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QdroDesk.com – February 2017 QDRO Newsletter - Volume 5, Issue 1

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.

IS SURVIVORSHIP INHERENT IN A PENSION?

Family law courts are divided about whether the right of survivorship -- and a survivor benefit -- is an inherent right in dividing a pension. Some courts take the view that survivorship is an inherent right in dividing a pension; other courts have ruled that survivorship is what is termed “an unbundled right,” and a QDRO must explicitly provide for survivorship.

In a divorce, the nonparticipant spouse should never assume that the division of a pension automatically provides for survivorship. In most cases, the employee makes an affirmative election to establish these survivor benefits, and must always keep a current beneficiary designation on file with the plan.

A survivor benefit is a benefit paid by a pension plan to the designated beneficiary of an employee (usually a spouse) upon the death of the employee. The benefits are either pre-retirement survivor benefits or post-retirement. The beneficiary of a pre-retirement survivor benefit receives it in the event of the employee's death prior to retirement; the beneficiary of a post-retirement benefit receives it upon the death of the employee after retirement.

Survivor benefits protect a spouse's interest in a pension. They are not insurance. In many cases, after parties are divorced, a former spouse no longer has an interest in the pension of the other spouse. Certainly this is true if the pension is divided using an immediate offset. Under such an

agreement, the employee keeps his/her interest in the pension and the other spouse takes another asset of equal value in lieu of his/her share of the pension. Therefore, each party receives his/her fair share of the property at the time of the divorce. In such a case, survivor benefits would be unnecessary since the alternate payee received his/her full interest in the pension at the time of the divorce.

On the other hand, if the parties decide to divide the pension using deferred distribution, it is necessary to protect the former spouse's interest in the pension until such time as he or she can receive payment for their portion of the property. When drafting a Qualified Domestic Relations Order (QDRO) to divide a pension at the time the benefits have reached maturity for distribution, it may be necessary to establish the former spouse's entitlement to a pre-retirement survivor annuity, in the event the employee should die between the time the QDRO is drafted and the date the former spouse receives a distribution.

Establishing this survivor annuity protects the former spouse's awarded share of the pension. Further, under some plans it may be necessary to establish post-retirement survivor benefits for the former spouse to protect his/her interest in the pension plan if the employee dies prematurely after the monthly pension payments commence.

--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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