

What is a QDRO and why is it so important during a divorce?

This article looks at what role a QDRO plays in dividing or reassigning retirement funds during divorce.

Divorce tends to bring up a lot of difficult issues, particularly when assets are being divided. While some assets, such as savings and checking accounts, are fairly easy to divide, others can be much more complicated. Retirement funds include assets that are often especially hard to divide without either spouse paying a steep tax bill or early withdrawal penalty for doing so. Fortunately, it is possible to avoid such penalties by filing a qualified domestic relations order (QDRO) beforehand. While a QDRO can prove useful in a number of situations, including enforcing child support orders, it is especially common when splitting retirement assets.

What does it do?

A QDRO is a legal document that allows divorcing spouses to assign or retitle certain retirement assets into another person's name. In effect, a QDRO enables all or part of a retirement fund to be transferred from one spouse to another without either spouse incurring tax penalties or early withdrawal fees that they may otherwise be subject to. Essentially, a QDRO allows the person to whom the asset is being transferred to be treated as though his or her name was on the asset from its inception. Without a QDRO, splitting or reassigning the plan to another party would be treated as a distribution and thus subject to early withdrawal taxes and fees.

What doesn't it do?

As Forbes points out, a QDRO merely preserves the essential characteristics of a retirement asset without actually changing how the asset functions. In other words, once the retirement fund has been reassigned to the other person, that person will still be subject to the same rules governing the fund as his or her ex-spouse was. For example, taxes will still have to be paid on distributions received from the retirement fund, although an early withdrawal penalty can be avoided in the case of an early cash payout.

Furthermore, QDROs do not apply to all retirement funds. As Time magazine points out, while a QDRO is helpful when splitting or reassigning a 401(k), pension, or other employee-sponsored plan, it may not apply to other plans. In the case of individual retirement account funds, for example, a transfer incident review will likely have to be filed, which accomplishes similar tax-free incentives for transferring retirement funds as a QDRO otherwise would.

Legal help

Retirement funds, including 401(k)s, pensions, and investment portfolios, are often among the most valuable assets that a couple has acquired during their marriage. In a divorce, therefore, it is extremely important that these assets be divided properly. An experienced family law attorney can help those in the midst of a divorce understand how to divide retirement funds, including how to properly file a QDRO.