomplete/Unrecognized Divorce

This form of “divorce” is fairly straightforward. If two people are legally married and have made the decision to no longer be together in marriage, but they have not filed for a divorce or have completed the necessary paperwork and legal action, then it is considered an incomplete divorce and is not legally recognized.

There are other forms of unofficial marriage and special unique circumstances that the Social Security Administration offers provisions for. If you need an advocate in Florida to help fight for your Social Security benefits for a unique circumstance you are going through contact Disability Experts of Florida to learn how they can help you.



Additional Resources

Other definitions from a compilation of the Social Security laws: spouse, surviving spouse, wife, widow, divorced spouse etc.

https://www.ssa.gov/OP_Home/ssact/title02/0216.htm

Unique circumstance information on deemed marriages

https://www.socialsecurity.gov/OP_Home/rulings/oasi/53/SSR66-44-oasi-53.html

Qualifying for benefits as a spouse, surviving spouse, civil union or non-marital legal relationships

<https://faq.ssa.gov/link/portal/34011/34019/Article/3762/Do-I-qualify-for-benefits-as-a-spouse-if-I-am-now-in-or-the-surviving-spouse-of-a-civil-union-or-other-non-marital-legal-relationship>

Social security credits as building blocks

<https://www.ssa.gov/planners/credits.html>

Earning Social Security survivors benefits

<https://www.ssa.gov/planners/survivors/ifyou.html>

How a spouse earns Social Security survivor's benefits

<https://www.ssa.gov/planners/survivors/ifyou.html>

What you need to know when you get Social Security disability benefits

<https://www.ssa.gov/pubs/10153.pdf>

How you are affected by ex-spouse Social Security benefits

<http://blog.ssa.gov/ex-spouse-benefits-and-you/>

General information on common-law marriage and Social Security policy

<https://secure.ssa.gov/poms.nsf/lnx/0200305060>



Additional Resource (cont.)

Common-law marriage in Florida

<http://www.moonlawgroup.com/common-law-marriage-in-florida-fact-or-myth/>

Dividing Property in Florida divorces

<http://www.divorcenet.com/resources/divorce/marital-property-division/florida-divorce-dividing-prope>

Qualifications and retirement planning for Social Security benefits

<https://www.socialsecurity.gov/planners/retire/yourdivspouse.html>

Types of Benefits provided through Social Security

<http://www.disabilityexpertsfl.com/blog/bid/197721/What-Benefits-Do-I-Get-from-Social-Security>

Other links related to Social Security benefits and divorce

<http://www.disabilityexpertsfl.com/search?s=divorce>



Conclusion

There are different benefits provided by the Social Security Administration for those going through different circumstances of divorce and each have different qualifications for eligibility. Some may be widowed or some may remarry after the death of a spouse, while others may be divorced or going through a divorce with their same-sex partner.

Receiving Social Security benefits during a divorce generally depends on a few things, such as:

- ✔ Later changes in marital status
- ✔ Your age
- ✔ You and your spouse's retirement and/or work status, and
- ✔ The duration of your marriage

Whichever your season of divorce is, knowing how your Social Security benefits are affected by your divorce is a fundamental part of knowing your rights and entitlement.





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