

QDRO-Retirement Plans and Divorced Participants

Background

In most community property states, retirement plan benefits earned while married are considered community property, and subject to division upon dissolution of the marriage. For some time, these state laws conflicted with federal law, which prohibited the assignment or alienation of a plan's benefits to anyone other than the plan participant. Various court cases, IRS Revenue Rulings, and other government agency correspondence were contradictory and created further confusion about how these spendthrift preemptive provisions applied to divorce settlements and Domestic Relation Orders. This left Plan Administrators open to lawsuits from participants if they honored the orders, and lawsuits from ex-spouses if they did not. Thankfully, in 1984, Congress passed the Retirement Equity Act (REA). REA enacted an exception to the anti-assignment and anti-alienation rule for ***Qualified Domestic Relations Orders (QDRO)***.

What is a QDRO?

A ***Qualified Domestic Relations Order*** is a domestic relations order that creates or recognizes the existence of an alternate payee's right to receive all or a portion of a participant's retirement plan benefits. A Domestic Relations Order is a judgment, decree or order, including an approved property settlement under a state domestic relations law (including a community property law), relating to the provisions of child support, alimony payments or marital property rights to an *alternate payee*. An alternate payee is any spouse, former spouse, child or other dependent of the plan participant who is identified by the order as having a right to receive plan benefits of a participant.

A QDRO must specify:

1. The name and last known mailing address of the participant and each alternate payee that is covered by the order;
2. The amount or percentage of the participant's benefits to be paid to each alternate payee or the manner in which the amount is to be determined;
3. The number of payments for the period the payments are required;
4. Each plan to which the order applies.

A QDRO may not require:

1. A plan to provide any type or form of benefit or any option not otherwise provided under the plan;
2. A plan to provide increased benefits;
3. Payment to an alternate payee of benefits that are payable to another alternate payee under a prior QDRO.

What to do if the Plan is served with a QDRO?

Normally, a QDRO is prepared by one of the divorce attorney's involved in the participant's divorce. Often times an attorney will contact the plan sponsor and ask for information regarding the plan, or ask to have a draft of the QDRO reviewed by the plan prior to its being submitted to the court. In these cases, the plan rarely needs to obtain its own legal representation. If the QDRO meets the requirements, it is usually a straightforward matter to comply with the QDRO once the court approves it. You should send a copy of the QDRO to The Paragon Alliance Group, LLC, as we can assist in determining if it meets the qualification requirements.

Sometimes, prior to a QDRO being issued, a plan is served with an order prohibiting payment of benefits to the participant until the divorce is resolved and a QDRO issued. These orders should not be ignored, as the plan could end up with liability to a participant's former spouse for benefits. Always send a copy of any document served on the plan to The Paragon Alliance Group, LLC.

If the plan is serviced with an order to pay benefits to someone other than a participant, and that order does not meet the requirements for a QDRO, then the plan cannot honor that order. It is important to advise the parties involved that the order is not a QDRO, and why it is not. One of the most frequent problems with QDROs is they are too ambiguous as to the amount to be paid to the alternate payee. It is best to suggest that the parties agree on a dollar amount and have that stated in the QDRO. Emotions run high during a divorce, and the plan should remain impartial and detached. We can help discuss QDROs with the attorneys involved. If the divorce case is complex, we will often recommend that the divorce attorneys hire a pension attorney for assistance in drafting a QDRO.

To comply with the law, when a plan receives a Domestic Relations Order, the Plan Administrator must promptly notify the participant and each alternate payee of receipt of the order and of the plan's procedure to determine the qualified status of the order. In addition, within a reasonable time after receipt of an order, the Plan Administrator must determine its qualified status and notify the participant and each alternative payee of such determination.