

## Qualified Domestic Relations Orders

What is a Qualified Domestic Relations Order (QDRO)?

Due to federal law preemption benefit and retirement plans that fall under the Employee Retirement Income Security Act (ERISA), QDRO are subject to ERISA's anti-assignment and anti-alienation provisions. Essentially that means that the benefits received by the participant to the ERISA plan cannot be assigned to another person. In the context of divorce cases in California this is very significant.

Under California law, benefit/retirement plans may be classified as community property. Consequently, a portion of that retirement plan may be directed (assigned) to the spouse or ex-spouse of the plan participant in a divorce action. But because federal law preempts state law, if that benefit or retirement plan is an ERISA plan such a division of the plan is prohibited. A QDRO is an exception to ERISA's anti-assignment and anti-alienation provisions. A QDRO must relate to the provision of spousal support, child support, or marital property rights to an alternate payee. If a California court's property division order is determined to be a QDRO, ERISA's anti-assignment and anti-alienation provisions will not apply and the court may assign a proper percentage of the plan to the alternate payee.

### What Qualifies as a Qualified Domestic Relations Order?

- The order must identify:
  - The benefit/retirement plan or plans to which the QDRO applies.
  - The names of the plan participant and the alternate payee.
  - The mailing addresses of the benefit plan participant and the alternate payee.
- The alternate payee can only be a spouse, former spouse, or child/dependent of the plan participant.
- The order must specify the amount of percentage of benefits to be paid to the alternate payee.
- The order cannot require payment of benefits in excess of the actuarial value of the participant's plan.
- The order must do one of the following:
  - State the length of time the payments must be directed to the alternate payee.
  - State the number of payments that must be directed to the alternate payee.
- The order must not conflict with previous QDRO. If the benefits sought by the QDRO are already being paid to a different alternate payee, the more recent QDRO will not be enforceable.
- The order cannot require payment in a form that is different from the method used in the identified plan.
- The order cannot require the identified plan to provide a benefit option to the alternate payee that is not available to the plan participant.

### How do I receive a Qualified Domestic Relations Order?

There are a few necessary steps that must be taken in order to receive a QDRO. First, there must be a

domestic relations order. Once the party seeking the QDRO has received the order, he or she must serve that domestic relations order on the plan or plans identified in the order. At that point, the plan administrator must notify the plan participant and the alternate payee that the plan administrator is in receipt of the order. In addition, the plan administrator must advise the plan participant and the alternate payee of the plan's procedures for determining whether the domestic relations order is a QDRO. The plan administrator must then determine whether the domestic relations order is a QDRO within a reasonable period of time.

If the plan administrator determines that the order is a QDRO, the plan administrator must follow the requirements of the order. Both the plan participant and the alternate payee have the right to appeal the plan administrator's determination. Because the State and Federal courts have concurrent jurisdiction over these issues, the appeal may be made in either a California court, or a federal court.