



QUALIFIED DOMESTIC ORDERS & JOINDERS

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Name: _____

Phone Number: _____

Email: _____



This guide will help you to understand what a Qualified Domestic Relations Order is, why a person would need one, and the purpose of a Joinder. We have tried to answer many of the most commonly asked questions about the Qualified Domestic Relations Orders and Joinders, including: reviewing terminology associated with these types of matters, briefly addressing some of the required and prohibited provisions of QDROs, and provide an overview of the steps that are involved in processing QDROs and Joinders.

Why are DROs and QDROs necessary?

In the State of California, all income earned during a marriage is considered to be community property. “Income” is not limited to the money paid to an employee in the form of a paycheck, but also includes the retirement benefits that are earned by an employee.

The idea of a retirement plan; be it a defined benefit, or a defined contribution plan (defined below) is to have an employer “pay into” in an account today that the employee will be able to use upon retirement. There are various tax advantages to retirement plans that are beyond the scope of this article.

In order to “split” the marital property portion of a person’s retirement and distribute the non-participating spouse’s portion of that retirement to them, the Court typically determines the present value of the future benefits (through a process that is also beyond the scope of this article) and orders the retirement plan to pay that amount to the non-participating spouse through a DRO and QDRO.

QUALIFIED DOMESTIC RELATIONS ORDER & PENSION PLAN JOINDER

This may be a long process, depending upon the parties involved, and must be entered into carefully as it can have significant effect on a large asset.

DROs and QDROs:

1. The order which is used to divide a pension or retirement plan is called a DRO (Domestic Relations Order.) The Order is used to recognize the rights of a spouse, former spouse, child or other dependent of a participant in an employee benefit plan who may be entitled to receive a portion of the vested interest of that participant— usually pursuant to a divorce.
2. When this order goes to a Plan that is not a governmental entity, it is called a QDRO. The Q is for “qualified” and whether a plan qualifies or not is up to the rules of that Plan. The DRO becomes qualified when the Plan Administrator has reviewed it, and has determined that it meets the needs of the Plan. When the Plan receives a signed order from the Judge, they will then implement it. We will refer to such orders as QDROs throughout this pamphlet.

QDROs may also be used to collect child support and spousal support, including unpaid arrears. The use of a QDRO for such support collection requires information that is beyond the scope of this brochure.

Definitions - Every retirement plan is either a Defined Contribution or Defined Benefit. Defined Benefits are generally recognizable as a pension plan which pays a monthly benefit amount upon retirement. These are becoming more rare. A Defined Contribution is generally thought of as a 401(k) type of plan or an ESOP or Keogh Plan where sums of money, or stocks, or “units” are placed in an account which can be accessed based on certain dates or events. These types of plans are becoming more common. It is important to know which type of plan you are working with because the QDROs will vary. The Plan Administrator can offer guidance by looking at the plan statements to help you along the way. Defined Contribution statements usually show a monthly payment amount based on the earliest retirement date or the age 65. Defined Benefit statements usually show the amount of money, stock or units held as of the date of the statement.

Beware: The statement may show an amount of money which may be used by the plan to buy an annuity to make payments to the Participant upon retirement, which is why checking with the Plan Administrator is a good idea. The Plan Administrator may be: the company, the union, an outside administrator, a bank, or a law firm or a combination of any of the above. The person who has earned the retirement benefit is the Participant and the person who is the spouse, or other dependent, is the Alternate Payee or Non-Member Spouse. The QDRO should be filed in the same court where the divorce occurred.

Timing - It is best to submit the QDRO to the court for Judge’s signature at the same time, or as close as possible to the signing of the Judgment, because the Participant is often more cooperative at this time.

Some plans reabsorb the benefits if the Participant dies and the QDRO has not been received prior to his/her death. If this happens, the benefit is lost.

If the Participant has retired prior to the filing of the QDRO, the choices available to the Alternate Payee may be restricted because a portion of the funds may have already been paid to the Participant and may not be recoverable by the Alternate Payee.

QDRO’S ARE GOVERNED BY THE FOLLOWING RULES:

1. ERISA – Employee Retirement Income Security Act of 1974 (29USC1001-1461)
2. The Code – the Internal Revenue Code
3. Federal regulations
4. State laws
5. Judicial case law (both state and federal)
6. The rules and regulations of the Plan itself

MANDATORY PROVISIONS OF EVERY QDRO:

1. The exact name of the Plan to which this order applies. If this order applies to more than one plan, the exact names of each Plan are required.
2. The name, date of birth, social security number and last known mailing address of both Participant and Alternate Payee. (This can be attached as a separate “Confidential” statement attachment page.)
3. The date of marriage and date of separation.

PROVISIONS THAT CANNOT BE LISTED IN ANY QDRO:

1. An award of any type, or benefit, or option not otherwise available under the Plan.
2. An award of more than the Participant has earned or will earn.
3. An award amount previously awarded to another Alternate Payee under a previous QDRO.

OTHER PROVISIONS INCLUDE:

1. How this order relates to the divorce, such as division of marital property or support.
2. The state domestic relations law and other such rules and laws upon which this order relies.
3. Approval by the Plan Administrator.
4. Tax provisions of both parties.
5. Stipulation of the Parties.
6. A certified copy of the order following the signature of the Judge.
7. Alternate Payee may choose a contingent beneficiary if he/she predeceases the distribution.
8. Alternate Payee given survivor status as to his/her benefits if Participant dies without receiving the pension, and Alternate Payee’s pension depends upon Participant’s survival.

PROCESS TO FOLLOW:

1. Find the Plan Administrator and establish contact. Request a copy of the rules and, if possible, a sample of the QDRO language which would be acceptable to the Plan. Get the name of a person you can remain in contact with throughout the process.
2. Determine if the plan requires a “Joinder.” If they do, follow the process below.
3. If you don’t plan to prepare the QDRO immediately, consider writing a Letter of Adverse Interest. This is a letter which you write to the Plan to say, you are in the process of a divorce and have some rights to the pension of your spouse. For a few plans, a telephone call will establish this same thing. It is always a good idea to make sure your portion of the benefits are secure to avoid the pension funds being distributed or dispersed prior to entry of Judgment.

4. Get the correct name of the pension and the plan process for the draft QDRO to be approved by the Plan.
5. Use the sample QDRO the plan has sent you, and type it in a pleading paper format. There may be many decisions you will need to make while completing the document. Think these over carefully, as they will be very important to your life and perhaps your financial security later.
 - a. Pleading format includes lined-numbered and ruled paper, one side only. Start at the top:
 - b. type your name on line 1,
 - c. street address on the line between 1 and 2, d. city, state, zip code on line 2,
 - d. telephone number on next line between 2 and 3, with your fax number if you have one,
 - e. e-mail address on line 3, if you have one and want to disclose it.
 - f. These should be single spaced.
 - g. On line 4, write either "Petitioner, In Pro Per" or "Respondent, In Pro Per."
 - h. Tab down to line 11 and type in "SUPERIOR COURT OF CALIFORNIA"
 - i. On line 12 type "COUNTY OF ____" (the name of the county your Judgment is or will be entered). *Lines 11 & 12 should be centered.
 - j. At line 14, on the left side, type : Marriage of:

Petitioner: _____(name)

Respondent: _____(name)

(Note: if you are the Petitioner in the divorce, you will always be the Petitioner in any filing. The same applies if you are the Respondent.)

k. At line 14, on the right side, put: Case No.: ____

l. Skip to the next line and type in:

STIPULATED QUALIFIED DOMESTIC RELATIONS ORDER.

6. Now you can begin to copy over the information obtained from the sample QDRO.
7. Many courts require a footer on the document which reflects the name of the case, the case number, and page numbers.
8. Create two lines for the date and two signature lines for the Participant and the Alternate Payee.
9. Most courts require a Stipulated QDRO; therefore, if the plan doesn't provide one, add the following: "APPROVED AS TO FORM AND CONTENT" directly above the Judge's signature line.
10. Send a draft to the Plan for the plan administrator to review. The draft QDRO can be sent by fax or by mail. Once the plan administrator has reviewed the draft QDRO, you will notified mail. The notification will either approve the QDRO format and content, or instruct you to make changes. If changes are necessary, make the changes and resubmit for approval. Approval of the

QDRO by the plan administrator is required prior to the parties signing. (FYI: *Most courts require original documents to be signed with blue ink*)

11. Read all the information from the plan to determine if the plan administrator will require a certified copy of the QDRO Order before dividing the account(s).
12. Make 2 copies of the QDRO to be filed with the court. The document with original signatures should have a two-hole punch at the top.
13. Prepare a postage pre-paid, self-addressed envelope so the court clerk can mail your copy to you.
14. Take the original and two copies to the court for filing. Note: Some courts may require you take a copy of the original Judgment under which the QDRO is ordered; therefore, check your local court rules before submitting your documents to the court.
15. If the plan administrator requires a certified copy of the QDRO, you will need to pay the clerk to have one of the QDRO copies “certified.”
16. Once you receive your copy of the QDRO from the court, mail the required copy to the Plan.

The Process of Pension Joinder:

What is a “Joinder” and why is it sometimes necessary?

For a Court to order a person or organization to do something, that person or organization must be under the “jurisdiction” of the Court. Typically the way a Court is allowed to claim jurisdiction over a person or organization is by the filing of a complaint, wherein both the plaintiff and a properly served defendant (or petitioner and respondent in the case of family law) come under the jurisdiction of the Court.

The Court is not usually allowed to make orders that affect people who are neither the plaintiff/petitioner nor a defendant/respondent. This would include companies who run retirement accounts. The way that this problem was solved in the past was to “join” the retirement company as a “claimant” to the family law case.

A joinder forces the company to involve an administrative representative throughout the QDRO process and to incur all of the associated costs. For this reason, many retirement companies today will grant jurisdiction to the Court without requiring a joinder be filed.

You can find out whether or not a joinder is required by talking to someone at the retirement agency.

You will need the following forms:

FORM NAME	Form No.
Pleading on Joinder – Employee Pension Benefit Plan	FL370
Request for Joinder of Employee Pension Benefit Plan and Order	FL372
Notice of Appearance and Response of Employee Pension Benefit Plan	FL374
Summons (Joinder)	FL375
Notice and Acknowledgment of Receipt	FL117

(Note: Additional local forms may be required. Check with your local clerk's office for special form requirements in your particular county)

You can find these documents in the self-help section at www.courtinfo.ca.gov, or get them from the clerk at the courthouse. *Do not substitute other forms for these as these forms are required by law.

Form 370:

1. Fill out the top just like it shows on your draft QDRO. i.e.; put your name and your address, telephone number, etc.
2. Under Claimant choose the proper name of the plan. Once you have incorporated the Claimant name, ALWAYS write it the exact way on all the Joinder forms.
3. Fill out questions 1-6.
4. At question 7, check boxes a-d.
5. Remember that this is a public filing so be cautious about listing your social security or date of birth date on it. That information will be provided to the plan through the QDRO.
6. At the bottom of the form, date, sign and mark the appropriate boxes.

Form372:

1. Complete the top portion, including the Claimant information exactly as it was listed on the Pleading on Joinder – Employee Pension Benefit Plan.
2. On line number 1, list the Claimant's name.
3. Below line 2, date and sign and mark the appropriate box reflecting Petitioner or Respondent and print your name below your signature.

FL375:

1. Complete the top portion as it is listed on the previous forms.
2. Skip line number 1 and go to line number 2. Put an "x" in the box.
3. At line 3, go to C and put an "x" in the last box ("FC 2062 (Employee Benefit Plan))
4. The back does not need to be filled out at this point.

Take the completed original form (two-hole punched at the top of the page) and 2 copies to the court house for filing. There is no filing fee for these documents.

The clerk will return the original Summons to you. Hold onto it until after the Claimant has been served. See further instructions below.

You will need to serve a copy of the documents on the plan. Take one copy of each of the documents returned by the court and add a blank copy of **FL372**.

Then complete **FL117**:

1. Complete the top portion.
2. Under name of the individual being served, place the name given to you by the plan or, if none, write the name of the plan and add “representative”.
3. Fill in the date of mailing, type the name of the person signing and have that person sign. Cross out the section reading “must not be a party in this case” if you are sending it yourself.
4. Send the original and a copy of **FL117** along with a copy of the other documents listed above and a self-addressed return envelope to the plan to receive a copy of the signed **FL117** back. Mark your calendar for 30 days from the mailing.
5. Wait at least 30 days. Fill-out the second page of the original Summons. Mark the box at 1a(1) and under “other” write in **FL117**, Notice and Acknowledgement of Receipt.
6. At 1b, write in the name of the person or the designation as written on the top line of the **Notice and Acknowledgement of Receipt**.
7. At number 1c, mark (1) Party or claimant, then mark 1e “by mailing” and write the date of the mailing and the city and state from where you mailed it.
8. Under number 2, “Manner of Service” mark box d. It’s okay if you received the Notice and Acknowledgement and Receipt; however, if it failed to be returned, cross it out.
9. At number 3, mark box c and the last box, “FC 2062 (Employee Benefit Plan).”
10. For line number 4, if you are a party to the action, cross out “not a party.”
11. Answer question number 5 appropriately.
12. Under line number 6, mark a) and complete e).
13. Sign on the left side and complete the date and place.
14. Take or mail the **Proof of Service**, with two copies of the document to the court.
15. Whether or not you have heard from the Plan, they are joined.

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