



## Employees' Retirement System of Rhode Island Qualified Domestic Relations Orders (QDRO) and Divorce

### **ERSRI and Your Pension Benefit**

The Employees' Retirement System of Rhode Island (ERSRI) is a governmental defined benefit plan. The factors used to calculate the member's pension benefit are years of creditable service and average salary from the highest three consecutive years of salary. The amount of money that a member contributes to the system bears no direct relationship to the amount of retirement benefits that the member will receive. A member must be vested, terminate all employment and make application for a pension benefit to be eligible to receive the benefit.

Federal and State anti-alienation laws protect a pension from lien, garnishment, and attachment. However, an active or retired member of ERSRI may have their retirement benefits considered a marital asset in a divorce proceeding and the ex-spouse of the member may be entitled to a portion of their retirement benefit. Pension benefits are payable to another person pursuant to a Qualified Domestic Relations Order (QDRO). In that Order, the member is referred to as Participant and the former spouse is referred to as Alternate Payee.

### **Qualified Domestic Relations Orders**

A Domestic Relations Order (DRO) is a court order or judgment that sets out how a members' retirement benefit is to be divided upon retirement. The Order must be a judgment, decree or court order relating to the provision of marital property rights awarded to a spouse. (See RIGL §15-5-16.1)

A Qualified Domestic Relations Order (QDRO) is an order that assigns to an Alternate Payee a portion of the pension benefits payable to a Participant of a retirement plan.

### **Procedural Overview**

*It is extremely important that all parties comply with the requirements below in order to avoid delays in processing a retirement benefit to a Participant and/or the Alternate Payee.*

Once a member is divorced, a copy of the Entry of Final Judgment and Property Settlement Agreement must be sent to ERSRI for placement in the member's file. A Participant, Alternate Payee, or a lawyer can request the Participant's pension information and it will be disclosed once ERSRI receives a release signed by the Participant or a Subpoena. To obtain this information, please contact our

Communications Coordinator at 401-457-3954. Once a QDRO has been drafted, it must be sent to ERSRI for review and it must be accompanied by a signed and notarized beneficiary nomination form completed to reflect the intentions of the QDRO. This form is available on our website under FORMS.

Once approved by ERSRI, a letter stating that ERSRI has qualified the Order is sent to the lawyer who originally submitted it. The Order must then be entered with the Court. Once entered, a certified copy is returned to ERSRI for placement in the Participant's file to be implemented at the time of the Participant's retirement, death, or other termination of service if applicable, or if the Participant is already retired, at such time the Order is received by ERSRI.

### ERSRI Model QDROs

There are certain provisions which must be included in the QDRO (please refer to ERSRI Models). In addition, there is certain language which should not be contained in the QDRO that due to the nature of a defined benefit public pension plan, the Plan would not be able to accommodate. For further information specific to you or for any questions, please contact the Internal Legal Counsel for ERSRI at 401-457-3949.

Model QDROs are available for use under the ERSRI Pension Plan. These models were drafted to assist members and benefit recipients should a division of benefits become necessary. These models should not be construed as legal advice, and ERSRI assumes no responsibility or liability for any harm resulting from the use of these models. It is very important that you refer to the Rhode Island General Laws governing retirement of ERSRI and MERS members to obtain complete knowledge and understanding of all options and benefits available to our members, and members and benefit recipients are encouraged to seek legal advice from a knowledgeable lawyer with any domestic relations matter affecting their benefit.

### Frequently Asked Questions

**I am a member of the Employees Retirement System of Rhode Island. I am going through a divorce. Why are my retirement benefits an issue in my divorce?**

Your pension from the Employees' Retirement System of Rhode Island (ERSRI) is considered marital property subject to valuation and equitable distribution in a divorce.

**What is a domestic relations order (DRO) and what does it mean that it is "qualified"?**

A domestic relations order (DRO) is a judgment, decree or court order relating to the provision of child support, alimony payments or the division of marital property rights awarded to a spouse, former spouse, child or other dependent, referred to as the *Alternate Payee*, of the ERSRI member, referred to as the *Participant*, as part of a divorce settlement.

A Qualified Domestic Relations Order is a domestic relations order that has been subsequently approved by the Plan Administrator. Under federal law the Plan Administrator has the final authority to qualify a DRO or to deny it if it fails to meet the federal requirements or provides for benefits not otherwise available under the Plan.

### **I am going through a divorce. How do I get information regarding my pension value?**

You may contact the Communications Coordinator at 401-457-3954.

### **What information will be provided to me?**

As an active member (not receiving a monthly ERSRI pension) you can be provided with a current member balance reflecting your total member contributions. You can also be provided with a breakdown of your reported wages, contributions and service credit since your date of membership.

As a retired member (receiving a monthly ERSRI pension) you can be provided with confirmation as to the basis of your current monthly benefit amount.

ERSRI Retirement Booklets are available on our website at [www.ersri.org](http://www.ersri.org) under Publications and will provide you with information on benefits you may be entitled to and explanations on the defined benefit formula from which we determine your future monthly benefit.

### **Can my former spouse begin collecting the benefit before I have retired?**

No. An Alternate Payee will begin collecting the benefit when the Participant retires and begins collecting. The QDRO cannot require ERSRI to segregate any portion of the Participant's benefit that is awarded to the Alternate Payee into a separate account. The Participant cannot be forced to retire even if he/she has met the requirements to retire, and ERSRI will not approve and qualify any order which requires the Participant to retire at a certain age or on a certain date.

### **Can anyone from the Retirement System assist me in drafting a QDRO?**

No. The role of ERSRI in approving QDROs is simply to determine whether the QDRO satisfies the requirements of the retirement Plan and relates solely to the technical requirements. ERSRI cannot give legal or actuarial advice with regard to the terms of the QDRO, the future value of the benefit, or tax consequences. You should seek assistance from a lawyer who is well versed in the area of domestic relations orders.

### **When should the draft QDRO be submitted to ERSRI?**

The draft QDRO should be submitted to ERSRI as soon as possible. Although the Participant may not be ready to retire, the QDRO should provide ERSRI with instruction as to what benefits are to be awarded to the Alternate Payee in the event of the Participant's death prior to retirement or election to withdraw his/her funds upon termination. If ERSRI does not qualify the Order, the parties will still have had recent contact with their lawyers and can more readily seek an amended Order.

### **How long will it take for ERSRI to qualify and approve my DRO once it is received by ERSRI?**

Since all situations differ, it can take a few weeks to several months for ERSRI to qualify and approve a domestic relations order. That is why once you know a QDRO is necessary, it is important that you get your draft submitted as soon as possible.

A QDRO cannot require retroactive payment to a date preceding the Order's receipt by ERSRI.

### **I am a retired member who selected a joint and survivor option when I retired. Can I exercise my right to change to another option and/or change the beneficiary once I am divorced?**

If you selected a joint and survivor option at the time of retirement, you may exercise your right to revoke or modify that retirement option selection only one time and **notice of modification or revocation must be filed with and approved by the Retirement System prior to the commencement of divorce proceedings** against or by the named beneficiary being filed in the RI Family Court or in a foreign court of equal jurisdiction.

You will not be allowed to change your beneficiary at any time if you select a joint and survivor option.

### **How do I fill out the Beneficiary Nomination form?**

The Beneficiary Nomination form must be completed to reflect the intentions of the QDRO. You should seek assistance from your lawyer or you can contact ERSRI for assistance.

### **Can my former spouse, who is the Alternate Payee, designate a beneficiary for his/her share of my pension in the event he/she dies before me?**

No, the Alternate Payee's portion of the pension has no survivor benefit. If the Alternate Payee dies prior to the Participant's retirement, or any time after the commencement of benefits, that share will revert back to the Participant. The Participant will be required to produce a certified copy of the Alternate Payee's death certificate.

### **Can my former spouse choose a lump sum instead of a monthly benefit?**

Lump sum payments can only be made to an Alternate Payee under a QDRO if the Participant has terminated his/her employment and has elected to take a refund of contributions in lieu of a monthly pension benefit. The QDRO must specify payment instructions for both a monthly benefit and a lump sum payment.

### **My former spouse was previously awarded a percentage of my pension but has agreed to waive that award; what information does ERSRI need in order to assure that I receive my entire pension upon retirement?**

ERSRI would need a court order stating that the previous QDRO has been vacated and/or that the former spouse has waived his/her interest in the Participant's pension.

### **My QDRO was submitted to ERSRI and approved several years ago. Will it be necessary to re-review it for approval?**

ERSRI is in possession of QDROs dating back several years. Once you are ready to retire, your QDRO will be reviewed for approval. In some cases it may be necessary to amend the QDRO in order for ERSRI to begin making payments to you and your Alternate Payee.

### **How do I submit a QDRO to ERSRI?**

You or your lawyer must provide ERSRI with a certified copy of your divorce decree and property settlement agreement which was signed by the Judge and entered with the Court.

Once you or your lawyer has reviewed the model QDROs and completed a draft, it can be submitted to ERSRI, Attention: Legal Department via fax (222-2430) or regular mail (ERSRI, 40 Fountain Street, 1<sup>st</sup> Floor, Providence, RI 02903). Email can also be used. Please request email information by calling 457-3949.

Once ERSRI qualifies the Order, we will return it to the sender for entry with the Court. At that time, a certified copy showing the Judge's signature and that the document was filed with the Court, must be sent to ERSRI for placement in the member's file.

**I would prefer that my former spouse receive a larger benefit now and in a couple of years, I would like that benefit to be reduced; how can I accomplish this?**

A QDRO cannot require multiple payment arrangements either increasing or decreasing. The terms of the Order may be amended at a later date by providing ERSRI with an amended court-approved Order which supersedes the terms of the existing Order on file with ERSRI.

**DISCLAIMER** ERSRI is governed by Rhode Island General Laws and the Rules and Regulations promulgated by ERSRI board members. While ERSRI has made every effort to assure accuracy of information presented in this brochure, in the event of any conflict between this publication and the laws, rules and regulations, the laws, rules and regulations will prevail.