

## **Can I Get Rid Of My QDRO (Qualified Domestic Relations Order) By Filing Chapter 7 Bankruptcy?**

I recently had a client who was interested in discharging a “QDRO” (qualified domestic relations order) under chapter 7 bankruptcy. I had to break it to her that this was probably not a possibility.

QDRO stands for Qualified Domestic Relations Order and is often included in divorce agreements in which the community estate contains a retirement or pension plan. It functions to give the divorced spouse their share of the asset in question. QDROs apply only to those employee benefits or pension plans that are subject to ERISA, the Employee Retirement Income Security Act. In plain English, a QDRO is a legal document that allows a retirement account or pension to be divided between two parties in a divorce, thus guaranteeing the alternate payee (the person receiving the interest) receives their due portion of the asset.

When it comes to Bankruptcy discharge, there is general little recourse for domestic support obligations, and QDROs are no exception. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) directly addresses the lack of ability to discharge support obligations, defining “domestic support obligation” is any debt incurred before or after a bankruptcy filing that is owed to or recoverable by a spouse, former spouse, child or governmental unit; in the nature of alimony, maintenance or support; and established pursuant to the terms of a divorce decree, separation agreement, property settlement agreement, court order or administrative determination.

So how does this directly affect your QDRO? The division of a debtor’s pension benefits during the divorce action by entering a Qualified Domestic Relations Order (“QDRO) is considered to be a transfer by debtor of a present interest in their pension. Remember that a pension account is a valuable asset in the marital estate and may need to be divided between the two parties upon dissolution of the marriage, this is where the QDRO comes into play.

It might be helpful to consider that a QDRO is an asset of the alternate payee instead of a debt of the debtor. That is, the alternate payee is owed some portion of the pension at the time of divorce, which must be deferred until the plan is paid out. Regardless, you simply cannot discharge a QDRO in chapter 7 bankruptcy.