

**Current Law on Qualified Domestic Relations Orders (QDRO) v.  
Qualified Illinois Domestic Relations Orders (QILDRO)**

During the dissolution of marriage process, part of the property division includes allocating portions of one or both of the spouse's retirement plan, such as pension and 401(k) plans. Retirement benefits may not be paid to anyone other than the plan member, except to an alternate payee pursuant to a valid Qualified Domestic Relations Order ("QDRO") as a result of a dissolution of marriage. If the working spouse has a private retirement plan, a QDRO will be entered for purposes of creating or recognizing the existence of an alternate payee's (aka the spouse or former spouse) right to receive a portion of the accrued benefits payable with respect to a participant (the working spouse) under a retirement plan. *See* ERISA § 206(d)(3)(B)(i); IRC § 414(p)(1)(A). A QDRO is required in order to have a valid and enforceable assignment of all or part of a tax-qualified retirement plan, and a pension plan must comply with a valid QDRO. *Blue v. UAL Corp.*, 160 F.3d 383, 385 (7th Cir. 1998).

If the working spouse has a pension plan under a public retirement system, a Qualified Illinois Domestic Relations Order ("QILDRO") will be entered. A QILDRO is more restrictive than a QDRO, and has separate requirements. *See* 40 ILCS 5/1-119. The following is a common set of circumstances for divorcing or divorced spouses:

- Mr. Jones has been working for the Chicago Fire Department for 14 years, and has been married to Mrs. Jones for 15 years. Mrs. Jones works for General Electric Company.
- Mr. and Mrs. Jones are now divorcing, and have agreed to evenly split accrued benefits of both pension plans.
- Does a QDRO or QILDRO apply? How do they determine how much money each of them will receive?

Firefighters' pension funds are subject to QILDROs because they are part of the public retirement system. The QILDRO retirement system does not: 1) provide actuarial opinions as to the present market value of a member's benefits or other interests; 2) assume future events such as additional service credit, future salary increases, early retirement, reciprocal retirement or statutory changes; nor 3) provide benefit information for marital periods or specific years. The retirement system will provide accrued retirement benefits as of the date of the subpoena or member's authorization. *See* 26 U.S.C.A. § 414(p); Illinois Department of Financial and Professional Regulation's QILDRO Manual at <http://www.idfpr.com/>. An expert valuation by an actuary is often important when dealing with traditional pension plans so that a present value can be applied to both the marital and non-marital components so as to offset the value of other assets subject to division. *See In re Marriage of Richardson*, 381 Ill.App.3d 47, 884 N.E.2d 1246, 1250 (1<sup>st</sup> Dist. 2008).

What if the Wife works at a private company, such as General Electric? Her retirement plan would be subject to a QDRO. If Wife was working at G.E. prior to getting married, there will be both marital and non-marital portions of the pension to be analyzed in order to determine the appropriate distribution amount. "Pension benefits earned during the marriage are considered marital property and, upon dissolution, are subject to division like any other property." *In re Marriage of Menken*, 334 Ill.App.3d 531, 533, 268 Ill.Dec. 295, 778 N.E.2d 281, 283 (2002); 750 ILCS 5/503(b)(2). Pension and 401(k) plans have a real impact on the distribution of marital property.