

Guide for SERS Domestic Relations Orders

This guide is intended to assist you with drafting a domestic relations order (DRO) for the equitable distribution of a State Employees' Retirement System (SERS) retirement benefit. Members of SERS' Defined Benefit Plan (Members), Participants in SERS' Defined Contribution Plan (Participants), their spouses (Alternate Payees) and their attorneys may find the information in this guide to be useful.¹

Those who contribute to the Defined Benefit Plan are "Members." Those who contribute to the Defined Contribution Plan are "Participants." Hybrid members are both Participants and Members. As you read this guide, please be sure to review the information that applies to you.

SERS operates under the State Employees' Retirement Code (Retirement Code), which states the requirements for DROs.² SERS must approve your DRO as compliant before making any payments to an Alternate Payee. Sample DROs are available on SERS' website. They are designed to comply with the Retirement Code and to be used as drafting models.

SERS Benefit Plans – Defined Benefit, Defined Contribution, and Hybrid

SERS Board administers two distinct retirement benefit plans and a hybrid plan which includes components from both plans.³ Members and Participants make contributions to their respective plans at rates set by law. Participants also may make voluntary contributions. Members earn a benefit calculated based on salary, years of service credit, class of service and age at retirement. Participants choose their own investments and earn a benefit based, in large part, on investment performance. Hybrid members earn a combined Defined Benefit and Defined Contribution retirement benefit.

Because SERS is a governmental retirement plan, it is not subject to the Employee Retirement Income Security Act (ERISA) or the Retirement Equity Act of 1984.⁴ ***That means there is NO spousal notice or consent requirement.*** Unlike employees in private sector plans, SERS Members and Participants may make final and binding retirement benefit decisions without a spouse's consent. Unless there is a court order on file with SERS, restricting a Member or Participant from making SERS benefit changes, a Member or Participant may take any action permitted by the Retirement Code, even if a divorce is pending.⁵

¹ SERS Hybrid members earn benefits in both plans. This guide also applies to Hybrid members; and all references to "Members" and "Participants" also apply to Hybrid members.

² Requirements for SERS' approval of a DRO are set forth at 71 Pa. C.S. § 5953.1.

³ Additional information about SERS' Defined Benefit Plan, Defined Contribution Plan and Hybrid Plan is available on SERS' website at www.sers.pa.gov.

⁴ To attach a SERS retirement benefit, a DRO must comply with the Retirement Code, regardless of whether it qualifies under ERISA and/or the Retirement Equity Act. SERS will not approve a "QDRO" that does not satisfy the Retirement Code.

⁵ Members and Participants may be subject to restrictions under marital settlement agreements.

If you or your attorney have questions about SERS DRO requirements, you may contact SERS' Legal Office at (717) 783-7317. SERS attorneys will not speak with a Member or Participant who is represented by legal counsel without counsel's written consent.

Obtaining Your Retirement Account Data

Defined Benefit Plan

Members should contact their SERS retirement counselor for defined benefit plan data including the years of credited service, final average salary, total accumulated deductions, and account present value⁶ of the Member's defined benefit pension.⁷ At a Member's request, SERS will provide a benefit estimate as of a specified date – usually of the date of marriage, date of separation, or date of the request. SERS will not provide benefit estimates or other account information to anyone other than the Member without the Member's written authorization to release that information.

A customized benefit estimate calculator is available on SERS' website at <http://sers.pa.gov>. Members can use the custom calculator to create multiple benefit estimates based on different retirement dates, amounts of service credit, or final average salary figures. A generic calculator also is available at <http://sers.pa.gov>, which allows anyone to input dates and salary data to create benefit estimates. Both calculators generate preliminary estimates to be used for negotiating purposes. You should obtain a benefit estimate from a SERS retirement counselor before finalizing a DRO.

Defined Contribution Plan

To get information regarding Defined Contribution Plan account balances and vesting dates please contact the plan administrator: Empower [CONTACT INFO].

Drafting an Approvable DRO

SERS will only approve a DRO that complies with the Retirement Code. A DRO will not become effective until SERS approves it, even if it has been entered as an Order of Court. Below are drafting tips for Defined Benefit DROs and Defined Contribution DROs. The attached Sample DROs are designed to comply with the Retirement Code and the appropriate Sample DRO may be used as a drafting model for your case.

Defined Benefit DROs must:

- Follow the benefit structure established by the Retirement Code. (**NOTE:** Payments to a Member's Alternate Payee begin after the Member retires or dies.)
- State the marital share of the retirement benefit, as either a percentage or dollar

⁶ "Present value" is a statutory term meaning the amount of money SERS will need to have at the time of the Member's retirement (invested at an assumed rate of 4% compounded annually) to pay the Member's lifetime retirement benefit. It does not become payable until the Member retires or dies; and cannot be distributed to an Alternate Payee until one of those events occurs.

⁷ Some or all of that information will be listed on the Member's or Participant's most recent statement of account.

amount. (**NOTE:** Any lump sum amount payable to the Alternate Payee must be equal to or lesser than the Member's total accumulated deductions at the time the DRO is approved. The portion of the benefit payable to the Alternate Payee cannot exceed the amount of the Member's benefit.)

- Specify whether the Alternate Payee's portion includes post-separation enhancements such as post-separation purchases of service credit for service during the marital period. (**NOTE:** The Alternate Payee's portion of the benefit will include purchases of service credit made during the marital period regardless of when the actual State or nonstate service was performed, unless the parties state otherwise in the DRO.)

- Specify the retirement option the Member must select at retirement **OR** state that the Member may select any option available under the Retirement Code at retirement.

- State whether the Member may take a lump sum withdrawal of member contributions, and if so, what portion of the withdrawal, if any, will be paid to the Alternate Payee. (**NOTE:** If the DRO does not state that the Member may take a lump sum withdrawal, he or she will not be permitted to do so.)

- Require the Member to nominate the Alternate Payee as a survivor annuitant, if the parties intend for the Alternate Payee to receive monthly payments in the event the Member dies before the Alternate Payee.

- Nominate the Alternate Payee as an irrevocable death beneficiary, if the parties intend for the Alternate Payee to receive a portion of the Member's lump sum death benefit.

- Not permit the Alternate Payee to exercise any of the rights of a Member such as independently applying for benefits, selecting benefit options, or nominating beneficiaries.⁸

- Not require reference to any other document such as a property settlement agreement to calculate the Alternate Payee's benefit.

- Not make benefit payment amounts contingent on events other than the Member's death or retirement, such as selling the marital home or purchasing life insurance.

- Require the Member to execute a release authorizing the Alternate Payee to access the Member's account information to monitor the Member's compliance with the DRO.

- State that it is the Alternate Payee's responsibility to maintain a current address on file with SERS at all times.

Disability Retirement and DROs

There are additional guidelines for the equitable distribution of Defined Benefit disability benefits. (There is no disability benefit in the Defined Contribution Plan.) A Member's disability benefit has a non-disability component and a disability supplement. Unless the DRO states otherwise, if the effective date of the disability benefit is after the date of separation, the Alternate Payee's equitable distribution share will not include the disability supplement. If the injury or disability occurred during the marriage, the disability supplement portion of the annuity is included in the Alternate Payee's share.

⁸ Unlike ERISA plans, the rights of the Alternate Payee are entirely derivative of the Member's rights. The Alternate Payee cannot name beneficiaries or receive a separate interest in the Member's SERS benefit. The Alternate Payee's share of a Defined Benefit pension is payable to the Alternate Payee when the Member's benefit enters pay status at the Member's effective date of retirement or death before the effective date of retirement.

Drafting DROs for disability benefits is more complex than drafting non-disability DROs. If your DRO involves a SERS disability retirement benefit, your attorney should contact SERS' Legal Office for additional information.

Defined Contribution DROs must:

- Follow the payment structure of the State Employees' Retirement Code.
- Require immediate distribution of the Alternate Payee's share.
- State the Alternate Payee's portion as a dollar amount or percentage of the account balance and the date upon which the valuation is based;
 - Require SERS to pay the Alternate Payee no more than the lesser of the amount stated in the DRO or the Participant's vested account balance on the transfer date.
 - Not grant the Alternate Payee the rights, privileges or options available to the Participant.
 - Require the Participant to execute a release authorizing the Alternate Payee to access the Participant's account information to monitor the Participant's compliance with the DRO.
 - State that it is the Alternate Payee's responsibility to keep a current mailing address on file with SERS.

After SERS notifies the Alternate Payee that a DRO has been approved, it is the Alternate Payee's responsibility to contact the Defined Contribution Plan administrator and provide distribution instructions. The Alternate Payee can take a direct distribution subject to any taxes and penalties or roll it over into another qualified account (including a Defined Contribution Plan account, if the Alternate Payee has one)⁹.

Confidential Addendum to Domestic Relations Order

All DROs must include a separate page listing the mailing address, date of birth, and full Social Security number of the Member or Participant and the Alternate Payee. A *Confidential Addendum to Domestic Relations Order* form is included with the Sample DROs for that purpose. The addendum is used only for SERS' administrative purposes. It should not be incorporated in the DRO or submitted to the court. After the DRO is entered as an Order of Court, the addendum should be attached to a certified copy of the DRO and submitted to SERS for review and final approval. SERS will not approve a DRO submitted without a Confidential Addendum to Domestic Relations Order or other writing containing the same information.

Public Employee Pension Forfeiture Act

All SERS benefits are subject to the Public Employee Pension Forfeiture Act, 43 P.S. § 1311 *et seq.* A Member or a Participant who is convicted of or who pleads guilty or no defense to a forfeiture crime, forfeits his or her SERS retirement benefit. A Member's forfeiture at any time, or a Participant's forfeiture before SERS approves a DRO, will automatically forfeit the Alternate Payee's equitable share of the forfeited benefit.

⁹ Subject to IRS and Plan limitations on voluntary additions to Defined Contribution Plan accounts.

SERS' Preliminary Review and Final Approval:

Preliminary Review

At your request, SERS will review a draft DRO before you file it with the court, to determine if, on its face, it complies with the Retirement Code. SERS will not assess the accuracy of any information, such as dates of membership or participation, account valuations, or other data used in the draft DRO.¹⁰ Nor will SERS assess whether a draft DRO complies with any marital settlement agreement. SERS will not provide legal advice to either party or express an opinion on the desirability of any provision of a draft DRO to either party.

After reviewing your draft DRO, SERS will notify you in writing whether or not your draft DRO appears to meet SERS' requirements for approval. If it does not, we might suggest technical corrections, depending on the nature of the deficiency. SERS' preliminary review is not required, but it could help you avoid having to return to the court for an amendment.

Final Approval

After your DRO is entered as an Order of Court, you must mail a certified copy of the DRO, with an attached Confidential Addendum, to SERS for Final Approval review before the DRO will be effective. **The DRO you submit must have an original court certification seal or stamp.** Photocopied, scanned or faxed copies of the certification are not acceptable.

SERS will notify you in writing when it approves your DRO. If SERS does not approve your DRO, it will explain the reasons in writing.

NOTE: The materials contained in this document provide general guidance for drafting domestic relations orders in the format suggested by the SERS. These materials are provided as a courtesy.

These materials are not legal advice and do not replace consultation with an attorney. Using these materials does not guarantee that SERS will approve a particular domestic relations order. Likewise, using these materials to draft a domestic relations order does not guarantee that a person will receive a particular benefit or payment amount. Benefit estimates SERS provides are subject to audit, review, and correction before payment; benefit estimates are not payment guarantees. Persons with questions or concerns regarding SERS retirement benefit payments should contact SERS.

Persons with questions or concerns regarding equitable distribution or domestic relations orders should contact their attorney.

The statements in these materials are not binding on SERS, the Commonwealth of Pennsylvania or its agencies, officers, or employees and do not alter any law of the Commonwealth. In the event of a conflict between the materials contained herein and the statutes, regulations, or administrative

¹⁰ SERS does not "test" DROs to determine whether the portion of the benefit payable to the Alternate Payee represents the minimum or maximum amount the Alternate Payee can obtain in accordance with the provisions of the Pennsylvania Divorce Code or any other statute. It is the parties' responsibility to determine what portion of the SERS benefit is payable to the Alternate Payee.

policies of SERS and/or the Commonwealth, the statutes, regulations and administrative policies will control.

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