Issue: What can be included in a QDRO if the Stipulation or Order states only, “Pension shall be divided 50% pursuant to *Majauskas*”?

1. Implied Provisions That May Be Included in QDRO Even If Not Explicitly Awarded in Stipulation or Order

General Rule: AP is entitled to a share of the pension as it is “ultimately determined”[[1]](#footnote-1)

* Cost-of-Living Adjustments, improvements, and *ad hoc* changes; Variable Supplement Funds[[2]](#footnote-2)
* Payment of Arrears[[3]](#footnote-3)
* AP’s share is not reduced for any outstanding loan taken out by P (if loan was not for mutual benefit of the parties)[[4]](#footnote-4)

1. Provisions That Must Be Explicitly Awarded in Stipulation or Order to Be Included in QDRO

General Rule: QDRO may provide only what is agreed by the parties or ordered by the court[[5]](#footnote-5)

* Death benefits and survivor annuities[[6]](#footnote-6)
* Separate Interest QDRO[[7]](#footnote-7)
* *Pro rata* share of refund of P’s contributions[[8]](#footnote-8)
* No reduction in AP’s share for any option selected by P at retirement[[9]](#footnote-9)
* Interest, or investment earnings and losses (DC Plans)[[10]](#footnote-10)

1. *Olivo v. Olivo*, 82 N.Y.2d 202, 624 N.E.2d 151, 604 N.Y.S.2d 23 (1993). [↑](#footnote-ref-1)
2. *DeLuca v. DeLuca*, 97 N.Y.2d 139, 762 N.E.2d 337, 736 N.Y.S.2d 651 (2001); *Kraus v. Kraus*, 131 A.D.3d 94, 14 N.Y.S.3d 55 (2d Dep’t 2015); *Luongo v. Luongo*, 50 A.D.3d 858, 856 N.Y.S.2d 636 (2d Dep’t 2008); *Pagliaro v. Pagliaro*, 31 A.D.3d 728, 821 N.Y.S.2d 602 (2d Dep’t 2006). [↑](#footnote-ref-2)
3. *Boylan v. Dodge*, 42 A.D.3d 632, 839 N.Y.S.2d 580 (3d Dep’t 2007). [↑](#footnote-ref-3)
4. *Kraus v. Kraus*, 131 A.D.3d 94, 14 N.Y.S.3d 55 (2d Dep’t 2015). [↑](#footnote-ref-4)
5. *McCoy v. Feinman*, 99 N.Y.2d 295, 785 N.E.2d 714, 755 N.Y.S.2d 693 (2002). [↑](#footnote-ref-5)
6. *Kazel v. Kazel*, 3 N.Y.3d 331, 819 N.E.2d 1036, 786 N.Y.S.2d 420 (2004); *Lauzonis v. Lauzonis*, 105 A.D.3d 1351, 964 N.Y.S.2d 796 (4th Dep’t 2013); *Von Buren v. Von Buren*, 252 A.D.2d 950, 675 N.Y.S.2d 739 (4th Dep’t 1998); *Janofsky v. Janofsky*, 232 A.D.2d 457, 648 N.Y.S.2d 164 (2d Dep’t 1996). [↑](#footnote-ref-6)
7. *Gursky v. Gursky*, 93 A.D.3d 1127, 941 N.Y.S.2d 760 (3d Dep’t 2012); *Stachowski v. Stachowski*, 35 A.D.3d 1245, 825 N.Y.S.2d 416 (Mem.) (4th Dep’t 2006). [↑](#footnote-ref-7)
8. Greenberg writes that it is prudent to be explicit about any refund of employee contributions. [↑](#footnote-ref-8)
9. *Kraus v. Kraus*, 131 A.D.3d 94, 14 N.Y.S.3d 55 (2d Dep’t 2015). [↑](#footnote-ref-9)
10. *Twiss v. Twiss*, 245 A.D.2d 502, 666 N.Y.S.2d 35 (2d Dep’t 1997); *Altner v. Altner*, 281 A.D.2d 379, 721 N.Y.S.2d 279 (2d Dep’t 2001); *McWade v. McWade*, 253 A.D.2d 798, 677 N.Y.S.2d 596 (2d Dep’t 1998). [↑](#footnote-ref-10)