# Why It Is Important to Know How the Plan Works.

Divorce is a lot about decision making and, more importantly, financial planning. Divorce is perhaps the most important financial decision most people in America will make in their lives. It's the one day they buy and sell everything they own. A fundamental knowledge about property in general and sound financial planning strategies will go a long way toward insuring the survivor's economic well being.

Recently a divorced woman came to my office at the request to her attorney. She had been divorced less than one (1) month and her attorney wanted to have a QDRO drafted so that it could be entered prior to the time the trial court lost plenary power.

The parties had previously reached a property settlement in a mediation session. That settlement was subsequently set out in a Final Decree of Divorce.

Her husband was retired from Harris County, Texas and was receiving benefit payments from the Texas County & District Retirement System. He was receiving a Dual-Life Options with a 75% benefit to his beneficiary. His monthly payment was $ 3,882.00 for his life and $2,911.00 for his beneficiary's life. His recently divorced spouse was his named beneficiary.

She was awarded the following from the TCDRS benefits:

> A portion of the community benefit in husband's Texas County & District Retirement System ("TCDRS") Defined Benefit Pension plan arising out of Husband's employment with Harris County, that portion being nine hundred & thirty five dollars ($935.00) per month and more particularly defined in a Qualified Domestic relations Order.

I wanted to check the math to see what $935.00 per month was in relation to the community total and asked her how that amount was calculated. She informed me that the parties had been married for 14 years prior to the husband's retirement and that he had been a county employee for 28 years total. She explained that the mediator informed her that the formula for determining the separate and community portions of the benefit was determined by time based formula as follows:

$$\frac{\text{\# of months married as a participant in the Plan}}{\text{\# of months in the Plan as of the date of retirement}}$$

This apportionment formula is commonly referred to in Texas as the Taggart formula. This formula is used to determine the characterization of benefits under a traditional defined benefit plan that is in pay status or accruals under the plan which have terminated. Since the parties were married for 14 out of the 28 years of employment, it was explained to her that the community portion would be 50%. She was to be awarded approximately one-half of the community property. The math checked out.

But wait. The TCDRS is not a traditional defined benefit plan. Neither the mediator nor the wife's attorney knew anything about the plan, how it works, or how to properly characterize it. The TCDRS is classified as defined benefit plan for IRS qualification purposes. However it is more like a contributory cash balance plan, where contributions are made by the employee and interest is credited at the end of each year.

The community and separate portions of this type of plan are determined as follows:

1. The separate property interest is the balance of the accumulated contributions and accrued interest in the Plan as of the date of marriage; and
2. The community property interest is everything else (which includes all of the contributions made post-date of marriage, and all of the interest that accrued post-date of marriage).

In this particular case, the participant's balance in the Plan as of the date of retirement was \$188,300. The balance in the Plan as of the date of marriage was \$ 29,807, which would be the husband's separate property. The balance, \$ 158,493, would be considered the parties' community property.

Now do the math. The community property portion was actually 84.17%, not 50%. If the wife were to have received 50% of the community property, as she was lead to believe, she would have received approximately \$ 1,634 as follows:

\$ 3,882 X 84.17% X 50% = \$ 1,634.

Lesson of the day. Do not rely on your mediator for any legal advice. It's not their role. Be prepared for your mediation. Make sure you and your attorney know everything about the plan in question before mediation and before you make any binding agreement.