

**CHECKLIST FOR ASSESSING THE VALIDITY OF A QDRO**  
**(Qualified Domestic Relations Order)**  
**St. Louis – Kansas City Carpenters Regional Annuity Fund (Plan)**

ERISA and the Internal Revenue Code require qualified plans to honor the terms of a QDRO. The determination as to whether a particular domestic relations order is "qualified" is made by the plan's administrator. This checklist will help determine at the outset whether a particular order provides enough guidance as to how to pay benefits in *all* possible scenarios.

This checklist sets out those items which must be present for a domestic relations order to be a QDRO. The Plan Administrator must complete this checklist within 180 days of receiving a domestic relations order. If all items are present, the parties shall be notified that the Order is a QDRO. If one or more items is not present, the parties shall be notified that the Order is not a valid QDRO.

Complete a separate checklist for each plan governed by the terms of the Order.

\_\_\_\_\_ **1. Is the Document a Domestic Relations Order?**

The Order must be a judgment, order, decree or other judicial approval of an agreement related to child support, alimony, or the division of marital property, issued pursuant to state law. Divisions of property agreed to by the parties but not formally approved by a court are not acceptable.

A Note on Revised Orders: If an order is found to be invalid, and the deficiencies are later corrected by the parties, the Order may be resubmitted to the Plan. In this instance, the corrected order *must* be approved by the court in order for it to be valid.

\_\_\_\_\_ **2. Does the Order Include Names, Addresses, Social Security Numbers and Dates of Birth?**

The Order must include the names, addresses, Social Security numbers and dates of birth of both the Participant and the Alternate Payee. In some cases, there will be several Alternate Payees. An order may designate a guardian or other representative of an Alternate Payee (e.g., an adult who cares for a minor child), however a trust may not be named as an Alternate Payee.

Note: Although the law requires the Order to state the parties' addresses, you may have access to this information through other records. In practice, if the absence of a party's address is the **ONLY** deficiency and you have access to this information, you should not disqualify an order.

### \_\_\_\_\_ 3. Does the Order Identify the Plan(s) to Which It Applies?

The Order must clearly identify all plans to which it applies. As long as there is no uncertainty about the identity of the plan in question, it is acceptable for an order to refer to an outdated or informal plan name. The Order should also identify the Plan Administrator.

Note: The letter to the parties regarding whether the Order is a QDRO should point out the proper name of the plan(s) covered by the Order.

### \_\_\_\_\_ 4. Does the Order Create a Right to Determinable Benefits?

The Order must create an Alternate Payee's right to benefits that are determinable. This item must be carefully reviewed in conjunction with the plan to be sure that you can determine how much to distribute to the Alternate Payee and when to make the payment.

- A. Does the Order relate to the type of plan covered? In some cases the parties' attorneys will draft orders based on form books or previously accepted QDROs. This can result in orders which are impossible to administer. The Plan is a Profit-Sharing Plan under IRS regulations.
- B. Is the Order clear as to what portion of the accrued benefit is to be divided? For example, most orders provide what specific portion of the benefit accrued up to the date of the divorce is to be divided between the parties. The portion to be divided is often referred to as the marital portion. If the Order does not specify limits, the plan will assign benefits to the Alternate Payee based on the entire accrued benefit of the Participant at the time of the distribution (including accruals after receipt of the QDRO). Note that this may not be consistent with the parties' intentions in drawing up the QDRO, so they must be informed of this interpretation in the letter confirming the validity of the QDRO.
- C. Is the Order clear as to how the benefit is to be divided between the parties? Many orders provide that the specified benefit is to be divided on a percentage basis (usually 50% for both parties). It is also permissible for an order to provide that the Participant's entire accrued benefit is to be paid to an Alternate Payee, or that a specific dollar amount of benefit is to be provided.
- D. Is the Order clear as to when payments to the Alternate Payee are to begin? In most instances, Alternate Payees are treated just like other Participants/beneficiaries under the plan. For example, the Alternate Payee's benefit may be distributed at the Participant's earliest retirement date under the Plan, the first of the month following the Participant's death or such earlier date as the Plan may permit.
- E. Is it clear as to what happens if the Participant or the Alternate Payee die prior to receiving the full amount assigned.

\_\_\_\_\_ **5. Does the Order Limit the Alternate Payee's Benefits to an Amount Not in Excess of the Participant's Accrued Benefit?**

The Order may not provide for benefits payable to an Alternate Payee which exceed the benefits payable under the plan(s). For example, if the Order states that the Alternate Payee is to receive \$2,000 of the Participant's benefit, and Participant has only accrued a \$1,000 benefit to date, the Order is not a valid QDRO. It is possible, however, for the Order to specify that the Alternate Payee will receive all or some portion of the benefits earned by the Participant after the dissolution of the marriage.

The fact that a Participant is not yet vested in the plan does not disqualify the Order, however the letter to the parties must note that benefits will only be payable under the Order to the extent the Participant is vested when the benefits become payable.

\_\_\_\_\_ **6. Does the Order Provide for a Permissible Payment Method?**

The Order must provide that benefits payable to the Alternate Payee are to be paid under a method allowed by the plan. For example, if the Order requires a monthly payment and the plan has no monthly payment option available, the Order is not a valid QDRO.

\_\_\_\_\_ **7. Is this Order Consistent with Previous QDROs?**

If other QDROs (related to other Alternate Payees) have been received with respect to the benefits of this particular Participant, the Order must be consistent with the provisions of those orders. An order cannot supersede the payment of benefits to an Alternate Payee under another QDRO. Regardless of the dates of the marriages involved, the first order received by the plan is followed first, with any remaining benefits subject to any order received later.

**This checklist should be updated if the DOL and IRS issue proposed or final regulations relating to QDROs.**