“Retirement Plans, QDROs, MQCOs, LOIs & Plan Transfers”

Dispute Resolution Center
Annual Conference
Orlando, Florida

Saturday, August 8, 2017

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“Retirement Plans, QDROs, MQCOs, LOIs & Plan Transfers”

PRESENTATION OUTLINE

1. Retirement Plan Types
   A. Qualified vs. Non-Qualified
   B. Defined Benefit vs. Defined Contribution
   C. Personal/Individual

2. Asset & Benefit Transfers
   A. QDRO’s
   B. MQCO’s
   C. LOI’s

3. Taking Distributions from Plans

4. Retirement Death Benefits - Pre & Post Retirement

5. Agreement Writing
Retirement Plan Basics

• What Retirement Plans are called.

– 1. “Retirement Plan” is a generic term which applies to all plans.

– 2. A “Qualified” Retirement Plan generally means the plan is qualified under ERISA, but can also be a government or plan of a non-for-profit entity.

– 3. Plans include Defined Benefit Plans, Defined Contribution Plans, Individual Retirement Plans (IRA’s) and other specialty Retirement Plans.
Retirement Plan Basics (Con’t.)

4. A Defined Benefit Plan provides a monthly benefit when a person retires. In general there is not an immediate cash value or “pool” for distribution, access or transfer. There are exceptions to this.

5. A Defined Contribution Plan has an account value based on contributions of an employee, employer and any investment growth or loss. The employer contribution may be subject to “vesting”. 401(k)’s are included here.

6. An IRA is an Individual Retirement Plan, not covered under ERISA, and is personally held by an individual. No joint IRAs.
Retirement Plan Basics (Con’t.)

- 7. A Tax-Sheltered Annuity or 403(b) Plan is an individual plan defined contribution plan, which may have contributions from an employee and employer. All TSA Plans are only offered through qualifying public or not-for-profit entities including hospitals, government agencies and private agencies, e.g. Legal Aid Societies.

- 8. A 457 Deferred Compensation Plan is a defined contribution plan, which may have contributions from an employee and employer.
Retirement Plan Basics (Con’t.)

Retirement Plan Basics (Con’t.)

• Most importantly, virtually all plans are different, due to the language in the plan document. There is virtually no consistency between plans; each must be reviewed when writing documents or formulating plans for distribution between divorcing spouses.
Retirement Plan Asset & Benefit Transfers

QDRO’s, MQCO’s & LOI’s

$’s In $’s Out
I. Qualified Domestic Relations Order (QDRO)

- Qwe-dro or Quad-dro.
- The word “Qualified” is key.
- Most common use with ERISA Plan, but also can be used in government or public plans, e.g. Florida Retirement System.
- When drafting, work with Plan Administrator.
- Virtually every QDRO will be different due to difference in plan documents.
Retirement Plan Asset & Benefit Transfers (Con’t.)

• Document should be “pre-approved” by Plan Administrator before submitting to Court for signature. Not always available; very problematic.

• A specific account valuation date needs to be stated for Defined Contribution and plans with account values.

• The 10% penalty for early withdraw does not apply when a spouse takes a distribution under a QDRO, as long as it comes directly from the Plan, even if the person is not age 59 ½ or older.
II. Military Qualifying Court Order (MQCO)

- Provided for under the Uniformed Services Former Spouse Protection Act (USFSPA), US Code Title IV, Section 1408.
- MQCO must conform to Department of Defense specifications.
- MQCO much simpler than QDRO.
- MQCO can and should be filed even if service member has not retired.
- Former Spouse needs to file Form DD 2293 with MQCO to Department of Defense when applying for benefits.
- MQCO can provide for Child Support, Alimony and Equitable Distribution.
Retirement Plan Asset & Benefit Transfers (Con’t.)

- Maximum 50% of **DISPOSABLE RETIRED PAY**, which is monthly retirement benefit less allowable deductions.
- 10 – 10 Rule in Military Pensions.
- Survivor Benefits available at extra cost to retiree.

III. Letters of Instruction (LOIs)

- Used for personal Retirement Plans, such as IRAs.
- QDRO is not needed or required for IRA transfer.
- To cause transfer, need 2 letters – 1 for outgoing, 1 for incoming, signed by each party. Examples.
December 5, 2008

Wachovia Securities
12370 S. Cleveland Avenue, 1st Floor
Fort Myers, FL 33907

RE: Letter of Instruction;
Transfer of Funds in Account, Account # 900000003.

Dear Sir/Madam:

Pursuant to this Letter of Instruction, please immediately accept the transfer of $50,000.00 from my Former Husband’s account, Account # 90000002 to my IRA Account, Account # 90000003, pursuant to our Marital Settlement Agreement and Final Judgment of Dissolution of Marriage, copy enclosed for your ready reference.

Please contact me directly should any questions exist in this matter.

Thank you, in advance, for your cooperation in this regard.

Very truly yours,

Sara Jean Smith

Encs.
December 5, 2003

Wachovia Securities
12370 S. Cleveland Avenue, 1st Floor
Fort Myers, FL 33907

RE: Letter of Instruction:
Transfer of Funds in Account, Account # 90000002.

Dear Sir/Madam:

Pursuant to this Letter of Instruction, please immediately transfer $50,000.00 from my IRA Account, as given above, to that of my Former Wife's Account of her choosing, pursuant to our Marital Settlement Agreement and Final Judgment of Dissolution of Marriage, copy enclosed for your ready reference.

Please contact me directly should any questions exist in this matter.

Thank you, in advance, for your cooperation in this regard.

Very truly yours,

Jethro Paul Smith

Enclosed.
Mediation Tip

There is not a “one size fits all” document to transfer Retirement Plan assets.
Taking Distributions From Plans

1. This discussion only concerns plans with existing and available asset balances, e.g. 401(k), 457, TSA & IRA, not monthly/defined benefit plans.

2. Three basic methods of transfers from plans.
   A. Cash distribution – taxable to person who receives it in the year in which it is received. 10% penalty waived if by QDRO.
   B. Trustee-to-Trustee transfer – Non-taxable transfer of assets from one plan to another e.g. Plan to IRA. No constructive receipt; no tax.
   C. Combination – Transfer and distribution.
Mediation Tip

Be careful not to give tax advice when discussing aspects of plan transfers.
Retirement Plan
Death Benefits –
Pre & Post Retirement
Retirement Death Benefits – Pre & Post Retirement

I. Retirement Death Benefits – Pre-Retirement.

Benefits paid by a retirement plan due to the death of an employee prior to his/her actual retirement are dependent upon:

• The type of retirement plan,

• Specific clauses in the plan document and,
• Beneficiary arrangements made consistent with existing law, statute and plan requirements. Especially important here is the ERISA requirement of naming a spouse as primary beneficiary unless written waiver and consent is given otherwise.
Retirement Death Benefits – Pre & Post Retirement (Con’t.)

II. Retirement Death Benefits – Post-Retirement.

Benefits paid by a retirement plan due to the death of an employee following his/her actual retirement are dependent upon:

• The type of retirement plan,

• Specific clauses in the plan document,
Retirement Death Benefits – Pre & Post Retirement (Con’t.)

• Beneficiary arrangements made consistent with existing law, statute and plan requirements and, especially important here is the ERISA requirement of naming a spouse as primary beneficiary unless written waiver and consent is given otherwise.

• Elections made for benefit payments to be made to the retiree. Examples are:
  2. Period Certain.
Mediation Tip

There is a big difference in Retirement Plan Death Benefits depending on whether a person has retired and is receiving benefits, or if they are yet to retire and not receiving benefits.
Agreement Writing

Below is a “checklist” of items which need to be contained in EVERY mediation agreement, when the transfer of retirement assets or benefits is part of the agreement.

1. Definite dates to determine the “marital portion”.
2. A “valuation” or cut-off date for any calculation.
3. A statement regarding the payment of fees for the document, i.e. which party will pay fee or both, and amount of split.
4. A good generic phrase to use is:

“The parties shall engage the services of a 3rd party to prepare a Qualified Domestic Relations Order, “QDRO”, or other like document, to effectuate the transfer of retirement benefits in this Agreement.”
Agreement Writing (Con’t.)

5. If possible note the type of plan, e.g. 401(k), Pension, 457(b), ESOP, TSA.

6. Remember – Pension Plans of Florida Cities CANNOT be divided by QDRO, but other City Plans, e.g. 457 Deferred Compensation Plans, can be divided by QDRO.

7. Specify the amount of the marital portion to be shared, e.g. equally, 50% to each party.

8. Be EXTREMELY careful with loan balances, marital or non-marital, included in balance to be divided or not. Existing loans almost always remain with the Plan Participant.

9. Combination QDROs may be done with different types of plans, with approval of Plan Administrator, but virtually NEVER for 2 people in 1 QDRO.
THE END