

**IDENTIFYING AND RESOLVING  
COMMON PENSION PROBLEMS**

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Pensions and other retirement plans are the most important supplement to Social Security income. Without income in addition to Social Security, many senior citizens are forced to live in poverty.

Private pensions are governed by a complicated statutory scheme including the Employee Retirement Income Security Act (ERISA), the federal income tax statutes, Department of Labor regulations and Treasury Regulations. Pensions for employees of federal, state, and local agencies are usually governed by separate statutes or ordinances not ERISA. Union members may be covered by a single employer's plan, a multiemployer plan, or the union may have a plan covering its members. Navigating the maze of pension laws can seem frustrating; however, most pension questions can be resolved through locating and reading a copy of the plan document. This article will assist the reader in identifying and resolving a few of the most common pension problems.

## **1 I think I should be drawing a pension, but I can't locate my former employer.**

This is one of the most common pension problems. People move and forget to notify former employers or pension plan administrators. Companies move, merge, or go out of business and lose track of former employees. Locating a lost plan can be difficult. There are a few steps that a person can take to locate a lost pension, especially if internet access is available. If you do not have internet access at home, contact your local public library or senior center. Many libraries and senior centers offer internet access and instruction at no charge.

### ***1.1 Search your personal records.***

The first step to locating a lost pension is to search your personal records. If you have old income tax returns, you may be able to locate your employer's address on an old W-2 form. If the address is no longer a good one, you may be able to locate the employer by performing a general internet search for the employer's name, by using telephone books and catalogues of companies found in the reference section of your local library, or by contacting the U.S. Postal Service for a forwarding address. If you are able to locate a current address for your former employer, write a letter requesting information about the pension plan and how to apply for benefits. A sample letter is included in the Appendix.

### ***1.2 Talk to former co-workers.***

If you are still in touch with former co-workers, talk to them. Find out if they are drawing a pension. If a former co-worker is drawing a pension, find out where their monthly check comes from, and write the entity that issues the monthly check. If the entity that issues the monthly check is not the plan administrator, it will be able to give you the plan administrator's name and address. Be aware that even though your co-worker is drawing a pension, you may not be vested in the pension. If you are able to

locate the plan and receive benefits, your pension benefit will not be the same as your former co-worker's benefit. Few persons' pension benefits are the same amount.

### **1.3 Search for the plan's Form 5500s.**

Pension plans must file informational returns with the Department of Labor. Information is reported on a DOL Form 5500. The website [www.freeerisa.com](http://www.freeerisa.com) maintains a searchable database of Forms 5500. You can also print a copy of a Form 5500 from the website. If you search the Freeerisa website and locate a Form 5500 under a former employer's name, the latest plan administrator's name and address will be on the form. Write the pension plan administrator and request an application for benefits. It is important that communications with pension plan administrators be in writing. Always make a copy of your letters and keep them in a file. It is also important to send letters of inquiry by certified mail because the return receipts serve as evidence that the letters were received.

### **1.4 If your employer is out of business.**

If the employer is no longer doing business, you will need to find out whether your employer was bought by or merged with another company. Lexis/Nexis maintains a free searchable database of corporate mergers and acquisitions on the internet: [http://www.corporateaffiliations.com/executable/cn\\_mergers.asp](http://www.corporateaffiliations.com/executable/cn_mergers.asp). The database contains names of companies in alphabetical order. Look for either your former employer's name or the name of a company that you believe may have acquired your former employer.

You may also contact the Texas Secretary of State's Office for assistance in researching the history of a Texas corporation, partnership, or other business entity. Information contained in the Secretary of State's files include the date a business forfeited existence, names and addresses of business owners or officers, and other names a business used. Contact the Secretary of State's office by calling 512-463-5555.

### **1.5 If you believe your pension plan was terminated.**

Whether your former employer went out of business or merged with another company, the pension plan may have been terminated. When pension plans terminate, a number of things can happen. Most commonly, benefits may be distributed in a lump sum, or annuities may be purchased for plan participants. When a pension plan is terminated, the plan administrator attempts to locate all plan participants. If, after considerable effort, the plan administrator has been unable to locate a participant who has a relatively small distribution, the plan administrator may deposit the benefit with a state's unclaimed property agency. In Texas, you may contact the State Comptroller's Office at 1-800-654-FIND (3463) to see whether any unclaimed property is being held for you. You may also perform an internet search for unclaimed property at <https://txcpa.cpa.state.tx.us/up/Search.jsp>.

Some pension plans terminate because the plans are underfunded. That is, there is not enough money in the plan to fully cover pensions for all of the plan's participants. The Pension Benefit Guaranty Corporation (PBGC) is an agency that insures pension plans. If an underfunded terminated plan was insured by the Pension Benefit Guaranty Corporation, one can contact the PBGC to see if pension benefits are due. The PBGC may also be able to assist you in locating the plan administrator of a terminated plan. The

PBGC can be contacted toll free at 1-800-400-7242 or via their internet site [www.pbgc.gov](http://www.pbgc.gov).

If after taking the steps outlined above, you are unable to locate your former employer or pension plan administrator, contact the Employee Benefits Services Administration at 1-866-444-EBSA (3272).

## **2 Once I have found the plan administrator, how do I claim my benefits?**

Pension claims begin with the filing of an application for benefits. The application for benefits is obtained from and filed with the pension plan administrator. If the plan participant is married, then his or her spouse must also sign the application, and this signature must be notarized.

Many pension plan administrators are offering to start the claim process by telephone. If a plan offers this service, the participant calls a toll free number, provides certain information to a benefits analyst, and the plan mails any forms that need to be completed in order to get benefits started.

If a plan does not provide a telephone service and has not sent an application form, then a participant can send a letter to the plan administrator asking that benefits be started. This type of letter should be sent by certified mail so that the participant can prove that the letter was received.

## **3 I am receiving my pension, but the payments are lower than they should be.**

There is no standard formula for calculating pension benefits. Each pension plan is different. Plan administrators have a fiduciary duty to make certain that each plan participant receives the correct amount. However, pension plan administrators sometimes make mistakes. The first step in verifying a pension calculation is to find out how your benefit was calculated. Contact your pension plan administrator in writing to request a copy of your benefit calculation. The next step is to compare the plan's calculations with the formula set out in the pension plan document. The formula should be contained in the Summary Plan Description that you should have received when you became a plan participant. You can also request a copy of the Summary Plan Description from your plan administrator.

Many times, pension benefits are "actuarially adjusted." Actuarial adjustment is a way that plans predict the length of time benefit payments need to continue and how large or small the payments need to be to make certain that a participant receives his or her entire benefit – no more and no less. Actuarial calculations are made by actuaries. Actuaries are professionals who have been trained in actuarial calculations and who have passed a rigorous examination. If you have a dispute involving the actuarial adjustment of your benefit, you may want to contact an independent actuary. To find an independent actuary, look in your local telephone book.

## **4 I applied for a pension, but the pension plan denied my claim.**

There are numerous reasons why pension claims are denied. Every pension plan must have a process for appealing the denial of a claim. If benefits are denied, the plan participant must follow the plan procedures for administrative review. There is no standardized procedure required by law. The procedures are adopted by each plan individually. The pension plan's administrative appeal process must be exhausted before the plan participant can file a lawsuit. The plan provides time deadlines that must be followed. It is extremely important that you send your appeal and all documentation to the plan administrator within the time deadline. It is also important that you present all facts and documents that you believe are important to your benefit claim to the plan administrator during the appeal process. If your appeal is denied, and you are required to file a lawsuit, you may only be allowed to use evidence that you presented to the plan administrator during the claims and appeals process.

If your benefit claim is denied, you have the right to get a copy of the plan provisions regarding appeals and any other information relevant to your appeal.

Most plans require that the appeal process be initiated by a written request for review. The written request for review is usually filed with the plan administrator or with an administrative committee. Whether the administrative review is a document review or whether a participant may appear in person is determined by the plan.

It is advisable to hire an attorney to assist in making benefits appeals. Your local bar association may have a lawyer referral service that can refer you to an attorney that handles pension benefit appeals. If you are disabled or over the age of 60, the Legal Hotline for Texans may be able to assist you in making a benefit appeal or in locating an attorney.

## **5 I received a letter in the mail saying that I have been overpaid, and I owe the pension plan money.**

Pension plan administrators make mistakes. Sometimes the plan pays a person more than he or she is entitled to. This is a tricky situation for both the plan administrator and the participant. Sometimes the plan does not discover the error until years of overpayments have been made.

It is critical that you give accurate information to the plan administrator. If an overpayment is the fault of the participant, *e.g.*, if the participant gave the plan the wrong birthdate, then the plan will seek to recover the overpayment from the participant. This is called recoupment. Most plans attempt to recoup an overpayment by reducing a person's monthly benefits until the overpayment is fully repaid.

The first step you should take if you receive a letter informing you of an overpayment is to contact the plan administrator and request information. You will need

to find out the cause of the overpayment and whether the plan document addresses overpayments. Many plan documents fail to mention overpayments and fail to provide a procedure for the plan administrator to follow in order to recoup overpayments.

In some cases, it is possible to request that the Plan recoup overpayments from the person that made the mistake instead of reducing the participant's monthly benefits. It is also possible to request that the Plan waive the overpayments.

Plan administrators do not want to force participants into poverty. If the plan's proposed reduction of your benefits will cause you financial hardship, contact the plan administrator and request that the overpayment be waived or that the amount of monthly recoupment be reduced. To ask for a waiver due to financial hardship, you must prove that you will be financially harmed. The best way to do this is to collect one month's worth of bank statements and bills. Send a copy to the plan administrator with a written explanation.

To challenge an overpayment recoupment, the participant must make a formal claim to the plan administrator following the same process as one follows in applying for a pension benefit.

## **6 I am divorced and am not receiving benefits from my ex-spouse's employer.**

There is no automatic pension benefit for divorcees. When two people get divorced, the court must determine the couple's pension rights. Currently, it is common for pension and retirement plans to be partitioned between parties to a divorce. However, this practice was not common until the 1980s.

### ***6.1 How are pension rights determined in divorces?***

The partitioning of pension rights in divorce is a two step process. The initial order is contained in the divorce decree. One way to find out whether you have a right to an ex-spouse's pension is to look at your divorce decree. If you do not have a copy of your divorce decree, you can get one by contacting the clerk of the district court in the county where you were divorced.

The second step of the process of partitioning pension rights in a divorce is getting a qualified domestic relations order (QDRO). To pay pension benefits to a non-participant spouse, the pension plan administrator must be presented with and qualify a domestic relations order. Once qualified by the plan administrator, the order becomes a qualified domestic relations order (QDRO) that allows the plan administrator to pay benefits.

### ***6.2 How do I find out if I have a QDRO?***

To find out whether a QDRO was approved in your divorce, contact the pension plan administrator. If the pension plan administrator does not have a QDRO, you will

need to get a copy of your divorce decree to see whether the court made any orders regarding your rights to your ex-spouse's pension. If you do not have a copy of your divorce decree, you can get one by contacting the district clerk in the county where you were divorced.

### ***6.3 What if I do not have a QDRO, but my divorce decree gives me a portion of my ex-spouse's pension?***

If you have pension rights in your divorce decree and no QDRO was filed with the plan administrator, you will need to obtain a QDRO. In some cases, a divorce decree is specific enough to function as a QDRO. In most cases, a separate domestic relations order must be prepared. You can send a copy of your divorce decree to the plan administrator and request that it be qualified. However, the plan administrator can take up to 18 months to review and qualify a domestic relations order. If the plan administrator finds that the decree does not contain the language necessary to be qualified, then you must take the steps necessary to obtain a domestic relations order and present it to the plan administrator to be qualified.

Drafting domestic relations orders is complicated. It is not advisable to attempt to draft a domestic relations order without the assistance of an attorney. If your divorce decree partitions pension benefits but no QDRO was executed, it is best to hire an attorney to handle the drafting, execution, and qualification of the QDRO.

### ***6.4 What if my divorce decree does not address my rights to my ex-spouse's pension?***

A pension plan administrator cannot pay benefits to an ex-spouse unless the divorce decree provides for it and a domestic relations order has been qualified. A domestic relations order cannot be executed or qualified absent an order from the court that granted the divorce. If your pension rights were not addressed in your divorce proceeding, then to be entitled to a portion of your ex-spouse's pension you must re-open your divorce proceeding and request that the court address the pension issue. To re-open a divorce proceeding, you should obtain the advice of an attorney that practices in the area of family law.

Your local bar association may have a lawyer referral service that can refer you to an attorney that handles divorces. If you are over the age of 60, the Legal Hotline for Texans may be able to assist you in locating an attorney.

## **7 Conclusion**

This publication addresses a few of the most common pension problems. If you have encountered a pension problem that is not addressed in this publication or if you need further assistance, there are a few resources available to you. If you are over the age of 60 or eligible for Medicare, you may contact the Legal Hotline for Texans at 1-800-622-2520 for assistance with your pension questions. If you have questions regarding a pension that has been terminated, you may contact the PBGC at 1-800-400-7242. If you have questions regarding a private pension, that is, not a government-sponsored plan or a church plan, you may contact the EBSA for assistance at 1-866-444-EBSA.

## 8 Appendix of Useful Worksheets and Sample Letters

### A BRIEF HISTORY OF PENSION REGULATION

Pre-1974		Pension rights governed primarily by state trust laws. No single substantive federal statutory scheme governing pensions. Many plans required 10 years or more of service for vesting. Some plans had no vesting, meaning that regardless how many years an employee worked for the company, s/he had to retire from the company's employment to be eligible for a pension. No spousal rights were required, so many spouses were entitled to no survivor payments.
1974	ERISA	ERISA enacted. Most provisions became effective as of 1976 plan year. Created PBGC. Added disclosure rules, standard vesting rules, and minimum funding standards among other things. Standard vesting rules were from 5-15 years for private plans.
1984	REA	Effective for plan years beginning 1985. Enacted spousal rights. To waive rights to survivor payments requires notarized signature of spouse.
1989		Amendment to ERISA made 5 year vesting the norm.

**Why do I need to know these dates?** Your pension rights are determined by the date you leave an employer, *i.e.*, your termination date. If you left an employer prior to 1976, there were few legal protections for you. Since most plans had long vesting periods, *e.g.*, 10 or more years, if you did not work for an employer for more than ten years and terminated service prior to 1976, you probably did not work there long enough to be vested in the pension plan. If you are a widow or widower and your spouse left employment prior to 1985, you probably do not have survivor rights in the pension plan. There are exceptions, so you should attempt to locate and verify your benefit entitlement with every possible plan. However, you may choose to look for the older plans last.

Begin your lost pension search with employers for whom you worked more than 5 years with a termination date in 1976 or later.

## HOW TO USE WORKSHEETS AND SAMPLE LETTERS

***Pension Planning Worksheet:*** Use this form to track your work history and your progress in locating plan administrators. Simply fill in the information as you locate it. Make your notes as complete as possible.

***Lost Pension Worksheet:*** Use this form to guide you through the process of locating a lost pension. Again, fill in the information as you locate it, and make your notes as thorough as possible.

***Sample Inquiry Letter:*** Once you have located a former employer or pension plan administrator, you need to send a letter requesting information about the pension plan. This type of inquiry can be made by telephone; however, the ERISA only mandates penalties for failing to disclose information when the inquiry is in writing. Employers or Plan Administrators have thirty days in which to respond to a participant's request for information. Allowing three days for the mail to arrive, you can reasonably expect a response about thirty-six days from the date you mailed your inquiry letter. Always use certified mail to send letters to employers or plan administrators so that you can prove your letter was received.

***Sample Follow-Up Letter:*** Use this letter only when you receive no response from a former employer or plan administrator after thirty-six days. It is best to send a follow-up letter by certified mail so that you can prove your letter was received. Attach a copy of your original letter and the U.S. Postal Service green card (return receipt) showing that your original letter was received.

## PENSION PLANNING WORKSHEET

**When should I start planning to draw my pensions?** Because it can take a year or more to locate a lost pension or resolve problems, it is best to start early. Beginning the process 6 months to a year prior to your retirement date is a good idea.

**List your employers. Include the name, address, telephone number, and the dates that you worked there.**

Employer Name:	Plan Administrator's Name:
Address:	Address:
City, State, Zip:	City, State, Zip:
Phone:	Phone:
Start Date:	Years required to vest:
End Date:	Other helpful information:
Did company have a pension plan?	
Do I have benefit statements from the plan?	

Employer Name:	Plan Administrator's Name:
Address:	Address:
City, State, Zip:	City, State, Zip:
Phone:	Phone:
Start Date:	Years required to vest:
End Date:	Other helpful information:
Did company have a pension plan?	
Do I have benefit statements from the plan?	

Employer Name:	Plan Administrator's Name:
Address:	Address:
City, State, Zip:	City, State, Zip:
Phone:	Phone:
Start Date:	Years required to vest:
End Date:	Other helpful information:
Did company have a pension plan?	
Do I have benefit statements from the plan?	

(Copy this sheet as many times as you need. If you do not remember an employer's name or address, you can get this information from the Social Security Administration for a fee. Call 1-800-772-1313 or go to [www.ssa.gov](http://www.ssa.gov) to request an earnings record. The process takes about a month.)

## LOST PENSION WORKSHEET

Make a copy of this form for each lost pension or retirement plan.

Employer Name:

Last Known Address:

Last Known City, State, Zip:

Last Known Telephone Number:

Inquiry Letter Mailed:

Date Response Expected: (36 days later)

Response Received?

If no, has the pension plan filed a tax return in the last 4 years? ([www.freeerisa.com](http://www.freeerisa.com))

Is the company out of business? (Texas Secretary of State (512) 463-5555)

Has the company been bought or merged? ([www.corporateaffiliations.com](http://www.corporateaffiliations.com))

Has the plan been trusteesd by PBGC? ([www.pbgc.gov](http://www.pbgc.gov) or 1-800-400-7242)

Administrator from tax return:

Address:

City, State, Zip:

Inquiry Letter Mailed:

Date Response Expected: (36 days later)

Response Received?

New Owner:

Address:

City, State, Zip:

Inquiry Letter Mailed:

Date Response Expected: (36 days later)

Response Received?

PBGC:

1-800-400-7242

Notes of conversation:

## SAMPLE INQUIRY LETTER

Date

Plan Administrator or Employer

Address

City, State Zip

Re: Former Employee: (Your name)  
Social Security Number:  
Date of Birth:  
Dates of Service:  
Pension Plan Name (if known):

To Whom It May Concern:

I worked for **Employer** from **Start Date** to **End Date** as a **Job Title**. I am writing to see whether I am entitled to a pension. Please provide the following information:

1. A Summary Plan Description for any pension plan that was in effect at Employer on Termination Date;
2. A pension estimate; and
3. An application for benefits; or
4. If you believe I did not earn a pension benefit, please provide an explanation why and documents to substantiate your belief.

If you are not the plan administrator, please provide the name, address, and telephone number of the plan administrator. Thank you for your help. This request is made pursuant to Sections 104 and 503 of the Employee Retirement Income Security Act of 1974 (ERISA) and applicable Department of Labor regulations. I look forward to your response within thirty days.

Sincerely,

Your signature

Your printed name

## SAMPLE FOLLOW-UP LETTER

Date

Plan Administrator or Employer

Address

City, State Zip

Re: Former Employee: (Your name)  
Social Security Number:  
Date of Birth:  
Dates of Service:  
Pension Plan Name (if known):

To Whom It May Concern:

I worked for *Employer* from *Start Date* to *End Date* as a *Job Title*. On *Date of Letter*, I wrote you to see whether I am entitled to a pension. I asked for the following information:

1. A Summary Plan Description for any pension plan that was in effect at Employer on Termination Date;
2. A pension estimate; and
3. An application for benefits; or
4. If you believe I did not earn a pension benefit, please provide an explanation why and documents to substantiate your belief.

To date I have not received a response. Sections 104 and 502 of the Employee Retirement Income Security Act of 1974 (ERISA) and applicable Department of Labor regulations require you to comply with participant or beneficiary information requests within thirty days or be subject to monetary penalties of up to \$110 per day. I should have received a response no later than *Date (Date of Letter + 36)*. Please provide the information that I requested within the next ten days as well as a check representing the penalties you have incurred.

Sincerely,

Your signature

Your printed name