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The goal of our monthly QDRO Newsletter is to keep you informed of Hot Topics regarding all aspects of QDROs. If you find our newsletter valuable, please forward it to a colleague. We hope you enjoy this month's topic.

USING A QDRO TO COLLECT PAST DUE CHILD SUPPORT

Delinquent support is a well-known problem for family law attorneys – as well as countless parents struggling with uncooperative former spouses. One can only imagine how many custodial parents hold the short end of the stick as they struggle, pillar to post, to manage when a deadbeat former spouse fails to make good on his (or her) obligations. Two years ago, for example, California announced that noncustodial parents in that state alone owe \$19.2 billion worth of unpaid child support.

Relief can be had, however, when the custodial parent taps the noncustodial parent's retirement plan with a child support QDRO.

Retirement plans are marital assets and subject to division and distribution in a divorce, but even many veteran attorneys do not understand that retirement plans can be tapped to pay child support.

The Employee Retirement Income Security Act (ERISA) provides that qualified domestic relations orders (QDROs) can be used for one of three purposes. The most common, of course, is to divide a pension to provide property rights to a spouse or former spouse. The second is to provide child support to a spouse, former spouse, child, or other dependent of a participant and the third is to provide maintenance to a spouse or former spouse of a participant. These three provisions apply to qualified defined benefit and defined contribution plans. Child support QDROs can be attached to any ERISA-governed retirement program, such as a 401(k) plan or pension plan. Child support QDROs do not apply to non-ERISA qualified plans, such as Individual Retirement Accounts (IRAs).

Family law practitioners should not overlook retirement funds as a way to meet child support obligations even if the participant is too young to be eligible to receive payments. When a client is not paying court-ordered support, or facing consequences because he or she has failed to make support payments, the family practitioner should remember the pension as an important source of funds. Even when the supporting parent has lost his or her job, retirement funds can be used to make support payments. This applies to both 401(k) plans and traditional pension plans.

QDROs may be used to enforce spousal and child support when the properly crafted domestic relations order "... relates to the provision of child support, alimony payments, or marital property rights to a spouse, child, or other dependent of a participant, and ... is made pursuant to a State domestic relations law (including a community property law)."

Child support QDROs can come into play even when the noncustodial parent is not a deadbeat. An obligor sometimes requests that current child support be made from his or her retirement plan as opposed to his or her income, which frees income for daily living expenses.

Obtaining a child support QDRO is not difficult. The child support QDRO requires that a court order or judgment must exist setting forth the amount that should be paid. The custodial parent must then obtain a record of the amount owed in back child support by contacting the state's child support enforcement agency. He or she then retains an experienced practitioner who drafts the child support QDRO. The QDRO must meet the requirements of the plan, including plan identification, the parties, and the amount owed. After the judge signs the QDRO, it is submitted to the retirement plan administrator.

The QDRO must include the name of the alternate payee in order for it to be approved by the plan administrator. An alternate payee can be a spouse, former spouse, or dependent child of the participant.

Whenever the spouse or former spouse is named as the alternate payee, that party is taxed on the QDRO distribution, even if the QDRO was drafted for child support arrearage purposes. For this reason, in the case of a child support QDRO, some practitioners list the child as the alternate payee in the QDRO itself, rather than naming the participant's former spouse. When the child is the alternate payee, the participant is taxed on the distribution. Child support is not meant to be taxable to the custodial parent; therefore, the non-custodial parent should be responsible for the taxes on the distribution.

Like any other QDRO, the judge cannot instruct a plan as to when or how to make a distribution. This is up to the plan pursuant to their distribution policy. An immediate lump-sum distribution may not be possible, but QDROs apply to retirement plans even if the participant and alternate payee reside in one state and the company is in another.

A QDRO is the only real solution when dividing retirement plans as marital property. Obviously QDROs are also an effective tool for the collection of past-due child support or maintenance. In fact, Section 414(p) of the Internal Revenue Code references domestic relations orders for child support first and for property settlement purposes second.

--Conclusion--

If you have any questions regarding our Newsletter or [QdroDesk.com](http://www.QdroDesk.com), please let me know and thank you for giving us the opportunity to share our Newsletter with you. We appreciate your business, and the confidence you have placed in us.

For more QDRO information and online QDRO preparation services, please visit us online at: <http://www.QdroDesk.com>

Sincerely,

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