



### **ADDRESSING A CHANGING ECONOMY: LIABILITIES IN SEEKING QDRO LANGUAGE PLAN "PRE-APPROVAL"**

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#### *Introduction:*

As the economic world changes around us, it is hard to ignore that there will be an ultimate effect on how the legal community must address retirement benefit issues. At LawData, we feel that it is time to begin to focus on the areas of divorce settlement that are vulnerable to liability due to the foreseeable (and unforeseen) changes ahead.

We are initiating a series of newsletters, each addressing a specific issue that has recently arisen in the course of our business.

Our second newsletter in this series will address the liabilities involved in seeking pre-approval from a pension plan prior to submitting your Qualified Domestic Relations Order to the Court for signature.

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#### *Introductory Special!*

#### **Free Pension Appraisal**

**If you are an attorney who has never used our services, then let us prepare a free pension appraisal (a \$200.00 value) so that we can demonstrate to you the outstanding support and expertise we provide to every one of our attorney/clients. We make this offer knowing that once you try us you will become a regular client.**

**Please use our standard submission form and note that you are a first time attorney client.**

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Often an attorney will seek plan pre-approval prior to submitting their Qualified Domestic Relations Order (QDRO) to the judge for signature. In some areas throughout the country this is actually a jurisdictional requirement. For many attorneys, seeking plan pre-approval has become standard operating procedure.

*What is accomplished by this practice?*

Basically, it saves cost and enhances convenience in an otherwise not so convenient process. If the QDRO language has been reviewed by the plan and is deemed "acceptable" prior to submission to the judge for signature, after the judge has signed the Order it is then officially forwarded to the Plan and the attorney's job is done. A practice that seems to be mutually appealing to both the parties and the attorneys involved in the case.

*Why deviate from a practice that appeals to both attorney and client?*

Under the terms of ERISA, private pension plans are under absolutely no obligation to review an unsigned QDRO as it is not even considered an Order until it has been signed by a judge. Although many plans do extend this courtesy, there is no liability on their behalf should the document submitted for pre-approval fall through the cracks for any reason. Nor are they obligated to follow up at any time. Thus, during this gratuitous pre-approval process the liability remains entirely in the hands of the counsel initially submitting the draft "Order".

What potential liability is at risk during the pre-approval process?

The risk factors involved would include various circumstances that could potentially transpire including, but not limited to, the following:

- Participant or Alternate Payee's death
- Participant taking a loan against the plan
- Participant retiring and commencing receipt of benefits
- Participant remarrying, naming new spouse as beneficiary of survivor benefits that should have been reserved for the former wife under the terms of the draft QDRO
- Plan and counsel failing to follow up entirely

How can an efficient plan pre-approval process be ensured?

An efficient pre-approval process cannot be ensured.

That being stated, many plans are happy to work with attorneys to create as much of a hassle-free QDRO process as possible. Often, the plans do respond within 30-90 days of submission of the draft "Order" with a letter either stating that the draft is acceptable as it is written or suggesting specific changes to the language that would deem the draft acceptable as a QDRO.

However, in the event that the plan does not graciously extend such prompt courtesy, you must be prepared for extensive follow-up for an indefinite amount of time during which you remain vulnerable to many foreseeable and unforeseeable contingencies.

What is LawDATA's role in seeking plan pre-approval?

While LawDATA will, upon counsel's request, submit a draft QDRO to a plan for pre-approval WE DO NOT ASSUME THE RESPONSIBILITY OF FOLLOWING UP WITH THE PLAN. There is no fee that would cover the cost of the potential time and liability involved should we assume that responsibility.

Nor do we endorse the practice of seeking plan pre-approval. As outlined above, we do not feel that it is in the best interest of our attorney clients.

Again, we do understand that there are jurisdictions across the country that actually require the practice of seeking plan pre-approval prior to submission of a QDRO to the court for signature. That is the reason why we do submit the Order directly to the plan for pre-approval by attorney request. We do want to take this occasion to caution you to be diligent in your follow-up with the plan from that point forward.

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Contact us at [Info@LawDATAinc.com](mailto:Info@LawDATAinc.com) to assist you in preparing your settlement language. Allow our *25 years of experience* to assist you in minimizing both your liabilities and your headaches in your next marital dissolution case.

We now provide settlement language FREE OF CHARGE.  
Download our forms at [www.lawdatainc.com](http://www.lawdatainc.com)

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LawDATA, Inc. has been active in the valuation of pensions and the preparation of Domestic Relations Orders for our attorney clients since the founding of LawDATA, Inc. in 1984. We have presented Continuing Legal Education programs, dealing with the valuation and distribution of retirement assets incident to divorce cases for State Bar Associations throughout the country and written many articles on the subject for legal publications.

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