

QUALIFIED DOMESTIC RELATIONS ORDERS

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PLAN ADMINISTRATION BEFORE AND AFTER THE QDRO

Presented by

Linda Russano Morra

Brucker & Morra, A Professional Corporation Los
Angeles, California

SUMMARY OF TOPICS

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BEFORE: Accept or Reject?

- The requirements in a nutshell
- Perfect v. good enough - is there a difference?
- Is it too late for a QDRO?
- What to do with benefit while reviewing QDRO

SUMMARY OF TOPICS

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AFTER: Thorny Administration Issues

- Allocating earnings/losses
- Vesting
- Loans
- When can you pay?

BEFORE - ACCEPT OR REJECT? **The Requirements in a Nutshell**

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Before it can be a QDRO, it must be a DRO.

- A judgment, decree or order, including approval of property settlement agreement
- That is made pursuant to state domestic relations law

BEFORE - ACCEPT OR REJECT? **The Requirements in a Nutshell**

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- That relates to the provision of child support, alimony or marital property rights
- For the benefit of a spouse, former spouse, child or other dependent

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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To constitute a QDRO, a DRO must:

- Create or recognize the alternate payee's right to receive, or assign to the alternate payee
- All or a portion of the benefits otherwise payable with respect to a participant under the plan

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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To be a QDRO, the DRO must contain:

- Name and last known mailing address of Participant and Alternate Payee;
- The name of the plan to which the order relates.

BEFORE – ACCEPT OR REJECT? The Requirements in a Nutshell

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- Amount or percentage of P's benefit to be paid to AP, or manner in which the amount or percentage is to be determined.
- The number of payments or period to which the order applies.

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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The DRO must not require the plan to:

- Provide any type or form of benefit or option not otherwise provided under the plan (except it may permit early payout to the alternate payee ;
- Pay a joint and survivor annuity to the alternate payee and his or her subsequent spouse.

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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- Provide increased benefits (determined actuarially).
- Pay benefits that are assigned to another alternate payee under a prior QDRO.

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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Who can be an alternate payee?

- Spouse
- Former Spouse
- Child
- Other dependent

All of these relate to the participant.

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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QDRO Procedures

All plans must have written QDRO procedures

QDRO procedures may contain default interpretations
but clear disclosure of the defaults is critical

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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What actions must a plan administrator take when it receives a DRO?

- Acknowledge
- Review
- Notify

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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What must the plan administrator do with the participant's benefits upon receipt of a DRO?

- Segregate
- Account separately
- Freeze disbursements

BEFORE – ACCEPT OR REJECT? **The Requirements in a Nutshell**

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Tips

- Have good written procedures
- Follow them - No ad hoc determinations
- Disclose the interpretation, including default provisions. Give parties a chance to object.
- Do not provide customized language to parties or their counsel

BEFORE – ACCEPT OR REJECT? Perfect v. Good Enough - Is There a Difference?

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Substantial compliance

- Plan administrators generally have applied the QDRO requirements relatively strictly.
- On the other hand, courts often have applied the requirements more liberally, sometimes straining to approve a QDRO in an effort to obtain a fair and equitable result.

BEFORE – ACCEPT OR REJECT? Is It Too Late For a QDRO?

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What if the participant is in pay status when the DRO is served on the plan?

- Retirement election irrevocable
- Share each payment when made (no separate interest)
- Rights of current spouse may supersede alternate payee's rights to survivor benefits

BEFORE – ACCEPT OR REJECT? Is It Too Late For a QDRO?

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What if the Participant is deceased when the DRO is served on the Plan?

- Answer depends upon jurisdiction
- Answer depends upon plan terms
- Answer depends upon whether participant is remarried

AFTER – THORNY ADMINISTRATION ISSUES

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Step 1 – read the proposed QDRO

Step 2 – read the plan documents

Step 3 – read the QDRO procedures

AFTER – THORNY ADMINISTRATION ISSUES

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Allocating earnings/losses

- What does the QDRO say?
- If silent, is there a default?
- What is the division date?
- Are historical records available?

AFTER – THORNY ADMINISTRATION ISSUES

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Vesting

- Alternate payee subject to same vesting as participant

Participant loans

- QDRO should state how loans are treated and QDRO procedures should contain a default provision

AFTER – THORNY ADMINISTRATION ISSUES

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When can you pay?

Earliest retirement date under the statute

- If plan permits distributions immediately upon employment termination, ERD is participant's age 50. Otherwise alternate payee must wait.
- Plan document can permit immediate payment to alternate payee
- Be careful with prototypes and volume documents