

**DRAFTING A QUALIFIED DOMESTIC RELATIONS ORDER  
ACCEPTABLE TO THE  
STEELWORKERS PENSION TRUST**

**REQUIREMENTS OF THE LAW**

In general, the Employees' Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code) do not permit a participant to assign or alienate the participant's interest in a pension plan to another person. These "anti-assignment and alienation" rules are intended to ensure that a participant's pension benefits are actually available to provide financial support during the participant's retirement years. A limited exception to the anti-assignment and alienation rules is provided for assignments of pension benefits through qualified domestic relations orders (QDROs).

Under the QDRO exception, a domestic relations order may assign some or all of a Participant's pension benefits to a spouse, former spouse, child, or other dependent to satisfy family support or marital property obligations if and only if the order is a "qualified domestic relations Order." ERISA requires that each pension plan pay benefits in accordance with the applicable requirements of any "qualified domestic relations order" that has been submitted to the plan administrator. The plan administrator's determinations on whether a domestic relations order is a QDRO, therefore, have significant implications for all parties to a domestic relations proceeding and the plan. As defined in ERISA and the Code, a "Qualified Domestic Relations Order" (QDRO) is a Domestic relations Order that creates or recognizes the existence of an "alternate payee's" right to receive, or assigns to an alternate payee the right to receive, all or a portion of the benefits payable to a participant under a pension plan. Further, the Order to be a QDRO must include certain information and meet certain other requirements.

To be recognized as a QDRO, an Order must be a “Domestic Relations Order”. A Domestic Relations Order is a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law) and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a participant.

A state authority, generally a court, must actually issue a judgment, order, or decree or otherwise formally approve a property settlement agreement before it can be a “domestic relations order” under ERISA. The mere fact that a property settlement is agreed to and signed by the parties will not, in and of itself, cause the agreement to be a domestic relations order.

There is no requirement that both parties to a marital proceeding sign or otherwise endorse or approve an order. It is not necessary that the pension plan be brought into state court or made a party to a domestic relations proceeding for an order issued in that proceeding to be a “domestic relation order” or a “qualified domestic relation order”. Indeed, because state law is generally preempted to the extent that it relates to pension plans, pension plans cannot be joined as a party in a domestic relations proceeding pursuant to state law. Moreover, pension plans are neither permitted nor required to follow the terms of domestic relations orders purporting to assign pension benefits unless they are QDROs.

A Domestic Relations Order may be issued by any state agency or instrumentality with the authority to issue judgments, decrees, or orders, or to approve property settlement agreements, pursuant to state domestic relations law (including community property law).

A Domestic Relations Order can be a QDRO only if it creates or recognizes the existence of an alternative payee’s right to receive, or assigns to an alternative payee the right to receive, all or a part of a participant’s benefits. For purposes of the QDRO provisions, an alternative

payee cannot be anyone other than a spouse, former spouse, child, or other dependent of a participant.

Finally, QDROs must contain the following information:

- the name and last known mailing address of the participant and each alternate payee;
- the name of each plan to which the order applies;
- the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee; and
- the number of payments or time period to which the order applies.
- the order must not require a plan to provide an alternate payee or participant with any type or form of benefit, or any option, not otherwise provided under the plan;
- the order must not require a plan to provide for increased benefits (determined on the basis of actuarial value);
- the order must not require a plan to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO; and
- the order must not require a plan to pay benefits to an alternate payee in the form of a qualified joint and survivor annuity for the lives of the alternate payee and his or her subsequent spouse.

There is nothing in ERISA or the Code that requires that a QDRO (that is, the provisions that create or recognize an alternate payee's interest in a participant's pension benefits) be issued as a separate judgment, decree, or order. Accordingly, a QDRO may be included as part of a divorce decree or court-approved property settlement, or issued as a separate order, without affecting its "qualified" status.

A domestic relations order that provides for child support or recognizes marital property rights may be a QDRO, without regard to the existence of a divorce proceeding. Such an order, however, must be issued pursuant to state domestic relations law and create or recognize the rights of an individual who is an “alternate payee” (spouse, former spouse, child, or other dependent of a participant).

A State Court (or other state agency or instrumentality with the authority to issue domestic relations orders) does not have jurisdiction to determine whether an issued domestic relations order constitutes a “qualified domestic relations order”. Jurisdiction to challenge a plan administrator’s decision about the qualified status of an order lies exclusively in Federal court.

### **STEELWORKERS PENSION TRUST’S QDRO GUIDELINES**

The Steelworkers pension Trust (Trust) is a Defined Benefit Plan. This type of plan promises to pay each Participant a stream of periodic payments, usually monthly, beginning at retirement and continuing for the balance of the participant’s life. This stream of payments is generally known as an “Annuity”. If payment stops at the Participant’s death, it is a “Single Life Annuity”. The Trust, as do other plans, offers a participant the choice of other forms of payment, known as “Options”, in place of a Single Life Annuity. All such Options, however, feature a stream of periodic payments. Since there is a “cost” associated with these Options, the Single Life Annuity form of benefit produce the highest periodic payment. For the purpose of drafting a Domestic Relations Order considered Qualified by and acceptable to the Trust, the Draftsman need not be concerned about any payment Option other than the Single Life Annuity, as will become clear below.

Further, with a Defined Benefit Plan the Participant does not have an individual account or an account balance. There are no lump sum payments or other types of cashouts. For

purposes of calculating the full amount of marital property in a divorce action, a Present Value of a Participant's accrued benefit may be determined. The Present Value of a Participant's accrued benefit is the lump sum amount of money that is needed at the present time to produce the Single Life Annuity beginning at the Participant's normal retirement age. For example, take the case of a Participant currently age 40 years who has accrued a Single Life Annuity of \$300 per month beginning at his normal retirement age of 65 years. The Present Value of this benefit is the amount of cash now needed to begin paying this person \$300 per month beginning 25 years from now and continuing thereafter for his life. To make such a calculation one must make two assumptions, what annual interest rate the lump sum will earn and what the life expectancy of the Participant will be. In most jurisdictions there are several acceptable ways of determining these assumptions. It must be remembered, however, that the Present Value is a hypothetical figure to be used in figuring the total value of a marital property in a divorce action. To reiterate, the Trust does not make lump sum payments.

Since most QDROs received by the Trust concern the division of marital property in a divorce, the Trust has developed a Model QDRO for this purpose, a copy of which is attached.

In this Model QDRO, the Trust takes what is known as the "Separate Interest Approach". This means that the Participant's benefit is divided into two separate parts, one for the Participant and one for the Alternate Payee. This approach simplifies the Draftsman's task. The Alternate Payee's benefit begins when the Participant attains the earliest retirement age under the Plan and continues for the balance of the Alternate payee's life. Once the Alternate Payee's benefit payments begin, the subsequent death of the Participant will not affect the Alternate Payee's payments. If the Participant dies before the Alternate Payee and before the Alternate Payee's benefit payments begin, the Alternate Payee will nevertheless receive the Pre-Retirement

Surviving Spouse Benefit which again will provide the Alternate Payee with a lifetime benefit beginning at the time the participant would have attained the earliest retirement age. It is to be noted, however, that the Alternate Payee must receive his/her benefit as a Single Life Annuity and may not choose any of the other optional forms of payment that are available to a Participant. The Draftsman will also notice that the Model QDRO provides that the Alternate Payee is not to be considered the surviving spouse of the Participant for the purpose of the Post-Retirement Surviving Spouse Benefit. Giving the Alternate Payee this benefit is not necessary since his/her benefit once begun will continue if the Participant dies first. This leaves the participant free to give this benefit to any future spouse. Since there is a substantial cost in providing this benefit, the fact that it is not provided to the Alternate Payee in no way diminishes the Alternate Payee's interest.

Although the Trust provides a Model QDRO for divorce matters, the Draftsman is not required to use it. The Trust will accept any QDRO that conforms to the requirements of the law as described above.

In order to save time and money for all concerned, it is suggested that once the QDRO is drafted and before being submitted to the Court that it be sent to Trust Counsel for pre-ratification. If Counsel finds the proposed QDRO unacceptable, he will advise precisely what modifications are necessary to make the proposed QDRO acceptable. Further, during the initial drafting of the QDRO, ZENITH AMERICAN SOLUTIONS, INC. is available to answer questions and give advice.

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