

Frequently Asked Questions (FAQs) about QDRO's

We realize that divorce is a stressful experience under the best of circumstances, and that the QDRO process can be somewhat complex, confusing, and mysterious. We have prepared this information sheet to answer some frequently asked questions we have received from clients. We hope you will find it helpful. Please keep a copy of this document handy and refer to it as your case progresses.

- **What is a QDRO?** “QDRO” stands for “Qualified Domestic Relations Order”. This is a special kind of Court Order which is used to divide pension rights between divorcing spouses, or to collect alimony or child support from a pension or employee benefit Plan. Even if your Divorce Decree or Separation Agreement awards you a share of your former spouse’s plan, you still need a QDRO to implement that award in order to receive your money.

- **What types of pension plans are subject to QDRO's?** All types. Private (corporate) pension and benefit plans such as 401(k), 403(b), 457, defined benefit monthly payment, TIAA/CREF, etc. may be divided by QDRO's under a Federal law called “ERISA”. Military retired pay, Federal and State civil service plans, and IRA's may be divided by similar Orders.

- **How do QDRO's work?** The State Divorce Court first enters an Order dividing a pension. This State Court Order may be entered after a contested hearing, or by mutual agreement of the parties. The Order must also be approved by the pension Plan before it becomes effective. Your rights are not protected and you will not receive anything under the State Court Order until and unless the Plan has reviewed and accepted the Order.

- **Why should I get a QDRO now? Why can't I wait until my former spouse retires or until I need the money?** If you delay in obtaining a QDRO, you may lose valuable rights and run the risk of forfeiting all of the benefits awarded to you in your divorce. Your rights may be lost if your former spouse does any of the following before your QDRO is submitted to the pension Plan and accepted by the Plan:

- retires
- remarries
- dies
- quits or is fired
- withdraws funds from the Plan before retirement
- takes out a loan secured by the Plan account

• **What is QDRO Solutions, LLC?** We are a pension division consulting firm operated by an experienced family law attorney. QDRO Solutions, LLC prepares pension division Orders for all types of Plans – corporate, military, civil service, etc. We draft QDRO's, send them to the Plan, and make any amendments required by the Plan until the QDRO is accepted by the Plan. We do not represent individual clients in Court or renegotiate settlements. All our work is done on a fixed fee basis of \$685.00 per Plan.

• **How is QDRO Solutions different from other firms?** Some of the QDRO preparation firms which advertise on the Internet are operated by clerks, junior college dropouts, stockbrokers, etc. – people with no formal legal training at all. QDRO's are very complex legal documents and should be prepared only by a qualified attorney. Ann Stirling is a graduate of the University of South Carolina Law School with excellent credentials and over 30 years of Family Law legal experience. Second, we guarantee our work. Your QDRO will be accepted by the Plan or you will receive a full refund. No other firm makes that guarantee. Third, our low fixed fees are guaranteed – we have never charged anyone a penny more than our flat fee. Many other QDRO firms have hidden extra fees and charges buried in the fine print in their ads. All our work is coordinated with your divorce attorney. Finally, you can rely on us for the prompt, personal service and attention you deserve in your divorce proceeding.

• **What are the steps in the QDRO process?** There are usually 7 steps required to complete the QDRO process:

Step 1. Gathering information. We need complete information about both parties (names, addresses, social security numbers, dates of marriage and divorce, etc.). We also need copies of your Divorce Decree or Separation Agreement so we can see how much each party is to receive. In addition, except in military or Federal civil service Plans, we need two important documents from the pension Plan to be divided: the Summary Plan Description (SPD) and Written QDRO Procedures (WQP). We will write to the Plan to request this information if it was not included in your application. You will receive copies of all correspondence with the Plan.

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Step 2. Drafting your QDRO. Once we have received all the information described above, we will draft your QDRO and send it to you for your review and approval. Please review this draft carefully to make sure all information is accurate. If you have any questions about the draft or corrections to be made, please let us know.

If the plan being divided is an IRA, the Order is called a “Transfer Incident to a Divorce”. If the Plan being divided is military retired pay, the Order is called a “Qualifying Court Order,” and for Federal civil service Plans the Order is known as a “Court Order Acceptable for Processing” for FERS/CSRS retirement Plans or a “Retirement Benefits Court Order” for a Federal Thrift Savings Plan. All these different types of Orders are basically similar to each other; but, there are significant differences. All of them are sometimes informally referred to as “QDRO’s,” even when they are technically called something else.

Step 3. Approval by other party. If you accept the draft QDRO, you must arrange to send it to your former spouse or his or her attorney for review and approval. The other side should, acting reasonably, accept the QDRO as long as it accurately reflects the underlying provisions of the Divorce Decree or Separation Agreement. However, people do not always act reasonably in divorce cases. There are ways to bypass this step; but, it is usually preferable to obtain the other side’s consent to the QDRO. If you feel the other party will unreasonably delay or hinder this step, or if the situation is an emergency, it is possible to omit this step. Please let us know if this is the case.

Please do not sign your QDRO at this point or ask your former spouse to do so until step 4 is completed.

Step 4. Approval by Plan as draft. We then send the QDRO to the pension Plan for approval in draft form. If the Plan requests any changes in the QDRO, we will negotiate them with the Plan. It is not unusual for Plans to request changes in QDROs; in fact, this happens in about 50% of the cases. Do not be alarmed if you receive a copy of a letter from the Plan requesting changes in the draft QDRO. These usually involve minor changes in wording which will not affect the amounts involved. We will, subject to your approval, negotiate and work out any changes requested by the Plan.

Military and Federal civil service pension division Orders cannot be reviewed as drafts by the Plans, so this step is omitted in those cases. A few corporate Plans also decline to review draft QDRO’s. In such cases, step 4 is omitted and we proceed directly to step 5.

Step 5. Signature of QDRO by Judge of the State Divorce Court. Once the Plan has approved the QDRO in draft form, we will send you a clean copy, which should now be signed by all parties and their attorneys and presented

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to the State Divorce Court for signature by a Judge. If it is not possible to obtain all these signatures, consult your local attorney about how to present your QDRO to the State Divorce Court for signature by a Judge. A local attorney must review and approve the draft QDRO and present it to the Court.

Step 6. Obtain a certified copy of the QDRO. Once the QDRO has been signed by a Judge, you should obtain a certified copy of the QDRO and send it to us. A certified copy is one which bears the original signature and seal of the clerk of the Court. A certified copy may be obtained from the clerk of the State Divorce Court for a few dollars. You must then send the certified copy to the Plan for final approval, acceptance and payment.

In military and civil service cases, additional certified copies and certain other documents will be required. Please call us and we will send you the other documents which are needed in these cases.

Step 7. Final acceptance by the plan. Once you have sent the certified copy to the Plan, it is usually approved very quickly if the plan has already reviewed the QDRO as a draft in step 4.

- **How long does the QDRO process take?** Completion of the seven (7) steps described above usually takes 2 to 6 months (it can take longer), depending on the complexity of the Plan, the clarity and precision of the wording of your Divorce Decree or Separation Agreement, whether your former spouse is cooperative or hostile, and similar factors. The longest component of the process is usually how long it takes the pension Plan to review draft QDRO's and respond to communications from us. We generally respond to all drafting requests and correspondence within two to three weeks in order to keep your case moving forward. Occasionally, due to other professional commitments, it may take us a little longer to respond to your communications.

- **When will I receive my money?** Some pension Plans make funds payable under QDRO's available as soon as they approve the QDRO. If the Plan being divided is an IRA or a Federal Thrift Savings Plan, the funds may be withdrawn immediately. Most (but not all) 401(k), 403(b), 457 and ESOP plans also permit immediate withdrawal. Other pension Plans will not make the funds available until after the employee actually retires, or at least attains the earliest retirement age allowed by the Plan (in some cases as low as 50 or 55).

All of our QDRO's are drafted to require the pension Plans to make your funds available to you at the earliest possible time allowed by law. However, a QDRO cannot override the Federal law governing QDRO's or the written terms of the Plan itself, which specify and control the earliest date when payments can begin.

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• **Can I get a lump sum?** This depends on the type of Plan involved. 401(k), 403(b) and 457 Plans (also known as Defined Contribution Plans), IRA's, ESOP's and Thrift Savings Plans usually permit lump sum payments. Ordinary pension Plans (also known as Defined Benefit Plans) and military and Federal civil service Plans only permit monthly payments, not lump sums. A QDRO cannot override the terms of the Plan itself which specify the form in which payments can be made.

• **What about taxes?** Generally, the person who receives payments from a pension Plan under a QDRO must pay Federal, State and local income taxes on what they receive, and does not pay income taxes on what the other party receives. (An exception to this general rule is in the case of QDRO's for child support, in which the employee must pay all taxes even though the funds are paid to the child or the child's custodian.) If you are an Alternate Payee and receive payments from your former spouse's Plan under a QDRO, you are taxable on what you receive and your former spouse is not.

Rollovers. If you receive a distribution from your former spouse's 401(k) Plan, you can roll those funds over into your own 401(k) Plan or an IRA. If you do this properly, you will not have to pay income taxes on those amounts at the time of the rollover. However, you will have to pay taxes on all funds withdrawn from your own 401(k) or IRA when you take them out. Rollovers of this kind are not arranged in the QDRO itself. You can arrange a rollover directly with your former spouse's Plan after your QDRO has been accepted by your former spouse's pension Plan, and the Plan will be glad to deal directly with you at that time to arrange a rollover or direct distribution to you.

Monthly payments from a Defined Benefit Plan or a military or Federal civil service Plan cannot be rolled over into another Plan or IRA. They are taxable to you when received.

Caution: If you are going to need funds in the foreseeable future, you can avoid the 10% penalty on early withdrawals (prior to age 59-1/2) by taking the funds directly from your former spouse's 401(k) or similar Plan under a QDRO under Section 72(t)(2)(c) of the Internal Revenue Code. However, if you first roll the funds over into your own Plan or IRA and then withdraw them from your own Plan, you may needlessly re-subject yourself to the 10% penalty. (The 10% penalty is mandatory and there is no way to avoid it if your spouse's Plan being divided is an IRA rather than a 401(k) or similar Plan).

Twenty percent withholding. If you take a cash distribution from your former spouse's Plan rather than rolling the funds over, the Plan is required by Federal law to withhold 20% of the amount you receive for Federal income taxes. This is like have Federal income tax withheld from your paycheck. You will be able to claim the amount which the Plan withholds on your Federal income tax return when you file it on April 15 of the year following the payment to you.

Tax basis. In dealing with a 401(k) or IRA, it is important to know your "tax basis" in the Plan assets awarded to you so you can minimize your tax payable. When drafting an order for this type of Plan for an alternate payee (non-employee), our Orders require the employee or IRA owner to cooperate in providing information about tax basis to the alternate payee.

Disclaimer: The foregoing is a general statement of the tax treatment of payments made under QDRO's. It is not individual tax advice which requires an analysis of your individual financial circumstances. You must consult a CPA, tax attorney or other qualified tax advisor if you have any questions about the specific tax treatment of the payments under your QDRO. IRS Circular 230 DISCLOSURE -- Notice regarding Federal tax matters: Internal Revenue Service Circular 230 requires us to state herein that any Federal tax advice set forth in this communication (1) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed by Federal tax laws, and (2) cannot be used in promoting, marketing, or recommending to another person any transaction or matter addressed herein.

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We hope you found this information helpful. If you have any additional questions, please do not hesitate to contact me by e-mail at info@qdrosolutions.net.

Sincerely,

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