

A Closer Look at

THE LAW



CUNNINGHAM
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ATTORNEYS AT LAW

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Cunningham Dalman, PC
321 Settlers Road
P.O. Box 1767
Holland, MI 49422
Phone: (616) 392-1821
www.holland-law.com
Fax: (616) 392-4769
www.holland-law.com

Disclaimer: This newsletter is for general information only and covers only broad legal concepts. In no way is this newsletter intended as formal legal advice. If you have further questions regarding a legal matter, please consult a licensed attorney.

Cunningham Dalman, P.C. is a full service law firm located in Holland, Michigan. Our attorneys possess skill and experience in a broad spectrum of areas of practice, and have proudly served the lakeshore community for over 100 years.

Tax on Company Owned Life Insurance Policies

By: [Gregory J. McCoy](#)
Attorney at Law

If your company has life insurance on its employees, there are new IRS requirements that affect you. The new rules apply only to those policies issued after August 17, 2006, but also apply if there has been a change to the policy after that date, such as a change in the death benefit. The new rules make the death benefit taxable to the employer unless certain steps are taken. To avoid this tax, the employer **must notify the employee of the policy and obtain the written consent of the employee whose life was insured and annually file IRS form 8925**. Failure to comply with these requirements will result in the **death benefit becoming taxable**.

Additional details of this law are as follows:

-- Many insurance companies that issue corporate-owned policies are having the consent forms signed as part of the application process. However, this should be verified, and a copy of that consent kept in your files. In addition, just having the consent is not enough -- you must also file IRS form 8925, so your accountant must be kept up to date on the status of these types of policies.

-- The exemption requires either (i) the insured be an employee at any time during the 12-month period before the insured's death, or the insured was a director, or a highly compensated employee or highly compensated individual at the time the insurance policy was issued, or (2) the death benefits are paid the insured's family or are used to purchase the insured's stock in the employer.

-- These rules also apply to the owner-employee of a wholly-owned corporation.

-- For consent to be valid, the contract must be issued within one year after the consent was executed or by the employee's termination date, whichever is earlier.

-- The notice and consent requirements may be satisfied electronically (e.g. by e-mail) under specified circumstances.

-- Adequate notice requires that the fact amount of the life insurance be disclosed either in dollars or a multiple of salary.

Using a Retirement Plan to Satisfy an Intra-Family Debt

By: [Kenneth B. Breese](#)
Attorney at Law

In 1984 Congress passed the Retirement Equity Act as a means, among other goals, of establishing a method by which retirement plans could be divided between divorcing spouses. The mechanism was called a Domestic Relations Order or a Qualified Domestic Relations Order (QDRO). Since then, many divorcing couples have availed themselves of this device in order to fairly divide retirement benefits held in the name of one spouse. There is, however, another use for this type of order that is only now gaining acceptance. It is the use of a QDRO to collect child support arrears, spousal support arrears or even property division debts owed between spouses.

The mechanism is simple. First, the enforcement document must be an order entered pursuant to State Domestic Relations law. Usually, this means a divorce. However, it could be entered in the context of a Paternity Action, a Non-Support Action, or even a Neglect or Abuse Action. Since the creation of the Family Court Division of the Circuit Courts in 1996 it is arguable that any matter properly brought before that Court is a domestic relations matter.

In addition, the Order must create a right in the retirement plan dealt with, identify the participant and those entitled to receive payment and specify which plan is being affected. The order must also include Social Security numbers and specify what is being transferred.

So, for example, if an arrearage in child support or alimony exists a QDRO may be prepared which attaches the debtor's pension, 401k or, even, IRA. These plans are, otherwise, not subject to the collection efforts of creditors and are, not infrequently, one of the few sources of liquid assets available for use to satisfy an intra- family debt.

These orders are much more complex than the basic requirements indicate and must be approved by the administrator of the retirement plan being attached before they will be effective. If you believe that someone owes you or a family member support or even another type of debt arising out of a family law judgment or order, contact us to discuss the possibility of collection of that debt out of retirement benefits.