



The In Marriage QDRO®



What We Will Discover

- A tool previously associated with divorcing spouses works for married couples, allowing them unrestricted access to retirement benefits without penalty.
- Unrestricted, non-penalized access offers married couples more freedom in investment and provides more estate planning and protection opportunities for those who serve them.



What is a QDRO?

A **domestic relations order** that is signed by the appropriate **state court judge** that:

- Recognizes the joint marital ownership interest in a retirement plan; and
- Provides for the plan benefits between the parties; and
 - Plan Participant
 - Alternate Payee
- Is approved (qualified) by the retirement plan administrator.



Who May be an Alternate Payee?

In drafting the 1984 amendment to ERISA, Congress did not restrict use of the QDRO to divorcing parties.

- ERISA § 206(d)(3)(K); 29 USC § 1056(d)(3)(K) defines “alternate payee” as:
(K) The term “alternate payee” means any **spouse**, former spouse, child, or other dependent of a participant **who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.**
- U.S Tax Code, 26 U.S.C. § 414(p)(8) defines alternate payee as:
(8) The term “alternate payee” means any **spouse**, former spouse, child or other dependent of a participant **who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.**



Divorce is Not Required

On the Department of Labor website,
Frequently Asked Question No. 4 states the following:

**“Must a domestic relations order be issued
as part of a divorce proceeding to be a QDRO?”**

No. A domestic relations order that provides for child support or *recognizes marital property rights* may be a QDRO, without regard to the existence of a divorce proceeding. Such an order, however, must be issued pursuant to state domestic relations law and create or recognize the rights of an individual who is an alternate payee (spouse, former spouse, child, or other dependent of a participant).”

- <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/qdros.pdf>



The State Court Process

Section 1056(d)(3)(c) (ii) defines “domestic relations order” as:

1. Any judgement, decree, or order (including approval of a property settlement agreement)
2. Which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, an
3. is made pursuant to a State domestic relations law (including a community property law)



Plan Qualification Process

Section 1056(d)(3)(c) defines “qualified domestic relations order” as a domestic relations order which:

4. Creates or recognizes the existence of an alternative payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan.
5. Specifies name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,
6. Specifies the amount or percentage of the participant’s benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined
7. Specifies the number of payments or period to which such order applies,
8. Specifies each plan to which such order applies.
9. Does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan.
10. Does not require the plan to provide increased benefits (determined on the basis of actuarial value), and
11. Does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order





The Currency of Access: Applications of an IMQ



Current Modes of Access

- Retire
- Quit
- Divorce
- Plan Loan
- Hardship Distributions
- In Service Distributions
- In Marriage QDRO®



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Example:

Delay Required Minimum Distributions

Scenario: Mr. Richardson owned his own business and was still working at age 69. He had accumulated over \$800,000 in his 401(k) plan. He knew that he would be required to start taking RMDs at age 70 ½, but neither needed nor wanted the extra income. His wife, to whom he had been married for over 20 years, was 14 years younger than him (age 55).



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Required Minimum Distributions for Mr. Richardson at age 70 ½ with \$800,000 in his 401(k) would be approximately:

Year One:	\$28,000 (pre-tax)
Year Two:	\$29,000 (pre-tax)
Year Three:	\$31,000 (pre-tax)

By age 82, annual RMDs would be approximately \$42,000

- What would the benefit be if the total amount in the 401(k) were allowed to continue to grow?
- What are the savings to Mr. and Mrs. Richardson if the RMDs are avoided?



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Example:

Transfer of Retirement Benefits as Part of an Estate Plan

Scenario: Mrs. Richardson was Mr. Richardson's second marriage. Prior to his marriage to her, Mr. Richardson started and grew his business. It was his largest asset and he intended to transfer the business to his children at his death. While his children from his first marriage liked Mrs. Richardson, he was concerned that they would not continue to care for her financially as he desired.



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Example: Long Term Care Planning

Scenario: Mr. Smith's wife had dementia and required nursing home care. He was concerned about the loss of her income to the nursing home.

His Income:

Social Security (\$1,786)

Pension (\$1,714)

\$3,500

Her Income:

Social Security (\$1,804)

Pension (\$1,936)

\$3,740



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We used the IMQ to transfer her pension to her husband.

His Income with IMQ:

$$\$3,500 + \$1,936 = \$5,436$$

Her Income with IMQ:

$$\$3,740.19 - \$1,936.19 = \$1,804$$

- In one year, we saved over **\$23,234** just in income.



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Example: Funding ROTH IRA

Scenario: Mr. and Mrs. Harris, both aged 40, exceed the income restrictions for creation of a ROTH IRA.



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Mr. and Mrs. Harris, both age 40, exceed the income restrictions for creation of a ROTH IRA.

- For a married couple, Modified Adjusted Growth Income must be under \$204,000.
- Annual contributions to a ROTH IRA are capped at \$7,000.

Movement of Retirement Plan Assets to ROTH IRA	
	Plan Participant's 401k or other ERISA based retirement plan
	↓
No income or contribution restrictions	Alternate Payee IRA
Subject to income taxes	↓
	Alternate Payee ROTH IRA



Miscellaneous Uses of the In Marriage QDRO

- Pay Off Debt by Liquidating without 10% Penalty
- Purchase Alternative Investments through Self Directed IRA
- Purchase “air” time in spouse’s retirement
- Rolling funds to the older spouse (to access earlier)
- Married, but filing separately (lower tax bracket)
- Parties that are physically separated, but not wanting to divorce (property settlement)



Plans Eligible for an In Marriage QDRO®

All ERISA based plans, including

- 401k
- 401(a) and 403(b)
- Pension plans
- Qualified Profit-Sharing plans
- Deferred compensation 457 plans
- Some state & metro pension plans (depending on statutory language and whether it includes the requirement of a divorce or legal separation)
- (Maybe) Federal Thrift Savings Plan (TSPs)

Plans not eligible

- Military pensions
- Federal pensions (FERS and CSRS)
- Railroad retirement plan
- IRAs & SEPS (except there may be a work around – stay tuned!)



Know the Transfer Rules

Example: I have a client who is 10 years older than spouse and would love to avoid RMDs. But his \$750,000 is in an IRA, not a 401k. Can anything be done?

* Does participant have a small 401k from a previous employer that was never rolled over?

* Does participant have a side business that can be incorporated into an LLC whereby a solo 401k can be opened?



Know the Transfer Rules

		Roll To							
		Roth IRA	Traditional IRA	SIMPLE IRA	SEP-IRA	Governmental 457(b)	Qualified Plan ¹ (pre-tax)	403(b) (pre-tax)	Designated Roth Account (401(k), 403(b) or 457(b))
Roll From	Roth IRA	Yes ²	No	No	No	No	No	No	No
	Traditional IRA	Yes ³	Yes ²	Yes ^{2,7} , after two years	Yes ²	Yes ⁴	Yes	Yes	No
	SIMPLE IRA	Yes ³ , after two years	Yes ² , after two years	Yes ²	Yes ² , after two years	Yes ⁴ , after two years	Yes, after two years	Yes, after two years	No
	SEP-IRA	Yes ³	Yes ²	Yes ^{2,7} , after two years	Yes ²	Yes ⁴	Yes	Yes	No
	Governmental 457(b)	Yes ³	Yes	Yes ⁷ , after two years	Yes	Yes	Yes	Yes	Yes ^{3,5}
	Qualified Plan¹ (pre-tax)	Yes ³	Yes	Yes ⁷ , after two years [*]	Yes	Yes ⁴	Yes	Yes	Yes ^{3,5}
	403(b) (pre-tax)	Yes ³	Yes	Yes ⁷ , after two years	Yes	Yes ⁴	Yes	Yes	Yes ^{3,5}
	Designated Roth Account (401(k), 403(b) or 457(b))	Yes	No	No	No	No	No	No	Yes ⁶



Identify Opportunities

- Mine your current & previous client base. Do you have any clients with 401k plans you wanted to help, but couldn't.
- Heard of any corporations that have frozen their pension, but not giving the employee immediate distribution rights. (e.g. BASF)
- Any clients complain about their 401k investment opportunities. They may not have enough in their 401k to justify an IMQ, but fellow co-workers might.



The Risks

- Death (Attorney)
- Divorce (Attorney)
- Bad Financial Investment (Financial Advisor)
- Problematic Plan Admin



“Should you” is a Different Question than “Can you”

- Spouse #1 can donate to his Spouse #2
- In Marriage QDRO can transfer up to 100% of any qualified fund
- Wife can divorce husband or Vice Versa.
- The In Marriage QDRO satisfies the CAN question
 - It is legal.
 - It is an actual transaction.
 - Up to couple to answer the SHOULD question



Thank You!



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