

FOOTE Notes on Retirement

Strange Rules

There are many strange rules in individual retirement plans that have no specific rhyme or reason. There just exist and the attorney simply needs to be aware of many of them when negotiating property settlements that involve these particular retirement plans.

1- **Federal Pensions** (FERS or CSRS) such as Post Office, Dept of Ag, etc.

All rights to a former spouse survivor annuity is terminated (even if it is provided for in a court order) if the former spouse gets remarried before age 55. Thus, if your client is a 48 year old wife of a postal employee, you need to advise her of this rule. If she already has plans of getting remarried or, worse, has already remarried, then her receipt of any pension funds stop when the ex husband dies. This may be a time where the parties can further negotiate offsetting the pension interest or placing a present day value on survivorship rights portion of the pension. Either way, it needs to be addressed before the property settlement is signed.

2- **Administrative Fees** (Vanguard, Fidelity and other plans)

If the retirement plan is administered by Vanguard or Fidelity or few other plans, there is a fairly substantial QDRO administration fees.

- a. Vanguard charges \$700 per QDRO to administer and execute a QDRO. That \$700 will be charged against the participant unless a division of the fee is stated in the QDRO. Although this can sometimes be negotiated when preparing a QDRO, the attorney for the alternate payee would be within his/her rights to say "we never assumed that cost in the written property settlement."
- b. Fidelity charges \$300 per QDRO if you utilize their web based QDRO production service. If you prepare your own QDRO, then they charge \$1,300 per QDRO. They split the fee 50/50 unless the QDRO provides otherwise.

3- **Changes in plan administration**

- a. Syngenta is a very helpful plan to work with. However, their 401k documents only go back to the late 1990s. If your client alleges he/she had any pre marital funds in Syngenta 401k prior to about 1997, then Syngenta will not be able to track that for you.
- b. Some plans have changed administration as late as 2004 and will require that the QDRO provide what the community and separate portion is as of December 31, 2003. Although this can be calculated during the QDRO documentation stage and

placed in the QDRO, if there are substantial funds involved, the client counting on those records will be at a significant disadvantage when trying to renegotiate AFTER the property settlement is already signed.