

Who's the Spouse Entitled to the Survivor Pension?



SITUATION

F. Ivora Richman marries Ida Furst in 1970. They split up in 1990 but never get a divorce. Richman moves in with his girlfriend, Carman Law, in 1992 and they live together for the rest of Richman's life. In 1999, Richman designates Carman as his beneficiary under the plan. On Dec. 1, 2000, he retires and receives his first pension payment exactly one year later. Richman keeps getting benefits until he dies in 2005. Soon thereafter, Ida tells the plan administrator that she's Richman's lawful spouse and demands survivor benefits. Carman says that she and she alone is entitled to survivor benefits. Richman earned the bulk of the pension while he was married to Ida. The plan is subject to Ontario law.

QUESTION

Who's entitled to Richman's survivor pension?

- A. Carman because she was living with him when the first installment of the pension came due.
- B. Ida because Richman never divorced her.
- C. Ida because she was married to Richman when he earned most of the pension.
- D. Each woman gets a 50/50 share.

ANSWER

A. Carman gets the survivor benefits because she was living with Richman when the first pension installment came due.

EXPLANATION

Under pension laws, if a plan member dies, the living spouse may be entitled to a survivor pension. Technically, the pension is a joint and survivor interest between the spouses with the survivor entitled to the benefit when the other spouse dies. But problems arise over who's really the "spouse" under the law. This scenario, which is based on a recent Ontario case, shows how rival claims get resolved when the member enters into a common-law marriage without formally divorcing a previous spouse.

Ontario law defines spouses as two people who are married or continuously living together in a conjugal relationship for at least three years. Richman had a spousal relationship with both Ida and Carman at some point in his life. But in ON (and NS), "spouse" is determined as of the date the first pension payment comes due—Dec. 1, 2001 in this case. In other jurisdictions, the spouse is determined as of the date payments begin rather than when they come due, which wouldn't affect the outcome in this case. Since Richman had been living in ON with Carman for 8 years on Dec. 1, 2001, she'd be considered his spouse and would get the survivor's share [*Kendall v. Canadian Multi Employer Retirement Fund for the Graphic Arts Media*, 2008 CanLII 60974 (ON. S.C.), Nov. 24, 2008].

WHY WRONG ANSWERS ARE WRONG

B is wrong because even though Ida and Richman never got divorced, Ida doesn't qualify as Richman's spouse under ON pension law. ON law stipulates that a joint and survivor pension isn't created in favor of the spouse if the member and spouse are living separate and apart on the due date the first installment. This eliminates Ida because she and Richman weren't living together on Dec. 1, 2001.

C is wrong because when the bulk of the pension was earned doesn't matter for purposes of determining if a joint and survivor pension is created and who qualifies as the spouse entitled to the survivor pension.

D is wrong but it's not a bad choice because both women are technically his spouse—Ida by formal marriage and Carman by common-law. But pension law recognizes Carman's common law marriage to Richman for purposes of creating a joint and survivor pension. When the first pension installment came due, Richman was separated from Ida and had been living together with Carman for more than three years.