

# QUALIFIED DOMESTIC RELATIONS ORDERS

## **Rule**

A retirement plan cannot pay retirement benefits to anyone other than the participant unless the participant dies or unless there is a Qualified Domestic Relations Order.

## **Definitions**

Domestic Relations Order (DRO) – judgment, decree or court order relating to the payment of child support, alimony or marital property to an Alternate Payee, and which is made pursuant to a state domestic relations law.

Qualified Domestic Relations Order (QDRO) – a DRO that has been determined to be qualified, i.e., which complies with the requirements of Section 414(p) of the Internal Revenue Code.

Alternate Payee – person who is either the spouse, former spouse, child or other dependent of the participant, and to whom benefits are payable in accordance with the QDRO.

## **Property Settlement**

If a participant and his/her spouse are divorcing, they must divide up their assets and reach a property settlement.

**Option 1** - The parties trade assets outside the plan, i.e., you get the house, I'll keep the retirement plan. Because the exchange of assets is done outside the plan, the participant remains the owner of the retirement plan assets and the plan is never involved in a QDRO.

**Option 2** - The plan becomes a key part of the property settlement and all or a portion of the plan's assets are assigned to the spouse.

Over 90% of property settlements are handled in accordance with Option 1. This is why there are relatively few QDROs.

## **Time of Payment**

A plan can provide that the QDRO benefit is payable:

- 1) as soon as administratively feasible,
- 2) at the participant's (not the Alternate Payee's) earliest retirement age under the plan (defined as the earlier of the date of termination, early retirement date or age 50) or
- 3) when the participant terminates employment.

We recommend immediate payment (if permitted by the plan) so that the plan 1) does not have to keep track of the Alternate Payee, 2) does not need to forward plan notices and Summary Plan Descriptions to the alternate payee, and (if applicable) 3) does not have to continue to provide investment fund information to the Alternate Payee.

## **Tax Treatment**

### Former Spouse

QDRO payments are considered taxable income to the former spouse. The former spouse has the option of rolling over the distribution to an IRA or qualified plan to defer income taxes. Payments are subject to mandatory 20% income tax withholding unless there is a direct rollover of the benefit to an IRA or qualified plan.

### Children

If the Alternate Payee is the participant's child or other dependent, the participant is responsible for all income taxes.

### 10% Pre-59½ Tax

QDRO payments are not subject to this additional 10% tax.

## **Preparation of QDRO**

Generally, the Alternate Payee and his/her attorney are responsible for and must bear the cost of preparing the QDRO.

The plan administrator may communicate directly with the participant and Alternate Payee or may communicate with their attorneys.

For ease of administration, the Alternate Payee or his attorney should provide draft QDRO for review before it is finalized.

## **Review of QDRO**

The Plan Administrator is responsible for reviewing a DRO and determining if it is qualified, i.e. it is a QDRO. Please forward any QDRO to your KGA consultant for review.

The expense of having the QDRO reviewed should be borne by the company or the plan. Per Department of Labor guidelines, the cost of QDRO review cannot be charged to the affected participant's account.

## QDRO REQUIREMENTS CHECKLIST

**Participant's Name:** \_\_\_\_\_

**SSN:** \_\_\_\_\_

**TO BE QUALIFIED, THE PROPOSED DRO MUST CONTAIN THE FOLLOWING PROVISIONS**

1. The instrument is a judgment, decree or court order relating to the provision of child support, alimony, or marital property rights made pursuant to a State domestic relations law.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Participant's name.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Participant's last known mailing address. (The plan administrator's independent knowledge of the participant's address even if the address is not stated in the QDRO is sufficient.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Alternate payee's name (must be spouse, former spouse, child, or other dependent of participant.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Alternate payee's last known mailing address. (The plan administrator's independent knowledge of the alternate payee's address even if the address is not stated in the QDRO is sufficient.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Name of plan or plans to which the DRO relates.	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Clear indication of the alternate payee's relationship to the participant.	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. * Clear indication of amount or percentage of participant's benefit to be paid to the alternate payee or how to determine the amount or percentage to be paid to the alternate payee). [Note: The amount or percentage may not exceed 100% of participant's current vested benefit.]	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. * Clear indication of number of payments to be made to the alternate payee (or period for which payments are required).	<input type="checkbox"/> Yes <input type="checkbox"/> No
* Factors to be considered under Items 8 and 9 include (but are not limited to): valuation date (or interim valuation date), after tax contributions, cost-of-living increases, life expectancy rates, distribution of certain in-kind assets, and death of alternate payee [see footnote on page 2 regarding possible prohibition of payment of death benefit to a non-alternate payee].	<input type="checkbox"/> Yes <input type="checkbox"/> No

**QDRO REQUIREMENTS CHECKLIST**  
(Continued)

<p>10. ** Payment commencement date:</p> <p>DRO requires immediate payment (i.e., upon approval of the order if the plan permits)</p> <p style="text-align: center;"><b>OR</b></p> <p>DRO requires payments to begin on or after the earlier of</p> <p>(a) the date on which the participant is entitled to a distribution under the plan, or</p> <p>(b) the later of:</p> <p>(1) the date the participant reaches age 50, or</p> <p>(2) the earliest the participant could receive benefits if he separated from service</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
<p>11. ** DRO does not alter the amount or form/type of benefits/options the plan provides.</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
<p>12. DRO does not conflict with a prior QDRO.</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
<p>13. DRO specifies how outstanding participant loans will be absorbed or allocated.</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
<p>** When determining whether a DRO satisfies Items 10 and 11, examine the plan for any provision that permits payment to an alternate payee whether or not the participant is otherwise eligible to receive plan benefits. In addition, any form of payment that includes a non-alternate payee [e.g., a J&amp;S annuity over the lives of the alternate payee and his/her subsequent spouse] may violate the anti-alienation rules of IRC401(a)(13) (i.e., payment is made to an individual other than the participant or an alternate payee).</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>

**All items must be marked "Yes" for DRO to be qualified.**