

### **SCPRP QDRO PROJECT**

The Project would target women QDRO beneficiaries who are low-income, of color, older, disabled, victims of domestic violence, or non-English speaking; and provide services for both divorce decree simultaneous and post-decree QDROs and DROs statewide to: (1) low-income individuals with grant funding such as TAJF; (2) sliding scale reduced fee for over income up to some level to be determined; and (3) standard rate fee for those with incomes over reduced fee eligibility.

**Texas Statewide Family Law Court Orders.** The Project would take advantage of TLSC's expertise in providing services statewide to non-custodial parents, veterans & crime victims.

**Family Code Title 1**, Subtitle C, Chapter 7 – Award of Marital Property; Chapter 9 – Post-Decree Proceedings. SCPRP - QDROs & Post-Decree QDROs, VLAP - Military Retirement Note: The PCIP RFP for SCPRP draws the line between VA benefits, which PCIP doesn't handle, and military retirement DROs with DFAS. In reality, VA pensions are integrated with military retirement and it is difficult to just do military retirement.

**Family Code Title 4**, Subtitle B, Protective Orders. TLSC Crime Victims Project.

**Family Code Title 5**, Subtitle B, Suits Affecting the Parent-Child Relationship. POLL (non-litigation only).

**Texas Statewide Legal Services Referral System.** The Project would also take advantage of the statewide legal aid and free legal services referral system. SCPRP Post-Decree QDRO volunteer cases have built up good will with LANWT, VLS CT, and have started with Houston VLS and cases out of Harris County.

### **Texas Post-Decree Qualified Domestic Relations Orders**

In Texas when a court renders a final decree of divorce or annulment or other final order dividing pension and retirement savings plans generally an additional court order necessary to complete the division is a simultaneously entered qualified domestic relations order or similar domestic relations order (QDRO) (1). It is recommended that a lawyer who is competent in marital property division of pension and retirement savings plans prepare a QDRO (2).

**Post-Decree QDRO Problems.** Typical problems include: pension and retirement savings plans are not divided on divorce, QDROs are not prepared or not approved by the plan administrator and there is no follow up, property divisions in divorce decrees and QDROs are not clear, or the QDRO is lost or not processed by the plan administrator and there is no follow up. QDRO problems often are not discovered until years after the divorce decree became final when the

alternate payee spouse, the former spouse who did not participate in the plan as an employee, applies for benefits and is denied.

**Post-Decree QDRO Remedies.** Generally, in order to receive the benefits the alternate payee spouse must enforce the divorce decree, obtain a post-decree QDRO, obtain division of a pension or retirement savings plan not previously divided on divorce, or some combination thereof.

#### **Agreed QDRO & Defense Finance & Accounting Services (DFAS) Affidavit.**

**Agreed Motion to Enter QDRO.** In the case where only a post-decree QDRO is needed a motion to enter QDRO may be used. An attorney prepares a QDRO and obtains pre-qualification or pre-approval from the plan, both parties to the divorce agree to the QDRO and sign it, a motion to enter the QDRO is made, the Judge signs and enters the QDRO, after which it is sent to the plan for qualification or approval allowing for payment of benefits. However, the motion to enter procedure does not always go smoothly. If a party was represented by an attorney on the divorce who had agreed to handle the QDRO the party may try to contact that attorney or, if that is not feasible or possible, may obtain a new attorney. The former spouse must be located and be willing and able to cooperate. Many times it is difficult to locate the former spouse or if they are located they may not want to cooperate. If the former spouse was represented by an attorney it may be prudent or necessary to try to contact that attorney also.

**DFAS Affidavit.** If a military retirement Domestic Relations Orders is not approved by DFAS then in lieu of family court action the service-member may execute a Notarized Statement of the Parties Clarifying the Court Order Dividing Retired Military Pay and file it with DFAS.

**Post-Decree Proceedings.** In most cases if a motion to enter is not viable then post-decree enforcement proceedings under Chapter 9 of the Texas Family Code must be engaged. An original lawsuit must be filed. Jurisdiction in most counties is in district court but statutory county courts have jurisdiction in some counties. The Texas Rules of Civil Procedure and local rules apply. Common procedures include: Rule 145 Affidavit of Indigency, service by publication, substituted service, injunctions, contested hearings, and default judgments are relatively common. SCPRP employs motions for appointment of counsel in District Court (Texas Government Code Section 24.016).

**Suit to Enforce Decree.** The court that rendered the decree of divorce retains the power to enforce the property division (3). Suits to enforce the decree include enforcement of division of property (4), clarification orders (5), reduction to money judgment (6), enforcement of a right to future property (7) and contempt (8). A suit to enforce the division of future property not in existence at the time of the original decree must be filed before the second anniversary of the date the right to the property matures or accrues or the decree becomes final, whichever date is later, or the suit is barred (9). A court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment. An order to enforce the division is limited to an order to assist in the implementation of or to clarify the prior order and may not alter or change the substantive division of property (10). The court may award costs (11) and attorney's fees (12).

**Post-Decree Qualified Domestic Relations Order.** The court that rendered a final decree of divorce or annulment or another final order dividing property retains continuing, exclusive jurisdiction to render an enforceable qualified domestic relations order or similar order permitting payment of pension, retirement plan, or other employee benefits to an alternate payee or other lawful payee (13). A party may petition a court to render a qualified domestic relations order if the court that rendered a final decree of divorce did not provide a qualified domestic relations order or similar order permitting payment of benefits to an alternate payee or other lawful payee (14). A court that renders a qualified domestic relations order retains continuing, exclusive jurisdiction to amend the order to correct the order or clarify the terms of the order (15). The court may award attorney's fees (16).

**Post-Decree Division of Property.** Either former spouse may file a suit to divide property not divided or awarded to a spouse in a final decree of divorce or annulment (17). A suit must be filed before the second anniversary of the date a former spouse unequivocally repudiates the existence of the ownership interest of the other former spouse and communicates that repudiation to the other former spouse (18). The court may award attorney's fees (19).

**Women Beneficiaries.** Engaging post-decree enforcement, QDROs and division of pension and retirement savings plans proceedings is particularly important for women, especially women who are low-income, of color, older, disabled, victims of domestic violence, or non-English speaking. "Older American women are still twice as likely as elderly men to be living near or below the federal poverty line. They also are less likely to have access to reliable retirement income. Women still earn lower wages than men and are more likely to work part-time or take time off to care for their children, parents or disabled relatives, which can further lower their earnings. Women also make up the majority of low-wage workers, and low-wage jobs, like restaurant and retail, which typically don't offer retirement savings plans to their employees." (20) However, low-income women many times can't afford an attorney to engage post-decree proceedings and due to a shortage of funding legal aid and free legal services programs generally only accept family cases that involve domestic violence. Although many women who need post-divorce proceedings were victims of domestic violence during the marriage, in many cases the divorce was granted years ago, fortunately.

(1) "Qualified Domestic Relations Order" is defined in Internal Revenue Code Section 414(p)(1)(A) (26 U.S.C. 414(p)(1)(A)) and "Domestic Relations Order" is defined in Internal Revenue Code Section 414(p)(1)(B) (26 U.S.C. 414(p)(1)(B)). For purposes of this Article both are referred to as QDRO. Texas Family Code Section 7.003 "DISPOSITION OF RETIREMENT AND EMPLOYMENT BENEFITS AND OTHER PLANS. In a decree of divorce or annulment, the court shall determine the rights of both spouses in a pension, retirement plan, annuity, individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant, regardless of whether the person is self-employed, in the nature of compensation or savings."

(2) Supreme Court of Texas, Divorce Set One, Page 2: "It is recommended that you hire a lawyer to prepare a QDRO if you use these forms to divide retirement funds."

(3) Texas Family Code Section 9.002

- (4) Texas Family Code Section 9.006
- (5) Texas Family Code Section 9.008
- (6) Texas Family Code Section 9.010
- (7) Texas Family Code Section 9.011
- (8) Texas Family Code Section 9.012
- (9) Texas Family Code Section 9.003(b)
- (10) Texas Family Code Section 9.007
- (11) Texas Family Code Section 9.013
- (12) Texas Family Code Section 9.014
- (13) Texas Family Code Section 9.101(a)
- (14) Texas Family Code Section 9.103
- (15) Texas Family Code Section 9.1045(a)
- (16) Texas Family Code Section 9.106
- (17) Texas Family Code Section 9.201(a)
- (18) Texas Family Code Section 9.202(a)
- (19) Texas Family Code Section 9.205
- (20) Women Hit Harder than Men by Retirement, BenefitsPro, Mar 27, 2014, Paula Aven Gladych

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