

What is a QDRO?

QDRO stands for Qualified Domestic Relations Order.

Under federal law, pension plans are protected from creditors by something called an anti-alienation provision. Anti-alienation means the pension plan cannot be divided. In other words, usually your pension funds are protected against creditors like credit card companies or mortgage lenders. It also means state courts, usually, cannot order division of pension savings earned by the spouses.

Often, a major asset acquired during a marriage is a spouse's pension interest. In Illinois, marital property includes all property acquired during marriage, and includes either an interest or increased interest in a pension. If there were no exceptions to the federal law, known as ERISA, the spouse earning the pension during the marriage would get to keep all of the pension.

Congress provided an exception for divorce cases, which is the QDRO. The QDRO is an order entered by the state court allowing division of the pension.

There are similar anti-alienation provisions covering state, municipal and federal government pensions. Orders similar to QDROs, called QILDROs (Qualified Illinois Domestic Relations Orders) are available in Illinois for state and municipal pension plans. For federal plans, the term is a Court Order Acceptable for Processing, or COAP.

It is important to determine whether your lawyer is preparing an appropriate order to divide pension interests. It is preferable to obtain the dividing order at the same time as the divorce judgment. Preparation of and approval of the order can take time. However, if the order is not prepared and the participant dies, the pension interest can be lost altogether. Often, order preparation is overlooked, so make sure your lawyer is preparing or has prepared an order.