

Qualified Domestic Relations Order (QDRO)

All Funds

While the New Jersey State-administered retirement systems are exempt from the Employee Retirement Income Security Act of 1974 (ERISA), the Division of Pensions and Benefits will attempt to follow the provisions of ERISA, as related to the Retirement Equity Act of 1985 (REACT) provided such mandates do not violate applicable New Jersey laws or administrative rules. Although your pension is normally exempt from any liens, the Division of Pensions and Benefits will honor court orders for child support, alimony, or equitable distribution in cases of divorce or dissolution of a civil union.

A Domestic Relations Order is a court order, separate and apart from a Judgment of Divorce. A Domestic Relations Order provides for the equitable distribution of pension and related benefits upon the dissolution of a marriage or civil union. A Domestic Relations Order that has been reviewed and approved by the Division of Pensions and Benefits and signed by a judge is then deemed a Qualified Domestic Relations Order (QDRO).

REQUIREMENTS FOR AN ACCEPTABLE QDRO

The language within the acceptable QDRO must clearly impose an obligation upon the Division to withhold a portion of a participant/member's retirement benefits for payment to an alternate payee. The description of the participant and the alternate payee must be clear and specific, i.e. full names and addresses as opposed to references to "spouse" or "former spouse," etc.

The QDRO must contain specific names, as previously mentioned, including:

- Names, addresses and Social Security numbers of both the member and the alternate payee:
- The specific name of the retirement system in which the member is enrolled. State administered systems include:

- Public Employees Retirement System of New Jersey
- Teachers Pension and Annuity Fund of New Jersey
- Police and Firemen's Retirement System of New Jersey
- State Police Retirement System of New Jersey
- Judicial Retirement System of New Jersey
- Alternate Benefit Program of New Jersey
- Defined Contribution Retirement Plan of New Jersey
- Deferred Compensation Plan of New Jersey
- Supplemental Annuity Collective Trust

The QDRO must state a specific amount to be withheld for payment to the alternate payee (see sample on page 5). Acceptable examples include:

- A specific dollar amount; or
- A specific percentage of the member's benefit; or
- An amount to be determined through the application of a coverture fraction. A coverture fraction calculation utilizes a specific percentage of the member's gross monthly retirement allowance, multiplied by a coverture fraction where the numerator is the total number of years and months that the parties were married while the member was a participant in the retirement system and the denominator is the total number of years and months the member has participated in the retirement system.

To insure proper tax reporting, the QDRO must indicate whether the withholdings are for alimony, support, or equitable distribution payments. The form of payment will determine how the payments are reported for tax purposes.

QDRO EVALUATION AND GUIDELINES

Under the Retirement Equity Act, the Division must review each Domestic Relations Order providing for the payment of benefits from a State-administered retirement system maintained by the Division to someone other than the member or retiree (participant) to determine if the order is qualified.

Upon receipt of a Domestic Relations Order, the Division will provide the participant, each alternate payee, and their legal representative (interested parties) with written notice that the order was received.

The Division will classify the Domestic Relations Order as “qualified” if the Division determines that the answer to each of the evaluation items listed below is either “Yes” or “Not Applicable.” If the Division determines that the answer to any of the items is “No” the Division will classify the order as not qualified.

1. Is the order a Domestic Relations Order?

A domestic relations order may take the form of a judgment, decree, or court order (including a court approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property laws). It must relate to the provision of child support, alimony, or material property rights to a spouse/partner (present or former), child, or other dependent of the plan participant.

2. Does the order specify the plan or plans to which it applies?

A QDRO must clearly specify each plan to which it applies (see page 1). If multiple plans are specified, the order of payment should be included if appropriate.

3. Does the order specify the plan participant by name and mailing address?

A QDRO must specify the name and mailing address of the participant. The last known mailing address for a current employee is sufficient.

4. Does the order specify an alternate payee by name and mailing address?

An alternate payee is a spouse/partner, former spouse/partner, child, or other dependent of the

participant. A QDRO must clearly specify the name and address of each alternate payee.

5. Does the order create or recognize the alternate payee's right to all or part of the participant's benefits under the plan?

A QDRO must create or recognize the existence of an alternate payee's right to, or assign to an alternate payee right to, receive all or a portion of the benefits payable with respect to a participant under a plan.

6. Does the order specify the amount or percentage of the participant's benefit to be paid by the plan to each alternate payee (or clearly designate the manner to determine the amount or percentage)?

A QDRO must clearly specify the amount or percentage of the employee's benefits to be paid to each alternate payee, or the manner in which this can be determined.

7. Does the order state how benefits must be paid to each alternate payee?

A QDRO must clearly specify the number of payments from the plan or period to which it applies.

8. Is the order consistent with all other QDROs received by the Plan with respect to the participant?

A QDRO cannot require benefits to be paid to an alternate payee that are required under a prior QDRO to be paid to another alternate payee.

9. Is the order free of any unnecessary conditions, obligations, or representations that would appear to bind the Division if it approved the order?

If the order is free of any other conditions or obligations and meets all of the other preceding requirements, the order can be considered “qualified” under the Division's QDRO process.

10. Can the QDRO require designation of beneficiary for group life insurance?

Court orders may be filed that specifically designate the former spouse/partner to receive a life

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insurance benefit. For more information, see Fact Sheet #42, *Divorce, Dissolution of a Civil Union, and Retirement Benefits*.

The Division will make a preliminary determination of whether the order is qualified, generally within 60 days of receipt, and will notify each interested party in writing of its decisions. If the Division determines that the order is not qualified, the interested party may obtain a modification of the order and resubmit it to the Division for review.

IMPLEMENTATION

QDROs are implemented only when the member retires and elects to receive his or her monthly benefit **or** when the member terminates participation in their respective retirement system and applies for a withdrawal of their net personal contributions prior to retirement. If a QDRO is received for a participant who has already retired, the QDRO can be implemented upon approval and *Order of the Court*.

A QDRO cannot direct the State to implement any provision that would conflict with Statute or regulation governing administration of the retirement systems nor can the benefit(s) payable to alternate payee(s) exceed the net benefit available to the participant.

The former spouse/partner does not obtain all of the rights of a member under the provisions of a QDRO. However, if the QDRO is deemed acceptable, the former spouse/partner does receive the right to receive a portion of the member's monthly retirement benefits until either (a) he/she or the member dies or (b) the Division of Pensions and Benefits receives another court order that modifies or nullifies the previous QDRO. The former spouse/partner's right to receive a portion of the retiree's monthly retirement allowances cannot be assigned or bequeathed to anyone else or to the former spouse/partner's estate.

The withholdings from the member's monthly retirement allowances implemented under a QDRO will terminate upon the death of either the retiree or the former spouse/partner. If the former spouse/partner predeceases the retiree, the withholdings will revert back to the retiree. When the retiree dies, all with-

holdings under the QDRO will terminate. However, in those systems that permit the member to name survivor beneficiaries, the former spouse/partner could receive survivor benefits in such situations even though the withholdings under the QDRO will terminate. Of course, the member would have had to name the former spouse/partner as the beneficiary for the survivor pension benefits at the time of selection of a retirement benefit on the application.

Generally, the Division of Pensions and Benefits will only implement QDROs on a prospective basis. Arrears or retroactive withholdings are not automatic but, if a request for such arrears or retroactive withholdings is specifically required within the QDRO, such arrears or retroactive withholdings can be implemented. The QDRO must state the amount of the regular withholdings plus the additional amount of the arrears withholdings plus the balance of the outstanding arrears balance.

LIMITATIONS

The normal pension benefits to the member cannot be increased as a result of the provisions appearing within a QDRO. There are no lump sum retirement benefit payments available to the member or the former spouse/partner under the provisions of a QDRO.

Retirement Survivor Benefits

Public Employees' Retirement System (PERS), Teachers' Pension and Annuity Fund (TPAF), and Judicial Retirement System (JRS) — If the member retires and designates his or her spouse/partner as the beneficiary under one of the various survivor options available within the PERS, TPAF, or JRS, and is then divorced from that named beneficiary, the former spouse/partner will remain eligible to receive those survivor benefits.

Police and Firemen's Retirement System (PFRS) and State Police Retirement System (SPRS) — A divorce will void the former spouse/partner's eligibility to receive monthly survivor benefits. The laws governing the PFRS and SPRS state that only the man or woman to whom the retiree is married or in a civil union on the date of his or her death is eligible to receive a monthly retirement system.

Group Life Insurance

In cases of divorce or dissolution, even though your *Application for Retirement Allowance* may indicate your former spouse/partner and/or relatives of your former spouse/partner as beneficiaries for life insurance they cannot receive the benefit. The proceeds from your life insurance policy become payable upon your death to your remaining primary beneficiaries, if any, contingent beneficiaries, if any, or your estate. However, the following exceptions will be honored and considered valid:

- Court orders are filed that specifically designate your former spouse/partner to receive a life insurance benefit; or
- You sign and file a Designation of Beneficiary form after the final date of judgment that names your former spouse/partner as life insurance beneficiary.

For more information see Fact Sheet #42, *Divorce, Dissolution of a Civil Union, and Retirement Benefits*.

SPECIAL CONDITIONS FOR DEFINED CONTRIBUTIONS ACCOUNTS

The Division of Pensions and Benefits administers the Defined Contribution Retirement Program (DCRP) and the New Jersey State Employees Deferred Compensation Plan (NJSEDCP).*

There is wording required in the QDRO in order for the Division to accept and implement it. Specifically,

- (1) In order to be acceptable for implementation, a QDRO involving the DCRP or the NJSEDCP must state that “The Division of Pensions and Benefits” is to withhold a specific dollar amount or a specific percentage of the balance within

the participant’s account as of the “end of a month” for either equitable distribution, alimony or support payments to the alternate payee.

- (2) The wording concerning the “Division of Pensions and Benefits” is necessary to create a clear obligation upon the Division to implement the requested decision.
- (3) The wording concerning the percentage withholdings based on an “end of a month” is necessary since the value of the accounts is usually calculated at the end of a month.

After the Division of Pensions and Benefits receives an acceptable, executed QDRO, it will attempt to segregate the specific dollar amount or specific percentage requested within such QDRO within the participant’s account as soon as practical thereafter. Once the segregation within the account is made, the former spouse will have total control over those funds as to investment decisions, allocations, etc. The participant will only have control over the remainder of the funds within that account. For more information see Fact Sheet #9, *Divorce and Your Deferred Compensation Account*.

ADDITIONAL INFORMATION

For additional information about your benefits and divorce or dissolution of a civil union, see the following fact sheets:

- Fact Sheet #9, *Divorce and Your Deferred Compensation Account* (for members of the NJSEDCP)
- Fact Sheet #42, *Divorce, Dissolution of a Civil Union, and Retirement Benefits* (for members of all funds)

*Local employers (i.e. municipalities, counties, boards of education, etc.) may offer deferred compensation plans to their employees but the Division of Pensions and Benefits is not part of the administration of such local plans. The laws and regulations governing these types of plans may differ from the laws and regulations governing the NJSEDCP and their procedures for implementing QDRO’s may be different than those policies and procedures concerning the NJSEDCP.

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This fact sheet is a summary and not intended to provide total information.

Although every attempt at accuracy is made, it cannot be guaranteed.

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DIVISION OF PENSIONS AND BENEFITS**SAMPLE****MATRIMONIAL ORDER**

- A. Where a SPECIFIC DOLLAR AMOUNT has been resolved:

The Division of Pensions and Benefits is to withhold the amount of \$412.18 [OR ANY OTHER STATED AMOUNT] from John Doe's gross monthly retirement allowances for [either: alimony, support, or equitable distribution – indicate only one] payments to Ms. Flossie Doe.

- B. Where a SPECIFIC PERCENTAGE has been determined:

The Division of Pensions and Benefits is to withhold forty-two percent (42%) [OR ANY OTHER AGREED UPON PERCENTAGE] of John Doe's gross monthly retirement allowances for [either: alimony, support, or equitable distribution – indicate only one] payments to Ms. Flossie Doe.

- C. Where a SPECIFIC PERCENTAGE has been determined but the member is still an active employee and the monthly retirement allowance cannot be determined at the present time:

The Division of Pensions and Benefits is to withhold from John Doe's gross monthly retirement allowances for [either: alimony, support, or equitable distribution – indicate only one] payments to Ms. Flossie Doe an amount to be computed by multiplying the gross monthly retirement allowances by forty-two percent (42%) [OR ANY OTHER AGREED UPON PERCENTAGE] and a coverture fraction in which the numerator will be the total number of years that the spouses were married while the member was a member of the retirement system [THAT SPECIFIC NUMBER OF YEARS AND MONTHS MUST BE STATED IN THE ORDER, such as 26 years and 3 months] and the denominator will be stated to be the total years of service credit accrued within the retirement system at the time of retirement [THIS ACTUAL FIGURE WILL BE UNKNOWN AT THE TIME OF THE PREPARATION OF THE COURT ORDER].

NOTES: The withholdings mentioned in such orders will be sent directly to the divorced spouse unless the order specifies another payee such as a probation department.

- Upon the death of EITHER the retirant or the divorced spouse, all withholdings mandated under such a court order will be terminated. In those retirement systems that permit the member to select a survivor's retirement option at the time of his or her retirement, the equitable distribution withholdings will still terminate upon the death of the retirant but, if the divorced spouse is designated as the beneficiary under the survivor's retirement option and survives the retirant, such divorced spouse who was designated as the survivor's option can receive monthly survivor's benefits for the rest of his or her life after the death of the retirant. Those benefits do not arise from the equitable distribution court order but rather arise from the rights of a designated beneficiary under a survivor's retirement option.
- If another person receives monthly survivor's benefits subsequent to the death of the retirant under a retirement option selected by the retirant, the divorced spouse cannot receive continued equitable distributions from the monthly survivor's benefits payable to that other person.