

MODEL ELIGIBLE DOMESTIC RELATIONS ORDER

**FOR RETIREES OF THE MARYLAND
STATE RETIREMENT AND PENSION SYSTEM**

**Important: This Model is presented
for informational purposes only, and
should not be taken as legal advice.**

Maryland State Retirement Agency
October 31, 2015

Introduction

This Model Eligible Domestic Relations Order (“Model”) contains model language for attorneys who are involved in the preparation of a Domestic Relations Order (“DRO”) that addresses the plan benefits of a retiree of the Maryland State Retirement and Pension System (“MSRPS”). A separate model is provided for members and former members of the MSRPS.

Regulations promulgated by the Board of Trustees for the MSRPS provide that the MSRPS will administer a DRO submitted by the parties only if it constitutes an “Eligible Domestic Relations Order” that satisfies all of the requirements set forth in the Code of Maryland Regulation (“COMAR”) 22.01.03.03. The purpose of this Model is to assist parties and their attorneys in a divorce in preparing a DRO that will be eligible for processing by the Agency. **The Model and this introduction are presented for informational purposes only, and should not be taken as legal advice.** The Maryland State Retirement Agency (“Agency”) does not advise participants, former spouses (“alternate payee”), or attorneys about how to draft a DRO that best suits the wishes and intentions of the parties. This is the task of the attorneys and parties involved. The Agency’s role is ministerial. The requirements that must be satisfied for the Agency to honor a DRO are set out in Division II of the State Personnel and Pensions Article (“SPP”), Md. Code Ann., and in COMAR 22.01.03.

The following points should be considered:

1. **Exemption from ERISA’s requirements regarding Qualified Domestic Relations Orders.** As a government-sponsored plan, the MSRPS is exempt from the requirements regarding Qualified Domestic Relations Orders contained in Title I of the Employees Retirement Income Security Act of 1974 (“ERISA”). A DRO that references ERISA or is labeled as a Qualified Domestic Relations Order or “QDRO” will not be accepted. COMAR 22.01.03.03B(12). Unlike ERISA plans, in the absence of an appropriate court order, a participant may take any action with regard to his or her benefits without any notice or consent. Additionally, an alternate payee’s rights are entirely derivative of the participant’s rights. To that end, an alternate payee may not elect beneficiaries or choose retirement options.
2. **MSRPS and State System.** The MSRPS administers death, disability and retirement benefits on behalf of more than 382,300 participants in accordance with Division II of the State Personnel and Pensions Article of the Annotated Code of Maryland. The MSRPS consists of a number of individual State Systems: Correctional Officers’ Retirement System, Employees’ Pension System, Employees’ Retirement System, Judges’ Retirement System,

Legislative Pension Plan, Local Fire and Police System, Law Enforcement Officers' Pension System, State Police Retirement System, Teachers' Pension System, and Teachers' Retirement System. A DRO must specifically identify the name of the individual State System to which it applies. COMAR 22.01.03.03B(1)(a).

3. **Plan Benefit.** A DRO should clearly address the types of plan benefits that are to be divided by the court. The regulations and this Model address the common types of plan benefits and are designed to give the most commonly used meanings to words most often encountered in DROs. However, with numerous individual State Systems administered by the Agency, the regulations and this Model cannot address each type of benefit that may be available to a participant in a particular system. Before drafting, attorneys are advised to consult a benefits handbook or contact a retirement counselor at the Agency to acquaint themselves with the various benefits that are available under the participant's State System. Retirement counselors are available by telephone at (410) 625-5555, or (800) 492-5909. Benefits information, including the benefits handbook for several of the systems, is also available on the MSRPS website, www.sra.maryland.gov.

4. **Allowance.** Unless otherwise specified, the term "allowance" is defined by regulation to include the following: service retirement allowance, disability retirement allowance, vested allowance, and cost of living adjustments. Additionally, except when the statute requires payment exclusively to a surviving spouse, minor child, or dependent parent, the term allowance includes a lump sum payment of the amount accrued in the Deferred Retirement Option Program on termination of participation.

5. **Marital Share Formula.** Under the Board of Trustees' regulations, the Alternate Payee's share of a plan benefit may be expressed as a fixed dollar amount, a fixed percentage, or a formula that clearly divides a plan benefit. The regulations provide criteria for the acceptance of a formula to divide a plan benefit. The Alternate Payee's share may not exceed the amount of the Participant's plan benefit nor can an Alternate Payee be assigned service credit that exceeds the amount of service credit earned by the Participant. Typically, parties use the following formula to divide the plan benefits earned during a marriage:

$$\begin{array}{r}
 \text{Total months of service credit} \\
 \text{received by the participant} \\
 \text{during the marriage} \\
 \hline
 \text{Total months of} \\
 \text{Service credit}
 \end{array}
 =
 \begin{array}{l}
 \text{The "Marital} \\
 \text{Share Fraction"}
 \end{array}$$

$$\text{Alternate Payee's share} = \text{Marital Share Fraction} \times \text{___\%}$$

This formula is described in the Model as follows:

The alternate payee's share of the participant's allowance is declared to be the "marital share fraction" multiplied by ___%. The "marital share fraction" is the following fraction: the numerator is the total number of months of service credit received by the PARTICIPANT during the parties' marriage, up until and including the date of the Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANT'S service credit in the State System.

6. **Post-Retirement Survivor Benefits.** Some State Systems permit a participant to select a reduced form of allowance that will provide for post-retirement survivor benefits to a designated beneficiary. Six types of optional post-retirement survivor benefits are described at SPP §21-403. Several points should be considered:

- a. ***No change of retirement option.*** A retiree is not permitted to change his or her retirement option after the first payment is made. Thus, the parties can only divide the survivor benefit selected by the retiree, if any, at the time of retirement.
- b. ***One beneficiary.*** Four of the options provide for a survivor annuity-monthly payments to a designated beneficiary for life. In the case of a survivor annuity, only *one* individual may be designated as the beneficiary. SPP §21-402(b). Thus, if the parties wish for the participant to designate the alternate payee as the beneficiary of an optional survivor annuity (currently Options 2, 3, 5 and 6), the DRO must provide that the retiree shall designate the alternate payee as the sole primary beneficiary. The amount of a survivor allowance is based on the life expectancy of the participant and the designated beneficiary. **It is important to note that the change in a designated beneficiary will result in a change in the amount of the allowance payable to the participant and alternate payee.**
- c. ***Spousal Survivor Benefits for State Police Retirement System, Law Enforcement Officers' Pension System, and Judges' Retirement System.*** Some systems, such as the State Police Retirement System, Law Enforcement Officers' Pension System, and the Judges' Retirement System, provide post-retirement survivor benefits to participant's current surviving spouse or minor child rather than to a designated beneficiary. Because these "plan-determined" survivor benefits are payable by virtue of the surviving spouse's or minor child's status, no portion of these benefits

can be assigned to an alternate payee under a DRO. However, if the participant was not married at the time of retirement, he or she may have selected an option that provides for post-retirement survivor benefits.

7. **Out-of-State Domestic Relations Orders.** If submitting a DRO that has been issued in a state other than Maryland, two points should be considered:
 - a. **Cite to proper legal authority.** Please note that an out-of-state DRO must cite to the statutory scheme for dividing pension benefits in a divorce of the state where the order is executed. The proper legal authority for the out-of-state order will replace the introductory language stated in paragraph 6 of this Model, which references the Maryland Law.
 - b. **Filing under Uniform Enforcement of Foreign Judgments Act.** An out-of-state DRO that divides pension benefits in Maryland, must include verification that the DRO has been appropriately filed in a Circuit Court in Maryland in accordance with § 11-802 of the Uniform Enforcement of Foreign Judgments Act, Md. Code Ann., Courts and Judicial Proceedings. The Agency requires a true test copy of the DRO filed in and stamped by a Circuit Court in Maryland as such verification.

IMPORTANT INSTRUCTIONS FOR USING THE MODEL

This model provides a basic format for use in preparing a DRO. Various alternatives for dividing benefits are offered. **THIS MODEL IS NOT INTENDED AS A CHECK-OFF FORM. ANY ALTERNATIVES THAT ARE NOT SELECTED MUST BE REMOVED FROM THE DRO BEFORE SUBMISSION.** To prevent confusion in the administration of a DRO, the Agency will not accept a DRO that contains options that are not chosen by the parties.

_____ * IN THE
Plaintiff * CIRCUIT COURT
v. * FOR
_____ *
Defendant * Case No. _____
* * * * *

ELIGIBLE DOMESTIC RELATIONS ORDER

Upon consideration of the Judgment of Absolute Divorce entered in the above-captioned case, it is this _____ day of _____, _____, ORDERED,

1. This Order relates to the disposition of certain benefits of [(name of PARTICIPANT)] to be provided by the [name of individual retirement or pension system within the MSRPS] (“State System”), which is part of the MARYLAND STATE RETIREMENT AND PENSION SYSTEM (“MSRPS”).
2. The parties hereto were married on [(date of marriage)], and this Order is entered incident to a final Judgment of Absolute Divorce entered on [(date of divorce)].

3. The PARTICIPANT is identified as follows:

Name: [name of PARTICIPANT]
Address: [address]
D.O.B./SS#: **The PARTICIPANT’S date of birth and social security number must be provided in the letter transmitting this Order to the MSRPS.**

4. The ALTERNATE PAYEE is identified as follows:

Name: [name of ALTERNATE PAYEE]
Address: [address]
D.O.B./SS#: **The ALTERNATE PAYEE’S date of birth and social security number must be provided in the letter transmitting this Order to the MSRPS.**

5. The administrator of the MSRPS is:

Maryland State Retirement Agency (“AGENCY”)
120 East Baltimore Street
Baltimore, Maryland 21202
Attn: Eligible Domestic Relations Orders

6. To accommodate the marital property distribution between the parties, in accordance with Md. Code Ann. Family Law Article, §§ 8-202 and 8-205 and COMAR 22.01.03, IT IS HEREBY ORDERED AS FOLLOWS:

A. Allowance. The ALTERNATE PAYEE’S share of the PARTICIPANT’S allowance is declared to be

(Choose Alternative i., ii. or iii.)

- i. [\$ _____ dollar amount]
- ii. [_____ percentage]

iii. [percentage (%)] multiplied by the “marital share fraction.” The “marital share fraction” is the following fraction: the numerator is the total number of months of service credit received by the PARTICIPANT during the parties’ marriage, up until and including the date of the Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANT’S service credit in the State System.

B. Post-retirement survivor benefit. At retirement, the PARTICIPANT selected [state either “the Basic Allowance” or “Optional Form of Allowance Number ____.”]

(Choose Alternative i., ii., iii. or iv. If Alternative iv. is selected, also choose Selection (1), (2) or (3))

- i. No share of any post-retirement survivor benefit is assigned to the ALTERNATE PAYEE under the terms of this Order.
- ii. The PARTICIPANT shall maintain the ALTERNATE PAYEE as the sole primary beneficiary of any post-retirement survivor benefit payable from the State System to a designated beneficiary, for the ALTERNATE PAYEE’S lifetime.
- iii. The PARTICIPANT shall complete the procedures necessary to CHANGE the current beneficiary designation and designate the ALTERNATE PAYEE as the sole primary beneficiary of any post-retirement survivor benefit payable from the State System to a designated beneficiary, for the ALTERNATE PAYEE’S lifetime.

iv. The PARTICIPANT may designate an individual other than the ALTERNATE PAYEE as beneficiary of any post-retirement survivor benefit payable from the State System to a designated beneficiary. If the participant designates someone other than the ALTERNATE PAYEE as beneficiary, and if a post-retirement survivor benefit is payable with respect to the PARTICIPANT, and if the ALTERNATE PAYEE survives the PARTICIPANT, the ALTERNATE PAYEE'S share of the post-retirement survivor benefit payable with respect to the PARTICIPANT is declared to be:

(If Alternative iv. is selected, also choose Selection (1), (2) or (3))

(1) [\$ _____ dollar amount]

(2) [_____ percentage]

(3) [_____ percentage (%)] multiplied by the "marital share fraction," as defined in paragraph 6A.

C. Method and timing of payment; restrictions. MSRPS is hereby directed to make payments of the ALTERNATE PAYEE'S share directly to the ALTERNATE PAYEE, if, when, and as payments of PARTICIPANT'S Plan Benefit are made to PARTICIPANT, in any form selected by the PARTICIPANT that is permitted by the State System. The ALTERNATE PAYEE'S share may not exceed the amount of the PARTICIPANT'S plan benefit.

D. Obligations of Alternate Payee- not obligations of MSRPS or Agency.

It is the obligation of the ALTERNATE PAYEE to promptly:

(i) Provide the AGENCY a certified or true-test copy of this Order, and modifications or amendments hereto;

(ii) Provide the AGENCY the following information in written correspondence accompanying the submission of this Order:

(1) The social security numbers and dates of birth of the PARTICIPANT and the ALTERNATE PAYEE, and

(2) The current address and current telephone number of the ALTERNATE PAYEE;

iii. Submit documentation to the AGENCY to verify the ALTERNATE PAYEE'S date of birth;

iv. When the ALTERNATE PAYEE becomes eligible to receive a monthly allowance, submit the required forms to commence receipt of the allowance by electronic fund transfer;

v. Notify the AGENCY in writing of:

(1) The death of the PARTICIPANT; or

(2) Any change of the ALTERNATE PAYEE'S name, address or telephone number; and

(vi) Comply with all reasonable requests from the AGENCY for information and documentation necessary for processing payment of all or any portion of a PARTICIPANT'S plan benefit to the ALTERNATE PAYEE.

E. Obligations of Participant – not obligations of MSRPS or AGENCY. It is the obligation of the PARTICIPANT to promptly:

i Submit any applications or forms required by the AGENCY to effectuate any provision of this Order, including, but not limited to, any form required by the AGENCY to designate the ALTERNATE PAYEE as beneficiary.

ii. Notify the AGENCY in writing of:

(1) The death of the ALTERNATE PAYEE; or

(2) Any change of the PARTICIPANT’S name, address or telephone number; and

iii. Comply with all reasonable requests from the AGENCY for information and documentation necessary for processing payment of all or any portion of a PARTICIPANT’S plan benefit to the ALTERNATE PAYEE.

If the PARTICIPANT fails to comply with or takes any action in contravention of any provision of this Order, including, but not limited to, this Paragraph 6, the PARTICIPANT shall bear the sole and exclusive liability for such action, and not the MSRPS or the AGENCY.

F. Tax consequences of payments. All payments to the alternate payee shall be includable in the taxable income of and taxable to the alternate payee in accordance with the applicable provisions of the Internal Revenue Code, Treasury regulations, and other guidance. After-tax contributions shall be allocated to the parties in the same proportion as the total number of the alternate payee’s share bears to the participant’s total plan benefit.

7. This Court retains jurisdiction to amend this Order for the purpose of its acceptance and/or administration by the MSRPS or any transferee retirement system or to effectuate the terms of the parties' Settlement Agreement and/or Judgment of Divorce.

Judge,
Circuit Court for _____

Consented as to form:

PARTICIPANT

ALTERNATE PAYEE

Attorney for Participant
[Address and telephone]

Attorney for Alternate Payee
[Address and telephone]