

QDRO Frequently Asked Questions

Regarding Marital Litigation and the Division of Retirement Benefits

For the Retirement Plans Administered by
Wespath

Information provided by the Legal Services Department
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Wespath receives a number of inquiries from participants and/or spouses who are considering the dissolution of their marriages. The following is a compilation of the most commonly asked questions with answers to those questions. This document is not all inclusive. Questions regarding marital litigation and domestic relations orders should be directed to **Legal Services**, Wespath, 1901 Chestnut Avenue, Glenview, Illinois 60025-1604. The direct telephone number for **Legal Services is (847) 866-4202**. Inquiries may also be sent by facsimile to **(847) 866-4880** or emailed to **legalteam@wespath.org**.

1. When should Wespath be notified of pending marital litigation?

Participants and their attorneys should contact Wespath for information as soon as possible. Retirement benefits are an important part of the financial estate of clergy and other church employees. Our retirement plans may be very different from other retirement programs with which attorneys are familiar. Accordingly, the rules concerning the division and distribution of retirement assets are different from other retirement programs.

Wespath's retirement plans are "church plans" as defined in Section 414(e) of the Internal Revenue Code (Code) and are administered pursuant to Code Section 403(b)(9). The church plans each provide that they will recognize domestic relations orders (DROs) that qualify as qualified domestic relations orders (QDROs) under Code Section 414(p), as determined by Wespath.

2. Why should Wespath be contacted?

Wespath is a separate entity from the local conference offices, staff agencies, and other employers whose staff participate in the retirement plans we administer. With respect to the division of retirement assets Wespath will (1) supply the applicable model QDROs, together with related materials, to anyone who makes a request for information. The model QDROs are to assist in the drafting an order appropriate for our church plans; and (2) provide information about the provisions of our retirement plans. In order for us to provide specific information regarding a participant's retirement benefits (such as account balances or accrued monthly benefits) to a third party, we require the participant's written authorization or a subpoena for records.

The responsibility for administering marital litigation matters and the transfer of retirement benefits has been assigned to Wespath's Legal Services department. Only personnel from Legal Services should provide assistance to the participant, spouse, former spouse, and/or their attorneys during this process.

3. Is the spouse/previous spouse of the participant automatically entitled to a portion of the retirement account or benefit of the participant?

Our retirement plans do not dictate that there must be an assignment of retirement benefits. Often, the court will divide the retirement assets based upon an agreement between the participant and the spouse, which considers the personal financial situation of both parties. It is up to the participant and the spouse, together with their legal representatives and the court, to determine the amount to be assigned from the participant's total accrued benefit under a retirement plan.

4. Does the assignment of benefits have to come from all of a participant's retirement benefits?

No. It is up to the parties to decide from which retirement plan or plans the assignment will be made. Many participants have multiple retirement plans and/or benefits. Eligibility to receive distributions and the forms of distributions allowed vary under each of the retirement plans we administer. We strongly encourage the parties to obtain financial information from Wespath's Legal Services team by either having the participant submit a written release for information or by issuing a subpoena for records before decisions related to the assignment of benefits are finalized.

Please note: *Wespath issues quarterly statements of account that reflect defined contribution balances. These statements do not provide a valuation of any defined benefit accruals a participant may have.*

5. What should be done if there will be an assignment of retirement benefits?

A court must enter a DRO with respect to the assignment of those benefits. Wespath will then review the DRO to determine if it qualifies as a QDRO (meaning that it is not in conflict with the terms of our retirement plans or attempting to assign benefits that a participant does not have).

A qualified domestic relations order or QDRO (often pronounced "quadro") is a Judgment, Decree, or order that (1) relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; (2) is made pursuant to a state domestic relations law (including a community property law); (3) meets the requirements of the retirement plans and section 414(p) of the Code; and (4) is accepted and approved by Wespath. The alternate payee may be a spouse, former spouse, child or other dependent of the participant, who receives an assignment of a portion of the participant's retirement benefit under a court order.

A QDRO must meet certain criteria and be very specific in its language. In most situations a QDRO is filed as a separate document, but it may be included in the Decree of Divorce. Wespath makes the final determination as to whether a QDRO is qualified. Even though the QDRO is actually a court order signed by a judge, it is not considered qualified until Wespath approves the order because only certain kinds of assignments are permitted under our retirement plans. Under the law, retirement plans are not required to pay benefits in a way that conflicts with the terms of the plans.

Please note: Wespath **will not** approve an order as a QDRO that would require us to (1) retroactively divide a participant's account balance; (2) calculate gains and losses on past amounts to bring them forward to the date of transfer; or (3) divide up past benefits that have already been paid to a participant. If the parties wish to use a date in the past to determine the amount to be assigned in a QDRO that is their option. However, the parties will have to take on the burden to calculate the retroactive gains and/or losses through a current date. *See our Model QDROs for further information pertaining to acceptable Dates of Division.*

6. What if there will be no assignment of the retirement benefits?

If the participant is to retain full rights to his or her retirement benefits, the decree, separation agreement, or similar order should specifically state this. Once finalized a copy of that order should be sent to Wespath.

7. Who is responsible for preparing the QDRO?

Unless stipulated in the separation agreement or Decree, either party may prepare and file the QDRO. Any division of benefits set forth in a separation agreement or Decree is binding on the parties but not on Wespath. We will divide a participant's retirement benefits only in response to a QDRO. Both the participant and the alternate payee should cooperate fully toward the goal of qualifying an order and ensuring the completion of the division of retirement benefits. An attorney's failure to prepare a QDRO for his/her client could potentially be deemed an omission significant enough to warrant a malpractice claim. The failure of a QDRO to be adopted and approved may result in a potential alternate payee losing his or her rights to benefits that the parties planned to assign. Unless a QDRO is prepared, entered, and approved by Wespath, the participant will retain his or her retirement benefits and might in some cases receive a distribution of those benefits before the alternate payee receives an assignment.

8. Will Wespath do a preliminary review of the draft QDRO?

Yes. The purpose of the preliminary review is to determine whether the order will qualify as a QDRO and if we will be able to administer the QDRO. *The preliminary review of an order is not intended to have Wespath determine the amount to be assigned, determine that the division set forth in the order is fair and equitable to the parties, or settle disputes between parties.* The preliminary review is intended only to confirm that we will be able to assign benefits to the alternate payee in the manner sought by the proposed order. **We strongly encourage the submission of a draft QDRO for preliminary review.** This will avoid unnecessary delays in qualifying the order. If there is a technical problem, it is easier and more cost effective to make revisions before the court has entered the order. Drafts should be submitted to our Legal Services Department by email to legalteam@wespath.org; by fax to **847-866-4880**; or by US Mail to Wespath, 1901 Chestnut Avenue, Glenview, IL 60025-1604.

9. When should the QDRO be filed?

It is extremely important that the parties make every attempt to have the QDRO filed **concurrently** with or before the entry of the final decree of divorce (or similar order). A filed decree of divorce does not mean that the matter of assigning retirement benefits is finished. The matter is not concluded until Wespath receives a certified copy of a DRO and qualifies the order as a QDRO. In addition, if a QDRO is not received and approved by Wespath in a timely manner, there is the possibility that a participant may die or that benefits may be paid out to a participant and/or the participant's beneficiary, causing the alternate payee to lose his or her right to benefits.

10. What does Wespath do when it receives an order that purports to be a QDRO?

Upon receipt of a court order that purports to be a QDRO, Wespath will review the order and make a determination on the qualified status of the order. The determination is based on whether the order divides retirement benefits in accordance with federal law and with the terms of the retirement plans we administer. During the review period Wespath places an administrative hold against a participant's account balances to prevent distributions, including cash installment payments, from any retirement account mentioned in the DRO. This administrative hold continues until the DRO is examined, and approved by Wespath. The normal hold period lasts 150 days. Reasonable additional time is allowed for a defective order to be corrected and/or entered by a court in accordance with Wespath's *Procedures for Qualified Domestic Relations Orders*.

11. What happens after the Wespath approves a DRO as a QDRO?

Wespath will create a Participant Record for the alternate payee in our data base. The alternate payee will then have his or her own identity and participant number.

For benefits assigned from an account balance

Wespath will process an internal transfer of the benefits assigned from the participant's accounts into a separate account(s) for the alternate payee. The internal transfer will usually be completed within 30 days of the date the QDRO was approved or following the Date of Division in the QDRO. Transfers are processed in the order of date of receipt of the DRO and date of approval of the QDRO. We must treat each alternate payee equally. Special requests for expediting transfers cannot be honored.

After the internal transfer is completed, Wespath will notify the participant and alternate payee in writing. At that time, the alternate payee will receive information about registering for our online account services website: Benefits Access (benefitsaccess.org). The alternate payee will be issued quarterly statements of account reflecting any defined contribution balances that remain invested at Wespath.

For benefits assigned from a Defined Benefit

If the alternate payee is assigned benefits from the Pre-82 Plan or the Defined Benefit portion of the Clergy Retirement Security Program, the information about the assignment will be maintained internally at Wespeth and noted on both the participant's and alternate payee's records. Since the actual payment of the benefit may not occur for several years, or even decades, it is important that the participant and alternate payee keep Wespeth informed of any address or name changes. Requests for pension projections can be made through our Customer Service Department at 1-800-851-2201 between the hours of 8:00 a.m. and 6:00 p.m., Central time, Monday through Friday.

For benefits already being paid as a monthly annuity

If the alternate payee is assigned a portion of a retirement annuity already being paid, payment to the alternate payee will begin effective as of the Date of Division stated in the QDRO and as soon as administratively possible following Wespeth's approval of the QDRO. At the time of our approval of the DRO as a QDRO, various forms will be sent to alternate payee to complete and return to us to initiate his or her monthly payments.

12. What happens if Wespeth does not approve a DRO as a QDRO?

If Wespeth disapproves of a DRO because it fails to meet the requirements, it will continue its administrative hold on account balances for an additional 180 days. This allows the parties time to obtain an order correcting the defect. In accordance with plan procedures and federal law, Wespeth may continue to segregate benefits while repeated attempts are made to correct an order for a maximum of 18 months, before discontinuing the withholding of benefits for the alternate payee.

13. What happens if the participant and/or alternate payee die before the QDRO is approved?

Receiving a DRO after the death of a participant and/or alternate payee could be problematic. The sooner Wespeth is notified of the potential assignment of benefits, the better chances that a DRO may be approved as a QDRO.

For benefits assigned from an account balance or accrued defined benefits not being paid

If the death of a participant and/or alternate payee occurs during the QDRO determination process where we have an administrative hold in place, in most cases, the QDRO determination will continue in the same manner as if the participant and/or the alternate payee were still living. However, if the DRO will be rejected and not approved as a QDRO potential problems may arise. If Wespeth does not have an administrative hold in place and benefits have already been paid out to a participant's Beneficiary, the alternate payee may lose his or her right to benefits that were intended to be assigned.

For benefits already being paid as a monthly annuity

The type and form of annuity payment that the participant is receiving at the time of his or death will directly affect whether or not we could even approve the DRO as a QDRO. A QDRO cannot alter the form of benefit already being paid and if the participant does not have benefits that continue beyond his or her death, in most likelihood we would not be able to accept the DRO. At most, a QDRO can assign some or all of the contingent annuitant's benefit to an alternate payee.

14. When is the alternate payee eligible to receive a distribution if the participant is not receiving payments?

An alternate payee under the retirement plans administered by Wespath, is treated as a fully vested terminated participant. Rights to distributions are subject to the requirements applicable to terminated participants as provided by each retirement plan as they may be amended from time to time, including the non-alienation provisions. The alternate payee is eligible for benefits in accordance with the plan's age requirements, if any, based upon the alternate payee's age (**not the participant's age or eligibility to receive benefits, except in accordance with federal regulations regarding required minimum distributions**).

After the internal transfer of retirement benefits from the participant to the alternate payee has been completed, the alternate payee is then eligible to receive distributions from the following retirement plans and/or accounts:

- United Methodist Personal Investment Plan (UMPIP) account
- Clergy Retirement Security Program (CRSP) **Defined Contribution** account
- Retirement Plan for General Agencies (RPGA) account (RPGA is closed as of December 31, 2024, and replaced with UMPIP)
- Horizon 401(k) Plan.

An Alternate Payee is eligible to begin a monthly retirement benefit **upon or after his or her attainment of age 62** from the following retirement plans and/or accounts:

- CRSP Defined Benefit and/or Supplement One (Pre-82 Plan)
- The Ministerial Pension Plan (MPP) account

For more information about the types and forms of available distributions options by plan, please refer to the Distribution Options handout provided in our QDRO packet or the Summary Plan Descriptions that can be viewed on our website at www.wespath.org.

15. How does an alternate payee obtain a distribution?

An alternate payee **who is eligible for a distribution** may request a distribution after being notified in writing that the internal transfer of retirement benefits has been completed. The alternate payee may request a distribution either on-line through Benefits Access or by calling our **Customer Service**

Department at 1-800-851-2201 between the hours of 8:00 a.m. and 6:00 p.m., Central time, Monday through Friday to request an Application for Benefits.

16. Must an alternate payee who is eligible to receive distributions take a distribution?

The fact that an alternate payee is eligible to receive a distribution does not mean that he or she must take a distribution. An alternate payee may consider saving some or all of the money to be received as retirement income. Monies may remain on account at Wespath until the original participant's required beginning date under IRC Code section 401(a)(9), relating to required minimum distributions.

17. Why would an alternate payee want to leave funds on account at Wespath if he or she has access to distributions?

Wespath has many good reasons why an alternate payee would want to keep his or her accounts invested here, including a proven track record; historical fund performance that has yielded strong investment returns compared to mutual funds with similar investments; lower management and administration fees; we do not charge sales commissions which can be 6% or more of your account balance; and we do not charge redemption fees which can be as high as 5% of your account balance.

We offer portfolio management at no cost through our LifeStage Investment Management Service. The LifeStage Investment Management Service is a one-step investment approach for managing retirement accounts. More information can be obtained from Wespath's website at www.wespath.org or by calling our **Customer Service Department at 1-800-851-2201** between the hours of 8:00 a.m. and 6:00 p.m., Central time, Monday through Friday.

18. Does the alternate payee have to pay income taxes on the awarded portion of the participant's retirement benefits?

Income taxes will become due only when distributions are made to the alternate payee. Both federal and any applicable state income taxes will be due on the taxable portion of the distributions that the alternate payee receives. The amount awarded attributable to after-tax contributions will not be subject to federal income tax. However, all earnings on contributions are taxable. Distributions from a Roth Account may be considered "qualified distributions," meaning both contributions and earnings will be exempt from federal income taxes, if the distribution to the alternate payee is made after the original participant reaches age 59.5 (or becomes disabled or dies) and occurs at least 5 years after the first day of the calendar year in which the original participant made the first Roth contribution to the retirement plan. If a non-qualified distribution is made from the Roth Account, then only the amount that is attributable to the earnings portion of the distribution – not the contributions portion – will be subject to income tax.

Distributions made pursuant to a QDRO are not subject to the additional 10% federal tax for premature distributions.

19. Who will be the beneficiary of the retirement benefits of the participant and alternate payee after the dissolution of marriage?

The beneficiary of the participant. Under the provisions of the retirement plans administered by Wespath, the spouse is the automatic primary beneficiary of a married participant. As long as a participant is legally married, for most plans, a notarized signature of the spouse on the form supplied by Wespath is required before the participant can designate someone other than the spouse as a primary beneficiary.

When a participant is divorced before receiving a monthly annuity payment, the former spouse is revoked as the default beneficiary. Until the participant submits new beneficiary information, any distribution made following the death of the participant, will be made as if the former spouse predeceased the participant.

Once a participant's benefit is being paid in the form of a monthly life and survivor annuity, the contingent annuitant (the person who receives the payment upon the death of the participant) cannot be changed. Submitting a designation of beneficiary form or changing beneficiary designations in Benefits Access will not change a contingent annuitant.

The beneficiary of the alternate payee. Upon the approval by Wespath of a QDRO, the alternate payee will be sent a Designation of Beneficiary form for completion. If no beneficiary designations are made, the beneficiary will be deemed to be the estate of the alternate payee for any benefits due to the alternate payee. The beneficiary(ies) of the alternate payee will be entitled to 100% of the balance in each of the undistributed accounts of the alternate payee upon his or her death, except in regards to benefits assigned from the CRSP Defined Benefit.

This publication is provided with the understanding that it is a source of information and does not constitute legal, tax or other professional advice, which may often turn on specific facts. If legal advice or other professional assistance is required, the services of a professional advisor should be sought.

This is a general description. For further information and important requirements consult the Statement of Account, Summary Plan Description, the Procedures for Qualified Domestic Relations Orders and the model QDRO forms. If any information furnished by Wespath conflicts with a specific retirement plan, the terms of the retirement plan govern.