

QDRO Guidelines

GUIDELINES FOR ORDERS ASSIGNING A MEMBER'S RETIREMENT BENEFITS AND ALLOWANCES TO AN ALTERNATE PAYEE

These guidelines are for informational purposes and to assist in drafting orders that dispose of a portion of a member's retirement benefits and allowances or assets and are subject to change.

1. Fairfax County has three separate Retirement Systems, respectively named the Fairfax County Employees' Retirement System (ERS) (Fairfax County Code, Chapter 3, Article 2), the Fairfax County Police Officers Retirement System (PORS) (Fairfax County Code, Chapter 3, Article 7), and the Fairfax County Uniformed Retirement System (URS) (Fairfax County Code, Chapter 3, Article 3).

2. The name and address of the Retirement Administrator for all three Retirement Systems are:

Meir Zupovitz

Fairfax County Retirement Administration Agency
12015 Route 50, Suite 350
Fairfax, Virginia 22033

3. In the interest of economy, the Retirement Administrator urges that a draft order be submitted for review and pre-approval. That way, any problems with the order can be resolved before it is entered by the court, thereby ensuring prompt qualification after its entry.

4. An order must comply with all applicable terms and conditions of the County ordinance governing the Retirement System to which it relates. The ordinances for the Retirement Systems appear in the Fairfax County Code which is available at <https://www.municode.com>.

5. The ordinances for all three Retirement Systems only permit a member to elect a survivor benefit for the benefit of the person to whom he or she is married at the time of the member's retirement. Fairfax County Code §§ 3-2-32(c), 3-3-32(c), and 3-7-39.

6. The Retirement Administrator requires that an order from a jurisdiction other than Virginia be authenticated by the Circuit Court for Fairfax County, Virginia. He will give full faith and credit to such an authenticated order.

7. The Retirement Systems are defined benefit plans (i.e., plans that provide for payment of specified monthly retirement benefits) using the "shared payment" approach. This means that the alternate payee cannot begin to receive payment of his or her portion of the member's

retirement benefits and allowances until after the member has actually retired, or, in the event that the member enters DROP, when the member's County employment actually ceases.

8. Because the Systems are defined benefit plans, an alternate payee is not permitted to designate a beneficiary to receive the assigned benefits in the event of the alternate payee's death.

9. Inclusion in an order of any of the following phrases – or words to the same effect – will result in the denial of qualification of an order because they are inapplicable to defined benefit plans:

- The member's "total account balance;"
- "Total distribution;"
- A "lump sum payment" to the alternate payee;
- "Interest on investment earnings or appreciation;" or
- The alternate payee's "share" of the member's retirement account

10. No order can be qualified that refers to ERISA or the Retirement Equity Act (or any successor statutes) because the County, as a local government, is exempt from the provisions of ERISA.

11. To ensure compliance with the requirements of 26 U.S.C. § 414(p) applicable to the Retirement Systems, any order dividing or transferring the retirement benefits and allowances of a member of one of the Systems to an alternate payee must contain the following language:

The court deems the retirement benefits and allowances or assets of (member's name) to be marital property and is dividing or transferring that marital property by direct assignment to (name of member's spouse or former spouse) pursuant to Virginia Code §§ 20-107.3 and 51.1-801.

In the case of an order from a foreign jurisdiction (e.g., Maryland; West Virginia), the order instead should identify the state statute pursuant to which it is made.

12. To facilitate its processing and administration, the order must specify:

- a. The name and last known mailing address of the member and the alternate payee covered by the order;

- b. The dollar amount of the benefits and allowances to be paid by the System to the alternate payee or a specific percentage of the member's total benefits which are to be paid by the System to the alternate payee;
 - c. Either a specific number of payments to be made by the system to the alternate payee, or the time period over which such payments will be made (normally until the death of the member or the death of the alternate payee, whichever occurs first); and
 - d. The name of the System to which the order applies, and the name and address of the Retirement Administrator.
13. For the protection of each System, the following language must also be included in the order:
 - a. The order does not require the System to notify the alternate payee of any change or alteration of the retirement benefits and allowances due to the member; and
 - b. The order does not require the System to pay any refunds for retirement contributions that may be due on the death of the member to anyone other than the beneficiary designated in writing by the member and on record with the System.
14. The order must provide that the alternate payee shall complete and return all applications, forms and other documents required by the Retirement Administrator, or by federal, state or local law, prior to the distribution of any benefits to him or her under the order.
15. The order must provide that the alternate payee will keep the Retirement Administrator informed of any and all changes in the alternate payee's address and direct deposit information, if applicable, for the duration of the System's obligation to pay a portion of the member's retirement benefits and allowances to the alternate payee.
16. The order must disclose whether the member: (a) remains employed; (b) is no longer employed but has elected to receive a deferred annuity pursuant to either Fairfax County Code §§ 3-2-38, 3-3-39 or 3-7-38; or (c) is retired.
17. The County has established a Deferred Retirement Option Program (DROP) for each Retirement System. Fairfax County Code §§ 3-2-57, 3-3-57 and 3-7-52. If the parties intend to assign a portion of the member's DROP account balance to the alternate payee, then the order must expressly provide for this assignment.

18. Orders that deal with the distribution of retirement benefits to which the member may become entitled in the future based upon a formula set forth in the order should contain the following language:

When and if (member's name) retires or otherwise becomes entitled to receive his/her benefits, the parties will compute the amount of monthly benefits to which (name of alternate payee) shall be entitled in accordance with the formula set forth herein. The parties shall obtain the entry of a modification order which specifies the exact amount which is to be paid to (name of alternate payee) by the retirement system and shall forward such order to the Retirement Administrator for review and implementation.

The parties acknowledge that pursuant to 26 U.S.C. §§ 401(a)(13) and 414(p), the system cannot make payments to the former spouse until such time as such modification order has been entered and qualified.

* A modification order must satisfy all of the requirements set forth in these guidelines.

QDRO Template

This SAMPLE QUALIFIED DOMESTIC RELATIONS ORDER (QDRO) may be appropriate for use with respect to benefits to which you are entitled under one of the Fairfax County Retirement Systems. It may or may not contain provisions that are applicable to your particular needs or situation. Nothing contained in this SAMPLE QDRO shall be construed as legal or tax advice. See your attorney for assistance in preparing your QDRO.

[STATE]

IN THE _____ COURT OF _____

_____,

Plaintiff/Petitioner,

v.

Defendant/Respondent.

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Case No. _____

QUALIFIED DOMESTIC RELATIONS ORDER (QDRO)
FAIRFAX COUNTY [EMPLOYEES'/POLICE OFFICERS/UNIFORMED] RETIREMENT SYSTEM

1. This order relates to the provision of marital property rights and/or spousal support to the Alternate Payee as a result of [a property settlement agreement incorporated, but not merged, into] a final order/decre of divorce between the Member and the Alternate Payee.

2. This order is entered pursuant to the domestic relations law of the State/Commonwealth of _____.

3. This Court has personal jurisdiction over the Parties to this case and jurisdiction over the subject matter of this order and the dissolution of the Parties' marriage. The Parties were married on _____, 20__, separated on _____, 20__, and divorced on _____, 20__.

4. This order creates and recognizes the existence of the Alternate Payee's right to receive all or a portion of the Member's benefits payable under an employer defined benefit plan qualified under Section 401 of the Internal Revenue Code, as amended (the Code). As such, it is intended to be a Qualified Domestic Relations Order (QDRO) under Section 414(p) of the Code, and shall be administered and interpreted in conformity with Section 414(p).

5. This Court deems the retirement benefits and allowances or assets of the Member to be marital property, and is dividing or transferring that marital property by direct assignment to the Alternate Payee pursuant to [applicable state law provision].

6. As used in this order, the following terms shall apply:

a. "Creditable service earned" means creditable service earned, but not creditable service purchased.

b. "Marriage" means the period of time beginning on the date the Member and the Alternate Payee were married and ending on the date the Member and the Alternate Payee were separated within the meaning of § 20-107.3 of the Code of Virginia.

c. "Parties" means the Member and the Alternate Payee.

7. This order applies to the Fairfax County Employees'/Police Officers/Uniformed Retirement System (System). Any successor retirement plan or system to the System or any other retirement plan or system to which liability for provision of the Member's benefits

described below is incurred, shall also be subject to this order. In addition, any benefits accrued by the Member under a predecessor retirement plan or system of the employer, whereby liability for benefits accrued under such predecessor retirement plan or system, shall also be subject to this order.

8. Any changes in the Retirement Administrator, System sponsor or name of the System shall not affect the Alternate Payee's rights as provided under this order.

9. The name and address of the Retirement Administrator is:

Meir Zupovitz
Fairfax County Retirement Administration Agency
12015 Route 50, Suite 350
Fairfax, Virginia 22033

All correspondence or inquiries relating to this order shall be directed to the Retirement Administrator.

10. The name, last known mailing address and date of birth of the Member are: _____ . The Member remains employed/is no longer employed but has elected to receive a deferred vested benefit/is retired.

11. The name, last known mailing address and date of birth of the Alternate Payee are: _____ . The Alternate Payee shall notify the Retirement Administrator in writing of any changes in his/her mailing address and direct deposit information made after the entry of this order.

12. The social security numbers for the Member and the Alternate Payee are provided in a confidential addendum attached to this order.

13A. This order assigns to the Alternate Payee an amount equal to _____% of the marital share of the Member's gross monthly benefit, as calculated by the System, as of the Member's benefit commencement date. For this purpose, the marital share shall be determined by multiplying the Member's gross monthly benefit by a fraction, the numerator of which is the Member's total creditable service earned during the Marriage and the denominator of which is the Member's total creditable service earned as a System member.

When and if the Member retires or otherwise becomes entitled to receive his/her benefits, the Parties shall compute the amount of monthly benefits to which the Alternate Payee shall be entitled in accordance with the marital share formula set forth herein. The Parties shall obtain the entry of a modification order which specifies the exact amount which is to be paid to the Alternate Payee by the System, and shall forward such order to the Retirement Administration for review and implementation. The Parties acknowledge that pursuant to Sections 401(a)(13) and 414(p) of the Code, the System cannot make payments to the Alternate Payee until such time as such modification order has been entered and qualified.

OR

13B. This order assigns to the Alternate Payee an amount equal to _____% of the Member's gross monthly benefit, as calculated by the System, as of the Member's benefit commencement date.

OR

13C. This order assigns to the Alternate Payee an amount equal to \$_____ of the Member's gross monthly benefit, as calculated by the System, as of the Member's benefit commencement date.

14. The System will pay the amount assigned under paragraph 13 directly to the Alternate Payee, provided that the Member has both retired and is receiving a monthly benefit.

15. Cost of living adjustments (COLAs), if any, shall be proportionately applied to both the Member's and the Alternate Payee's monthly benefits provided under paragraph 13.

16. The Alternate Payee shall continue to receive his/her share of the Member's gross monthly benefit until the death of the Member or the death of the Alternate Payee, whichever occurs first.

17. In the event that the Alternate Payee predeceases the Member either before or after payment of his/her benefits commences, the Alternate Payee's share of the Member's benefits assigned under this order shall revert to the Member.

18. The assignment of benefits made under this order also shall apply to the Member's final account balance in the System's Deferred Retirement Option Program (DROP). The amount assigned to the Alternate Payee from this account shall be _____%/\$_____.

19. This order does not require the System to notify the Alternate Payee of any or alteration of the retirement benefits and allowances due to the Member.

20A. If the Member requests a refund of his/her accumulated contributions to the System, this order assigns to the Alternate Payee an amount equal to the _____% of the marital share of the Member's refund, as calculated by the System, as of the Member's refund date. For this purpose, the marital share shall be determined by multiplying the Member's

refund by a fraction, the numerator of which is the Member's total creditable service earned during the Marriage and the denominator of which is the Member's total creditable service earned as a System member.

OR

21B. If the Member requests a refund of his/her accumulated contributions to the System, this order assigns to the Alternate Payee an amount equal to the _____% of the Member's refund, as calculated by the System.

OR

22C. If the Member requests a refund of his/her accumulated contributions to the System, this order assigns to the Alternate Payee an amount equal to the \$ _____ of the Member's refund, as calculated by the System. If this fixed dollar amount exceeds the amount of the refund available to the Member, then the Alternate Payee will receive the full amount available for refund to the Member.

23. This order does not require the System to pay any refunds for retirement contributions that may be due on the death of the Member to anyone other than the beneficiary designated in writing and on record with the System.

24. The Member shall notify the Alternate Payee, in writing, within thirty (30) days of his date/her of actual retirement or entry into DROP.

25. The Alternate Payee, prior to the distribution of any benefits to him/her under this order, shall complete and return all applications, forms and other documents required by the Retirement Administrator, or by federal, state or local law.

26. For purposes of Sections 402(a)(1) and 72 of the Code, the Alternate Payee shall be treated as the distributee of any distribution or payments made to him/her under this order, and as such, will be required to pay the appropriate federal income taxes on such distribution.

27. Nothing in this order shall impose any obligation upon the System regarding either tax reporting or withholding with respect to the Parties.

28. No action or inaction of the Member shall circumvent the terms and conditions of this order, or diminish or extinguish the rights and entitlements of the Alternate Payee under this order. Should any action or inaction by the Member be to the detriment of the Alternate Payee, the Member shall be required to make sufficient payments directly to the Alternate Payee to the extent necessary to neutralize the effects of the Member's action or inaction.

29. In the event that the System inadvertently pays to the Member any benefits that are assigned to the Alternate Payee pursuant to the terms of this order, the Member shall immediately reimburse the Alternate Payee to the extent that the Member has received such benefit payments and shall pay such amounts so received directly to the Alternate Payee within ten (10) business days of receipt.

30. In the event that the System inadvertently pays to the Alternate Payee benefits that are to remain the sole property of the Member pursuant to the terms of this order, the Alternate Payee shall immediately reimburse the Member to the extent that the Alternate Payee has received such benefits payments and shall pay such amounts so received directly to the Member within ten (10) business days of receipt.

31. In the event of the System's termination, the Alternate Payee shall be entitled to receive his/her portion of Member's benefits as provided in this order in accordance with the System's termination provisions for members and beneficiaries.

32. In the case of a conflict between any terms of this order and the terms of the System, the terms of the System shall prevail.

33. The System shall bear no responsibility for ensuring compliance with this order.

34. This order does not require:

a. The System to provide any type or form of benefit, or any option, not otherwise provided by the System;

b. The System to provide increased benefits (determined on the basis of actuarial value); or

c. The payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.]

35. This Court shall retain jurisdiction with respect to this order to the extent required to maintain this order's qualified status and the original intent of the Parties as provided herein. This Court shall also retain jurisdiction to enter such further orders as needed to execute and/or enforce this order. Such further orders may also include, but not be limited to, *nunc pro tunc* orders.

Entered this ____ day _____, 20__.

Judge

[ENDORSEMENTS, IF APPLICABLE]