

## **What is a Qualified Domestic Relations Order?**

A "Qualified Domestic Relation Order" (QDRO) is a court order that creates or recognizes the existence of an "alternate payee's" right to receive or assigns to an alternate payee the right to receive, all or a portion of the pension payable with respect to a participant under a retirement plan, and that includes certain information and meets certain other requirements.

Reference: ERISA § 206(d)(3)(B)(i); IRC § 414(p)(1)(A)

## **What information must a court order contain to qualify as a QDRO under ERISA?**

QDROs must contain the following information:

- The name and last known mailing address of the participant and each alternate payee
- The name of each pension plan to which the order applies
- The dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee.
- The number of payments or time period to which the order applies

## **Will a QDRO be part of the divorce decree or property settlement?**

Yes. There is nothing in ERISA or the Code that requires that a QDRO (that is, the provisions that create or recognize an alternate payee's interest in a participant's retirement benefits) be issued as a separate judgment, decree, or order. Accordingly, a QDRO may be included as part of a divorce decree or court approved property settlement, or issued as a separate order, without affecting its "qualified" status.

The order must satisfy the requirements described above to be a QDRO.

Reference: See generally ERISA § 206(d)(3)(B); IRC § 414(p)(1)

### **Must a domestic relations order be issued as part of a divorce proceeding to be a QDRO?**

No. A domestic relations order that provides for child support or recognizes marital property rights may be a QDRO, without regard to the existence of a divorce proceeding. Such an order, however, must be issued pursuant to state domestic relations law and create or recognize the rights of an individual who is an “alternate payee” (spouse, former spouse, child, or other dependent of a participant). An order issued in a probate proceeding begun after the death of the participant that purports to recognize an interest with respect to retirement benefits arising solely under state community property law, but that doesn't relate to the dissolution of a marriage or recognition of support obligations, is not a QDRO because the proceeding does not relate to a legal separation, marital dissolution, or family support obligation.

Reference: ERISA § 206(d)(3)(B); IRC § 414(p)(1); Advisory Opinion 90-46A; see *Egelhoff v. Egelhoff* 121 S. Ct. 1322, 149 L. Ed. 2d 264 (2001); see *Boggs v. Boggs*, No. 97-79 (S. Ct. June 2, 1997), see *Boggs v. Boggs*, 520 U.S. 833, 117 S. Ct. 1754 (1997)

### **Who determines whether an order is a QDRO?**

Under Federal law, the administrator of the retirement plan that provides the benefits affected by an order is the individual (or entity) initially responsible for determining whether a domestic relations order is a QDRO. Plan administrators have specific responsibilities and duties with respect to determining whether a domestic relations order is a QDRO. Plan administrators, as plan fiduciaries, are required to discharge their duties prudently and solely in the interest of plan participants and beneficiaries. Among other things, plans must establish reasonable

procedures to determine the qualified status of domestic relations orders and to administer distributions pursuant to qualified orders. Administrators are required to follow the plan's procedures for making QDRO determinations. Administrators also are required to furnish notice to participants and alternate payees of the receipt of a domestic relations order and to furnish a copy of the plan's procedures for determining the qualified status of such orders. It is the view of the Department of Labor that a state court (or other state agency or instrumentality with the authority to issue domestic relations orders) does not have jurisdiction to determine whether an issued domestic relations order constitutes a "qualified domestic relations order." In the view of the Department, 4 jurisdictions to challenge a plan administrator's decision about the qualified status of an order lies exclusively in Federal court.

Reference: ERISA §§ 206(d)(3)(G)(i) and (ii), 404(a), 502(a)(3), 502(e), 514; IRC § 414(p)(6)(A)(ii)

Once we receive the QDRO, our legal section will review the order and inform the participants whether it is approved.

### **Can I request an estimate as an alternate payee?**

No, as long as your ex-spouse is working for the state of Delaware in a pension creditable position, we cannot provide an estimate.

### **Do I have to collect the QDRO portion?**

If you do not wish to collect your QDRO portion, then we require a legal amendment of the order.

### **Whom do I contact if I have questions?**

Please contact the Office of Pensions. Be advised, that we cannot provide legal counseling about the order itself.

## What is a Power of Attorney (POA)?

A power of attorney gives one or more persons the power to act on your behalf as your agent. The power may be limited to a particular activity, such as closing the sale of your home, or be general in its application. The power may give temporary or permanent authority to act on your behalf. The power may take effect immediately, or only upon the occurrence of a future event, usually a determination that you are unable to act for yourself due to mental or physical disability. The latter is called a "springing" power of attorney. A power of attorney may be revoked, but most states require written notice of revocation to the person named to act for you.

Reference: American Bar Association

[https://www.americanbar.org/groups/real\\_property\\_trust\\_estate/resources/estate-planning/power-of-attorney/](https://www.americanbar.org/groups/real_property_trust_estate/resources/estate-planning/power-of-attorney/)

## What Qualifies as Guardianship?

**Guardianship** is the possession by a non-parent of the powers, rights, and duties which are necessary to protect, manage and care for a child. A Guardian has the legal authority to take care of the child as if he/she were the child's parent until the child turns 18 years of age.

Included in a Guardianship Order is a **Custody Order**. Therefore, a Guardian has the same legal authority to care for the child as a parent would. However, unlike a parent, the Guardian cannot be held liable by a third party for something the child has done wrong simply because he/she is the guardian. Additionally, the Court also has the right to limit any of the powers and duties granted to a Guardian.

Reference: Delaware Courts - Family Court

<https://courts.delaware.gov/family/guardianship/>