# <u>DIVISION OF RETIREMENT BENEFITS AND QUALIFIED DOMESTIC RELATIONS ORDER (QDRO)</u>

A Qualified Domestic Relations Order, or QDRO, is a court order that legally allows a retirement plan, such as a pension or 401(k), to distribute money to someone other than the plan participant; for example to a former spouse. Distribution of retirement funds requires special attention so that the tax advantages associated with such funds will not be inadvertently lost. A QDRO is intended to transfer the agreed upon portion of the fund to the nonparticipating spouse while protecting the tax benefits which make these funds such attractive investments.

QDROs were created by the Retirement Equity Act of 1984 ("REA") and can be found under Section 414(p) of the Internal Revenue Code and Section 206(d) of ERISA. All companies that sponsor ERISA-governed pensions or 401(k) plans are legally required under federal law to administer and interpret Qualified Domestic Relations Orders.

Typically, QDROs are drafted after the divorce has been concluded. The QDRO must be approved by the fund administrator, signed by the parties, and entered by the Court as an order. The order is then registered with the plan administrator.

QDRO's are not needed to divide a non-qualified plan such as an individual retirement account (IRA) or an annuity between spouses. Funds from one spouse's IRA can be rolled over tax-free into an IRA set up by the other spouse as long as the settlement agreement specifies it. To be safe, the settlement agreement should clearly specify that the transfer of IRA funds is required as part of the property settlement that is intended to be tax-free under Internal Revenue Code Section 408(d)(6).

Otherwise, if a spouse rolls over some or all of his or her IRA funds into the other's IRA in anticipation of a divorce, this transfer is treated as a distribution to the spouse who owns the IRA. Therefore, one party gets the money and the other pays the tax.