

## **THE SPOUSAL INTEREST IN A RETIREMENT PLAN; AVOIDING COMMON PITFALLS**

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When an employee separates from service, he is faced with decisions, mostly irrevocable, about what to do with his retirement plan assets. The spouse of an employee in this situation needs to think carefully about what impact such decisions will have on her. For the following discussion, it is assumed that the employee/participant is the husband since more wives are left alone and are affected by mistakes in this area.

It is important to remember that a spouse *must* be named primary beneficiary of her husband's retirement plan by federal mandate. This is true regardless of the type of plan. If a participant wants to change his primary beneficiary to someone other than his spouse, a written waiver signed by the spouse is required to make such a change. This often occurs with couples in a subsequent marriage where there are children from previous marriages. Also, some defined benefit plans require a minimum term of marriage when a monthly pension payment is being made to a single person who marries. It is important to check the plan prospectus for details. In the event of death or divorce, emotions run high so couples need to discuss these matters when they are happy and rational.

In a divorce, retirement assets and options related to retirement are often glossed over in the heat of battle but the long-term effects on a divorced spouse in retirement are often difficult to predict. The division of retirement assets and/or the pension benefit must be agreed upon in the judgment entered pursuant to a decree of divorce since a QDRO is meaningless if state jurisdiction over the retirement assets is relinquished due to failure to divide them in the judgment.

For those not contemplating divorce but only retirement, both husband and wife should visit with HR to review what options are available and what the wife can expect if she is left alone. The husband also needs to know what would happen to him if he is left alone, assuming he is the plan participant. If there is a way to roll over defined benefit assets in a lump sum to an IRA, that is the best option. In today's environment of cost containment, many defined benefit plans are terminating due to high administrative costs which make these plans too expensive for many employers to maintain. If this occurs, a participant must be offered a monthly payout for life alternative or a present value lump sum alternative. At the death of both spouses, the payments end. If money remains in the participant's "payout account", it is forfeited. If a participant chooses a present value lump sum, however, he can roll the money over to an IRA, invest for income, and upon the death of both spouses, something may be left for non-spouse beneficiaries. There are also other reasons to take lump sum distributions from a defined benefit plan such as when couples do not need current income. Unfortunately, once a monthly payment schedule is selected, it cannot be changed. By taking a lump sum, the assets can be invested and held for a future time when additional income may be required or until minimum distributions are required by law.

Defined Contribution or Profit Sharing/401k plans nearly always involve lump sum options. Once again, as long as the money is in an employer plan, the spouse must be named primary beneficiary. If the husband does an IRA rollover upon his separation from service, the wife must consent in writing because an IRA account does not require a spouse to be named primary beneficiary unlike an employer plan. With an IRA, upon the death of the owner where his wife is primary beneficiary, she can either leave assets in his IRA or roll them over to her own IRA. With an employer plan where his wife is primary beneficiary, she can also leave assets in his employer plan or roll them to her own IRA. If non-spouse beneficiaries are named in either the employer plan or IRA, different rules apply. If there is any doubt about the stability of the marriage, it is best for a wife not to consent to an IRA rollover at separation from service.

Retirement issues affect both spouses in different ways. Whether married or divorced, couples need to discuss retirement money matters. Most often, wives are the ones left alone with little or no information about their husbands' retirement plan. It is never too early but it could be too late to discuss what happens when one of them is left alone.

## **ACTION STEPS TO REMEMBER**

1. **Discuss retirement with your spouse**; be open and realistic.
2. **Wives should know** it is OK to ask for a meeting alone with HR.
3. **In the event of divorce**, be specific about the division of retirement assets in the judgment otherwise, the QDRO is useless.
4. **If your employer terminates** their defined benefit plan, carefully consider taking a lump sum. Doing so provides more control over assets and future financial well-being.
5. **If in doubt about your marriage**, do not allow assets to be rolled to an IRA and remember that a written spousal waiver is always required when a married plan participant changes beneficiaries or takes a distribution from an employer plan.

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