

## GUIDELINES FOR DOMESTIC RELATIONS ORDERS

The Guidelines below outline the requirements to obtain an approved Domestic Relations Order (DRO). A copy of the sample DRO developed by the Retirement Board of Allegheny County (RBAC) is also provided for consideration in drafting an appropriate order. These materials are intended to assist members of the Allegheny County Employees' Retirement System (Retirement System) and ex-spouses who have an interest in the member's pension.

***NOTICE: The information contained in this document is not intended as legal advice and does not replace individual consultation with an attorney. The RBAC cannot provide legal advice or representation to members or alternate payees. If you have specific questions regarding the equitable distribution of a retirement benefit, you should consult with an attorney.***

The Retirement System administers a defined-benefit pension plan created by the Second Class County Code ("Retirement Law").<sup>i</sup> 16 P.S. §§ 4701–4716. The Retirement Law generally prohibits attachment of retirement contributions or benefits. However, attachment of retirement benefits for purposes of equitable distribution can be accomplished through the terms of an approved DRO.

Because the Retirement System is a governmental retirement plan, the provisions of the Employee Retirement Income Security Act ("ERISA") and the Retirement Equity Act of 1984 regarding qualified domestic relations orders and spousal consent do not apply.

### Guidelines

The DRO cannot alter the RBAC benefit structure. The Retirement Law establishes the benefits available to members. All DROs must utilize the benefit structure established by the Retirement Law. Any alterations to the benefit structure are outside the jurisdiction of the Courts of Common Pleas.<sup>ii</sup>

The Retirement Law permits members to designate a spouse for a survivor benefit, but survivor benefits extend only to current spouses at the time of the member's death. Any election in favor of a surviving spouse benefit is cancelled when the member divorces, or upon legal separation if already receiving retirement benefits.<sup>iii</sup> No survivor's benefit is available to an ex-spouse. **A DRO may therefore only provide for benefits to the alternate payee during the member's lifetime—it allocates the benefit available to the member during his or her lifetime. Under a DRO, all payments to the alternate payee will cease upon the member's death.**

At the member's request, RBAC will provide the member's total credited service and total accumulated contributions. The RBAC can also provide an estimate of the benefits to which the member is entitled as of the date of the request or the date of separation. Benefit estimates cannot be released to anyone other than the member without the member's written authorization. Contact the Retirement Office for more information on estimating a member's benefit.

The division of benefits between the member and alternate payee must be clear, unambiguous, and set forth within the four corners of the DRO. The RBAC will not approve any DRO that requires reference to property settlement agreements, trust documents, or other documents to calculate benefit formulas or determine payout information. The RBAC cannot accept a DRO containing terms contingent on events other than the member's death or retirement, such as the sale of the marital home or the member's purchase of life insurance. Generally, the following information should appear in the DRO:

The portion of the retirement benefit attributable to the marriage. This statement must include the actual dates (month/day/year) of the marital measuring period if such dates are necessary to determine the benefit to be divided.

The marital share of the retirement benefit, expressed as either a percentage or dollar amount. The dollar amount payable to the alternate payee cannot exceed the amount of the member's monthly retirement benefit. The parties should also specify whether the alternate payee's portion includes post-separation enhancements such as the purchase of service credit for service rendered during the marital period.

Whether the member may elect to take a lump sum withdrawal of all of his or her member contributions and interest and how that withdrawal is to be divided between the parties. The DRO should be explicit with regard to the member's authorization to take a lump sum, and the share, if any, payable to the alternate payee. Unless the DRO prohibits the option to take a lump sum withdrawal in lieu of a retirement benefit, the member will be permitted to do so under the Retirement Law.

The address of the alternate payee must be included. The alternate payee must maintain a current address on file with the RBAC at all times. This duty must be noted in the DRO.

**Unlike ERISA plans, the rights of the alternate payee are entirely derivative of the member's rights. The alternate payee cannot name beneficiaries or receive a separate interest in the member's benefit. The alternate payee's share is payable to the alternate payee if, as, and when the member's benefit enters pay status. The alternate payee's right to receive a monthly benefit will cease upon the death of the member.**

The DRO may require the member to execute a release authorizing the alternate payee to access the information RBAC maintains on the member, so that the member's compliance with the terms of the DRO may be monitored. The parties must include their full Social Security Numbers on an addendum submitted with the final DRO entered by the Court.

All benefits paid by RBAC are subject to the terms of the Public Employee Pension Forfeiture Act, 43 P.S. §§ 1311-1314. Under certain circumstances, the member's conviction for one of the crimes enumerated in that statute may cause the forfeiture of all benefits payable to the member and alternate payee.

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<sup>i</sup> Act of July 28, 1953, P.L. 723, art. XVII, §§ 1701–1716, 16 P.S. §§ 4701–4716.

<sup>ii</sup> See *Maloney v. Maloney*, 754 A.2d 36 (Pa. Cmwlth. 2000), *alloc. den.* 775 A.2d 810 (Pa. 2001).

<sup>iii</sup> 16 P.S. § 4712(e), (f). The election of a surviving spouse benefit is also cancelled, and the member's full benefit restored, if the spouse predeceases the member.