

PROBLEMS WITH QDRO's
With Carol Ann Wilson, CFP

- I. Terminology of QDROs, COAPs, MBDOs, etc.
 - A. What kind of plans are there
 - B. ERISA, REA
 - 1. Separate interest vs. shared benefits stream
 - 2. Consider offsets if multiple retirement benefits
- II. Failure to anticipate death
 - A. What if the employee dies?
 - B. What if the non-employee spouse dies?
- III. Failure to prepare the QDRO before the divorce is final
 - A. What if the employee dies?
 - B. What if the employee retires? (Could cut off survivor's benefits)
 - C. What if the employee remarries?
 - D. Who should prepare a fox and henhouse
 - E. Loss of bargaining power, availability of discovery, possibility of new surviving spouse (and much higher legal fees)
 - F. Aside re: QDRO mills, quality, price, and liability
- IV. Failure to divide early retirement bonus/subsidy
 - A. Read the SPD (Summary Plan Description)
- V. Failure to consider increase or decrease in value of plan before distribution
 - A. ALWAYS specify an as of date
 - B. Freeze
 - C. Adjust for gains and losses
 - D. Consider loans in, out?
- VI. The Gillmore principle of division at eligibility
 - A. "The employee spouse cannot by election defeat the nonemployee spouse's interest in the community property by relying on a condition within the employee spouse's control."
 - B. Same principle as for disability protections
- VII. Failure to understand the Plan Provisions, Features and Forms
 - A. Kennedy
 - B. Carmona
 - C. It may, or may not, be possible to affect benefits by way of waivers in prenupts, postnupts, or otherwise
 - 1. Must follow up with proper paperwork, where possible, or could lose no matter what papers say, and professionals (CPAs, lawyers) get sued
 - D. QDRO uses "support" QDROs, security QDROs

