

THE STRANGE RMD RULES FOR EX-SPOUSES AFTER A DIVORCE

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stic relations orders” (QDROs) are court orders used to divide ERISA retirement plan assets after a divorce. Normally, after a QDRO is approved by a defined contribution plan like a 401(k), the plan will establish a separate account within the plan in the name of the ex-spouse.

Since the ex-spouse has her own separate account within the plan, you might think that required minimum distributions (RMDs) for her would be based on her age. In other words, you might think that the ex-spouse doesn’t have to start RMDs until the year she turns age 73 (or 75 if born after 1959) – regardless of the 401(k) participant’s age.

Strangely, that’s not what the IRS regulations say. Those rules say that, even though an ex-spouse has a separate account, she must start taking RMDs when the participant reaches age 73 (or 75). The IRS rules go on to say that when RMDs start for the ex-spouse, she gets to use her own single life expectancy factor to calculate RMDs. Unfortunately, it’s not clear which IRS life expectancy table should be used. Although it would seem that the more favorable Uniform Lifetime Table (usually used for lifetime RMDs) is the correct table, some large plan administrators base RMDs on the Single Life Table (usually used only for post-death RMDs).

Example: Harrison is a participant in a 401(k) plan. He and his wife, Calista, are divorced in 2026 when Harrison is 72 and Calista is 54. They agree to a QDRO in which Harrison assigns 50% of his 401(k) account balance to Calista. The plan establishes a separate account for Calista’s benefit. Harrison turns age 73 in 2027. Even though Calista will only turn age 55 in 2027, she must start taking RMDs for that year. Her RMD for 2027 would be based on a life expectancy factor of 31.6 if she uses the IRS Single Life Table, but would be 43.6 if she uses the Uniform Lifetime Table.

There is a workaround if an ex-spouse who is younger than her ex-spouse, doesn’t want to be saddled with RMDs. Most plans allow ex-spouses to roll over their separate account to their own IRA at any time. Once she does that, the ex-spouse won’t be required to start RMDs until she turns age 73 (or 75 if born after 1959). (However, if the ex-spouse does the rollover in a year in which she is subject to RMDs, she would have to take the RMD out first.)

A distribution out of a QDRO separate account is never subject to the 10% early distribution penalty, regardless of age. The downside to the rollover strategy is that the rolled-over funds become subject to the standard IRA early distribution rules. Therefore, if the ex-spouse must tap into the rolled-over IRA funds before age 59½, that withdrawal is subject to penalty.

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