

February 18, 2010

Division of Retirement Benefits in New Mexico

A Qualified Domestic Relations Order ("QDRO") is a specialized order issued by the Court to divide retirement benefits during a divorce proceeding. As a community property state, the law in New Mexico provides that each spouse is entitled to 50% of the retirement benefits earned by the other spouse during the marriage. Retirement benefits can include, among other things, pension plans, deferred compensation accounts and 401(k) plans.

Retirement plans can often be one of the most valuable community assets owned by a divorcing couple and there are different ways to approach division of retirement benefits. As a preliminary matter, the parties must determine the value of the retirement benefit at issues. This determination can be fairly simple as in the case of 401(k) account, which contains a readily identifiable amount of money on any given day. In contrast, the value of pension plans can vary greatly depending on how much the employee spouse is making at the time of retirement and at what age the employee spouse retires. In complicated retirement cases, the parties and their attorneys should think seriously about hiring an actuary or other trained expert to determine the value of the disputed retirement benefit.

After the value of a retirement plan is determined, then the parties (or the Court) must also decide how and when the benefits will be distributed. In the case of some 401(k) plans, the parties can split the account at the time of divorce. In the case of other pension plans, neither party receives their share of the retirement plan until the employee spouse actually retires.

The QDRO should address all of the issues regarding valuation and distribution of retirement benefits. Though it would seem that the valuation and division would be a straightforward mathematical calculation, the division of retirement accounts is often hotly contested. The drafting of the QDRO can be highly contentious. In turn, the QDRO must be submitted to the court for approval and then submitted to the QDRO administrator for its approval. Each plan requires specific language and Orders are often rejected for what appear to be very trivial drafting issues.

There are some QDRO administrators that will review the Order prior to filing with the court. Others require a court approved Order prior to review. In these cases, the Order may take several trips through the drafting process, approval by the Court and final approval by the plan administrator. This process can take a very long time.

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In cases where retirement benefits are hotly disputed and the parties cannot agree on drafting, it is often beneficial to have a third party attorney draft the QDRO to reduce the conflict between the parties and their attorneys. Though this will often reduce the conflict and expedite the drafting process, even this step cannot alleviate the conflict in some cases. In those cases, it is often necessary to seek the intervention of the Court. Where this becomes necessary, the parties can be assured that they are embarking on a very expensive adventure.

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