

The Basics of Retirement Plan Division

California community property law applies to all assets acquired during marriage, including retirement accounts. That means that regardless of whose name is on the plan, retirement assets are subject to being divided between both spouses. Although one of the more complex issues in family law, here are the basics you need to know about retirement division and how it relates to California divorce. In general, retirement benefits are a form of employment compensation, just like a salary. Therefore, it is considered an asset that can be divided in a divorce, and yes, retirement plans can and are routinely divided during divorces.

How are Retirement Plans Divided in a California Divorce?

The first step in dividing retirement accounts is determining how much of the plan is community property and how much of the plan is separate property. At first glance, this may appear to be simple. After all, can't you just look at a statement as of the date of separation? This is a common misconception and one that can be very harmful to you if you are unaware of how retirement accounts work.

Unlike a bank account, which has very little return, if any, on investment with interest, retirement accounts are extremely active and can vary in value on a daily basis. For many (not all) retirement accounts, a Qualified Domestic Relations Order (QDRO) or Domestic Relations Order (DRO) is the vehicle used to divide the plans. Other types of retirement accounts, like IRAs, are structured as a transfer or a rollover.

What is a QDRO or a DRO?

[QDRO](#) (pronounced "Kwa-droh") is an abbreviation for a "[Qualified Domestic Relations Order](#)." [DRO](#) is an abbreviation for a "[Domestic Relations Order](#)." The technical definition of a QDRO or a DRO is that it is a domestic relations order that creates or recognizes the existence of another person's (alternate payee's) right to receive some or all of the benefits payable to the retirement plan owner. Since retirement accounts are in the employee spouse's name, without a QDRO, the retirement plan has no way of identifying the other spouse's interest in the retirement account.

There are some basic vocabulary terms you should be familiar with to help you better understand QDROs/DROs.

- The Plan: what the retirement account is typically referred to, regardless of whether it is a 401(k), 403(b), pension, or other type of retirement benefit
- Plan Administrator: typically the employer who maintains the plan, or else the association, committee, or other similar group representing the parties maintain the plan
- Plan Participant: the employee/owner of the plan

- Alternate Payee: the spouse receiving a portion (or all) of the employee's benefits under the Plan

All QDROs/DROs must be in writing and be specific enough for the Plan Administrator to implement. There are two basic ways of dividing defined contribution plans: by a percentage and by a dollar amount.

The most equitable and accurate way for an equal division of the community property interest in a retirement plan is by a percentage. This method can accurately account for any and all pre-marital and post-marital contributions to the plan and takes into account the naturally occurring fund fluctuations. The disadvantage is that neither the Plan Participant nor the Alternate Payee will know exactly how much of the fund will be distributed.

The other main way of dividing a retirement plan is by a straight dollar amount. Often times this is used when the plan is being used to equalize or offset other assets. The benefit to this method is that each party knows exactly what will be distributed; however, the end result can be unequal based on the fund fluctuations.

Conclusion

Understanding how retirement division works is very difficult to accomplish, especially with only relying on articles you read on the internet. Retirement assets are often times the most valuable community asset, and it's therefore a good idea to obtain assistance with protecting your rights. For more information and specific advice for your situation, please feel free to [contact us](#).