

# Questions & Answers

**about**

## Qualified Domestic Relations Orders



**Seattle City  
Employees'  
Retirement  
System**

For your convenience, we have compiled a listing of the most frequently requested information.

### **Overview**

A public employee's retirement benefit constitutes marital property that must be taken into account when property is divided in a marital dissolution.

Seattle City Employees' Retirement System (SCERS) is a "governmental plan" and is specifically exempt from the provisions of the Employee Retirement Income Security Act (ERISA) governing qualified domestic relations orders (QDROs). Thus, ERISA's QDRO provisions do not apply here. However, in order to assist our members with the required division of marital property, we do try to cooperate as long as the QDRO does not violate the provisions of our plan and complies with applicable Tax Code provisions of Code Section 414(p).

### **SCERS is a Defined Benefit Plan**

Defined benefit plans are the traditional retirement plans. The plan promises a retirement benefit based on age, average salary and total years of service.

## **Who do I contact for information regarding my 457 Deferred Compensation Plan?**

- ✓ SCERS staff *cannot* provide benefit information on the City 457 deferred compensation plan. You should directly contact Leana Proffitt or Claudia Kay in the Personnel Department's Benefits section.

## **How can I make sure the QDRO I submit is valid?**

To be valid, a QDRO must satisfy all laws, rules and procedures applicable to the plan. It must provide a form and type of payment permissible under the plan.

- ✓ The QDRO cannot require payment of any benefit, benefit amount, or distribution option not otherwise permitted by the plan.
- ✓ The QDRO cannot require SCERS to pay any amount already required to be paid to another alternate payee, or already subject to a child support assignment, or a federal tax lien.
- ✓ The QDRO cannot require the plan to pay increased benefits.
- ✓ A draft QDRO should be submitted for SCERS's review to determine whether SCERS can comply, *before court approval of the QDRO is sought*. Submit the proposed QDRO via fax: (206) 386-1506. Please allow ample time for a review.

## **Answers to Commonly Asked Benefit Payment Questions**

- ✓ A QDRO can direct payment only to an "alternate payee" who is the participant's spouse, former spouse, child or other dependent of a member and SCERS will pay the alternate payee directly.
- ✓ The member's selection of monthly benefits, or a monthly benefit and a lump sum payment, controls what the alternate payee receives. Payment to the alternate payee shall be in the same manner selected by the member.
- ✓ SCERS will not make any assumptions for the parties in administering any formula.
- ✓ Annual increases after the payment starts will be applied to the payment to the alternate payee if in percentage form, unless specified otherwise in the QDRO.
- ✓ SCERS staff *cannot* provide legal, tax, or other advice to the parties or their attorneys. Furthermore, the parties are responsible for assuring consistency between the QDRO and any previous court order(s).
- ✓ SCERS staff *cannot* provide advice on how to complete the QDRO document.
- ✓ SCERS staff *cannot* advise you on how to calculate the division of benefits. SCERS staff members do not have the authority or hold the qualifications necessary to advise you on how to calculate the division of benefits or testify as expert witnesses regarding actuarial valuations of benefits. Parties may need to hire an actuary or other professional to determine how to allocate benefits.

## **When does the alternate payee begin to receive payments?**

Payment to an alternate payee will be made when payments commence to the member. They cannot begin earlier.

If the member terminates City employment and applies to withdraw his/her accumulated contributions with interest from SCERS, the lump sum distribution will be divided between the member and the alternate payee.

If the member dies prior to retirement, the alternate payee will receive a lump sum distribution.

If the member retires, the alternate payee will receive payments in the same manner selected by the member, which may include a monthly payment, or a lump sum and a monthly payment. Benefits are based on salary, years of service, and age at retirement. The actual amount of the benefit is not determinable prior to retirement.

## **What happens when the alternate payee dies?**

The QDRO may allow the alternate payee to name a contingent beneficiary, or may direct that no further payment is made to the alternate payee or to any beneficiary, heir, or estate of the alternate payee.

## **What happens when the retired member dies?**

- ✓ If the member is retired and receiving the straight (or unmodified) benefit, the payment to the alternate payee stops when the participant dies.
- ✓ If the member is retired and receiving a joint-life benefit (Option D or E), and was divorced prior to retiring, the *payment to the alternate payee stops* when the member dies. If a divorce occurred after the member retired, then the alternate payee would begin receiving monthly benefits equivalent to the amount that would be payable had there been no divorce. The amount paid could be more or less than the alternate payee was receiving prior to the death of the member. If a divorce occurred before the member retired, then the alternate payee would not be entitled to any further benefits and the member's spouse at the time of retirement would be the one collecting the survivor benefits.
- ✓ If the member is retired and receiving benefits under Options A, B or C and dies, any remaining payments will be made to the alternate payee in the same proportion as the payments before the death and the other portion will be paid in accordance with the beneficiary designation of the participant.

## **Is the alternate payee's distribution taxable?**

Payments to alternate payees will be reported by SCERS to the Internal Revenue Service as taxable income. The amount paid to the alternate payee will be reported in the name of the alternate payee, not the member. If after-tax contributions were made to the plan, cost-recovery of them is prorated between the alternate payee and the member. Each individual should obtain his or her own advice on the tax consequences of any payments.

**DISCLAIMER: THIS IS A SAMPLE QDRO THAT IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY. IT SHOULD NOT BE USED WITHOUT INDEPENDENT REVIEW BY LEGAL COUNSEL FOR BOTH THE PARTICIPANT AND THE ALTERNATE PAYEE. THE PLAN MAKES NO REPRESENTATIONS AS TO THE SUITABILITY OF THIS FORM TO YOUR OR YOUR CLIENT'S PARTICULAR NEEDS. NOTHING HEREIN IS INTENDED TO BE CONSTRUED AS THE PROVISION OF LEGAL ADVICE TO EITHER THE PARTICIPANT OR THE ALTERNATE PAYEE. THIS SAMPLE REFLECTS THOSE PROVISIONS MOST COMMONLY USED REGARDING THE ALLOCATION AND DISTRIBUTION OF PLAN BENEFITS. IT DOES NOT CONTAIN ALL POSSIBLE OPTIONS AND ELECTIONS.**

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This matter has come before the undersigned Judge/Court Commissioner of the above entitled court, and the parties having stipulated and agreed to the provisions of this order. It is ORDERED AS FOLLOWS:

The parties and the Court intend this Order to be a qualified domestic relations order ("QDRO") within the meaning of Section 414(p) of the Internal Revenue Code of 1986, as amended ("Code"). This order is entered pursuant to the laws of the state of Washington governing the division of marital property between spouses in a dissolution of marriage action. This order creates and recognizes the existence of the Alternate Payee's right to receive a portion of the benefits payable with respect to the Participant.

## **I. Definition of Terms**

As used herein, the following terms shall have the meanings set forth in this Section I.

- A. "Alternate Payee" shall mean "Jane Doe", whose address is 123 Easy Street, Somewhere, WA zipcode. [\[Social Security numbers are to be provided separately and directly to the Retirement Office.\]](#) The Alternate Payee's date of birth is January 1, 1965.
- B. "Participant" shall mean "John Doe", whose present address is 5678 This Avenue, Nowhereville, WA zipcode. [\[Social Security numbers are to be provided separately and directly to the Retirement Office.\]](#) The Participant's date of birth is March 1, 1965.
- C. "Plan" shall mean the Seattle City Employees' Retirement System of the City of Seattle, which has its administrative office located at 720 Third Avenue, Suite 1000, Seattle, WA 98104.
- D. "Plan Administrator" shall mean Seattle City Employees' Retirement System Board of Administration, whose mailing address is 720 Third Avenue, Suite 1000, Seattle, WA 98104.

## **II. Award of Benefits**

Alternate Payee shall be entitled to receive from the Plan, a monthly payment calculated as a fraction where the numerator is equal to **XXX** (enter the number of months in which service credit was earned while the marital community was in existence), and the denominator is equal to the number of months of service credit earned by the retiree at the time of retirement, times fifty percent (50%) of the retiree's payments. The Alternate Payee shall receive the same form of payment, i.e., lump sum or monthly payments, as the Participant, based on what form of payment Participant elects. [This is one possible option.]

## **III. Commencement of Benefits And Benefit Adjustments**

Benefits awarded by the Order shall commence upon the earlier of the death of the Participant, the Participant separating from service and withdrawing his/her accumulated contributions with interest, or retirement of the Participant.

## **IV. Death of Retired Participant**

All payments to the Alternate Payee cease when a retired Participant receiving benefits dies; however, if the member is retired and receiving benefits under Options A, B or C and dies, any remaining payments will be made to the alternate payee in the same proportion as the payments before the death and the other portion will be paid in accordance with the beneficiary designation of the participant.

## **V. Death of Alternate Payee**

If the Alternate Payee dies before commencement of benefits, all benefits shall revert to the Participant.

***or***

If the Alternate Payee dies before commencement of benefits, benefits when payable will be paid to the Alternate Payee's designated beneficiary until the death of the Participant.

If the Alternate Payee dies after commencement of benefits, all benefits shall revert to the Participant.

***or***

If the Alternate Payee dies after commencement of benefits, benefits will be paid to the Alternate Payee's designated beneficiary until the death of the Participant.

## **VI. Tax Treatment of Benefits**

Alternate Payee shall be responsible for appropriate federal income tax on any distribution made to him/her by the Plan.

## **VII. Continuing Jurisdiction**

The Court shall retain jurisdiction over the parties and the Plan with respect to this Order to the extent necessary to preserve the original intent of the parties, and maintain its status as a Qualified Domestic Relations Order until all obligations of the Plan to the Alternate Payee have been satisfied.

## **VIII. Miscellaneous**

This "Qualified Domestic Relations Order" is not intended to require the Plan to provide any type or form of benefits nor any option not otherwise provided by such Plan; nor shall this Order require such Plan to provide for benefits in excess of what would otherwise be payable to the Participant or to his beneficiary. This QDRO does not require the Plan to pay any benefits which another Order, previously determined to be a qualified domestic relations order, requires the Plan to pay to another alternate payee. In the event there is a conflict between this Order and the Plan, the provision of such Plan shall control.

Alternate Payee shall, prior to the distribution of benefits awarded under this order, complete and return all applications, forms and other documents required by the Plan Administrator, the trustees or federal, state or local law.

Alternate Payee shall keep the Plan advised at all times as to Alternate Payee's current mailing address. Subsequent to an application for a retirement benefit by Participant, the Plan will notify Alternate Payee by first class mail to the Alternate Payee's last address on file with the Plan.

**DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 2006.**

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**Judge/Court Commissioner**