



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.

- Investment Freedom
- Estate Planning
- Control



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.**



Reading Words into the Statute

- Words “divorce” and “legal separation” DO NOT appear in the QDRO section of ERISA
- In IRA regulations, the US Code states that a rollover transfer must be “incident to divorce.”
- Not consistent with the legal construction of legislation to “read into” a federal statute words that appear in one statute, but not in the other.



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>



Knowledge Check #1

Who are the two gatekeepers that can cause an In Marriage QDRO to be rejected?

- a. IRS and State Court Judge
- b. State Court Judge and Plan Administrator
- c. Federal Court Judge & IRS





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®



No 10% Penalty for Pre 59 ½ Liquidation

Could Mr. Jones have used an In-Service Distribution to Liquidate his 401k without Penalty?

- ° Answer: No. He could have used an ISD to access his funds, but the penalties would have been significant.

In-Service Distribution	In Marriage QDRO
Ten Percent (10%) Withdrawal Penalty Lost \$13,000	No Withdrawal Penalty Saved \$13,000
Suspension from Contributions for Six Months and Suspension of matching for Six Months Lost \$4,750	No Effect on Contribution or Matching Saved \$4,750
Restricted Withdrawal Amounts Amount limitations would not have allowed Mr. Jones to access enough to pay the full debt. Lost Funds: Government fees and penalty on unpaid balance would continue	Able to access entire vested amount of 401k (and able to pay off entire debt) Saved Funds: All fees and penalties halted because entire debt was paid off



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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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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.

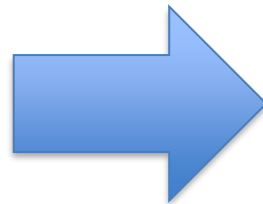


IMQ Application

Diversify Investments Ahead Retirement

Scenario: George believes that the stock market 9-year bull run will eventually see a correction. He is 61 years old and wants to retire in 4 years. Everyone at George's plant rolls their pension and 401k into a diversified portfolio when they retire. He remembers 2008 when his 401k lost 22% before he realized what to do and how to change his 401k investment structure.

George's 401k
(61 years old)



Wife Peggy's
Diversified
IRA (57 years
old)



\$500,000



Pension Lump Sum

Example:

Executive has a large Defined Benefit Plan. He/She is 57 years old and has nearly capped out the lump sum value of the pension, but wants to work 3 more years.

Benefit: An IMQ allows the executive to get early access to the lump sum cash to do tax planning or diversified investments.

(Additional Benefit if you believe Present Value Discount Rates will devalue the Pension in future.)



Cash Balance Pension Transfer

Example:

Company funds a very effective cash balance pension plan.

41-year old has almost reached the actuarial max cap for a cash balance pension for his age without the Company incurring a large excise tax for going outside plan funding rules.

Benefit: An IMQ allows the employee to transfer all (100%) of his cash balance pension to his/her spouse, bringing down the actuarial balance to \$0 and allowing the company to start fully funding the plan again.



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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 (& Escape Future Tax Increases)

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



Knowledge Check #2

Which type of client could benefit from an In Marriage QDRO?

- a. Wife is 71 years old with husband that is 62
- b. Husband & wife are 65 years old with large IRAs
- c. Man is 71 years old with large 401k & unmarried



Other Uses of the In Marriage QDRO

- Pay Off Debt by Liquidating without 10% Penalty
- Purchase Alternative Investments via Self Directed IRA
- Diversify ahead of Retirement (especially if you believe Present Value Discount Rates will devalue the Pension)
- Rolling funds to the older spouse (to access earlier)
- Reduce Estates over the Death Tax Threshold
- Married, but filing separately (lower tax bracket)
- Parties that are physically separated, but not wanting to divorce



Additional Scenarios Involving Pre 59 ½ Liquidation of 401k without Penalty

- Couple wants to pay for 2 expensive colleges for their daughters (actual case)
- Client wants to access the Roth portion of the 401k as down payment of new house (actual case)
- Wealthier spouse has a prenuptial agreement and files married, but separate tax returns, but still wants to provide security for the less wealthy spouse.
- Couple had an anomaly year where their incomes was not as large (ie, lower tax bracket) or they had large write offs for a start up business.



IMQ APPLICATION CHART

My Client(s) with a . . .	Personal Facts	An IMQ allows . . .	So that . . .
401k	Has a much younger spouse	Funds to be rolled to the younger spouse's IRA	RMDs can be delayed for many years
401k or Pension	Has a much younger spouse BUT still has 3 more years until retirement.	Funds to be rolled to the younger spouse's IRA now	Funds are not locked into the older spouse's IRA after retirement
Frozen Pension or Underperforming Pension	8 more years until retirement and cannot access the funds	Funds to be rolled to a IRA of the other spouse.	The pension funds can be better invested.
Pension	Plans to rollover the pension into a diversified managed portfolio in 5 year at retirement	Access to that same rollover today	Before inflation occurs and the Pension Plan's actuarial assumptions change. Higher interest rates mean lower present day pension values.
401k	Will have a low income and/or large deductions this year	Liquidation of the funds	The 10% penalty is avoided and it can be offset against the tax deductions
401k	Is 42 years old, wants to do ROTH conversions, but has all his funds invested in his 401k, not an IRA	Turns 401k funds into an IRA	A series of ROTH conversions can be planned over the next few years.
401k	Needs access to cash to fund a new house or pay for college	Access and Liquidation of funds	Without the 10% penalty for early distribution.
401k	Is 3 years from retirement and wants to avoid the Stock Market Rollercoaster	Access to those funds prior to retirement	Stable investment can be made without having to just put money in the 401k's money market account.
Pension	Will be going into nursing home soon	Pension to be put in the name of the other spouse	The Pension does not have to be given to the nursing home to qualify for Medicaid.
401k	Wants to invest in property	401k to be rolled into a Self-Directed IRA	Property can be purchased within the Self-Directed IRA



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!)



Identify Opportunities

- Review your current & previous client base with fresh eyes. Do you have any clients with 401k plans you wanted to help, but couldn't at the time.
- 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.



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



The Risks

- Death
- Divorce
- Bad Financial Investment
- Cost
 - * Over 170 In Marriage QDROs in 29 states
 - * 6 court rejections (4 of which we got approvals in same state, different county)



“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



Knowledge Check #3

Which Plans are eligible for qualification through an In Marriage QDRO?

- a. 401k, Corporate Pension & State Pension
- b. 401k, IRA & Military Pension
- c. 401k, Corporate Pension & Defer Comp 457



Thank You!



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