

ALIMONY - CHILD SUPPORT - ARREARAGE REMEDY QUALIFIED DOMESTIC RELATIONS ORDER(S)

Perhaps, the most effective tool to compel compliance with the terms of a Property Settlement Agreement or a court imposed settlement that is in arrears attributable to alimony or child support is a Qualified Domestic Relations Order.

Post-divorce events often result in non-compliance with the terms of a Property Settlement Agreement and or Final Judgment of Divorce. This generally occurs when a titled-spouse or his or her new mate deems such obligations burdensome. When conditions are favorable such obligated spouse is likely to unilaterally halt or reduce payment of court ordered obligations. This is especially true when the obligated spouse moves to another jurisdiction or leaves the country. The spouse suffering from such defaults is frequently without sufficient funds to obtain effective remediation of the defaults. The aim of this Practice Aid is to make clear that a swift, cost effective remedy exists. Moreover, the defaulting spouse pays the reasonable remedial legal fees of the injured spouse. Before going further, go to our website and read the Practice Aid titled "Attorney Fees". Upon reading the recommended Practice Aid, an attorney should be clear that his or her efforts can be compensated as part of the obligations imposed by the court in a Qualified Domestic Relations Order.

THE SCENARIO

As time passes and the remedial efforts of a Former Spouse are limited to phone calls, letters and pleas, a titled-spouse comes to believe that his or her economically disadvantaged Former Spouse is not financially able to pursue an effective legal remedy. This view serves to intensify the arrogance of the titled-spouse. Overtime the magnitude of alimony and or child support arrearages can be very substantial. Further enhancing the disdain of the titled-spouse is the view that removal from the jurisdiction in which the divorce took place or better yet relocation in a foreign country further insulates him or her from a serious challenge to this spouse's clear and continuing disregard of the terms of divorce. Note; the observations made herein hold regardless of the domicile of the titled-spouse. What controls is the fact that his or her pension is paid by a U.S. corporation subject to ERISA.

ALERT

The view held by the titled-spouse that an economically disadvantaged spouse is without legal recourse is at variance with reality provided this titled-spouse's pension is in either the accumulation stage (active plan participant) or in the retired and collecting stage of his or her pension. These pension assets of the titled-spouse represent the source of the remedy for default. A titled-spouse's pension(s) remain subject to Qualified Domestic Relations Orders designed to cure alimony and or child support arrearages (including imputed interest). Such Orders can be periodical. Thus your initial remedial Qualified Domestic Relations Order can be supplemented as required until the entire pension asset becomes the property of the injured spouse. The practitioner is reminded that regarding ERISA pensions there is no bar to an award of 100% of the pension to an Alternate Payee.

The mechanics of the remedy are a function of the status of the titled-spouse's pension at the time your action is commenced. If the titled-spouse is an active participant in a retirement program then the attorney is likely to focus on his or her Qualified Defined Contribution Plan*. This plan may have immediately distributable assets. If the titled-spouse is retired and collecting a pension the mechanics are different. Then the target of your remedial action is more likely to be a Qualified Defined Benefit Plan. However, if this individual upon retirement had both a Qualified Defined Contribution Plan and a Qualified Defined Benefit Plan it is possible that the assets of the Qualified Defined Contribution Plan were "rolled over" into an Individual Retirement Account (IRA). Then the initial effort of the attorney will be directed to a 26 U.S.C 408(d)(6) transfer of assets from the IRA directly to your client. This distribution to your client from the Individual Retirement Account may take the following forms:

Roll over of all but the sum due to the attorney for legal fees
A single sum paid directly to your client and fully taxable.

ATTORNEY ALERT

Do not assume that a pension(s) acquired subsequent to divorce is immune from use of this remedy. It is Troyan & Associates, P.A.'s view that post-divorce pension plans are a proper target of this remedy, provided your Qualified Domestic Relations Order is incident to default(s) of the Property Settlement Agreement and or Final Judgment of Divorce.

Troyan & Associates, P.A. is prepared to reduce your client's accumulated arrearages to a single sum or an actuarially equivalent monthly benefit. Then, we suggest a drafting methodology that satisfies the arrearage plus attorney fees. The end product of our effort will be a Qualified Domestic Relations Order(s) ready for execution by a court in your jurisdiction.