

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[John Narron](#) is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.

Not All Retirement Plans Are Easy to Divide

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Many divorcing couples have retirement plans that they will want to divvy up as part of the equitable distribution process. Often times, a spouse will have to transfer a portion of their retirement assets to the other spouse in order to balance his/her share of the marital assets. Retirement plans that fall under ERISA (Employee Retirement Income Security Act), such as 401(k) plans and defined benefit pension plans, do permit this type of “asset transfer” through the use of a Qualified Domestic Relations Order (QDRO). Roth and Traditional IRA plans also permit this type of asset transfer, by way of a Domestic Relations Order (DRO).

In situations where assets from a *non-traditional* deferred compensation plan are at stake, dividing these assets is often more difficult. *Here's why.*

Whereas 401(k) plans and defined benefit pension plans are considered “qualified” plans—setup and governed by ERISA, *non-traditional* deferred compensation plans are setup and governed by employers, not ERISA. Therefore, it is the employer who dictates the rules and provisions in a *non-traditional* deferred compensation plan, which is why these plans are commonly referred to as *nonqualified* plans. And, since employers typically reserve these “nonqualified” plans for their highly compensated executives, these plans can quickly accumulate substantial assets. And, therein lies the rub...because if you are going through a divorce and your spouse has a nonqualified retirement plan through his/her employer, you cannot assume any portion of those assets will be within your reach. In fact, it's fairly common for an employer to setup a nonqualified plan with provisions that bar asset transfers of any kind, particularly in a divorce, or the plan may include provisions that carry stiff penalties—all of which would certainly impact the calculus for an equitable distribution. If you encounter such terms, negotiations around dividing your marital assets will be quite different. For this reason, it is essential that you and your attorney make every effort to obtain plan summary and related plan documentation for all the retirement accounts you and your spouse own BEFORE you begin the process of dividing your marital assets. Making sure you thoroughly understand the rules governing these retirement accounts will go a long way in ensuring an accurate and equitable outcome.

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