

QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs)

A Guide for Divorce Attorneys and Mediators

By Bonne McHenry, QDRO Consultant

With more than 30 years in the QDRO consulting field, I recognize that the complex QDRO process may be unfamiliar or confusing to many professionals specializing in divorce. For that reason, I have provided some key facts about QDROs that will serve as a guide for divorce attorneys and mediators. This information will help them draft language clearly defining the division of retirement assets intended by the divorcing couple. Then, the QDRO consultant can prepare effective documents that will be approved and completed in a timely manner – and achieve the desired results for all parties.

Background

In an ideal court system, divorce files would be audited to ensure that awards to former spouses from retirement plans (QDROs) have been completed. An even better approach would be for the courts to require that QDROs accompany the divorce filing, or at least to stipulate a 30- to 60-day period for their completion, with follow-up by the court.

In the real world, though, such judicial oversight does not occur, and a large number of QDROs are never completed. Often, even those approved by the court never become a reality, and the former spouse never receives the awarded benefit.

A QDRO does not end with court approval; it must then be submitted to the Plan Administrator. The QDRO is not complete until the Plan Administrator has provided a letter of approval and confirmation of awarded benefit to both parties. (To expedite matters, it is strongly recommended that QDROs be preapproved by the Plan Administrator before submission to the court. This step will save time by making sure that any changes required by the Plan Administrator are incorporated at the outset, without requiring resubmission to the court.)

In my experience, the following are the most common reasons for QDROs not being completed:

1. The parties are unaware of what a QDRO is or that one is needed.
2. One or more of the parties moves and does not disclose the new address. (In New Hampshire, an address recorded with Child and Family Services [child support] is not available to a former spouse who is trying to obtain an awarded benefit.)

QDRO Procedural Guidelines

The type of retirement plan for which the QDRO is being prepared may have specific requirements that will need to be addressed. Here are some guidelines regarding division of benefits among the various plans.

DEFINED CONTRIBUTION (DC) PLANS: With DC plans, such as 401(k) or 403(b) plans, it is recommended that a statement be obtained on the participant's account and a QDRO "hold" placed promptly on the account. The statement should be reviewed for any participant loans or withdrawals that affect the award to the former spouse. (I have seen cases in which accounts were liquidated by the participant, preventing the former spouse from receiving some or all of the awarded benefits.)

If each party has one or more DC plans, these can be added up, with the appropriate awarded amount subtracted from the largest account to reduce the number of QDROs needed.

The former spouse may be awarded a percent or exact dollar amount as of a specified date. In that case, the divorce decree must indicate whether gains and or losses should be included in the award.

INDIVIDUAL RETIREMENT ACCOUNTS (IRAs): There are many types of IRAs. If the IRA was originally a defined contribution plan and the participant, after terminating employment, rolled over the balance into an IRA, a QDRO may be needed.

Since IRAs differ greatly in what the custodians require to divide these accounts, it is best to determine their exact requirements.

DEFINED BENEFIT (DB) PLANS: The division of DB plans can be quite complicated. The divorce should specify whether the awarded benefit is a *shared interest* or a *separate interest*.

In a *shared interest*, benefits for the former spouse begin when the participant retires and end when the participant dies. For the former spouse to receive pre- and post-retirement benefits, survivor benefits must be specifically addressed. If the participant has already retired, a shared interest is the only option.

If the awarded benefit is a *separate interest*, the former spouse receives a benefit for life. (In New Hampshire, the *Hodgins formula* is the standard awarded benefit for DB plans. However, because the *Hodgins formula* does **not** provide a benefit for the former spouse in the event of the participant's death, survivor benefits must be specifically addressed in the divorce.)

MILITARY, FEDERAL GOVERNMENT, AND STATE COURT ORDERS: Because these plans are often complex, it is advisable to seek advice from the QDRO preparer regarding appropriate language to be used in the divorce documents. (I am consulted by attorneys and mediators on a regular basis as divorce decrees involving these types of plans are being finalized.)

Other Important Requirements

The following rules should be adhered to regardless of the type of retirement plan for which the QDRO is being prepared.

- It is critical to provide all pertinent information regarding the plans, including full names of the company, plan, and participant, and identifying specific amounts to be allocated to each party from each retirement plan.

- To maintain confidentiality, do **NOT** put full account numbers for any plan in the divorce decree. Use only * and the last four digits to identify each account.
- The divorce decree should state which party is responsible for payment of the QDRO preparation fees. This fee assignment should also include payment of all fees charged by the Plan Administrators.

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