

# DIVORCE FINANCIAL ADVISING UPDATE

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Collaborative Divorce

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## Avoid Problems Dividing Retirement Plans... Know What The Plan Allows!!!

Too often, couples agree to a division of a retirement plan and sign the MSA only to find that their agreed upon retirement plan division cannot be implemented. **Plan division rules must be reviewed before clients come to an agreement.**

Retirement plan division is governed by both IRS and the employer's plan rules. IRS determines the taxation rules.

### IRS Distribution Rules

Unless participant chooses to defer, payment of benefits to plan participants must begin no later than 60 days after the **latest** of the following occurs:

- Participant reaches the earlier of plan's normal retirement age or age 65
- The tenth anniversary of the employee's participation in the plan
- Participant terminates service with the employer

### Tax Considerations

**10% Tax Penalties on distributions before age 59 ½ can be avoided if:**

- Plan participant is age 55 and has separated from service (left the company)
- An ex-spouse, as alternate payee, takes a distribution directly from the plan
- Distributions are taken as "substantially equal payments" under IRC § 72(t)

**Net unrealized appreciation (NUA)** - Advantageous tax treatment for distributions of **employer's stock** from a qualified plan. *If clients hold employer stock in plan, they should explore this strategy with plan administrator before doing anything further.*

**Qualified Plan Rules** As long as the plan complies with IRS guidelines, plan rules may be more restrictive than what is considered common practice. Often, division pursuant to a QDRO may be allowed earlier than distribution to plan participant.

### Recent Case Examples

- H & W agree to equal split of 401(k). H is age 55 and separated from service. Plan does not allow distribution or division pursuant to QDRO until H is age 60.
- H's 401(k) contains employer stock. Cost basis of stock very favorable for NUA strategy. Neither H nor W's share of employer stock can be distributed until H is age 59 ½. To liquidate stock while in plan would eliminate NUA capability.

**Have Questions? Need help? Call or e-mail me!**

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