

# How to Avoid Losing Your 401K in a Utah Divorce Settlement

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It's really important that you understand how to protect your 401K in a divorce in Utah. That's because a retirement account is often the first- or second-largest asset that couples need to split, other than their home. Without a divorce lawyer to plead your case, you could lose an asset that is rightfully yours or be denied the full amount of that asset which you are entitled to under Utah law.

## 401K and Divorce Settlement in Utah

Retirement benefits that accrue during a marriage are considered marital property under Utah law. If both spouses are working, the courts are likely to award each spouse their own retirement benefits. But what if only one spouse is working and contributing to a 401K?

A Utah divorce court will almost always rule that the spouse that paid into the 401K deserves that asset, while the other spouse should receive something of equal value. This can include cash, vehicles, home equity, or some other property, so long as it is of equal value. If there is no property of equal value, the 401K funds may have to be split in the divorce.

## Qualified Domestic Relations Order

A Qualified Domestic Relations Order (QRDO) is a specialized court order that can be used when a couple amicably agrees to split a 401K account. This is a separate court order from the divorce, which the Law Office of David Pedrazas, PLLC, can assist you with.

A bank, fund, or other entity that administers the 401K is not allowed under financial law to disburse funds to a spouse with a QDRO which is signed by a judge. Suppose that you have an amicable divorce and a verbal agreement with your former spouse to split a 401K evenly at retirement age — but then your spouse dies before retirement age. Under existing financial laws, the 401K administrator would be unable to disburse funds to you that are rightfully yours!

As your divorce attorney, David Pedrazas will ensure that a QDRO is properly filed and signed by a judge so that you do not lose any 401K funds that you are entitled to receive.

## 401K Divorce Calculator

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If spouses cannot come to an agreement on how to split up a 401K in their divorce, there is a mathematical formula developed by the Utah Supreme Court that will apply. This is sometimes referred to as the 401K Divorce Calculator, and the formula stems from the case Woodward v. Woodward (1982).

To calculate disbursement under this formula, the amount of the 401K is divided in half, then multiplied by the number of years of marriage. Then, divide that by the number of years that the contributing spouse paid into the 401K.

***Here's an example.*** Suppose that the husband paid into the 401K for 15 years and it has accrued \$50,000. The couple has been married for 10 years at the time of the divorce:

- $\$50,000 \times 0.5 = 25,000$
- $25,000 \times 10 = 250,000$
- $250,000 / 15 = \$16,667$

The wife who did not pay into the 401K would be entitled to \$16,667 under the Utah 401K divorce calendar.

## Contact the Law Office of David Pedrazas in Salt Lake City, UT

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If your marriage is coming to an end, you need a compassionate divorce lawyer in your corner. The Law Office of David Pedrazas, PLLC understands the struggles that you are going through. We will fight to ensure that assets that you are entitled to, based on your years of marriage, are not denied to you by a dispassionate court system. We have more than 20 years' experience in guiding Utah residents through the divorce court system and fighting for their rights.

Call our office today at 801-263-7078 for a consultation about your divorce and retirement assets.