

Will I Need a QDRO for My Divorce?

If you are getting a divorce and have a fair amount of retirement assets, chances are you have heard about a Qualified Domestic Relations Order (QDRO). All marital assets, including retirement assets you earned throughout your marriage, are subject to division. However, your retirement plan must be a qualified retirement plan covered by the Employee Retirement Income Security Act (ERISA). For example, you do not need a QDRO to split the assets in an IRA.

What You Need to Know About a QDRO

QDROs guarantee that more than one individual can benefit from the assets in a retirement account. It can be issued as part of a divorce decree or as a separate order. Moreover, QDROs are treated as seriously as alimony, child support, or other orders issued in a divorce.

Below are some of the benefits a QDRO may provide:

1. **You will avoid an early withdrawal penalty:** If you withdraw retirement assets before reaching the age of retirement, you will incur a 10% penalty. With a QDRO, you can transfer the money to your former spouse without dealing with the penalty.
2. **Your former spouse will be responsible for the taxes:** The assets distributed to your former spouse are taxable. However, you will not be responsible for the taxes on your ex-spouse's portion. Once these assets belong to your spouse, you will no longer be on the hook for them.
3. **Your former spouse may receive benefits after you pass away:** QDROs can divert part of the benefits owed to the alternate payee while you are alive or after your death. If you have an interest in securing your former spouse's future, this can be particularly useful.

Receiving QDRO Benefits

If you are expecting to receive assets from your spouse's retirement account through a QDRO, there are numerous ways for you to take your portion.

Here are some of the ways you can receive your portion of your former spouse's retirement assets:

1. **Lump sum:** If you choose this option, you will receive the full amount you are owed. You will also have to pay taxes on it today, so make sure you can fulfill the tax burden before accepting a lump sum.
2. **Annuity:** If you accept an annuity, you will receive your portion in installments, spreading out the tax burden.
3. **A qualified retirement plan:** You do not have to take the money right away, especially if you can afford to wait. Consider leaving it in the QDRO 401(k) or in another plan where they will continue to grow.
4. **An IRA:** You can also roll the money over into an IRA, keeping the assets tax-deferred and entirely under your control.

Contact an Experienced Divorce Attorney Today

If you are getting a divorce and have concerns about your retirement assets, the experienced legal team at Sullivan Law & Associates can provide the knowledgeable legal guidance and advice you need to navigate this complex process.

Contact us today at (949) 565-2793 to set up a free consultation.