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What Is a QDRO and Why Do I Need One?

1. What is a QDRO?

A QDRO is a Qualified Domestic Relations Order. A QDRO assigns retirement benefits from the employee's retirement benefit account to the non-employee spouse during a divorce. It is an actual court order that must be signed by the judge and served on the retirement plan in order to take effect. In most circumstances, a QDRO is stipulated, which means both parties will agree to the provisions and sign the QDRO which avoids the need for a court hearing.

2. What is an alternate payee?

An alternate payee is the non-employee spouse who receives benefits using a QDRO. The employee spouse is called the participant because he or she participates in the retirement plan.

3. Why do I need a QDRO?

The Retirement Equity Act of 1983 is a federal law that requires a QDRO to be entered with the court in order to divide retirement benefits. If your marital settlement agreement has a provision to divide retirement benefits, the retirement plan will not transfer the funds to the non-employee spouse unless a QDRO is entered.

4. What are the benefits of having a QDRO?

A QDRO will assign benefits to the alternate payee avoiding the federal penalty tax of 10% and the California penalty tax of 2.5%. If the retirement plan is a 401(k), the alternate payee will typically have two options to receive the retirement benefits: (1) the alternate payee can take a rollover into an IRA which will defer income taxes; or (2) the alternate payee can withdraw the retirement benefits in cash and avoid the federal and California penalty; however, the alternate payee will still have to pay income tax on the distribution.

5. Are all QDROs the same?

No. The terms in a QDRO depend on the agreement reached in your marital settlement agreement and the provisions of the retirement plan document. Some retirement plans provide for different retirement benefits than other plans. For example, a pension plan may provide benefits in the form of monthly payments, while a 401(k) may provide benefits in a lump sum distribution. You should ask your family law attorney or a QDRO attorney regarding the options available to the alternate payee and the participant after a QDRO is entered because each plan is different.



FOCUSED ON EMPLOYEE BENEFITS LAW

This publication is not intended to provide legal advice on specific matters.

For More Information

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Corey F. Schechter

Mr. Schechter has been a goal-oriented individual from an early age. As a child, he aspired to one day become a professional golfer on the PGA Tour. His desire and hard work to attempt that feat earned him a collegiate athletic scholarship and a spot on the Division I Golf team at Seton Hall University where he began to realize his academic rather than his athletic potential. While attending Seton Hall, Mr. Schechter took a course in Political Science where he developed a deep appreciation for the rule of law in our society and the importance of the judicial system within the United States where disputing parties can be heard and their differences resolved in a civilized manner. It

was at that point that Mr. Schechter had a sudden change of heart regarding his intended career, choosing to major academically in Political Science with one goal in mind – to go to law school and one day become an attorney alongside his father whom he had personally witnessed work so hard to ensure the best possible results for his clients. He is proud to say that he has lived up to that goal.

Mr. Schechter's passion these days is helping others who face complex decisions involving the often difficult situation of securing a financially-sound future for themselves and their families. In doing so, he has chosen to focus his practice on legal matters arising under the Employee Retirement Income Security Act (also known as "ERISA"). His day-to-day work consists of litigating claims on behalf of employees for workers' disability insurance benefits, life insurance benefits, and retirement benefits which have been wrongfully denied by their employers and/or large insurance companies. Mr. Schechter also assists in the designing and preparation of tax-qualified (or "tax-favored") retirement plan documents including defined contribution plans (including 401(k) and profit sharing plans, among others) and defined benefit plans (such as traditional pension plans), and also assists in the designing and preparation of non-qualified deferred compensation plans for employers of all sizes situated throughout the United States.

A large portion of Mr. Schechter's law practice is also devoted, unsurprisingly, to the additional transactional work that is required for the employee retirement benefit plans he helps create, such as preparing required amendments due to legislative changes in the laws regulating employee benefit plans in order for these employee benefit plans to maintain the tax-favored status, preparing discretionary amendments for these employee retirement benefit plans when the employer has a change in circumstances resulting in a desired modification to the terms of the retirement benefit plan they provide to their employees, and preparing stock purchase and redemption agreements for the sale and transfer of shares between an employer and its Employee Stock Ownership Plan (commonly referred to as an "ESOP").

More recently, Mr. Schechter has chosen to dedicate a significant amount of his legal practice to the preparation of state domestic relations orders and Qualified Domestic Relations Orders (or "QDROs" for short) which are typically required in order to divide the retirement benefits of recently-divorced couples where at least one of the former spouses made contributions (or had contributions made on their behalf) to a retirement benefit plan during their marriage. He also reviews QDROs and state domestic relations orders that have previously been prepared by other counsel for compliance with the law and for protection of the interest of the ex-spouse seeking a review of a previously prepared order.

Despite his tireless effort and the natural affinity Mr. Schechter has for performing and providing the highest quality legal services to each of his clients (and the significant expenditure of time that involves), he still manages to do his best to get himself out on the golf course whenever the opportunity presents itself!

Education

- California Western School of Law, J.D. – 2011
- National University of Ireland, Galway (International Human Rights Law) – 2010
- University of San Diego, B.A., Political Science, Magna Cum Laude – 2008
- Seton Hall University (Political Science) – 2004-2006

Awards

- Super Lawyers, Rising Star – 2016

Admissions

- California State Bar – 2011
- Ninth Circuit Court of Appeals – 2012
- United States Tax Court – 2012
- United States District Courts:
 - Southern District of California – 2011
 - Central District of California – 2012
 - Northern District of California – 2012