

10 Settlement Language Mistakes That Get QDROs Rejected

What to check before the agreement is signed, from the team that fixes these after the fact.

1. Writing “divide the 401(k) 50/50” without a valuation date.

The plan needs to know 50% of what balance, as of what date. Without a date, the order cannot be processed.

2. Using “marital share” for a defined contribution plan.

That term is a pension formula. A 401(k) administrator needs a percentage or dollar amount as of a specific date, not a formula they can't calculate.

3. Ignoring outstanding loans on the account.

If the settlement doesn't say whether loans are included or excluded, the plan defaults to its own rules, and one party gets surprised.

4. Not specifying whether gains and losses apply after the cutoff date.

Markets move between the agreement date and the transfer date. If the order is silent, the parties end up back in court.

5. Using a fixed dollar amount when a percentage would be safer.

If the market drops before the transfer, a fixed dollar amount can exceed the available balance, making the order unworkable.

6. Not addressing who pays plan processing fees.

Many plans charge QDRO review fees. If the settlement is silent, the plan deducts them by default, often from the wrong party.

7. Applying 401(k) language to a pension (or vice versa).

These are fundamentally different plan types with different division mechanics. Using the wrong language guarantees a rejection.

8. Failing to address survivor benefits in a pension order.

If the employee dies before the former spouse starts receiving payments, the former spouse may get nothing, unless the order specifically protects them.

9. Using generic language without checking the specific plan's rules.

Every plan has its own document and its own procedures. Language that works for one plan may be rejected by another.

10. Waiting months (or years) to file the QDRO after the divorce.

Every month of delay is a month the account is exposed to loans, withdrawals, rollovers, and market changes, none of which the order can undo.

TOVA reviews settlement language before it's finalized, not after it's rejected.

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