

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



DEC 4 1990

AO 90-47A

Mr. Joseph V. Demarte  
Lane Powell Moss & Miller  
3800 Rainier Bank Tower  
Seattle, Washington 98101-2647

Dear Mr. Demarte:

This responds to your request for an advisory opinion, on behalf of the Nordstrom Profit Sharing Plan (Plan), concerning the application of sections 514 and 206(d) of the Employee Retirement Income Security Act of 1974 (ERISA) with respect to the court order described below.\* Your submission contains the following facts and representations.

The Plan is a tax-qualified retirement plan providing benefits to employees of Nordstrom, Inc. Benefits are payable under the Plan upon the participant's retirement or death. The Plan provides that benefits may not be assigned or alienated except in the case of a "qualified domestic relations order." Bruce A. Nordstrom is a Plan participant whose benefit account is not in pay status.

Bruce Nordstrom's wife, Frances W. Nordstrom, died October 5, 1984. Her will was admitted to probate in the Superior Court for the State of Washington at King County (the Court). Subsequently, the estate of Frances Nordstrom (the Estate) filed a petition asking the Court to require the Plan to divide and segregate that portion of Bruce Nordstrom's benefits which represents the interest of the Estate. You indicate the request was made on the grounds that, inter alia, Frances Nordstrom owned at her death an undivided one-half community interest in Bruce Nordstrom's accrued benefits pursuant to the community property law of the State of Washington and that a court order for such division and segregation of benefits could issue in accordance with section 206(d)(3) of ERISA. The Court granted the petition and entered an order styled "Qualified Domestic Relations Order and Order Dividing Retirement Plan Benefits" (the Court Order).

You request the views of the Department of Labor concerning whether the community property law of the State of Washington is preempted by section 514 of ERISA and whether the Court Order falls within the scope of section 206(d)(3) of ERISA.

The factual situation and issues presented in your request are essentially the same as those addressed by the Department of Labor in Opinion 90-46A issued this date, copy enclosed. The only notable difference is the identity of the plan involved. Therefore, the analysis and views expressed by the Department in Opinion 90-46A apply equally well in this case, and we reach essentially the same conclusions. Specifically, it is the opinion of the Department of Labor that the Court Order is not a "domestic relations order" within the meaning of section 206(d)(3)(B)(ii) of ERISA and, therefore, does not constitute a "qualified domestic relations order" for purposes of sections 206(d)(3) and 514(b)(7) of ERISA. Accordingly, it is the opinion of the Department of Labor that the Court Order is unenforceable against the Plan.

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\* For convenience, this letter refers to the provisions of section 206(d) of ERISA rather than to the corresponding provisions in sections 401(a)(13)(B) and 414(p) of the Internal Revenue Code, to which your request refers.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure explains the effect of advisory opinions.

Sincerely,

Robert J. Doyle  
Director of Regulations and Interpretations

Enclosure