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Ken Berry • Apr. 12, 2023



Suppose you're in the midst of divorce proceedings and trying to divvy up assets in a reasonable manner. Some are easily divided, but others can cause more complications. For instance, how does one spouse gain access to the vested benefits in the other spouse's 401(k) plan? In this case, a qualified domestic relations order, QDRO for short, may do the trick.

Before we go any further, be aware that dealing with QDROs is usually not a do-it-yourself proposition. Be sure to enlist the services of experienced professionals.

How it works: A QDRO is issued by a court with jurisdiction or comparable

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Key point: Unlike other distributions from 401(k)s and qualified plans, QDRO distributions made prior to age 59½ aren't subject to an early withdrawal penalty of 10% of the amount. This is a special exception to the penalty written into the tax code. So you can pocket a distribution pursuant to a QDRO without incurring a penalty, but regular income tax still applies.

The QDRO must provide certain information, including the following:

- The names and addresses of the retirement plan account, the alternate payee and any other recipient of payments.
- The dollar amount or percentage being distributed to the alternate payee.
- Important payment details such as amount, form and timing of payments.

Before the QDRO is implanted, you must have a judge sign off on it. Then the alternate payee submits it to the administrator of the retirement plan. There are strict procedures to be followed. The administrator can take up to 18 months to respond to the parties. It is preferable to have the QDRO finalized before the divorce to ensure that the terms will be met.

Also, it's a good idea to submit a QDRO promptly to ensure you receive the full amount you're entitled to. Otherwise, you may be shortchanged if the plan participant dies before the QDRO is approved or if they start taking distributions.

There are four basic payout options for alternate payees to consider:

- 1. Lump-sum distributions:** Although you still owe tax on the full amount, you can avoid the usual 10% early withdrawal penalty.
- 2. Rollover:** There's no current tax due and you can invest the proceeds without tax erosion.

3. Regular distributions: You can choose to take distributions like the plan

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