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The goal of our monthly QDRO Newsletter is to keep you informed of Hot Topics regarding all aspects of QDROs. If you find our newsletter valuable, please forward it to a colleague. We hope you enjoy this month's topic.

THE QDRO AND THE DIVORCE DECREE/SETTLEMENT AGREEMENT

Some family law attorneys do not appreciate that the QDRO only effectuates the agreement between the parties, so the two must be consistent. The agreement need not contain the technical language of a QDRO; however, a generalized statement (Wife receives 50% of all husband's retirement benefits) invites trouble.

At a minimum, every agreement that divides a retirement plan should include the following:

- 1. Exact legal plan name or names.** The most common reason a QDRO is rejected by the plan administrator is because the plan name provided is incorrect. There are circumstances however when additional general provisions would be appropriate if a question arises as to unknown plans.
- 2. Clear, precise expression of the award, whether by percentage or dollar amount.** Attorneys should be aware of the payment options available under the plan before finalizing the agreement. For example, many defined benefit plans do not allow lump sum distributions beyond a certain amount (often \$5,000). Therefore, an agreement awarding the alternate payee \$100,000 from a plan that does not allow such a distribution will force the parties back into negotiations when the order is rejected by the plan administrator.
- 3. Date when the division occurs, such as date of divorce or other specific date.** This normally corresponds with the date on which marital property rights end but may be a different date. Some plans will only divide benefits at the end of a particular fiduciary period (e.g. the end of a month or end of a quarter). The practitioner should know this when negotiating the agreement.
- 4. The disposition and the extent of a post-retirement surviving spouse benefit should be addressed for all plans that do not allow for a separate interest approach.** This includes both federal government plans and most state and local government plans as well as the military and some private plans.

5. In the Civil Service Retirement System or Federal Employees Retirement System Plan, whether the division is for the gross, net or self-only benefit. Both parties and their attorneys should understand the difference between these terms. The gross benefit under the federal government plans does not have the same meaning that most people infer. Additionally, most non-ERISA, government plans have unique terms or language that should be included in the agreement.

6. For all defined benefit plans, a statement indicating whether the award includes cost of living increases (COLA).

Moreover, every agreement that applies to defined benefit plans should state whether the alternate payee should be considered a surviving spouse and entitled to any pre-retirement death benefit if the participant dies prior to either party commencing benefits and whether the alternate payee should receive benefits for his/her lifetime or the lifetime of the participant.

Every decree that applies to a defined contribution plan should additionally state the following:

1. Whether or not earnings and losses should apply to the alternate payee's award from the date of division to the date of distribution.
2. The disposition of the award if the alternate payee dies before receipt of his/her benefit.
3. Which party is responsible for any outstanding loan balances.

--Conclusion--

If you have any questions regarding our Newsletter or [QdroDesk.com](http://www.QdroDesk.com), please let me know and thank you for giving us the opportunity to share our Newsletter with you. We appreciate your business, and the confidence you have placed in us.

For more QDRO information and online QDRO preparation services, please visit us online at: <http://www.QdroDesk.com>

Sincerely,

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