

# QUALIFIED DOMESTIC RELATIONS ORDERS

## ADMINISTRATION MANUAL

### **Rule**

A retirement plan cannot pay retirement benefits to anyone other than the participant unless the participant dies or unless there is a Qualified Domestic Relations Order.

### **Definitions**

Domestic Relations Order (DRO) – judgment, decree or court order relating to the payment of child support, alimony or marital property to an Alternate Payee, and which is made pursuant to a state domestic relations law.

Qualified Domestic Relations Order (QDRO) – a DRO that has been determined to be qualified, i.e., which complies with the requirements of Section 414(p) of the Internal Revenue Code.

Alternate Payee – person who is either the spouse, former spouse, child or other dependent of the participant, and to whom benefits are payable in accordance with the QDRO.

Plan Administrator – Either the committee appointed to administer the plan or the company that sponsors the plan.

### **Property Settlement**

If a participant and his/her spouse are divorcing, they must divide up their assets and reach a property settlement.

**Option 1** - The parties trade assets outside the plan, i.e., you get the house, I'll keep the retirement plan. Because the exchange of assets is done outside the plan, the participant remains the owner of the retirement plan assets and the plan is never involved in a QDRO.

**Option 2** - The plan becomes a key part of the property settlement and all or a portion of the plan's assets are assigned to the spouse.

Over 90% of property settlements are handled in accordance with Option 1. This is why there are relatively few QDROs.

## **Time of Payment**

A plan can provide that the QDRO benefit is payable:

- 1) as soon as administratively feasible,
- 2) at the participant's (not the Alternate Payee's) earliest retirement age under the plan (defined as the earlier of the date of termination, early retirement date or age 50) or
- 3) when the participant terminates employment.

We recommend immediate payment (if permitted by the plan) so that the plan 1) does not have to keep track of the Alternate Payee, 2) does not need to forward plan notices and Summary Plan Descriptions to the alternate payee, and (if applicable) 3) does not have to continue to provide investment fund information to the Alternate Payee.

## **Tax Treatment**

### **Former Spouse**

QDRO payments are considered taxable income to the former spouse. The former spouse has the option of rolling over the distribution to an IRA or qualified plan to defer income taxes. Payments are subject to mandatory 20% income tax withholding unless there is a direct rollover of the benefit to an IRA or qualified plan.

### **Children**

If the Alternate Payee is the participant's child or other dependent, the participant is responsible for all income taxes.

### **10% Pre-59½ Tax**

QDRO payments are not subject to this additional 10% tax.

## **Preparation of QDRO**

Generally, the Alternate Payee and his/her attorney are responsible for and must bear the cost of preparing the QDRO.

The plan administrator may communicate directly with the participant and Alternate Payee or may communicate with their attorneys.

For ease of administration, the Alternate Payee or his/her attorney should either 1) use approved sample QDRO document or 2) if he/she use his/her own document, he/she should provide draft QDRO for review before it is finalized.

## **Review of QDRO**

The Plan Administrator is responsible for reviewing a DRO and determining if it is qualified, i.e. it is a QDRO. Because the QDRO is legal document, the Plan Administrator may request that an attorney review it on his/her behalf.

### Expenses for Review of QDRO

For a defined contribution plan participant, the expense of having the QDRO reviewed can be charged against the individual account of the participant who is a party to the domestic relations order. The plan expenses should be “reasonable” and the plan document must allow for this. For a cash balance or defined benefit plan, the cost of QDRO review cannot be charged to the affected participant’s account.

## **Procedures**

### **I. IF ALTERNATE PAYEE OR HIS/HER ATTORNEY CONTACTS PLAN ADMINISTRATOR REQUESTING SAMPLE QDRO DOCUMENT.**

1. Provide the following documents to the Alternate Payee or his/her attorney:
  - Letter 1
  - Sample Qualified Domestic Relations Order
  - Summary Plan Description
  - Plan Administrator QDRO Procedures
  - QDRO Requirements Checklist
2. Attorney prepares and submits draft QDRO to plan administrator for review.

### **II. IF YOU RECEIVE A DRAFT (“UNSIGNED”) QDRO:**

1. Forward the following documents to the Alternate Payee or his/her attorney:

- Letter 2.

Send the following items if you did not send them previously

- Letter 1
- Plan Administrator QDRO Procedures
- QDRO Requirements Checklist

2. Determine if the QDRO was based on the sample QDRO document, or if the attorney drafted his/her own QDRO. If the attorney used the sample QDRO, determine if you would like the plan’s attorney to review the DRO or if you will be reviewing the DRO. If the Alternate Payee’s attorney did not use the sample QDRO, forward draft QDRO to your attorney for review.

3. Notify recordkeeper of pending QDRO. Direct recordkeeper and other affected parties not to make benefit payments, withdrawals or loans to the participant until DRO has been either paid or denied. If benefits are in pay status, segregate the Alternate Payee's benefits. Amounts that are not in pay status are not required to be segregated during the determination period.
4. Review benefit calculation language in QDRO. Is language specific? Determine who will calculate benefit to alternate payee. Collect data and commence calculation.
5. Complete QDRO Requirements Checklist to determine if DRO is a QDRO.
6. Notify Alternate Payee's attorney if document is acceptable or needs changes.

### **III. WHEN YOU RECEIVE A FINAL SIGNED QDRO:**

1. Forward the following documents to the participant, Alternate Payee and both attorneys:

- Letter 2

Send the following items if you did not send them previously:

- Letter 1
- Plan Administrator QDRO Procedures
- QDRO Requirements Checklist

2. Determine if you or your attorney have previously reviewed the draft QDRO. If this is a new QDRO, go to Step II.2. above. If you have previously reviewed a draft of the QDRO, review final QDRO to verify all requested changes were made.
3. Notify recordkeeper of pending QDRO. Direct recordkeeper and other affected parties not to make benefit payments, withdrawals or loans to the participant until QDRO has been either paid or denied. If benefits are in pay status, segregate the Alternate Payee's benefits. Amounts that are not in pay status are not required to be segregated during the determination period.
4. Complete QDRO Requirements Checklist to determine if DRO is a QDRO.
5. If DRO is a QDRO, send Letter 4. If DRO is not qualified, send Letter 5.

### **IV. BENEFIT CALCULATION**

1. Gather information and calculate benefit due Alternate Payee. Kravitz may be retained to provide these services.
2. Using Letter 3, forward calculations to participant and Alternate Payee for approval.

## **V. BENEFIT PAYMENT**

1. After DRO is deemed to be a QDRO, forward benefit payment election forms and a copy of the QDRO to Alternate Payee.
2. Review forms to be sure they are complete.
3. Send completed election forms to Kravitz to process benefit payment. A lump-sum payment to the spouse/Alternate Payee is subject to 20% mandatory income tax withholding unless the Alternate Payee elects a direct rollover to an IRA or another qualified plan.
4. Forward blank beneficiary designation forms to the participant in the event he/she would like to change his/her plan beneficiary.

### **Kravitz**

Kravitz is available to explain the QDRO procedures and forms. We can calculate the benefit due the Alternate Payee. Because the determination of a DRO's qualified status is a legal issue, we cannot review a DRO to determine if it is qualified.

## QDRO REQUIREMENTS CHECKLIST

Participant's Name: \_\_\_\_\_

SSN: \_\_\_\_\_

### TO BE QUALIFIED, THE PROPOSED DRO MUST CONTAIN THE FOLLOWING PROVISIONS

1.	The instrument is a judgment, decree or court order relating to the provision of child support, alimony, or marital property rights made pursuant to a State domestic relations law.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	Participant's name.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	Participant's last known mailing address. (The plan administrator's independent knowledge of the participant's address even if the address is not stated in the QDRO is sufficient.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	Alternate payee's name (must be spouse, former spouse, child, or other dependent of participant.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	Alternate payee's last known mailing address. (The plan administrator's independent knowledge of the alternate payee's address even if the address is not stated in the QDRO is sufficient.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.	Name of plan or plans to which the DRO relates.	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.	Clear indication of the alternate payee's relationship to the participant.	<input type="checkbox"/> Yes <input type="checkbox"/> No
*8.	Clear indication of amount or percentage of participant's benefit to be paid to the alternate payee or how to determine the amount or percentage to be paid to the alternate payee). [Note: The amount or percentage may not exceed 100% of participant's current vested benefit.]	<input type="checkbox"/> Yes <input type="checkbox"/> No
*9.	Clear indication of number of payments to be made to the alternate payee (or period for which payments are required).	<input type="checkbox"/> Yes <input type="checkbox"/> No
*	Factors to be considered under Items 8 and 9 include (but are not limited to): valuation date (or interim valuation date), after tax contributions, cost-of-living increases, life expectancy rates, distribution of certain in-kind assets, and death of alternate payee [see footnote on page 2 regarding possible prohibition of payment of death benefit to a non-alternate payee].	

## QDRO REQUIREMENTS CHECKLIST (Continued)

**\*\*10.** Payment commencement date:

DRO requires immediate payment (i.e., upon approval of the order if the plan permits)

**OR**

DRO requires payments to begin on or after the earlier of

- (a) the date on which the participant is entitled to a distribution under the plan, or
- (b) the later of:
  - (1) the date the participant reaches age 50, or
  - (2) the earliest the participant could receive benefits if he separated from service

☐ Yes    ☐ No

**\*\*11.** DRO does not alter the amount or form/type of benefits/options the plan provides.

☐ Yes    ☐ No

**12.** DRO does not conflict with a prior QDRO.

☐ Yes    ☐ No

**13.** DRO specifies how outstanding participant loans will be absorbed or allocated.

☐ Yes    ☐ No

**\*\*** When determining whether a DRO satisfies Items 10 and 11, examine the plan for any provision that permits payment to an alternate payee whether or not the participant is otherwise eligible to receive plan benefits. In addition, any form of payment that includes a non-alternate payee [e.g., a J&S annuity over the lives of the alternate payee and his/her subsequent spouse] may violate the anti-alienation rules of IRC401(a)(13) (i.e., payment is made to an individual other than the participant or an alternate payee).

**All items must be marked "Yes" for DRO to be qualified.**

Administrator's Determination: DRO is a QDRO                      *(circle one)*                      Yes                      No

Completed by: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **PLAN ADMINISTRATOR QDRO PROCEDURES**

This statement of procedures governs your qualified retirement plan's ("Plan") process for determining the qualified status of domestic relations orders submitted to the Plan Administrator. A copy of this statement of procedures may be obtained by an eligible Participant or beneficiary of the Plan by making a written request to the Plan Administrator. Although this statement of procedures shall govern the Plan's determination of the qualified status of domestic relations orders, it does not supersede other provisions of the Plan or create substantive rights or an entitlement to benefits other than those provided under the terms of the Plan.

Upon the Plan's receipt of a domestic relations order, the following procedures shall be applied:

1. **Procedure upon receipt of a domestic relations order.**

- a. The Plan Administrator shall promptly notify both the Participant, and any Alternate Payee, that the order has been received and forwarded to the Plan's attorneys for review. This notice is to be sent to the address specified in the order or, if the order fails to specify an address, to the last known address of the Participant or Alternate Payee.
- b. If the Participant's benefits are in pay status, the Plan Administrator shall segregate any amounts which, under the order, would be made to the Alternate Payee as if such order were determined to be qualified immediately upon receipt. Amounts that are not in pay status during the determination period are not required to be segregated. Amounts required to be segregated from a defined benefit plan are to be placed in an escrow account. Amounts required to be segregated from a defined contribution plan are to be placed in either a separate account within the Plan or an interest bearing escrow account.
- c. The Plan Administrator shall notify the Participant and the Alternate Payee of the determination of the qualified status of the order. Such notice shall be sent to the addresses specified in the order or, if the order fails to specify an address, to the last known address of the Participant or Alternate Payee.
- d. After the determination of qualified status is made, or after 18 months from the date on which the first payment would be required to be made under the domestic relations order if such determination has not been resolved, the Plan Administrator shall make payment of the segregated amounts pursuant to the requirements of Procedure 3.
- e. Each Alternate Payee may be permitted to designate a representative for receipt of copies of notices that are required to be sent to such Alternate Payee with respect to the order.



2. **Procedure to determine the qualified status of domestic relations orders.**

- a. Any domestic relations order received by the Plan Administrator may be forwarded to and reviewed by the Plan's attorney for compliance with the requirements contained in this procedure.
- b. An order shall be determined to be a qualified domestic relations order ("QDRO") only if it satisfied all of the requirements listed in this procedure. If an order does not satisfy all of the listed requirements, it will be determined to be a non-qualified domestic relations order. Any order previously determined to be non-qualified that is resubmitted in an amended form shall be subject to all the rules and requirements of these Procedures as if such order were received for the first time.
- c. The order must be a "domestic relations order." A domestic relations order means any judgment, decree, or order (including the approval of a property settlement agreement) which:
  - i) relates to provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant, and
  - ii) is made pursuant to a state domestic relations law (including a community property law).
- d. The order must designate an Alternate Payee. An 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.
- e. The order must create or recognize the existence of an Alternate Payee's right, or assign to an Alternate Payee the right, to receive all or a portion of the benefits payable with respect to a Participant under the Plan.
- f. The order must specify the name and last known mailing address (if any) of the Participant and each Alternate Payee covered by the order. If the Plan Administrator has reason to know of the address of the Participant or an Alternate Payee independently of the order, the order will not fail to qualify under this requirement.
- g. The order must specify the amount, or percentage, of the Participant's benefits that are to be paid by the Plan to each Alternate Payee, or the manner in which such amount or percentage is to be determined.
- h. The order must specify the number of payments, or periods, to which such order applies.
- i. The order must specify each Plan to which such order applies.

- j. The order must not require a Plan to provide any type or form of benefits, or any option, not otherwise provided under the Plan.
- k. The order must not require the Plan to provide increased benefits (determined on the basis of actuarial value). An order does not require a Plan to provide increased benefits if the order does not provide for the payment of benefits to which the Participant would be entitled in the absence of the order.
- l. The order must not require the payment of benefits to an Alternate Payee which are already required to be paid to another alternate Payee under another order previously determined to be a qualified domestic relations order.
- m. An order may provide that payments to the alternate Payee must begin on or after the date on which the Participant attains the earliest retirement age under the Plan whether or not the Participant actually retires on that date.
- n. An order that is determined to be qualified will remain qualified with respect to a successor plan of the same employer or a plan of a successor employer (within the meaning of Section 414(a) of the Internal Revenue Code).

3. **Procedure for distribution of plan benefits.**

- a. If an order is determined to be a qualified relations order, after the determination, or within 18 months after the deferral of benefits, the Plan Administrator shall follow the terms of the order. The Plan Administrator shall authorize distribution to commence, or be made, to such Alternate Payee, in accordance with the order.
- b. If an order is determined to be non-qualified, or a period of 18 months from the date on which the first payment would be required to be made under the domestic relations order has expired and a determination of the qualified status has not been made, the amounts segregated pursuant to procedure 1(b) shall be paid to the person, or persons, who would have received such amounts if the order had not been issued.
- c. If an order is determined to be a qualified domestic relations order after the period of 18 months from the date on which the first payment would be required to be made under the domestic relations order, this determination shall apply prospectively only.

4. **Requests for review of the Plan Administrator's determination.**

The Participant or Alternate Payee may file a claim with the Plan Administrator for a review of its determination as to the qualified status of a domestic relations order, in accordance with the Plan's procedures for filing and review of benefit claims, except that any such claim must be filed with the Plan Administrator within 30 days after the date the Participant or Alternate Payee receives written notice of the Plan Administrator's determination.

5. **Amendment to these procedures.**

These procedures may be amended at any time.

## Letter 1

### Sample Letter to Attorney Providing Documents

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Guidelines for Completing a QDRO

Dear \_\_\_\_\_:

Per your request, enclosed are the following documents:

Sample QDRO  
Summary Plan Description  
Plan Administrator QDRO Procedures  
QDRO Requirements Checklist

Generally, the plan prefers to pay benefits to an alternate payee as soon as the QDRO is determined to be qualified and the alternate payee completes election forms. Following is additional information regarding the plan's QDRO procedures:

- The plan need not be joined in any court proceeding, and the Plan Administrator would prefer that the plan not be served or made a party to any action.
- The plan will distribute benefits to the spouse or other alternate payee shortly after the Plan Administrator receives and approves the qualified domestic relations order and distribution election forms (even if the plan participant remains employed at the company). Distributions to a spouse (or former spouse) will be reported on Form 1099-R as income to the spouse; distributions to other alternate payees generally will be reported on Form 1099-R as income to the participant, in accordance with Internal Revenue Service rules. The spouse has the option to rollover benefits to an IRA or qualified plan.
- The plan would prefer not to hold benefits for an alternate payee until the participant's retirement or other future date, and any administrative costs resulting from an order requiring the plan to do so will be charged against the alternate payee's account in the plan.
- To minimize delays and changes, the Plan Administrator would prefer to review a draft qualified domestic relations order before it is finalized and filed with the court.

- Upon receipt of a request from the participant, without the need for a subpoena, the plan will forward to you copies of the participant's most recent benefit statement from the plan, and any prior benefit statements requested. ( ) **(For Defined Benefit plans)** In addition, the plan will provide you with the lump sum present value of the participant's accrued benefit, and any other actuarial information you require in order to divide such benefit.

Regarding the enclosed sample QDRO, the Plan Administrator has approved it but it may require modification to satisfy the laws of the state and local court rules. The order may be in the form of a separate court order, or as part of a property settlement agreement approved by the court. The form will require some modification if the alternate payee is not the spouse (or former spouse) of the participant, or if distribution to the alternate payee is to be deferred.

All communications concerning the plan and qualified domestic relations orders should be with the following person:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please let us know if you have any questions regarding our procedures.

Sincerely,

\_\_\_\_\_

Attachments

cc: Participant  
Alternate Payee

## Letter 2

[Sample Letter to Attorney on Receipt of Proposed QDRO]

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_ Plan

Participant's Name: \_\_\_\_\_

Alternate Payee's Name: \_\_\_\_\_

Dear \_\_\_\_\_:

We have received the proposed QDRO, which will be reviewed for a determination of its status as a Qualified Domestic Relations Order with respect to the Plan. Enclosed is a copy of the Plan Administrator QDRO Procedures. We will follow these procedures for making this determination. You will be notified promptly once a determination has been made. In the interim, any correspondence or additional information may be directed to me.

Any distribution which may become payable to the participant from his/her plan benefit will be deferred until a final determination is made but not for more than 18 months from the date of this letter.

Very truly yours,

\_\_\_\_\_  
[plan representative]

Enclosure: Plan Administrator QDRO Procedures

Copies to: Participant  
Alternate Payee  
Attorneys

**Letter 3**

Date

To: Participant

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Re: Division of Account Balance Due to QDRO**

Dear \_\_\_\_\_:

We have received the draft QDRO and are in the process of determining if it is qualified.

Per the draft QDRO, we have calculated the benefit due the alternate payee. Please review the attached calculation. The alternate payee will be entitled to additional investment earnings through \_\_\_\_\_.

If you approve of our calculation, please sign below and return this form to our office.

We are also sending the calculation to the alternate payee for his/her review.

Sincerely,

\_\_\_\_\_

I understand and approve of the calculation of benefits payable to Alternate Payee under the QDRO:

\_\_\_\_\_  
Participant

I understand and approve of the calculation of benefits payable to the Alternate Payee under the QDRO:

\_\_\_\_\_  
Alternate Payee

## Letter 4

[Sample Letter to Attorney Upon Positive Finding]

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_ Plan  
Participant's Name: \_\_\_\_\_  
Alternate Payee's Name: \_\_\_\_\_

Dear \_\_\_\_\_:

The Plan Administrator has determined that the domestic relations order that we received for the above named parties is a "qualified domestic relations order" (QDRO) as defined by the Internal Revenue Code and ERISA.

As of the Plan's last valuation date, the amount payable to the alternate payee pursuant to the QDRO is \$ \_\_\_\_\_. This distribution, if currently payable pursuant to the QDRO, will be paid as soon as possible, once the enclosed distribution election form is completed and returned to me. Any amounts not currently payable pursuant to the QDRO but payable to the alternate payee in the future will be placed in a separate account or separately noted. All alternate payees will be contacted regarding any choices or designations permitted under the Plan.

Any additional questions you may have should be directed to me.

Very truly yours,

\_\_\_\_\_  
[plan representative]

Enclosure: Distribution Election Forms

Copies to: Participant  
Alternate Payee  
Attorneys

## Letter 5

[Sample Letter to Attorney for Nonqualified QDRO]

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_ Plan

Participant's Name: \_\_\_\_\_

Alternate Payee's Name: \_\_\_\_\_

Dear \_\_\_\_\_:

The Plan Administrator has received and reviewed the domestic relations order provided to us for the above named parties. We have determined that the domestic relations order is not qualified because \_\_\_\_\_.

You may submit a modified order for a new determination at any time. If no notice of such a resubmission is received within 45 days of this letter, any distribution due \_\_\_\_\_ will be made without regard to the existence of the referenced order(s).

Enclosed is additional information about the Plan, including a sample QDRO with language approved by the plan, which may be helpful in modifying the terms of this order. Any requests for further information, or future correspondence, may be directed to me.

Very truly yours,

\_\_\_\_\_  
[plan representative]

Enclosure: Sample QDRO and Procedures

Copies to: Participant  
Alternate Payee  
Attorneys