

Who Gets the Retirement Account?

Understanding Beneficiary Designations, Spousal Rights,
and Inheritance Issues



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INTRODUCTION

The beneficiary question is never simple



Competing claims

A surviving spouse, an ex-spouse, a named beneficiary, and heirs can each claim the same account.



Overlapping law

ERISA, the Puerto Rico Internal Revenue Code, the Puerto Rico Civil Code, and the plan document all apply at once.



Administrator exposure

Paying the wrong person invites disputes and fiduciary claims, so each decision must be documented and defensible.

Today's goal: a repeatable framework for deciding who gets paid, and which documents to ask for first.

Educational disclaimer



**For general education
only**

- This presentation provides general information only. It is not legal advice, and no attorney-client relationship is created.
- Laws, regulations, and agency guidance change. Confirm current requirements before acting.
- Plan documents and the specific facts control the outcome in any real case.
- Examples are hypothetical and simplified to illustrate the rules.
- Consult qualified counsel about your specific situation.

Agenda

1

ERISA foundation and preemption

2

Benefit payment rules: QJSA and QPSA

3

Spousal consent and nuptial agreements

4

Unmarried participants and beneficiary examples

5

Divorce and the QDRO framework

6

Puerto Rico marital property law

7

Preemption case law and practical compliance

8

Closing and questions

ERISA governs most private-sector plans



Scope

ERISA covers private-sector pension and welfare plans that cover employees. Governmental and most church plans are excluded.



Puerto Rico

Puerto Rico is a “State” under ERISA §3(10), so ERISA Title I applies to Puerto Rico plans.



Dual qualification

Under ERISA §1022(i), a trust can qualify under both the PR Code and the U.S. Internal Revenue Code (IRC).

§ 3(10)

Puerto Rico is a “State” for ERISA purposes

ERISA's survivor and spousal-consent rules are not optional local choices. They apply to Puerto Rico plans that cover employees.

FOUNDATIONAL FRAMEWORK: ERISA

ERISA preemption overrides local law

- **§514(a):** ERISA supersedes state and territorial laws that “relate to” covered plans.
- **Plan documents:** Fiduciaries pay benefits under the plan documents, consistent with ERISA (§404(a)(1)(D)).
- **Local rules yield:** Succession, community-property, and divorce rules cannot redirect benefits outside ERISA's own tools: spousal consent and QDROs.
- **Statutory exception:** Qualified domestic relations orders are not preempted (§514(b)(7)).

ORDER OF ANALYSIS

1 ERISA requirements

2 Plan document terms

3 PR Code qualification rules

4 PR Civil Code (yields where preempted)

BENEFIT PAYMENT RULES: ERISA-COVERED PENSION PLANS

Married participants get survivor protection

QJSA

Qualified Joint and Survivor Annuity

ERISA §205(a), (d)

- Lifetime income for the participant
- Then a survivor annuity for the spouse of 50% to 100% of the joint-life amount (default)
- Actuarially equivalent to a single-life annuity

QPSA

Qualified Preretirement Survivor Annuity

ERISA §205(a), (e)

- Applies if the participant dies before benefits begin
- Defined benefit: at least the QJSA survivor amount
- Individual account (e.g., money purchase): at least 50% of the vested account balance

Both are the default for married participants. Only a valid written spousal waiver changes the result.



Non-compliance with PR Code Sec. 1081.01(a)(9) puts the plan's qualification under the PR Code at risk.

Which plans must apply QJSA/QPSA?

SUBJECT TO QJSA/QPSA

- Defined benefit plans
- Money purchase plans
- Target benefit plans
- ERISA §205(b)(1)(A)–(B)

GENERALLY EXEMPT: DEFINED CONTRIBUTION PLANS

- Profit-sharing plans
- Stock bonus plans
- 401(k) / 1165(e) / 1081.01(d) elective-deferral plans
- Exemption is conditional (next slide)



Watch for transfers: a DC plan that receives assets from a plan subject to the survivor rules can lose the exemption, so review mergers and spin-offs.

The DC plan exemption has conditions

1

Spouse is the death beneficiary

The vested benefit is payable in full to the surviving spouse, unless the spouse consents to another beneficiary.

2

No life annuity election

The participant does not elect a life annuity. If one is elected, the survivor rules apply to that participant.

3

Not a transferee plan

The plan is not a direct or indirect transferee of a plan subject to ERISA §205, with limited exceptions.

ERISA §205(b)(1)(C)

TREAS. REG. §1.401(a)-20, Q&A-3 ALSO REQUIRES

- **Timely availability:** the death benefit must be available to the surviving spouse in a timely manner.
- **Gains and losses:** the account is adjusted for investment gains and losses until paid.

At death, the spouse is the default

A married participant dies

QJSA/QPSA rules apply

- The spouse is the default beneficiary
- A waiver requires written spousal consent (ERISA §205(c)(2))

QJSA/QPSA rules do not apply (exempt DC plan)

- The spouse remains the default beneficiary
- Unless there is a validly consented waiver (ERISA §205(b)(1)(C)(i))

Same result either way: no valid written consent, no non-spouse beneficiary.

SPOUSAL CONSENT

What makes a spousal consent valid



In writing, signed by the spouse



Names a specific beneficiary or form of benefit that cannot be changed without new consent, unless the consent expressly allows it



Acknowledges the effect of the waiver



Witnessed by a notary public or a plan representative



Effective only for the spouse who signed it

180 days

QJSA waiver window, ending on the annuity starting date

Age 35

QPSA waiver window opens the first day of the plan year the participant turns 35

ERISA §205(c)(2), (c)(7)

Spousal consent in practice



One-year marriage rule

A plan may require that the couple was married for one year before treating the spouse as a spouse for survivor annuity purposes (ERISA §205(f)).



Remote witnessing

IRS proposed rules (Dec. 2022) would permanently allow live audio-video notarization or witnessing of consents. Confirm current status before relying on them.



Spouse cannot be located

Consent is not required if a plan representative establishes there is no spouse or the spouse cannot be located, as Treasury regulations provide (§205(c)(2)).



Loans secured by the account

In plans subject to §205, using the benefit as loan security requires spousal consent in the 90 days before the security is given (§205(c)(4)).

Nuptial agreements alone don't waive rights



THE RULE

A nuptial agreement (capitulaciones matrimoniales) is generally insufficient, standing alone, to satisfy ERISA §205's spousal-consent requirement.

Hurwitz v. Sher

982 F.2d 778 (2d Cir. 1992)

A prenuptial agreement did not waive the surviving spouse's ERISA benefits: it named no beneficiary, did not acknowledge the effect, and was signed before the marriage.

Hagwood v. Newton

282 F.3d 285 (4th Cir. 2002)

Same line of authority: a premarital agreement did not waive ERISA spousal rights.

Nat'l Automobile Dealers & Assocs. Ret. Trust v. Arbeitman

89 F.3d 496 (8th Cir. 1996)

Same line of authority: a premarital agreement did not waive ERISA spousal rights.

SPOUSAL CONSENT AND NUPTIAL AGREEMENTS

Act 9-2017: the Keogh plan exception

1

The plan's trust is exempt from ERISA

A Keogh plan, typically one covering only owner-employees

AND

2

Participant and spouse signed a nuptial agreement

It must establish total separation of property



A married participant may name someone other than the spouse without spousal consent

Both conditions are required. If the plan is covered by ERISA, the §205 consent rules still apply.

UNMARRIED PARTICIPANTS

Unmarried participants: plan terms control



Designated beneficiary

The benefit is paid to the beneficiary the participant designated, according to the plan terms.



Preemption issues

Where local law would pick a different beneficiary, ERISA and the plan document prevail.



No designation

The plan's default order applies. If the plan is silent, benefits pass under Puerto Rico succession law.

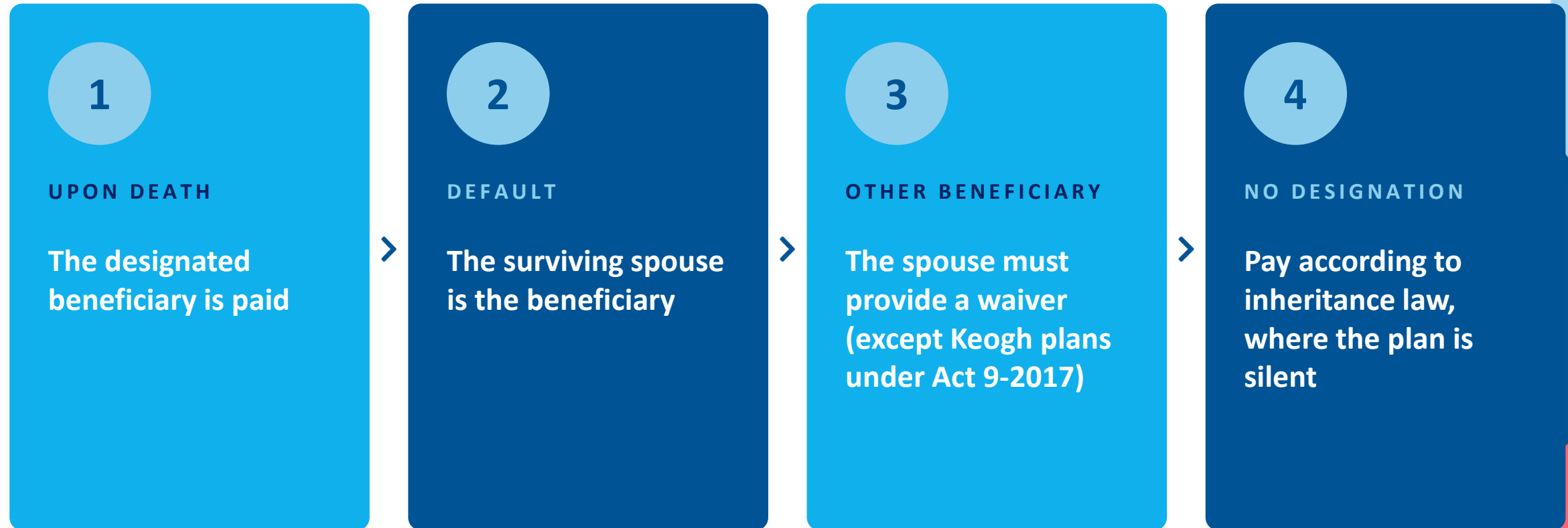


Later marriage or divorce

Marriage makes the spouse the default beneficiary. The effect of divorce depends on plan terms (see Examples 2–4).

SUMMARY OF GENERAL BENEFICIARY DESIGNATION RULES

Four rules, applied in order



Always confirm marital status first.

BENEFICIARY DESIGNATION EXAMPLES

Example 1: No beneficiary, no will

1

THE FACTS

- Single participant with no children and no surviving parents, only siblings.
- 30 years at Company XYZ; participant in the XYZ Retirement Plan, a Puerto Rico qualified plan
- Dies without a valid will and without designating a beneficiary
- Plan states that if there is no spouse and no beneficiary, it will go to the participant's estate

WHO IS ENTITLED?

His siblings, in equal shares

They are his rightful heirs under the Puerto Rico Civil Code.

No designation: succession law fills the gap.

Example 2: Marriage after designation

2

THE FACTS

- Single participant names his mother as beneficiary of the XYZ Retirement Plan
- Five years later he legally marries and does not update the designation
- Dies a few years later, still married

WHO IS ENTITLED?

The surviving spouse

The mother's designation is automatically invalid upon marriage, and the spouse becomes the default beneficiary.

See *Boggs v. Boggs*, 520 U.S. 833 (1997)

Marriage resets the default, even if the form never changes.

BENEFICIARY DESIGNATION EXAMPLES

Example 3: Ex-wife named, new wife survives

3

THE FACTS

- Married 10 years to Wife X, the designated beneficiary
- At the 11th anniversary they divorce by agreement
- He remarries Wife Z and never updates the designation
- Dies a few years later

WHO IS ENTITLED?

Wife Z, the surviving spouse

Wife X's designation automatically fails. See *Iglesias Saustache v. Calderón Felix*, 2018 TSPR 154.

The current spouse outranks a former spouse named on the form.

BENEFICIARY DESIGNATION EXAMPLES

Example 4: Divorced, never updated

4

THE FACTS

- Married 12 years to Wife X, the designated beneficiary
- After a few rough years they divorce; the designation is never updated
- Dies single 20 years later

WHO IS ENTITLED?

It depends on the plan document

If the plan voids a former spouse's designation on divorce: the participant's heirs under the Civil Code. If it has no such provision: Wife X.

See Kennedy v. DuPont, 555 U.S. 285 (2009)

Plan language controls (see Egelhoff, slide 32).

Anti-alienation and the QDRO exception

GENERAL RULE

Anti-alienation (ERISA §206(d)(1))

Plan benefits cannot be assigned or alienated.



EXCEPTION

QDRO (ERISA §206(d)(3))

A qualifying court order can assign all or part of a benefit to an alternate payee.

DOMESTIC RELATIONS ORDER (DRO)

A judgment, decree, or order, including approval of a property settlement, made under state domestic relations law that relates to child support, alimony, or marital property rights (ERISA §206(d)(3)(B)(ii)).

ALTERNATE PAYEE

A spouse, former spouse, child, or other dependent of the participant.

What a QDRO must and must not contain

A QDRO MUST STATE

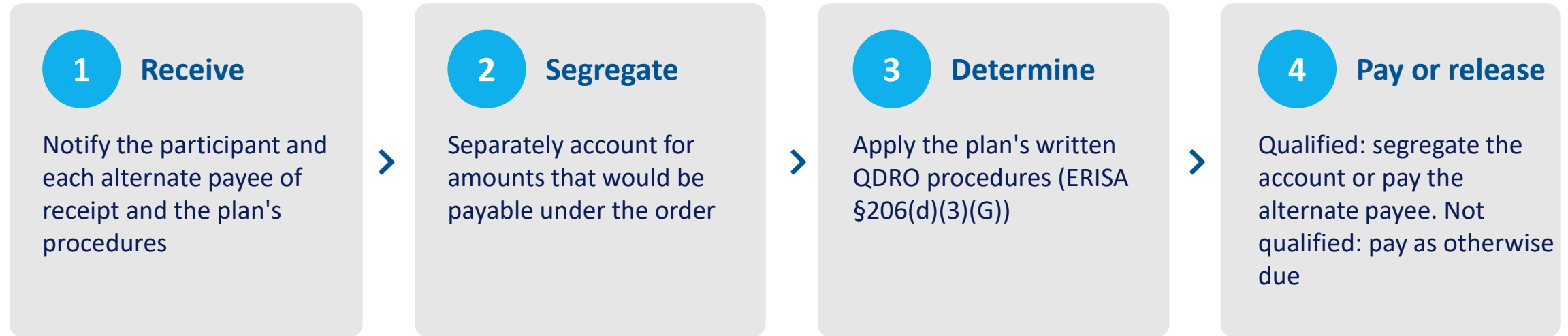
- ✓ Name and last known mailing address of the participant and each alternate payee
- ✓ Name of each plan the order covers
- ✓ Amount or percentage of the benefit, or how to determine it
- ✓ Number of payments or period covered

A QDRO CANNOT REQUIRE

- ✗ A type or form of benefit the plan does not offer
- ✗ Increased benefits, measured by actuarial value
- ✗ Benefits already assigned to another alternate payee under a prior QDRO
- ✗ A QJSA covering the alternate payee and a later spouse

SPOUSAL RIGHTS ON DIVORCE: THE QDRO FRAMEWORK

The plan administrator decides



18

months to decide

- **18-month rule:** if the order is not qualified, or is still unresolved, at the end of the period, the amounts go to whoever would have received them. A later QDRO applies only going forward.
- **Written procedures:** must be reasonable, notify those named in the order, and let the alternate payee name a representative.

When can the alternate payee be paid?



Earliest retirement age test

ERISA §206(d)(3)(E)

A QDRO may not require payment before the participant's earliest retirement age, unless the plan allows earlier payment (DOL QDRO Q&A 3-9).

Illustration: a participant, age 45 and still employed, may take a distribution on separation at 55. Earliest retirement age is 55, so the alternate payee waits until then unless the plan allows earlier.



Immediate lump sum

If the plan permits

A plan may let the alternate payee take a lump sum now, before the participant could be paid.

Authority: IRS Notice 97-11; DOL QDRO Q&A 3-9; Custer v. Custer, 776 S.W.2d 92 (Ky. 1988).



No order, no payment

Former spouses

Do not pay a former spouse on a divorce decree or settlement alone, including through interim or consignment orders.

Authority: Ramos v. Serrano, 2006 WL 1096252 (P.R. Cir. Ct. App. 2006).

QDRO questions: separate property and fees

Can a former spouse receive benefits through a QDRO if the benefit is the participant's separate property?

Maybe. It depends on whether the order secures child support or alimony or liquidates a community interest in marital assets.

Can a QDRO include attorney's fees?

- **Generally, not directly.** An attorney is not an “alternate payee” (ERISA §206(d)(3); IRC §414(p)), and paying a lawyer directly collides with anti-alienation.
- **Workaround:** a court may award fees to a spouse or child in a support or property case, and the order may give the alternate payee a larger share to cover them.
- **Limits:** the award must tie to support, alimony, or marital property rights and stay within plan limits. The alternate payee then pays the lawyer.

QDRO questions: wrong plan name

The plan name in the order is...	Likely outcome
Completely wrong	May be rejected if the plan is not identifiable. The QDRO must be amended.
Minor misspelling	May still be processed if the plan is reasonably identifiable from the participant's information, the employer, or a plan number.
Partially incomplete or wrong; the employer has only one plan	May still be processed if the plan is reasonably identifiable from the participant's information, the employer, or a plan number.
Partially incomplete or wrong; several plans have similar names	May be rejected if the plan is not identifiable. The QDRO must be amended.

The test: can the order be tied to one specific plan?

Civil Code of 1930: characterizing benefits

Benefit	Characterization under the legal conjugal partnership (SLG)
Defined benefit plan: lump sum	Separate property
Defined benefit plan: periodic payments	Marital (ganancial) property, if an SLG exists
Participant contributions	A credit may exist for contributions made by a participant married under the SLG
Deferred compensation (profit-sharing)	A credit may exist for the non-participant spouse, even if the participant spouse made no contributions

SLG = sociedad legal de gananciales (legal conjugal partnership).

Civil Code of 2020 (Art. 515): what changed?

ARTICLE 515: PENSIONS

- **Disability pensions:** marital property.
- **Retirement pensions:** separate property. If marital funds were used, the SLG may have a credit at liquidation.
- **Periodic retirement payments** received during the SLG: marital property.

IS THERE A CHANGE FROM THE 1930 CODE?

MAIN THEORY

No. The 2020 Code does not change the treatment under the 1930 Code.

ALTERNATIVE THEORY

Art. 515 is different and new, so its provisions apply.

INTEGRATION WITH PUERTO RICO MARITAL PROPERTY LAW

Art. 1303 (1930) vs. Art. 515 (2020)

ART. 1303, CIVIL CODE OF 1930

“El derecho de usufructo o de pensión, perteneciente a uno de los cónyuges perpetuamente o de por vida, formará parte de sus bienes propios, pero los frutos, pensiones e intereses devengados durante el matrimonio serán gananciales.”

In short: a lifetime pension right is separate property, but pensions and income earned during the marriage are ganancial.

ART. 515, CIVIL CODE OF 2020

“El derecho a recibir una pensión por retiro tiene carácter privativo, aunque para la adquisición de esta se empleen fondos comunes, en cuyo caso la sociedad de gananciales tendrá derecho a un crédito en dicho concepto en el momento de la liquidación de la misma. Los pagos periódicos, percibidos en función del derecho a recibir una pensión de retiro, que se reciban durante la vigencia de la sociedad, tienen carácter ganancial.”

In short: the retirement pension right is separate property (the SLG gets a credit if common funds were used), but periodic payments received during the SLG are ganancial.

Act 9-2017 (Sec. 7): plan terms control

Applies as of

Feb. 8, 2017

Act 9-2017 treats the plan document, not inheritance law, as the source of who is paid.



Exclusion from inheritance laws

All plan assets are outside the Civil Code's inheritance and succession provisions. Their disposition follows the plan document.



Spouse as default beneficiary

A married participant's spouse is the beneficiary at death. Another person may be named only in accordance with ERISA, where applicable (e.g., spousal consent).



Exception

Only when ERISA does not apply, and there is a prenuptial agreement of total separation of property, is spousal consent not required.

Boggs v. Boggs: ERISA beats state law

520 U.S. 833 (1997)

WHAT THE COURT HELD

- ERISA preempts state community-property law that let a deceased spouse leave, by will, an interest in undistributed pension benefits.
- ERISA's anti-alienation and QJSA protections for a subsequent spouse control.

WHY IT MATTERS IN PUERTO RICO

- Community property (sociedad legal de gananciales) and forced heirship (legítima) can conflict with ERISA's payment rules.
- Expect a preemption analysis whenever heirs' compulsory shares or ganancial claims reach plan benefits.

Plan documents rule: Kennedy and Egelhoff

Kennedy v. Plan Administrator for DuPont Savings & Investment Plan

555 U.S. 285 (2009)

A divorce-decree waiver that does not qualify as a QDRO does not override a valid, unrevoked beneficiary designation on file with the plan administrator.

Egelhoff v. Egelhoff

532 U.S. 141 (2001)

ERISA preempts a state statute that automatically revoked a former spouse's beneficiary designation on divorce. Administrators pay the beneficiary named in the plan documents.

Practical rule: the designation on file controls unless a QDRO or the plan's own terms say otherwise.

Same-sex spouses are ERISA spouses

2013

United States v. Windsor, 570 U.S. 744

Section 3 of DOMA is unconstitutional, so federal law, including ERISA, no longer defines “spouse” to exclude same-sex married couples.

2015

Obergefell v. Hodges, 576 U.S. 644

States must license and recognize same-sex marriages nationwide.

2022

Respect for Marriage Act

Repealed DOMA and requires federal recognition of marriages that are valid where performed.

Result: a validly married same-sex spouse is a “spouse” for QJSA/QPSA, beneficiary designation, QDRO, and hardship-distribution purposes, on the same terms.

AFTER THE BENEFICIARY IS IDENTIFIED

After the claim: beneficiary payout rules

10 years

Most non-spouse beneficiaries must empty the inherited account within 10 years of the participant's death.

2025

Final §401(a)(9) regulations (issued July 19, 2024) apply to distribution calendar years starting in 2025.

Annual

If death came on or after the required beginning date, beneficiaries also take annual distributions during the 10 years.

Exempt

Eligible designated beneficiaries skip the 10-year rule: surviving spouse, minor child of the participant, disabled or chronically ill individual, or someone not more than 10 years younger.

Applies to dual-qualified plans. Confirm treatment for Puerto Rico-only plans under the PR Code.

Practical compliance: what to review



General review

- Plan document
- Summary Plan Description (SPD)
- Adoption agreement
- Relevant contracts



Divorce review

- QDRO provisions
- Beneficiary designation on file
- Nature of each document received: participant letter, former-spouse letter, attorney letter, or court order



Death review

- Beneficiary designation on file
- Marriage evidence
- Death certificate

Operational practices to reduce risk



Life-event reminders

Remind participants to review beneficiary designations after marriage, divorce, or birth.



Plan-document default

Consider, with counsel, a provision that voids a former spouse's designation on divorce.



Triage incoming papers

Treat only a court order as a possible QDRO. Letters alone never move benefits.



Written QDRO procedures

Keep procedures and a model order current and calendar the 18-month period.



Consent file discipline

Capture each consent element and retain records, including any remote-witnessing recordings.



Verify marital facts

Require marriage and death evidence. Escalate conflicting claims and segregate disputed amounts.

Key takeaways

- 1 Check marital status first: the spouse is the default beneficiary.
- 2 Waiving spousal rights takes a valid written consent. A nuptial agreement alone does not suffice.
- 3 A divorce decree is not a QDRO. Only a qualified order moves benefits.
- 4 Plan terms and ERISA beat state default rules, so keep designations current.
- 5 Puerto Rico marital property law shapes divorce outcomes but cannot override ERISA.

Questions?

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Thank you!