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### **QDRO TRIBULATIONS FACING PLAN ADMINISTRATORS**

Many QDRO preparers encounter difficulties in obtaining pre-approval for orders they've submitted to qualified retirement plans. In many cases, the preparer's lack of understanding necessary to interpret the terms and conditions of each plan tends to be the reason for their struggles. While Plan Administrators can be difficult to work with (especially small companies), understanding the companies QDRO procedures and reviewing their summary plan description can eliminate most headaches.

The rules regarding QDRO's became effective on January 1, 1985, as set forth in the Retirement Equity Act of 1984. All qualified retirement plans are required to have written procedures that the plan must follow to determine if a court order complies with QDRO rules. Requesting this information from the plan can expedite your pre-approval process and minimize mistakes.

Even though the rules of written QDRO procedures are expressly required by law, a significant number of qualified plans do not have written procedures; apparently they fail to recognize the importance of establishing written procedures. To prepare for this problem with plan administrators I suggest having your own tailored orders for both defined benefit and defined contribution plans, which satisfy all the QDRO rules set forth in the Retirement Equity Act.

#### **Why the plan administrator's supervision of QDRO approval is difficult?**

I do have empathy for the plan administrator's job when approving these orders. The Employee Retirement Income Security Act itself is somewhat unclear; it fails to provide adequate direction on how the rule is implemented under many circumstances. There are also a number of mysterious unwritten rules that must be followed which cannot be found under ERISA or the Internal Revenue Code, yet the administrator must be aware of them.

Where the real problem exists is that administrators, mainly of small companies, are unfamiliar with QDRO's due to their lack of experience with them, and they do not have the time to process orders in a timely fashion. Another problem is that professionals and/or attorneys drafting orders do not have sufficient training to properly prepare an order which satisfies the complex statutory and plan requirements for the division of a participant's retirement benefits, incident to a divorce.

Lastly, because retirement benefits often represent a married couple's greatest financial asset, plan administrators must deal with the employee's emotional aspect of the division, which is not usually disclosed in their job description.

### **Difficulties with Non-Qualified Plans**

Non-qualified plans also cause distress for QDRO preparers; QDRO rules do not apply to non-qualified retirement plan benefits such as military, federal government, city, state and county plans. Public sector plans generate their own terms and conditions and can be substantially different from qualified retirement plan procedures. While most public sectors Summary Plan Description's can be lengthy and difficult to interpret, it is imperative that you understand the terms and conditions so you draft your orders to be most advantageous for your client. From my experience in reviewing proposed orders from opposing counsel, most often money is left on the table, which could have been used to ensure a divorcing clients future financial security.

For example, I recently finished a case that I was consulting which involved a Civil Service Retirement Pension. The opposing counsel represented the soon to be former spouse and never raised pre- and post-retirement survivor benefits. After educating my client about the money that would be left on the table had he died prior to or after commencing benefits, he did not feel comfortable allowing the Marital Settlement Agreement (MSA) to be drafted excluding those benefits. This happened to be a very amicable divorce and long-term marriage. Had the clients not been amicable, the MSA would have been drafted and the former spouse would have received payments if, as, and when the client did. So when the member died the former spouse's benefits would cease, while she anticipated a life-time annuity.

This example shows the lack of understanding of the Civil Service Retirement System and how it could have been detrimental for this client's future financial security. A proposed QDRO was also drafted in this case prior to our involvement; the Office of Personnel Management (plan administrator) would not have accepted the order in the manner in which it was drafted, because it was drafted as a QDRO. Problematic issues that arise with public sector retirement plans can often be avoided with a comprehensive understanding of the terms under the plan. To consult with a divorce financial analyst regarding please feel free to contact us at the number below.

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