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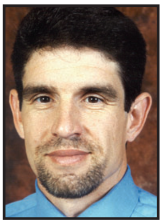
# Pension plans can be a difficult issue in a divorce

*BY CARLOS BLANCO*



With long-term marriages coming to an end at rate of close to 75 percent, the topic of pension plans usually presents itself in a divorce proceeding.

In marriages of 15-plus years, often one or both spouses contributed to their respective retirement plans or accumulated benefits under an employer-sponsored pension plan. Therefore, when it comes to equitable distribution, the proper valuing of these plans and their separation becomes critical. To discuss this topic, I asked Elgin Polo to share his expertise with us. Elgin is a CPA and partner with the firm Kabat, Schertzer, De La Torre, Taraboulos.

**DM:** Why and how do pension plans get valued for the purposes of a divorce?

**POLO:** Pensions are also known as defined benefit plans and these plans provide a series of future payments. In some dissolution cases, the participant may want to retain 100 percent interest in these future monthly payments, and consideration is made to offset the value with alternative assets. To value the pension plan, the valuator must consider many factors related to the participant, as well as to the plan. Some of these factors include age, life expectancy, mortality factors, cost-of-living adjustments to the future payments, as well as the time value of money that must be discounted to the date of the valuation. Once the valuation is determined, tax adjustment might be required, if compared to a non-retirement asset. To tax adjust the valuation, the valuator must determine the appropriate marginal tax rate and reduce the value, if applicable.

**DM:** When it comes to divorce and the splitting of retirement or pension assets, what are some of the things to consider?

**POLO:** Typically the most common way of separating retirement-related assets is to divide them; this eliminates the need for complicated valuations and reduces the need to assign the numerous variables required in such a valuation. If there is a desire for one party to receive a larger share of a retirement asset, which is offset by an alternative non-retirement asset, then the tax considerations must be taken into account. The advantages of receiving a non-retirement asset include limited or non-taxable transaction concerns and greater flexibility in terms of being sold and reinvested in a greater number of investment choices. The benefits of retaining a retirement assets are deferred tax growth and compounding and ability to manage taxable income in the future when income tax rates could potentially be much lower. Each option should be carefully considered.

**DM:** Where pension plans are involved there is usually a QDRO. What is a QDRO?

## DIVORCE MATTERS

**POLO:** A QDRO or Qualified Domestic Relations Order is defined by the Internal Revenue Code as the legal document prepared and filed as part of a divorce or legal separation related to employee retirement benefits or pension plan benefits, which are subject to the Employee Retirement Income Security Act (ERISA).

**DM:** What role does a QDRO play in a divorce case?

**POLO:** A QDRO may order payment of child support, alimony or marital property rights to a spouse, former spouse, child or other dependent of a plan participant. When certain retirement plans are established, they have specific rules that impose tax consequences on withdrawals from the plan. In the case of divorce, the use of a QDRO eliminates the requirement to pay income taxes on the amount withdrawn and transferred to the other party.

Carlos Blanco is the founder of The Big Kaboom <www.thebigkaboom.com> to provide answers, referrals and personal support to people considering divorce, moving forward with divorce or recently divorced. Contact him at 305-908-1171 or email to <cblanco@thebigkaboom.com>.