

# Divorce

## The **impact** on retirement plan accounts



Are you aware of the rules that govern the division of assets?

Retirement plans typically are considered fair game in a divorce proceeding. Whether you are giving up assets or receiving them, you need to be aware of the rules that govern the division of assets.

Your first priority in such matters should be to retain a qualified tax professional with ample experience working on divorces. He or she should be intimately familiar with the rules that apply to qualified retirement plans, such as 401(k)s and 403(b)s, as well as the rules that apply to IRAs. Further, a tax professional or CPA will be able to guide you through the technicalities involved in ensuring that the tax bill associated with retirement plan distributions is apportioned between ex-spouses in a fair manner.

### **For qualified plans, obtain a QDRO**

For a qualified plan—such as a 401(k) or 403 (b)—you will need to obtain a qualified domestic relations order (QDRO), typically from the divorce court. A QDRO is a legal order that recognizes the existence of an alternate payee's (e.g., a spouse's) right to receive a designated percentage of retirement plan assets. The QDRO establishes a spouse's co-entitlement to the assets and makes clear that the receiving spouse is responsible for paying the tax owed on his or her portion of the assets distributed from the retirement account.

Without a QDRO, money from a qualified retirement plan that is distributed to a spouse as part of a divorce settlement is considered taxable to the account owner, as are any early withdrawal penalties that may apply.

### **Get it in writing**

In order to be a valid QDRO, the order must include the following information:\*

- The name and last known mailing address of the plan participant and each alternate payee
- The name of each plan to which the order applies
- The dollar 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
- The QDRO can be a separate order from the divorce court or it can be part of the divorce decree itself

Note that the qualified plan's administrator is responsible for determining whether an order is a valid QDRO.

## It's different for IRAs

To divide an IRA, no QDRO is needed, but the arrangement must be included as part of the court-approved divorce settlement. In this case, the division of assets is treated as a transfer of ownership and the receiving spouse is required to take responsibility for paying any taxes and/or penalties due on the distribution. The receiving spouse may transfer the assets into a rollover IRA and defer taxation. Should the transfer of IRA assets occur outside of a court-approved divorce decree,

the IRA owner will be left "holding the bag" with regard to taxes and any penalties imposed on the transfer.

While on the surface, the division of retirement assets in a divorce proceeding may seem fairly simple, there are many legal "i's" to be dotted and "t's" to be crossed. Whatever the conditions, be sure to rely on trusted legal and tax professionals to help ensure the best possible outcomes for all parties concerned.

\*Source: Department of Labor, "FAQs About Qualified Domestic Relations Orders."

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