THE SENTINEL

You and the Law:
It's 10 p.m. Where is your pension?

AUGUST 10, 2013 8:00 AM • BY DENNIS BEAVER

For your readers who are covered by a pension and looking forward to a comfortable retirement, I have a warning, New York attorney Eddie Stone tells *You and the Law*.

"Employers across this country have made promises to their employees which will not be honored. Simply stated, pension liabilities dramatically exceed their assets. Thousands of state, city, county and private pensions aren't just in financial ICU, but rather are being wheeled to the morgue, the result of lies, incompetence and fraud. Many, when they *could and should have* poured money into their pension funds, spent it on other things. It was a huge slap in the face of their employees.

"This is a time when all present employees and retirees need to be aware of what is happening with their pension — what options may be available," Stone underscores.

Protections You Now Have IF Your Employer Goes Bankrupt

"Most employees who are covered by a *company* — not city, state or county — but a *company*-funded, defined-benefit pension plan, have *very significant federal protection* if the employer goes bust," Stone observes.

"They have a safety net and uniform protection under ERISA and the Pension Benefit Guarantee Corporation. This federal agency was a real lifesaver for Circuit City's 21,000 employees and retirees when the company went bankrupt in 2009.

"The pension fund was seriously underfunded, yet the PBCG stepped in and kept payments going to retirees and will to others when they become eligible to retire. Up to $60,000 a year is paid, *for life*, completely replacing a company pension for most retirees.

"*But there is nothing similar for state, city or county employees* where the pension comes directly from municipal funds. That's why bankruptcy could mean a really bad hit to retirees, and these things — who gets what — are being decided by bankruptcy courts right now.

Companies Dumping Their Pensions

“Companies all over America are scrambling to get out of their pension obligations — known as *de-risking*. They hand the duty of paying out pensions to an insurance company and purchase a group annuity contract, either “allocated” specifically to each employee, or “unallocated,” which just names the policy owner, typically the pension fund. Those terms matter in the event the insurance company fails.

When a pension plan de-risks:

1. Retirees lose all ERISA protections, including PBCG coverage.

2. If the annuity company fails, retirees and employees are forced into the vastly inferior safety net of state life insurance guarantee associations, where many *do not cover* unallocated group policies. California does not cover these policies.

“But if you have an individual (allocated) annuity, or a certificate in an unallocated annuity, then, depending upon where you live, lifetime state coverages range from $100,000 to $500,000. In California, it is a total of $250,000. Remember, under the PBCG, it is $60,000 a year *for life*.

“So your California reader, Helen, who has worked over 30 years for AT&T, could easily have close to a million dollars in present pension value. The company de-risks, transfers pension obligations to XYZ Insurance and five years later they fail. She could face substantial losses,” Stone points out.

So What Can An Employee Do?

“Find out what kind of discussions are going on. Are they looking into de-risking, and are there efforts under way to prevent it? For example, two retiree organizations, the Association of Bell Tell Retirees and ProtectSeniors.org, are attempting to have legislation passed which would prevent these de-risking transactions from happening without disclosure.

“Speak with your retirement organization or union. No insurance company is too big to fail. The loss of federal pension protection is simply too great to just let happen without a fight,” Stone firmly maintains.

Lump Sum Takeout?

Dallas-based Burk Rosenthal of Rosenthal Retirement Planning feels that for some people either retired or about to retire, if a lump sum pension withdrawal is possible — going into an IRA or selecting your own annuity — this *might* be a good move, but has real risks:

“I would caution your readers to understand that money in a lump sum may be risky. You have the risk of low interest, family and friends asking for money, bad investment decisions, taking out too much too quickly, and ultimately outliving your income, if not handled properly.

“A lump sum must be invested properly — are you able?”

“Finally, monthly pensions carry their own set of risks beyond a failure of the pension itself or the insurance annuity company. For example, your monthly payments might not keep up with the cost of living, and there may be no benefits left for survivors.

“The bottom line is that pension election decisions should never be taken lightly,” Rosenthal cautions.

You and the Law agrees and goes one step further: Want a good night’s sleep? Be a saver and start with your first job.

Dennis Beaver practices law in Bakersfield and welcomes comments and questions from readers, which may be faxed to him at 661-323-7993 or emailed to him at lagombeaver1@gmail.com.