

# ERISA Meets Estate Planning


*Navigating Beneficiary Designations,  
QDROs, and the SECURE Act*



# What Is ERISA? History & Purpose

- Enacted in 1974: Employee Retirement Income Security Act — landmark federal legislation
- Driving forces: Studebaker pension collapse (1963) exposed thousands of workers to devastating benefit loss
- Core objectives: Protect participants' retirement assets; ensure plan integrity; require disclosure
  - Minimum participation, vesting, and funding standards
  - Fiduciary duty standards for plan administrators
  - Claims and appeals procedures
- Administered jointly by: DOL (Department of Labor) and IRS/Treasury
- Covers: Qualified retirement plans, health & welfare plans, and most employer-sponsored benefit plans

# ERISA Preemption: The Estate Planner's Trap

 ***ERISA § 514 preempts ALL state laws that 'relate to' covered employee benefit plans.***

- Conflict: State probate laws, divorce decrees, and will provisions generally CANNOT override beneficiary designations on ERISA plans
- Kennedy v. Plan Administrator (2009): Spouse named as beneficiary collected despite divorce decree awarding benefits to children — designation controlled
- Egelhoff v. Egelhoff (2001): State auto-revocation-on-divorce statute preempted; ex-spouse collected life insurance
- Exception 1: Qualified Domestic Relations Orders (QDROs) — the ONLY way to redirect benefits to an alternate payee via court order
- Exception 2: Non-ERISA plans (government plans, church plans, IRAs) — state law may apply
- Practice Point: Always review ALL beneficiary designation forms — these trump the will

# Beneficiary Designations

- Primary Beneficiary: Receives benefits directly at participant's death
- Contingent (Secondary) Beneficiary: Receives benefits only if primary predeceases or disclaims
- Spouse default rights: ERISA requires spouse consent to name a non-spouse primary beneficiary in qualified plans (QPSA/QJSA rules)
- Trusts as beneficiaries: Valid but require careful drafting — see conduit vs. accumulation trust rules
- Estates as beneficiaries: Almost always a planning mistake — loses stretch, accelerates distributions

# QPSA & QJSA: Spousal Consent Requirements

- Qualified Joint & Survivor Annuity (QJSA): Default form of benefit for married participants in pension plans
  - Survivor annuity must be at least 50% (and not more than 100%) of the joint annuity amount
  - Spouse must consent in writing (notarized or plan representative witness) to waive
- Qualified Pre-Retirement Survivor Annuity (QPSA): Protects spouse if participant dies before retirement
  - Applies to DB plans and certain DC plans
  - Spouse is automatic beneficiary absent written, witnessed waiver
- 401(k) / DC plans not annuity-based: Spouse automatically receives 100% unless written waiver given
- Same-sex spouses: Fully protected after Obergefell v. Hodges (2015) and IRS Rev. Rul. 2013-17
- Common-law marriage: ERISA follows federal law — recognize state where participant resided at marriage
- What about Domestic Partners?

# Naming Trusts as Beneficiaries: Conduit vs. Accumulation

## CONDUIT TRUST

- All RMDs pass through trust to individual beneficiaries immediately
- Underlying trust beneficiaries look through for RMD calculations
- Simplest structure; beneficiaries pay tax as distributions received
- Risk: No asset protection — funds distributed are reachable by creditors
- Best for: Straightforward family situations

## ACCUMULATION TRUST

- Trustee has discretion to accumulate vs. distribute
- After SECURE Act: Must distribute all assets within 10 years (if non-EDB)
- Provides spendthrift and asset protection benefits
- Tax risk: Trust compressed tax brackets — may reach 37% bracket at \$15,200 (2024)
- Best for: Beneficiaries with creditor concerns, special needs, substance abuse

# Beneficiary Designation Horror Stories & Fixes

*Real-world mistakes that cost clients hundreds of thousands of dollars — and how to prevent them.*

- Outdated designations: Ex-spouse collects \$400K 401(k) after 20-year old form never updated (Smith v. Employer, 8th Cir.)
- No beneficiary named: Benefits pass to estate → probate, loss of deferral, potential estate tax exposure
- Disabled beneficiaries: Outright distribution disqualifies from Medicaid/SSI — must use special needs trust
- Fix: Annual or event-triggered review — marriage, divorce, birth, death, new retirement accounts
- Practice Point: Obtain copies of ACTUAL designation forms, not just a client's recollection
- Key document: 401(k) forms held by plan administrator; IRA form held by IRA owner or custodian

# What Is a QDRO? Statutory Framework

- Defined: 29 U.S.C. § 1056(d)(3) — a domestic relations order that creates or assigns to an 'Alternate Payee' the right to retirement plan benefits
- ERISA exemption: The only mechanism allowing assignment/alienation of qualified plan benefits
- Alternate Payees: Spouse, former spouse, child, or other dependent of the participant
- Plans covered: All ERISA-qualified plans (401(k), DB, 403(b), money purchase, profit sharing)
- Plans NOT covered: IRAs (use divorce decree + transfer incident to divorce under IRC § 408(d)(6)); government plans use DROs
- Tax treatment: Alternate payee takes on participant's tax basis; distributions taxed to alternate payee (not participant)
- 10% early withdrawal penalty: Does NOT apply to QDRO distributions to alternate payee, regardless of age

# QDRO Drafting Requirements

- Mandatory inclusions under ERISA § 206(d)(3)(C):
  - Name and last known mailing address of participant and alternate payee(s)
  - Amount or percentage to be paid to alternate payee, OR manner of determining amount
  - Number of payments or period to which order applies
  - Each plan to which the order applies (by name)
- Prohibited provisions — order CANNOT:
  - Require plan to provide any type or form of benefit not otherwise available
  - Provide increased benefits to alternate payee beyond plan terms
  - Conflict with prior QDRO for another alternate payee
- Pre-approval: Submit draft to plan administrator BEFORE finalizing divorce decree
- Interim order: Consider obtaining an order to freeze benefits during divorce proceedings or at least put the Plan Administrator on notice

# DC Plans vs. DB Plans: QDRO Differences

## DEFINED CONTRIBUTION (DC)

- Award specific dollar amount or percentage of account balance
- Specify valuation date (use date of divorce vs. date of plan division)
- Address investment gains/losses between divorce and transfer
- Separate account created for alternate payee
- Alternate payee controls investment allocation post-transfer
- Survivor benefit: If participant dies before transfer, specify protection

## DEFINED BENEFIT (DB)

- Two approaches: Shared payment vs. separate interest
- Separate interest: Most common — alternate payee receives independent benefit, can start at 62 even if participant hasn't retired
- Shared payment: Alternate payee only receives while participant receives
- COLA (cost of living adjustment) — specify if alternate payee shares in increases
- Survivor benefit election critical — specify if alternate payee is treated as surviving spouse
- Early retirement subsidies — specify if alternate payee shares

# QDRO: Critical Drafting Pitfalls

*Poorly drafted QDROs are one of the most common — and costly — errors in divorce practice.*

- Failure to submit timely: Participant retires, takes lump sum, or dies before QDRO entered — benefits may be lost
- Missing survivor benefit: Participant dies after divorce but before QDRO approved — alternate payee may get nothing without interim protection
- Wrong plan name: Using plan nickname vs. official plan document name can cause rejection
- Ambiguous language: 'Half the 401(k)' — half at what date? What about loans? Vested vs. unvested balance?
- Forgetting the loans: Participant has outstanding plan loan — affects net account value at transfer
- Rollover rights: Alternate payee should have option to roll QDRO funds to their own IRA (preserves tax deferral)
- Best practice: Use plan-model QDRO language if available; confirm plan administrator approval before finalizing decree

# SECURE Act 1.0 (2019): Key Changes

- Required Beginning Date (RBD): Pushed from age 70½ to age 72 for participants born after June 30, 1949
- Eliminated the 'Stretch IRA': Pre-2020, non-spouse beneficiaries could take RMDs over their own life expectancy
- New 10-Year Rule: Non-eligible designated beneficiaries must withdraw entire inherited IRA/plan within 10 years of participant's death
- No annual RMDs required during the 10-year period (per IRS Notice 2022-53 — IRS reversed on this; final regs pending)
- New 'Eligible Designated Beneficiary' (EDB) category — may still use stretch rules
- IRA-to-charity: Qualified Charitable Distributions (QCDs) up to \$100K/year still permitted (not changed)
- SIMPLE & SEP IRAs: Roth contribution option added

# Who Is an Eligible Designated Beneficiary (EDB)?

## EDB — STRETCH RULES STILL APPLY

- Surviving spouse of the participant
- Minor child of the participant (until age of majority — then 10-year clock starts)
- Disabled individual (as defined under IRC § 72(m)(7))
- Chronically ill individual (as defined under IRC § 7702B(c)(2))
- Individual not more than 10 years younger than participant
- EDBs may elect 10-year rule instead of stretch

## NON-EDB — 10-YEAR RULE

- Adult children (over age of majority) — most common scenario
- Grandchildren
- Siblings and other non-spousal heirs
- Most trusts — unless qualifying see-through trust for disabled/chronically ill beneficiary
- Charities and estates (5-year rule if participant died before RBD)
- Potential RMD requirement during 10 years if participant died after RBD (IRS final regs expected)

# SECURE Act 2.0 (2022): Major Provisions

- RBD age changes: Age 73 for those born 1951–1959; age 75 for those born 1960 or later
- Reduced RMD penalty: Excise tax reduced from 50% to 25% (10% if corrected timely within correction window)
- Roth accounts: RMDs eliminated from employer Roth accounts during participant's lifetime (effective 2024)
- Catch-up contributions: Ages 60–63 can contribute higher catch-up (\$10,000 or 150% of regular catch-up, indexed)
- 529-to-Roth rollover: After 15 years, up to \$35,000 (lifetime) can roll from 529 to Roth IRA for the same beneficiary
- Emergency distributions: Up to \$1,000 penalty-free from retirement accounts for personal/family emergencies
- Student loan match: Employers can match employee student loan payments as if retirement contributions

# SECURE Act Planning Strategies

*The 10-Year Rule fundamentally changed inherited IRA planning — proactive strategies are essential.*

- Roth conversion strategy: Pay taxes now; heirs inherit Roth IRA with 10-year tax-free growth and distributions
- Life insurance planning: Replace retirement assets consumed by taxes with tax-free death benefit to heirs
- Charitable Remainder Trust (CRT) as IRA beneficiary: Recreates stretch-like income stream; remainder to charity
- Qualified Longevity Annuity Contracts (QLACs): Up to \$200K in IRA used to purchase deferred annuity — excluded from RMD calculation until age 85
- Spousal planning: Surviving spouse can roll inherited IRA to own IRA — retains stretch and delays RBD
- Roth 401(k) contributions: No lifetime RMDs starting 2024; ideal for high earners expecting high future tax rates
- See-through trust for disabled/chronically ill: Allows EDB stretch rules through the trust

# The Estate Planner's ERISA Checklist

- Step 1 — Asset Inventory: Identify ALL retirement accounts — 401(k), IRA, 403(b), pension, deferred comp
- Step 2 — Obtain actual forms: Pull beneficiary designation forms from plan administrators (not just client memory)
- Step 3 — Coordinate with estate documents: Do designations align with will, trust, and overall plan?
- Step 4 — Spousal rights: Confirm QJSA/QPSA waivers; verify spouse consent where required
- Step 5 — EDB analysis: Identify which beneficiaries qualify as EDBs; calculate stretch eligibility
- Step 6 — Trust review: If trust is beneficiary, confirm it qualifies as see-through trust; review conduit/accumulation structure
- Step 7 — Divorce review: Are QDROs in place for all divided retirement assets? Interim protection orders?
- Step 8 — Annual review trigger: Marriage, divorce, birth, death, job change, new accounts

# Case Study: Integrating ERISA & Estate Planning

## CASE A: The Blended Family

Robert (68) remarries. Has \$1.2M 401(k) from prior employer naming Ex-Wife as primary beneficiary. New wife Sarah is not named. Result without action: Ex-Wife collects. Solution: Update designation (with Sarah's written consent under QJSA rules); consult prior divorce decree for any QDRO obligations.

## CASE B: The Domestic Partner

Maria has a domestic partner named Jane. They have lived together for 20 years and essentially say they are married. They are now splitting up and would like to divide Maria's 401(k) account 50/50. Problem: because they are not married and Jane is not a spouse, a QDRO cannot be completed. Solution: Maria and Jane marry in order to divorce and obtain a QDRO.

## CASE C: The QDRO Problem

David & Lisa divorce in 2018. Decree awards Lisa 50% of David's pension. No QDRO ever filed. David dies in 2024. Lisa has no rights to plan — no QDRO means no rights to benefits. His new wife (named as beneficiary) receives everything. Solution: File QDRO promptly; always get an interim order.

# Key Takeaways

- 01** ERISA preemption is absolute: Beneficiary designations override wills, trusts, and divorce decrees (outside of QDROs)
- 02** Obtain ACTUAL forms: Always get copies of beneficiary designation forms
- 03** QDROs are the ONLY path: Properly drafted and timely submitted QDROs are essential in any divorce involving retirement plans
- 04** The Stretch is Gone (mostly): SECURE Act's 10-Year Rule reshapes inherited IRA planning
- 05** Annual reviews are a must: Life changes (marriage, divorce, death, new accounts) must trigger immediate beneficiary review

# Questions & Discussion

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