

What is a QDRO (Qualified Domestic Relations Order)?

A: Qualified Domestic Relations Order (QDRO) is a legal document that is needed to divide retirement plans in a divorce. This order is required by the IRS in order to divide a retirement account without any tax consequences and penalties to either party. The QDRO must be entered pursuant to a state's domestic relation laws and is usually entered after or in conjunction with the Final Divorce Decree and/or Settlement Agreement.

Why is a QDRO needed?

A: QDRO allows a retirement plan to give part and/or all of a person's retirement plan to another "qualified" person without adverse tax consequences to the Plan and the parties involved in the divorce action. Normally, retirement plans cannot be assigned and/or transferred to a person who is not a Participant in the Plan. However, a QDRO is the exception to this rule.

A "qualified" person is known as an "Alternate Payee" and can only be:

- a. A spouse
- b. A former spouse
- c. A child of the Participant
- d. An other dependent of the Participant

Who is the "Participant" under a QDRO or DRO?

A: The Participant is the person who owns the retirement plan through his/her employer.

Who is the "Alternate Payee" under a QDRO or DRO?

A: The Alternate Payee is the person that is being awarded all or part of the retirement plan. An Alternate Payee can only be a spouse, former spouse, child or other dependent of the Participant.

When should a QDRO be drafted?

A: QDRO should be drafted as soon as possible. The divorce does not need to be final for the QDRO to be drafted. We recommend that the drafting and the pre-approval of the QDRO be done as early in the divorce process as possible.

We recommend that the QDRO be entered at the same time as the Final Divorce Decree so the Alternate Payee's rights to the retirement plan benefits are fully protected. If there is a lapse of time between the Final Divorce Decree and the entry of a QDRO, it is possible that the Alternate Payee could lose the benefits that were originally awarded.

Why should I do the QDRO now? Can't I just wait until I need the money or my former spouse retires?

A: Your rights to the retirement benefits are not effective until the QDRO is entered. Therefore, until the QDRO is entered, regardless of the Final Divorce Decree, you will not receive any benefits or have any entitlements to the retirement benefits. You may lose your awarded benefits if your former spouse does one of the following prior to the QDRO being entered.

- Dies
- Remarries
- Quits and cashes in or rolls over the benefits in the plan
- Becomes disabled
- Takes a loan against the plan assets
- Takes a refund of contributions and forfeits the pension benefits

How could an Alternate Payee lose benefits that were awarded by divorce Court?

A: qualified retirement plan protects the rights of a spouse to the Participant's benefits. A spouse is required to be maintained as the beneficiary of a Participant's retirement plan unless the spouse waives their right to the benefits. Once a divorce occurs, the spouse who is not a Participant in the Plan is no longer considered a "spouse of the Participant" and no longer has spousal rights. The QDRO reserves this right. If the QDRO is not entered, the "spousal rights" are lost until such time as a QDRO is entered.

In what circumstances would an Alternate Payee lose the benefits awarded to them?

A: If a Participant dies before a QDRO is entered and the Participant removed the former spouse as a beneficiary or named another person as the beneficiary, the Plan may pay the benefits to the named beneficiary rather than to the former spouse who was awarded the benefits. Once a death occurs, the Plan is not required to honor a QDRO that is entered subsequent to the death of the Participant.

How long does it take to get a QDRO drafted?

A: Gallo and Russell process all work on a first come, first serve basis. A draft QDRO can be done within 1-2 weeks after receiving complete information. However, obtaining a pre-approval from the Plan can take anywhere from 30-60 days (some plans take longer), as each Plan has their own pre-approval processing timeframe.

How long does it take to get the money?

A: Again, this depends on your Plan. Most plans have a 30-60 day processing timeframe. However, some Plans can take longer. In our experience, the average timeframe for the total QDRO process is 90-120 days.