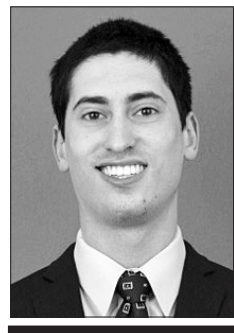


## A Step-by-Step Process for Preparing QDROs



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Once a Divorce Stipulation of Settlement is signed, there are many components that are outstanding. One of these components is preparing Qualified Domestic Relations Orders (QDROs). The contents of this article will explain to the practitioner the procedure for preparing a QDRO and submission to the Supreme Court and the retirement plan.

### The QDRO and Retirement Plans

According to the IRS, “a QDRO is a judgment, decree or order for a retirement plan to pay child support, alimony or marital property rights to a spouse, former spouse, child or other dependent of a participant.”<sup>1</sup>

Retirement accounts may include pension, 401(k), 403(b), 457, Variable Supplement, IRA, and annuity accounts. If either party to the Stipulation has an interest in any retirement accounts, the Stipulation should address whether the spouse who is not titled on the account (the Alternate Payee) is waiving the marital portion. Excluded is the portion earned before the marriage and after the divorce summons is filed.

If there is a waiver of equitable distribution, then no QDRO is necessary because the spouse who is titled on the account (the Participant) is retaining 100% of the retirement account. However, QDROs are usually necessary and it is good practice to check with the retirement plan as some Individual Retirement Accounts (IRA) and annuity accounts do not require a QDRO. If these plans do not require a QDRO, then the attorney should contact the Plan for further instructions of what is required to distribute the account.

### When a QDRO Is Needed

If a QDRO is needed, the attorney should review the Stipulation to determine how many QDROs are required. The Stipulation should address who pays for the preparation and submission of the QDROs. Once this is determined, it is good practice to send a letter to the client advising him or her that a QDRO is necessary for the distribution of a retirement asset, the cost of third-party preparation, and the estimated legal fee and/or retainer amount.

The letter can state that if the client wishes for the attorney to represent him or her with regard to the preparation of the QDROs, the client should retain the attorney. It is suggested that the letter state a deadline for the client to contact the attorney, and the letter should emphasize that if the client does not contact the attorney by the deadline, that the attorney will advise the spouse's attorney that the client is representing himself or herself with respect to the QDROs.



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### Preparing the QDRO

If the client decides to retain the attorney for supervising the QDRO preparation, it is suggested that a third-party company prepare the QDRO. The attorney should contact the third-party company that will be preparing the QDRO. The designated company should be stated in the Stipulation of Settlement. The company should have an information sheet requesting the case index number, the Justice assigned, the attorneys, the names of the spouses, social security numbers, addresses, dates of birth, the date of marriage, the date of the stipulation, and the date of commencement of the divorce action.

The attorney will also send the company the relevant pages of the Stipulation that explain how the retirement accounts are being distributed. Payment for the company to prepare the QDRO will also need to be submitted. The company may need the Participant to complete an authorization form so that the company can contact the Plan to determine the Plan's QDRO regulations.

### Reviewing the QDRO

Once the company prepares a draft QDRO, it will be sent to the attorney for review. The attorney should carefully review the draft to make sure that it matches the language in the Stipulation. It is especially important to make sure that the marital portion dates are correct, and that the monies that the Alter-

nate Payee is receiving conform with the Stipulation. It is also important to make sure that all factual information is correct. If there are any inconsistencies, the attorney should handwrite the requested revisions and send them to the company.

Once the company makes the revisions and the draft QDRO is acceptable, the company will send the QDRO to the Plan for pre-approval, which allows the Plan to indicate whether the language in the QDRO is consistent with the Plan QDRO regulations. The Plan will either indicate that the terms of the QDRO are acceptable and that it is pre-approved, or it will say that the terms are unacceptable and explain what changes need to be made. If it is the latter, the company will make the necessary revisions and resend to the Plan for pre-approval.

### Submitting the QDRO to the Court

Once pre-approval is obtained, it is the responsibility of the attorney to submit the pre-approved QDRO to the Supreme Court for signature by the Judge with Notice of Settlement. The attorney should contact the Court for its specified requirements. However, the attorney should provide a copy of the signed Judgment of Divorce or Separation, proof of service of the pre-approved QDRO on the opposing party or last known attorney for the opposing party, notice of settlement, and relevant pages of Stipulation that discuss the retirement assets, as well as the cover page and signatory pages of the Stipulation with acknowledgment of signature. There should also be an attorney certification pursuant to Section 130-1.1-a, and documentation of pre-approval from the plan administrator.

### Final Steps

Once the Court signs the QDRO and the County Clerk has entered the QDRO, request and obtain a certified copy from the County Clerk. The final step is sending the certified QDRO to the Plan so that the Plan can place it in the Participant's file. If this last step is not completed, the Plan will not record the QDRO, and when the Participant retires, the Plan will not send money to the Alternate Payee or divide the account. Once the QDRO is placed in the Participant's file, the Plan will send the attorney written acceptance or acknowledgment. Once the acknowledgment is received, the QDRO is completed and the Plan will follow its terms.

Creating a checklist of the above steps can be helpful to the practitioner as well as setting reminders to periodically follow-up on the status of each step.

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1. *Retirement Topics – QDRO – Qualified Domestic Relations Order*, IRS, (last updated July 3, 2018), <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-qdro-qualified-domestic-relations-order>.