

THE LAW OFFICES OF  
**ANNE SCHMIDT, LLC**

Thank you for choosing the Law Offices of Anne Schmidt, LLC to assist you with the drafting of your Domestic Relation Order(s). Most likely at this point your Divorce is either finalized or nearing completion, and you are exhausted emotionally and financially. Our goal is to make this part of the process as painless and transparent as possible for you, and to be here every step of the way for any questions that you might have.

*The following are just a few short answers to our most commonly asked questions:*

**1. What is a QDRO?** A QDRO is a Court Order required by both the IRS and the Department of Labor in order to assign retirement money (i.e.: Pensions, 401(k) Plans, Cash Balance Plans, ESOPs) to a former spouse. Normally, you can't touch your employer sponsored retirement without jumping through lots of hoops and hurdles, and even then, there can be massive penalties attached to doing so. However, divorce is an exception to this rule, allowing you to assign this money without certain tax ramifications through the entry of a QDRO. Much of this is controlled by a Statute called The Employee Retirement Income Security Act of 1974 ("ERISA") that I just happen to have a Master's degree in.

It's important to understand that each plan has its own limits and benefits. *Please note: death benefits are not guaranteed in pensions. If you are concerned about survivor benefits, we suggest scheduling a consult with Anne or speaking with your divorce attorney.*

**2. What is a QILDRO?** A QILDRO is a Court Order similar to the aforementioned QDRO, but for a Plan administered by the State of Illinois. Unlike Federal law, which controls private employer plans, state plans such as Teacher's Pensions, Firefighters, Police... are controlled by Illinois Pension Law.

**3. Do I need a QDRO to divide an IRA or a Brokerage Account?** No. Brokerage Accounts and IRAs are not qualified plans and do not require a QDRO to effectuate a division or distribution of assets due to divorce. Occasionally, these accounts will require a form or a Letter of Direction depending on the details the administrator requires and how your MSA is drafted. Forms can often be found on the administrator's website. Alternatively, reach out to your financial or investment advisor where your account is held, and they will provide you with their next steps. (See #28 below for more details.)

If you or your financial advisor require assistance, we are happy to consult at our hourly rate. Some IRA plans require a court-certified Letter of Direction. When that is the case, I can prepare that Letter as required for you, as well.

**4. How much does it cost?** For multiple QDROs, we invoice \$900 for the first basic QDRO and \$850 for each additional basic draft. Although this fee does not include us entering the Order into court for you, it does cover everything necessary to prepare the QDRO for entry into court, such

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as reviewing the plan documents and statements, communicating with the retirement plan administrator to make sure everything is approved and done properly, and drafting the Order. In addition, if for some reason we need to make edits, most ordinary communications and edits are included in this cost. We invoice an additional retainer of \$500 for each QDRO to prepare the order for entry with the court, collect a certified copy, mail it to the plan and submit to the plan for final approval. *Will County court entries are handled by referral, and we will provide more information if the jurisdiction of your matter is Will County.* Sometimes your divorce attorney will handle the entry for your matter.

**5. How long does this take?** We know the process can be confusing since it is rather complex, but to summarize the timeline, it can take a few weeks to a few months until the distribution is received.

***Here's a summary timeline to give you an idea of the process:***

1. We collect all the relevant details so Anne can draft your document. This includes your Marital Settlement Agreement, recent plan statements, summary plan descriptions, personal information from you and your spouse, and payment of our invoice.
2. Anne drafts your QDRO(s).
3. The QDRO(s) undergo internal review.
4. Each QDRO is sent to the plan for preapproval by each plan (*sometimes up to a few weeks*).
5. You and your attorneys will review the pre-approved QDRO(s) (*a few days*).
6. You and your ex will sign them.
7. Then your order will be prepared by our office for you or your attorneys to submit your QDRO(s) for entry and certification to the court for a judge's signature. Once the court images the order, if you have retained us to do so, we have them certified with an official court stamp (*a few weeks*).
8. The court certified documents will then be sent to your plans by either your attorney or our office.
9. The plans will provide you with documentation about what types of distributions are allowed (*within a reasonable period of time*).
10. And then the plan(s) will effectuate the division (*also a few weeks or sometimes months*).

**6. No really, how fast does all of this happen?** We are pretty fast, but sometimes we have to wait for plan administrators to approve things and that can take some time. Once the plan administrator receives the order which has been entered by the court, they are allowed a reasonable period of time to tell you whether it is "qualified" or not – meaning it has passed muster and the money will be segregated from your spouse's plan and assigned to you. At that point, the plan administrator will send you a letter saying everything is approved along with distribution forms asking you what you want to do with your money.

**7. What if my QDRO is rejected or not preapproved?** Sometimes we receive a letter asking us to make changes before the plan will accept the Order and assign the requisite monies. This is quite normal in the process and nothing to be alarmed about, any changes that we need to make to the Order to get it approved by the plan are included in the cost. We have a very strong knowledge of which plans require preapproval or may require tweaking of our Orders and will advise you accordingly during the process. The most important thing is to not be alarmed if you

receive a letter from the plan saying changes are required, we are on it and will help implement those changes to make sure your Order is approved and the money is assigned properly.

**8. What is a Participant and what is an Alternate Payee?** The participant is the member of the plan and the alternate payee is the person receiving the money from the member's plan in the marital settlement agreement – for example, John Smith is a participant in the ABC 401(k) plan and Sally Smith, his ex-wife, is the alternate payee. The plan will require up-to-date personal information for both the participant and alternate payee to approve the assignment. We will send you a secure link or an addendum form asking you for all of this info. If you are uncomfortable providing this information electronically, please call us and we will happily take it over the phone.

**9. What do I do with my money?** We are not financial advisors, so we cannot advise you the best way to invest or spend your money. What we can tell you is if you take a distribution (on a plan that allows a cash distribution like a 401(k) you will pay taxes on the distribution, and if you roll over into an IRA you will defer your taxes. Regardless, as mentioned earlier you avoid the 10% tax penalty through this nifty QDRO. If you need a referral to a Financial Advisor, please ask and we will be happy to provide a referral.

**10. How much do you charge outside of the flat fee?** If you need work done above and beyond the flat fee, Anne's rates are \$425.00 an hour. Because she has a Masters in Benefits, she often helps people figure out their health care issues in divorce i.e.: COBRA vs. Illinois Spousal Continuation Coverage and Qualified Medical Support Orders (QMSCO), which you will need in order to have access to your kids' medical plans if they are covered under your former spouse's plan. Anne also practices mediation and collaborative law, basically, any family law that is not litigated. Please visit our website is [anneschmidtlaw.com](http://anneschmidtlaw.com) for a better understanding of our practice areas.

**11. How do I get in touch with you?** Email or call Anne anytime. Our office number is 847.926.7679. Her email is [anne@anneschmidtlaw.com](mailto:anne@anneschmidtlaw.com).

**12. Billing Estimates as of December 2023 (also, please see our Rate Sheet for more detail):**

For the drafting of QDRO or QILDRO, we start with a cost of \$900 for drafting each basic DRO, which includes communicating with the retirement plan, drafting the DRO, pre-approval if necessary, and any subsequent edits to the document as a result of pre-approval. If you have multiple plans and require more than one QDRO, we invoice \$900 for the first QDRO and \$850 for each additional QDRO. We retain an additional \$500 for each DRO for court costs, certification fees and mailing costs as well as our secretarial time to manage those tasks. We submit to the plan for final approval. So the invoice for drafting and submitting one standard QDRO is \$1400, and for two standard QDROs is \$2350. If your matter is more complex or you require additional consultation, we will advise you of that and Anne's billing rate is \$425/hr for consultation.

We expect IRAs can be divided directly with the IRA plans (see #29 below). The parties can reach out to their advisors for guidance. If an additional Letter of Direction is required, Anne can draft as needed for \$425/hr, and those will typically invoice for \$900 for the first Letter of Direction and \$850 for each additional plan.

For QILDROs we invoice \$50.00 to cover the submission check required.

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### **13. Determining the Non-marital portion for Defined Contribution Plans**

Unlike Pension Plans, Defined Contribution Plans like 401(k)s, 403(b)s, TSPs, do not automatically segregate the non-marital portion of the deposits so the non-marital portion will need to be determined by the parties prior to drafting of the QDRO. Anne can assist with this calculation if the parties are agreeable to that and her consulting fee on collecting prior statements and assisting in that calculation and working with the parties to come to terms is \$425/hr.

By way of explanation, often contributions to your retirement account start before your marriage. It may be that based on your negotiations with your counsel and spouse that your agreement carves out these “non marital” contributions. It is important to understand that in your situation we will not be able to write a QDRO that determines this non marital component for you, and this exclusion will need to be agreed upon in your dissolution negotiations or calculated by an actuary who then provides us with those calculations to complete the drafting of the QDRO.

*For example:*

Joe Smith begins his marriage in 1998 with \$20,000 in his 401k before Marriage. Today, the 401k has \$250,000 in it subject to market fluctuations daily. There is a no doubt that the \$250,000 is comprised of growth from what the \$20,000 has grown to over the years as well as employee and possible employer contributions since 1998. Joe would like to not only carve out the \$20,000, but also the growth on the \$20,000 until the time of dissolution.

The problem is that without clean yearly statements outlining the exact rate of return on investments we are unable to opine on what that \$20,000 may be in today’s dollars as we do not have an actuary on staff. What we can do is help the parties reach resolution by providing a compounding interest rate calculation based on the Department of Labor yearly rates during the marriage and helping the parties reach agreement without the cost of litigation. But, if the parties want an actuarial assertion or analysis that will survive litigation they should hire an actuary. We can refer you to one if requested.

**14. If I am the plan participant, can I move money before the QDRO is complete?** If your Marital Settlement Agreement assigns a portion of your retirement assets to your ex-spouse, you cannot withdraw monies or close out your retirement plan before the required transfer to your ex-spouse without being at risk of violating of your Marital Settlement Agreement, a binding court order.

**15. What if my address changes?** If your address changes before our firm submits your QDRO for processing, inform us right away. If your address changes after we have submitted the QDRO to the retirement plan for processing, you will need to contact the plan to update their records. It is vital they can reach you with documents throughout the process.

**16. How will the plan know what to do with my disbursement?** The retirement plan will send the alternate payee documents outlining options for your disbursement. You will communicate directly with them about your wishes.

**17. If my plan allows a cash disbursement and I elect that option, will I pay the standard 10% penalty?** If you take a distribution on a plan that allows a distribution like a 401(k), you will pay taxes on the distribution, and if you roll over into an IRA you will defer your taxes. Regardless, as mentioned earlier you avoid the 10% excise tax penalty through this nifty QDRO. Be aware that if you elect a distribution, you must elect those dollars prior to the rollover of monies to an IRA, as once in an IRA, if you are under 59.5, the 10% penalty will apply. *We recommend you discuss all distribution options with your financial advisor because there are tax implications with certain types of distributions and certain plans, such as deferred compensation plans(457b), may accelerate the taxation.*

**18. If my plan allows a cash disbursement and I elect that option will I pay taxes on that disbursement?** If you take a distribution on a plan that allows this, like a 401(k), you will pay taxes on the distribution, and if you roll over into an IRA you will defer your taxes. Regardless, as I mentioned earlier you avoid the 10% excise tax penalty through this nifty QDRO. *We recommend you discuss all distribution options with your financial advisor because there are tax implications with certain types of distributions. Also, certain plans, such as deferred compensation plans (457b), may accelerate the taxation.*

**19. You told me the QDRO has been submitted to the retirement plan, but I haven't heard from the plan yet. What do I do next?** We recommend you give the plan a full 60 days to reach out to you with details and paperwork. Then contact the plan directly using the contact information which can be found on the QDRO itself, usually on the addendum page.

**20. How fast does all of this happen, really?** At this point, we've been advised by the courts to allow 3 weeks each for processing for both entry and certification. That being said, the process typically doesn't take longer than 3 weeks in total, but high volumes of submissions can often slow things down. However, once we send the QDRO to the Plan Administrator, that process can vary wildly in timing. Both the process of mailing the QDRO as well as the Plan Administrator's review period is different with every QDRO.

**21. Do you need my account number to know where to send the funds?** We do not need this information. You may need it when the plan administrator contacts you, if you decide to roll over the funds into a new or different account.

**22. What happens if I continue to make contributions to my plan after my divorce date?** Your divorce date is typically the division date of the asset. Some parties agree on an earlier division date, prior to their divorce date. No contributions after the division date will be segregated nor transferred to your former spouse.

**23. How do you handle loans that were taken against the retirement plan?**

If there are no loans noted on the plan statement when we review that document during the QDRO drafting phase, our office will assume that no loans have been taken by the participant unless affirmatively told otherwise. If a loan is taken between the time of dissolution and entry of the QDRO, our office will draft the QDRO to assign any loans on the account fully to the participant so the DRO will direct the administrator to *include* the loan.

**24. What is the difference between including or excluding a loan if one was taken against the retirement plan?** By *including* the loan in the value of the Participant's account, the plan will calculate the Alternate Payee's share as if the loan had *not* been taken and will not subtract that amount before calculating her 50%. Below are examples of how the Alternate Payee's share would be calculated when *including* or *excluding* the loan:

**Example – 50% assignment / Excluding loan balance**

Participant's Account Balance	\$100,000
Participant's Outstanding Loan Balance	\$20,000
Participant's Account Balance Excluding Loans (\$100,000 - \$20,000)	\$80,000
50% Assignment to Alternate Payee (0.5 x \$80,000)	<u>\$40,000</u>

**Example – 50% assignment / Including loan balance**

Participant's Account Balance	\$100,000
Participant's Outstanding Loan Balance	\$20,000
Participant's Account Balance Including Loans (loan is not subtracted)	\$100,000
50% Assignment to Alternate Payee (0.5 x \$100,000)	<u>\$50,000</u>

In the first example, the alternate payee receives a lower disbursement leaving \$10,000 in the plan towards her half of the loan. In the second example, the alternate payee receives half of the account balance, disregarding the loan. However, even if a portion of the Participant's Plan loan value is transferred to the Alternate Payee, no portion of the actual Plan loan (i.e., the obligation to pay it back) may be transferred to the Alternate Payee. The Participant will have to pay back the entire loan.

**25. What if my Marital Settlement Agreement doesn't make any reference to handling gains or losses in the retirement assets after the division date?** It's important for us to be sure we are drafting QDROs and Letters of Direction to the parties' intent and so we will ask for some clarification as we move forward with your matter.

Anne has drafted the following language which is typically included in the QDRO. If your MSA is unclear about how to handle gains and losses, we will ask you and your counsel to advise us by choosing one of the two options below.

a. *The amount assigned to the Alternate Payee shall be adjusted for a pro rata share of the earnings, gains, and losses attributable to the Participant's account under the Plan from the Division Date until a separate account is established under the Plan for the Alternate Payee. Any such adjustment shall be made in accordance with procedures established by the Plan Administrator.*

*or*

b. *The Alternate Payee shall not be entitled to earnings, gains, or losses.*

**26. I do not want my divorce attorney to review the drafted DRO because I do not want to be billed for their services any longer.** You can choose to review your DRO draft and we will not include your divorce attorney on the email when the DRO is sent to the parties and attorneys for review, but please remember that if you engaged Anne to act as a neutral, she is not representing you or your interests specifically and has been engaged to interpret and draft the DRO to reflect what you have negotiated in your Marital Settlement Agreement. If you choose not to include your divorce attorney at the review stage, you will be responsible for your review of the draft.

**27. Why is my attorney included on the addendum of the DRO and copied on the communication to the court and the retirement plan? I do not want to be billed for their services any longer.** The counsel of record in your divorce are included on the addendum and copied when your DRO is submitted to court, as they should be made aware this work has been completed.

**28. I am the divorce attorney of record for this client, but I have withdrawn from this case or no longer represent this client, why am I being copied on review of this DRO and copied on the communication to the courts and the retirement plan?** Anne's policy is to include the counsel of record during the review stage to ensure the proper interpretation of the parties' Marital Settlement Agreement. The counsels of record are included on the addendum and copied when the DRO is submitted to court, as they should be made aware this work, as required by the MSA order, has been completed.

**29. I need to divide an IRA account as listed in my Marital Settlement Agreement. Can you handle this for me?** If enough details about the division are included in your Settlement Agreement, dividing your IRA account can typically be handled by calling the financial advisor on your statement and requesting a Transfer Due to Divorce Form or logging onto your online account and searching for a Transfer Due to Divorce Form. Complete the form and provide the documents required. If you cannot make the transfer with the form and a copy of your Marital Settlement Agreement, please reach out to us with the details your IRA administrator needs, and Anne can be retained to draft a Letter of Direction for you.

**30. Our office has reached out to you multiple times via email for information, signatures or for another reason and you or your ex-spouse is not participating in the process. What's next?** In order to complete the DRO process, our office expects that you will participate in the process and respond in a timely fashion to our emails. If your matter requires additional time and resources to connect with you or your ex-spouse, we will invoice at Anne's hourly rate of \$425 for those communications.

**31. I received a "We are closing your matter with our office" email because you have tried to reach us and we have not responded. Now what?** If your matter has been closed by our office due to your or your ex-spouse's lack of participation, we invoice at \$425 to re-open your file for final processing. Please stay involved with our office to move your matter forward to completion in a timely fashion to avoid these extra time-consuming steps for which we must invoice.

**32. I received a locked/secured/encrypted pdf file from you. What password opens it?** To protect the sensitive data contained in the addendum, which must be prepared for the QDRO processing, we secure your file with a password. The password is the first three letters of the month and the year in which the email was sent to you where the file is attached. For example, if we sent you an email with an attachment in September of 2023, the password is the first three letters of the month, followed by the year: Sep2023.

**33. You are waiting for my signature on the final, approved DRO. How long do I have to sign it?** Once your DROs have been approved for circulation by both parties, the DROs will be circulated for signatures. You will have 30 days to complete your signatures on the Order. If the DROs are not signed by both parties or your counsel within 30 days, you will forfeit any retainer for preparation for court entry, fees and mailing costs, our contract with you ends and the DROs will be sent to both counsels representing the parties for any further processing. Please note that having the DROs entered and mailed to the plan by outside counsel may incur additional fees.

**34. I am an Alternate Payee for an Illinois State Pension which requires a QILDRO. Will I receive benefits if my ex-spouse passes away?** Unfortunately, Illinois State Pensions do not provide continued benefits for former spouses if the participant dies. If you have concerns about particular death benefits you will receive, we suggest you confirm the rights and features of the retirement plan with your counsel or set up a consult with our office.

We look forward to working with you and we are glad you chose our firm to help with one of the last steps of your divorce. Our team is experienced, and we will do our best to make this complex process run as smoothly as possible for you.

Best,

**Anne Prenner Schmidt, Esq.**

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*Rate changes and updates may occur throughout the year.*

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