

## **I'm getting divorced: What is a qualified domestic relations order and why should I care?**

A retirement plan can be the largest asset in a marriage. Nonetheless, retirement plans are often forgotten or overlooked during divorce, in part because divorce is so complicated and in part because a divorce can occur years before retirement – and who's thinking about retirement when it's 10 or 20 years down the road? If they don't have the right kind of court order, people going through divorce could neglect a significant portion of the marital assets and put themselves at risk of economic insecurity in retirement.

### **What is a QDRO?**

A qualified domestic relations order is a special court order that grants a person a right to a portion of the retirement benefits his or her former spouse has earned through participation in an employer-sponsored retirement plan. QDROs are typically prepared during divorce proceedings, though they can be filed years after divorce.

In a QDRO, the person who earned the benefit is called the "participant" and the person who is designated to receive a share of that benefit is called the "alternate payee." QDROs can award benefits to the alternate payee while the participant is alive, as well as survivor benefits if the participant dies.

Note that there is an important distinction between a domestic relations order and a *qualified* domestic relations order. Any family law court can issue a domestic relations order, but a domestic relations order becomes *qualified only* once it is accepted by the plan.

Note also that "QDRO" is the term for domestic relations orders that have been accepted by a retirement plan sponsored by a private employer, such as a company or non-profit. Other types of plans may have a different term for this. For instance, retirement plans for federal government employees refer to these court orders, once accepted, as a COAP (Court Order Acceptable for Processing).

### **Why do I need a QDRO?**

If a divorce is finalized without producing a QDRO, the former spouse has no rights to the participant's retirement benefits. After a divorce, the only way to obtain a QDRO is to undertake the very difficult task of reopening the divorce, which will require a divorce attorney and can take years.

We've heard from many clients who believe they are entitled to a portion of a former spouse's retirement benefit because it was addressed in the divorce decree. Unfortunately, we have to tell these clients that unless the retirement plan has a qualified domestic relations order on file, they have no right to a benefit.

### **How do I obtain a QDRO?**

- **Find an attorney.** If you're in the midst of a divorce and already working with an attorney, make sure your attorney knows that retirement assets are at stake and that a QDRO will be needed. If you aren't working with an attorney, contact a local bar association or the [National Pension Lawyers Network](#), a service of the Pension Rights Center that connects people in need of legal assistance with local attorneys who can assist them on a no-fee (*pro bono*), reduced-fee or regular-fee basis.
- **Notify the court.** If you are representing yourself without an attorney, make sure the court knows that your spouse earned a retirement benefit and ensures that your former spouse provides all information the court needs to properly divide the benefit.
- **Contact the plan.** If your spouse has not been forthcoming with information about his or her retirement benefits or if your divorce has already been finalized without a QDRO, contact the plan directly. A prospective alternate payee has a right to obtain information about a spouse's or former spouse's benefit but sometimes plans are reluctant to provide information because they are afraid of violating the participant's privacy. If this happens, remind the plan that there are specific Department of Labor regulations giving you a right to this information. If you continue to encounter problems, contact the Pension Rights Center.

If you are unable to find the plan's contact information, use [www.freeERISA.com](http://www.freeERISA.com) to locate the most recent Form 5500 that the plan has filed. This form should contain the contact information for the plan administrator. Once you have the plan administrator's contact information, contact them to ask for the following documents:

- Plan document and Summary Plan Description;
- Participant's benefit statements;
- A copy of the plan's model QDRO, if it has one; and
- A copy of any QDRO that may already be on file for the participant.

### **What should a QDRO include?**

There are nearly 700,000 private retirement plans in the United States and each one has its own rules for what information must be included in a QDRO. However, there are basic elements that each qualified domestic relations order must contain. We've listed these requirements below. It is important to know that plans can require additional information, but not less. Note that a separate QDRO must be filed for each retirement plan.

### **All QDROs must include the following:**

- The name and last known mailing address of the participant and alternate payee;
- The name of each plan to which the order applies;
- The dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee; and
- The number of payments or time period to which the order applies.

**What if I have problems?**

Contact a [Pension Counseling and Information Project](#). While a counseling project may not be able to draft a QDRO for you, it can help you obtain the necessary documents. Retirement plans are required to provide information related to QDROs to all people who may be entitled to a benefit from a retirement plan, including divorcing spouses. If your area is not served by a pension counseling project, use [PensionHelp America](#), an online service of the Pension Rights Center, to find a legal services office or nonprofit organization to assist you.

**What do I do once I have a QDRO?**

Submit it to the plan immediately! The plan should let you know within a reasonable amount of time whether it has accepted the QDRO. If the plan accepts the QDRO, you do not need to take any additional steps. If the plan rejects the QDRO, it must provide a clear explanation for the rejection, including information on what you need to do in order to improve the QDRO so that it is accepted by the plan.

**Additional Resources**

- DOL publication: [QDROs: the Division of Retirement Benefits through Qualified Domestic Relations Orders](#)
- Retirement Roadmap: [When Your Family Status Changes](#)
- PRC fact sheet: [State Retirement Plans and Divorce](#)