

HOW DO WE DIVIDE OUR PENSION PLAN?

When to use a QDRO in Your Divorce

NOTE: This information sheet provides general information about qualified domestic relations orders (QDROS) under the provision of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986. As in all of the information sheets in this series, **IT IS STRONGLY RECOMMENDED THAT YOU CONSULT WITH AN ATTORNEY.**

Many people are covered by employee-sponsored pension plans, which often represent one of their most significant assets. For this reason, whether and how to divide a participant's interest in a pension plan are often important considerations in separation, divorce, or other domestic relations proceedings. While the division of marital property is covered by Vermont law, any assignments of pension interests must also comply with federal law, namely ERISA and the Internal Revenue Code. Under ERISA and the Code, pension interests may be assigned only if judgment, decree or order creating or recognizing a spouse's, former spouse's, child's or other dependent's interest in an individual's pension benefits constitutes a "qualified domestic relations order" or "QDRO".

If you or your spouse has a pension plan, or other retirement accounts (such as a 401K), you will need to divide these funds as part of your property division. As with all property in the divorce, property distribution **cannot** be appealed after a final order, so it's important that you address this issue before your final hearing. Also, the spouse holding the assets may not choose to divide up the pension after the final order.

A **Qualified Domestic Relations Order**, or "QDRO" (pronounced "kwa-dro"), is a court order that creates or recognizes the right of another person to retirement money held in a deferred compensation plan, pension plan or 401K plan. Federal law governing pensions and taxes requires that pension interests cannot be assigned unless the domestic relations order *qualifies* recognizing the interests of other persons as well. The judge must formally approve an agreement between you and your spouse before it can be considered a QDRO. The QDRO can include more than one pension plan.

Without such a plan, any withdrawals, even those in an attempt to equitably divide up your assets, will be subject to penalties and taxes. And without such an order, the ex spouse seeking the retirement assets will have no right to them if the former partner dies, remarries or retires.

Not all divorcing parties need a QDRO, but you should find out if you do.

You must agree upon how the money or assets in the plan will be divided. You also need to contact the plan administrator of the pension, since there are different procedures called for in the various pension plans. Once you get the information from the plan administrator, you need to follow the procedure to the letter, to insure that the order will comply with the plan's requirements.

Information in the QDRO should contain names, addresses and social security numbers of the payees, as well as the names of the retirement plans involved and the account numbers of the parties.

There are other things that should **NOT** be included in the plan. You should include specifics about when the payments will begin and what will happen when a payee dies. Most plans have sample forms for you to follow, called a "model order." ***BUT THESE MUST BE FOLLOWED EXACTLY.*** If the order is not drafted correctly, the plan may not qualify, and you may not be able to collect your portion of the pension.

AN ATTORNEY FAMILIAR WITH THESE ORDERS WILL KNOW WHAT TO INCLUDE IN THE ORDER. You are advised to seek legal advice in this matter.

It's best to begin to gather this information and begin the paperwork early in the divorce process. The "QDRO" order will be signed by the judge at the time of the final hearing. The original order will be kept in the court file and a copy given to the parties to serve on the plan administrator. It is the parties' responsibility to serve the QDRO on the plan and respond to any follow up.

AGAIN, IT IS HIGHLY RECOMMENDED THAT YOU CONSULT AN ATTORNEY OR QUALIFIED FINANCIAL ADVISOR IN ORDER TO PROTECT YOURSELF.

Please also check the following website for more information:
<http://www.dol.gov/dol/pwba/public/pubs/qdro.htm>

**You can obtain helpful information, as well as court forms at:
www.VermontJudiciary.org.**