



# Seattle City Employees' Retirement System

## Questions and Answers about QDROs: Qualified Domestic Relation Orders

### Overview

Seattle City Employees' Retirement System is a defined benefit plan. Defined benefit plans are traditional retirement plans, guaranteeing a retirement benefit for life based on age, average salary, and total years of service. These retirement benefits may constitute marital or community property that must be taken into account when property is divided in a marital dissolution. A qualified domestic relations order, or "QDRO," is the court order that directs the division of retirement benefits.

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

A QDRO can direct payment only to an "alternate payee" who is the member's spouse, former spouse, child, or other dependent. Seattle City Employees' Retirement System will pay the alternate payee directly. The alternate payee will receive benefit payments in the same form the member chooses—i.e., lump sum or monthly payments—except in the case of death benefits. In some cases, the alternate payee can choose the form of payment for death benefits.

Seattle City Employees' Retirement System will not make any assumptions for the parties to the QDRO in administering any formula for division of benefits. If an alternate payee is receiving a stated percentage of the benefit, annual cost of living increases after the payment starts will be applied to the payment to the alternate payee unless otherwise specified in the QDRO.

Seattle City Employees' Retirement System staff cannot provide legal, tax, or other advice to the parties or their attorneys. Furthermore, the parties alone are responsible for assuring consistency between the QDRO and any other court order(s).

Seattle City Employees' Retirement System staff cannot provide advice on how to complete a QDRO document. Seattle City Employees' Retirement System staff cannot advise you on how to calculate the division of benefits. Staff members do not have the authority or qualifications necessary to advise you on how to calculate the division of benefits, or to testify as expert witnesses regarding actuarial valuations of benefits. Parties to the QDRO may need to hire an actuary or other professional to determine how to allocate benefits.

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## Frequently Asked Questions

### **Who do I contact for information regarding my 457 deferred compensation plan?**

Seattle City Employees' Retirement System staff cannot provide benefit information on the City's 457 deferred compensation plan. Contact the staff in the City's Human Resources' benefits unit regarding all matters related to the deferred compensation plan. You can also find information at: <http://www.seattle.gov/human-resources/benefits/retirees/retirement-plans>

### **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 Seattle City Employees' Retirement System 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 the Retirement System to pay any amount already required to be paid to another alternate payee, or that is already subject to a child support assignment or to a federal tax lien. The QDRO cannot require the plan to increase benefits.

Submit your draft QDRO to the Retirement System's review to determine whether SCERS can comply with the QDRO before court approval of the QDRO is sought. Submit the proposed QDRO allowing three weeks for a review.

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

Benefit payment to an alternate payee will begin when payments to the member begin. Payments cannot begin earlier, except in the case of a QDRO that provides the alternate payee with rights in the case of a member's death prior to retirement.

If the member terminates City employment and applies to withdraw accumulated contributions with interest from the Retirement System, the lump sum distribution will be divided between the member and the alternate payee as specified in the QDRO.

If the member dies prior to retirement, the alternate payee will receive a lump sum distribution or, if applicable, a pre-retirement death benefit in accordance with the terms of the QDRO.

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 cannot be determined 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 benefit payment be made to the alternate payee or to any beneficiary, heir, or estate of the alternate payee.

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

If the member is retired and receiving the straight (or unmodified) benefit, the benefit payment to the alternate payee stops when the member 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 and the member's spouse at the time of retirement would be the one collecting survivor benefits. 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 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. The other portion will be paid in accordance with the beneficiary designation of the member.

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

Benefit payments to alternate payees will be reported by the Seattle City Employees' Retirement System 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 in the name of the member. If after-tax contributions were made to the plan, cost-recovery of those contributions is prorated between the alternate payee and the member. Each individual should obtain his or her own advice from a qualified tax professional on the tax consequences of any benefit payments.

## Sample QDRO

*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 member 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 member 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.*

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 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 [insert alternate payee name], whose present address is [insert address]. The Alternate Payee's date of birth is [insert date of birth].

B. "Participant" shall mean [insert member name], whose present address is [insert address]. The Participant's date of birth is [insert date of birth].

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 900, Seattle, WA 98104.

D. "Plan Administrator" shall mean Seattle City Employees' Retirement System Board of Administration, whose mailing address is 720 Third Avenue, Suite 900, Seattle, WA 98104.

### **II. Award of Benefits**

Alternate Payee shall be entitled to receive from the Plan, a portion of the Participant's benefit calculated as a fraction where the numerator is equal to [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 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 the form of payment the Participant elects. [This is one possible option.]

If the Participant dies before retirement, and the Alternate Payee survives the Participant, the Alternate Payee shall receive the portion of the member's accumulated contributions in the same fractional amount as stated above.

### **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 Participant 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 or her beneficiary. This QDRO does not require the Plan to pay any benefits that 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, and 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 \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ Judge/Court Commissioner