PENSION RIGHTS CENTER

The Initiative on Women and Retirement and Divorce
A common ground project convened by the Pension Rights Center

AT A GLANCE

What Women and Other Spouses Facing Divorce Should Know About Splitting Retirement Benefits

This "At a Glance" fact sheet gives you a quick overview of splitting retirement benefits at divorce (including what a QDRO is and how to get one). For more in-depth information to show your lawyer or other professional who may be helping you, CLICK HERE for "What You and Your Lawyer Should Know about Getting a Share of Your Spouse's Retirement Benefits."

Don't Leave Retirement Benefits on the Table

Divorce can be both emotionally traumatic and financially devastating, especially for older people. Older women often are already at a higher risk of retiring into poverty.

It's important for anyone facing a divorce to know that they may be **legally entitled** to a share of their spouse's retirement benefits. This can include retirement savings accounts (such as a 401(k)-type plan) and pension benefits.

These retirement benefits may be the **most valuable financial assets in a marriage** apart from the family home. Knowing this information may be critical to securing your financial future.

You should know that, under the law in most states, retirement benefits earned during a marriage are **marital property that can be divided upon divorce.**

You or your lawyer (or whoever is helping you) need to (1) find out if there are retirement benefits, and then (2) make sure they are divided in the divorce.

The divorce decree will need to spell out how they will be divided. But as you'll learn, there's another step you will need to take: **You will also need a special legal document called a qualified domestic relations order (typically referred to as a QDRO).**

Keep reading to learn more!

How can you find out if your spouse has retirement benefits?

Too often, one spouse may not know about the other spouse's retirement benefits accumulated during the marriage – much less be aware they are entitled to receive a share of those retirement benefits in a divorce.

- → If you don't know whether your spouse has a pension plan or a 401(k)-type of account, your divorce attorney should be able to help you get information about:
  - each plan,
  - the benefits that your spouse earned during the marriage, and
  - how much the benefits are worth.
- → If you are a current spouse, or already involved in a divorce proceeding, the plan administrator is required by federal law to give you certain information upon written request, including:
  - a copy of the plan's required QDRO procedures,
  - a copy of the plan document(s),
  - a summary of the plan rules, and
  - specific financial information about your spouse's retirement accounts and benefits.
- → If you are already divorced and need information about your former spouse's retirement benefits, the U.S. Department of Labor has guidance which requires that the retirement plan also give you this information.

What is a QDRO why do you need one?

- To get a share of your spouse's retirement benefits, it may not be enough to just have them covered in the divorce decree.
- Under federal law, you need a special document, called a qualified domestic relations order (QDRO), that requires a retirement plan to pay you a share of your spouse's earned pension or retirement benefits.
- The QDRO is typically a separate document in addition to the divorce decree (but sometimes can be incorporated as part of the divorce decree).
- The QDRO is supposed to follow the division of retirement benefits specified in your divorce decree.

Keep in mind that this fact sheet on ERISA plans only applies to the division of retirement benefits earned under private sector retirement plans (through companies that offer them). If your spouse earned benefits under federal, state, or local government retirement plans, there will be other (though similar) procedures you would need to follow. You or your lawyer should ask the plan administrator what rules apply in the division of retirement benefits.

Who prepares a QDRO?

- A QDRO is a complicated document that, if possible, should be prepared by someone who has experience writing them.
- If you have a lawyer, ask if they have experience writing QDROs or can refer you to someone who does.
- To simplify the process, many retirement plans have templates or model forms, so be sure that you or your lawyer ask the plan administrator if one is available for your use.

Are there costs involved in getting a QDRO?

- Yes. You may have to pay both fees to your lawyer and fees to the retirement plan. These fees vary widely.
- The lawyer fees for the QDRO preparation may be divided between the parties or paid by one party or the other – depending on what the divorce court decides or what the parties negotiate.
- In addition, some retirement plans, such as 401(k) plans, may charge a QDRO processing fee.

What happens once the QDRO is drafted?

- It is often a good idea to send the draft QDRO – technically called a DRO – to the plan before submitting it to the court, so you will know it meets the requirements under federal law
- Once you or your lawyer has prepared a QDRO, you need to file it with the divorce court and ask the judge to sign it.
- Then, once it's signed, you or your lawyer will send the QDRO to the retirement plan administrator to review it.
- If the plan accepts the QDRO, they will let you know how and when you will be paid your share of the benefits.

You should know, as a technical matter, that before a plan approves this document, it is called a domestic relations order (or DRO). But they are known, commonly, as QDROs.

What happens if retirement benefits are left out of the divorce?

- It's best to obtain a QDRO during the divorce process, if possible.
- While it's sometimes possible to get a QDRO after the divorce, it is harder to do so. And a delayed QDRO can often result in loss of benefits.

Now that you know to ask about retirement benefits and how to get a share of them, you and your lawyer can move forward.

ADDITIONAL RESOURCES →