QUALIFIED DOMESTIC RELATIONS ORDERS / ERISA PLANS

Qualified Domestic Relations Orders ("QDRO") are necessary to divide retirement plans qualified under the Employment Retirement Income Security Act ("ERISA"). The specific terms of each QDRO depend upon the agreements made in a Marital Settlement Agreement or ordered by the Judge.

There are two major types of retirement plans that can be divided via a QDRO. 1) Defined Contribution Plans and 2) Defined Benefit Plans.

Defined Contribution Plans are generally 401(k) or Profit Sharing Plans; however, there are a couple of other variations. The value of these plans depends upon the investments in each participant's (employee's) account. Since the value of the benefits fluctuates, it is important that the QDRO indicate whether market gains or losses are included or not. Most plans will allow alternate payees to transfer their share of funds to another retirement plan or IRA once the plan is divided.

Factors that influence the amount received from a defined contribution plan are: a) whether or not the benefits are vested, b) whether or not a loan has been taken from the plan, and c) whether or not the benefits are all marital or not. All of these factors need to be taken into account in the QDRO as well as what happens to the benefits if either spouse dies.

Defined Benefit Plans are traditional pension plans which provide for a monthly payment once the participant reaches a certain age. While these plans can be divided at the time of the divorce, it is often not possible to receive the benefits until years later. It may be necessary to hire an actuary to determine the value of a pension plan.

Factors that influence the amount received from a defined benefit plan are: a) whether or not the benefits are vested, b) whether or not the plan has been frozen, c) whether or not the benefits are all marital or not and d) whether or not the participant had commenced benefits. Some plans may also have a cost of living increase included or some other type of benefit increase. Pension benefits usually require the plan administrator to do an actuarial adjustment to the amount of the benefit based upon the age that the participant or alternate payee starts benefits. In other words, the younger the individual is when the benefits commence, the smaller the benefit amount paid since the benefits pay for life and life expectancy is the same. It is important that specific provisions relating to the death of the participant and alternate payee be included in the QDRO as well.

Another type of ERISA plan is known as a **Hybrid Plan** and Cash Balance Plans are the best examples of these plans. These plans are defined benefit plans, but have a specific account balance which generally can be transferred to the alternate payee at the time the QDRO is approved.

Supplemental Executive Retirement Plans or **Top Hat Plans** are benefits offered to certain executives and business owners. These plans can be in the form of a defined contribution or defined benefit plan. These plans are often non-qualified retirement plans under ERISA law and may or may not be able to be divided via a QDRO.

Deferred Compensation Plans are also benefit or bonus plans offered to certain employees, which may include a variety of stock or equity interest plans some of which can be divided by a divorce order.

If you are not sure of the terms of the plan, please let me help you determine what kind of plan you are working with, whether it can be divided and how best to divide it upon divorce.