



Employees' Retirement System of Rhode Island and Municipal Employees' Retirement System

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 (DB Plan). The factors used to calculate the member's pension benefit are years of creditable service and average salary from the highest three or five 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. Effective July 1, 2012, there is a defined contribution (DC) component to our retirement system. This portion of the plan is administered by TIAA-CREF. Visit www.tiaa-cref.org, http://www.tiaa-cref.org/public/support/forms/topics/qualified_dom_rel_order.html for information regarding the DC portion of your retirement 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.

Please note that ERSRI pension calculations may require information from the member's current and prior employer. Consequently, it is encouraged that members and their attorneys contact ERSRI well in advance of scheduled court hearings and conferences. Typically requests for pension information from members, attorneys or via Subpoena will be honored and provided within 30 to 60 days of the date of request. If the pension information is needed prior to that time, the member should log on to their account at www.ersri.org (or create an account if they do not have one) to calculate their estimated date of retirement and pension benefit.

Qualified Domestic Relations Orders

A Domestic Relations Order (DRO) is a court order or judgment that sets forth how a member's 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. This information is strictly limited to the DB portion of your pension.

For information on the division of the DC portion of your pension, please contact TIAA-CREF at www.tiaa-cref.org http://www.tiaa-cref.org/public/support/forms/topics/qualified_dom_rel_order.html or call 1-800-842-2252.

Once a member is divorced, a copy of the Entry of Final Judgment and Property Settlement Agreement should be sent to ERSRI for placement in the member's file. The 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, or the information will be provided to the Participant. To obtain this information, please contact our Internal Legal Counsel at 401-462-7600. Once a QDRO has been drafted, it must be sent to ERSRI for review. Please note that a Participant who is planning to retire will not be able to begin collecting a pension benefit until a QDRO is reviewed and approved by ERSRI.

Once the QDRO has been approved by ERSRI, confirming correspondence will be sent to the lawyer who originally submitted it. The QDRO must then be entered with the Court. Once entered, a certified copy of the QDRO, along with a copy of the Final Judgment of Divorce and Property Settlement Agreement if not already submitted, must be 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 QDRO is received by ERSRI. In addition, a new beneficiary nomination form must be completed by the Participant. The form must include the name of the former spouse as well as one or more beneficiaries and be consistent with the order. The beneficiary nomination forms are available on our website at www.ersri.org under Forms.

ERSRI Model QDROs

There are certain provisions which must be included in the QDRO (please refer to ERSRI Models available on our website at www.ersri.org). 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 your circumstances, please contact the Internal Legal Counsel for ERSRI at 401-462-7600.

DISCLAIMER

Model QDROs are available for use under the ERSRI Defined Benefit 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 to understand options and benefits available to our members. Members and benefit recipients are encouraged to seek legal advice from a knowledgeable lawyer with any domestic relations matters 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) and TIAA-CREF 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?

If you are the Participant in the Plan, you will be provided with the information upon request by contacting ERSRI at 401-462-7600. Alternate Payees and lawyers must provide a release signed by the member or a Subpoena before information will be provided.

ERSRI pension calculations may require information from the member's current and prior employer. Consequently, it is encouraged that members and their attorneys contact ERSRI well in advance of scheduled court hearings and conferences. Typically requests for pension information from members, attorneys or via Subpoena will be honored and provided within 30 to 60 days of the date of request. If the pension information is needed prior to that time, the member should log on to their account at www.ersri.org (or create an account if they do not have one) to calculate their estimated date of retirement and pension benefit.

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 current service credit, date you began membership in the plan, an estimated monthly pension benefit based on service to date, and an estimated date of eligibility for retirement. ERSRI is unable to provide estimates on future accruals and or salaries.

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.

Again, as a member of the retirement system, you can create an account where you are able to see current service credit, beneficiary information, and calculate your date of retirement.

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. 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 for legal advice.

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 provides 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. We recommend submitting the QDRO as soon as practicable to ERSRI. Should the draft QDRO need modifications the required changes can be addressed by the attorneys and/or Court.

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 the draft be submitted in a timely manner.

For Participant's who have already retired and then get divorced, 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 one time. The 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 in the RI Family Court or in a foreign court of equal jurisdiction.

Once you are divorced, if you are not required to maintain your ex-spouse as beneficiary to the joint and survivor option, you may exercise your one time option by changing to the SRA option. You will not be allowed to change your beneficiary at any time if you select a joint and survivor option.

In addition, you should inform your attorney of the option you selected at the time of retirement. If you are unsure of which option you selected, please contact our office.

How do I complete the Beneficiary Nomination form?

The Beneficiary Nomination form must be completed as instructed in the QDRO and must include any additional beneficiaries for any remaining money which is not to be paid to your former spouse.

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? What if my former spouse and I remarry each other?

In either instance, 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. These court orders sometimes take the form of a Consent Order and Waiver.

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 (401-462-7691) or regular mail (ERSRI 50 Service Avenue 2nd Floor, Warwick, RI 02886). Email can also be used. Please request email information by calling 462-7600.

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 monthly pension. 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.

If I chose or choose to elect the SRA Plus Social Security Option at the time of retirement, how does this election affect payment to my former spouse?

The SRA Plus Social Security Option allows for a greater benefit to the retiree until age 62 when the benefit is reduced. If the QDRO is silent on the issue, the Alternate Payee will receive the greater amount until the Participant reaches age 62 and will receive the reduced amount thereafter, if this method is actuarially feasible.

Will my former spouse be entitled to a cost of living adjustment (COLA)?

The determination regarding a COLA is made by the parties and should be addressed in the Property Settlement Agreement. If a COLA is awarded to the Alternate Payee, it will be paid in accordance with the QDRO. If the Participant is already retired, the COLA language in the QDRO should state whether the Alternate Payee will

immediately begin receiving a portion of the COLA already received by the Participant or whether the Alternate Payee will receive a percentage of future COLAs paid to the Participant.

I am a retiree. Once the QDRO has been received by ERSRI, when can I expect to see the deduction from my monthly pension benefit for my former spouse?

For retirees and their former spouses, the QDRO is effective the month following the date it is received by ERSRI. You can expect to see payments deducted from your monthly pension within 2 to 3 months after we receive the Order, if not sooner. The Alternate Payee will receive his or her benefit within the same time period, 2 to 3 months after we receive the Order. Therefore, the first payment deducted from your pension benefit and paid to your former spouse will include retroactive amounts dating back to the month following the date the Order is received by ERSRI. If you are a Participant who is currently making payments directly to the Alternate Payee, you should contact your attorney regarding when you should cease making those payments. **ERSRI WILL NOT BE RESPONSIBLE FOR THE REIMBURSEMENT TO THE PARTICIPANT OF ANY PAYMENTS THE PARTICIPANT MAKES DIRECTLY TO THE FORMER SPOUSE ONCE ERSRI IS IN RECEIPT OF THE QDRO.**

Who do I contact about the DC portion of my pension for QDRO purposes?

For QDRO information and forms for the DC portion of your pension administered by TIAA-CREF, you or your attorney should visit TIAA-CREF's website at www.tiaa-cref.org, http://www.tiaa-cref.org/public/support/forms/topics/qualified_dom_rel_order.html or call 1-800-842-2252.

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.