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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.

UNDERSTANDING SEPARATE PAYMENT VERSUS SHARED INTEREST

In a divorce action, when dividing a defined benefit pension plan (DB plan), the QDRO can be drafted using either a separate interest approach or a shared interest approach (sometimes called a shared payment approach).

The key difference between these methods is that separate interest is based on the alternate payee's lifetime and shared interest is based on the participant's lifetime. In dividing a pension, these two approaches produce very different results in terms of the amount of the payments and the duration of the payments to the alternate payee.

A separate interest QDRO allows an alternate payee to be paid for his or her entire life regardless of the longevity of the participant. The benefit paid to the alternate payee is actuarially adjusted to that person's lifetime. Furthermore, in most cases, the alternate payee may elect to commence receipt of benefits anytime after the participant reaches his or her earliest retirement age, regardless of whether the participant retires at that time. Because the benefit is paid for the alternate payee's life, a survivor benefit that would extend payments beyond the death of the participant is unnecessary. However, a qualified preretirement survivorship annuity (QPSA) to secure the alternate payee's right to benefits in the event of the participant's death before retirement must still be included.

A separate interest QDRO provides the alternate payee the greatest flexibility with no financial impact on the participant. Generally, the separate interest approach can only be applied when the participant has not yet begun to receive pension payments. Additionally, in most cases, separate interest QDROs only apply to DB plans governed by ERISA. If the alternate payee dies before he or she begins to receive pension payments, the benefits may be paid to his or her estate, revert to the participant or be absorbed by the plan.

Under the shared interest approach, payments to the alternate payee do not begin until the participant retires and begins to receive a retirement allowance. The alternate payee simply shares in the participant's pension when he or she begins collecting it. Furthermore, payments to the alternate payee end upon the participant's death. The only way to extend payments to the alternate payee after the participant's death is for the participant to elect a qualified joint and survivor annuity (QJSA). This election is made at the time of his or her retirement and is typically irrevocable. Additionally, a reduction is made to the participant's benefit in order to extend the pension payments to a second person (the alternate payee). Often, the fact of this reduction can become a point of contention for the parties. Furthermore, providing a survivor benefit to an ex-spouse alternate payee may preclude the participant from providing a survivor benefit to a subsequent spouse.

Under a shared interest QDRO, if the alternate payee predeceases the participant, the benefits may be paid to his or her estate until the participant dies or it may revert to the participant, depending on plan guidelines.

The terms "separate interest" and "shared interest" do not apply to a defined contribution plan (DC), such as a 401(k), because DC QDROs deal with account balances that have "nothing to do with a lifetime stream of income," as is the case in a separate interest or a shared payment.

Settlement agreements should spell out the terms of the division of the pension. It is not uncommon to see agreements containing clauses such as "the pension will be divided between the parties." Such woefully inadequate language may force one or both of the parties to make choices that may not be consistent with their best interests and force the divorce professional to urgently review his or her E&O insurance.

--Conclusion--

If you have any questions regarding our Newsletter or 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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