



Retirement Plans – Defined Benefit vs. Defined Contribution

by STEPHEN MCDONOUGH on JULY 1, 2009

An important part of a divorce case is identifying and dividing up a couple's marital property. Within the marital estate, retirement plans frequently are one of the most valuable asset classes. A qualified retirement plan is one that satisfies numerous requirements set forth by the IRS and ERISA, the Employee Retirement Income and Security Act of 1974. Qualified plans take advantage of a number of tax benefits. The two main categories of qualified plans are the *defined contribution plan* and the *defined benefit plan*.

A defined benefit plan is what we consider the typical company pension plan, although these plans are joining the endangered species list for many Americans, sort of like capitalism and personal responsibility. Employees do not make individual contributions to these plans, leaving the employer to make all contributions and administer the investments. Employer contributions are usually

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determined by factors such as years of employment, wages, and age.

Benefits are not normally paid until regular retirement age, and are distributed in the form of a lifetime annuity, although some plans allow the option of a lump sum distribution. This type of plan is more involved to accurately value, requiring a formula and usually the services of a pension expert or actuary.

Defined contribution plans have a contribution which is defined, or set, but the final benefit is unknown. In these plans, such as a 401(k) or 403(b), each participant has an individual account. Factors such as the amount contributed by the employee and the amount of company match, if any, and the investment performance over time determine the plan balance over the years. In this type of plan, investment risk may rest squarely on the shoulders of the individual employee since most plans have a number of different investment options.

Both types of plans are subject to equitable division during divorce in Massachusetts under Mass. Gen. Laws c. 208 s. 34. Now, when you fill out your court financial form you will know what is meant by the terms “defined benefit” and “defined contribution.” Too bad there is not a box to request “retirement plan stimulus funds.” That would be nice.

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