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The income from a compulsory annuity CANNOT be split in the case of divorce...

The fact that a non member ex spouse can claim a portion of the member spouse's retirement fund on divorce is well established. However what will happen in the case where the divorce occurs after retirement and the spouse is now receiving an income from his retirement funds?

In terms of legislation, a compulsory annuity (including a living annuity) may not during the lifetime of the retired person be commuted or assigned to another person. Therefore the annuitant may not enter into an agreement to transfer a portion of the annuity to any other person.

Implications:

- The amount of income received from a compulsory annuity may be taken into account in determining the client's maintenance obligations on divorce. Thus the client's income from his annuity could result in a higher maintenance payment to his ex spouse.
- However this maintenance payment would be independent from the payment of the annuity. The annuitant would in practice receive the full income from the annuity and then could pay a portion of the income to another person.

Take Action: Married client's should be encouraged to maintain individual retirement plans. In the event of divorce they would at least have some form of retirement income to rely on, without having to claim from their former spouses.

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