



Sample Domestic Relations Order For Defined Benefit Plan Pension AND Defined Contribution Plan Account

*This Sample DRO is for members and participants who have contributed to **BOTH** the Defined Benefit Plan and the Defined Contribution Plan.*

SAMPLE DROs FOR MEMBERS WHO HAVE CONTRIBUTED ONLY TO THE DEFINED BENEFIT PLAN OR ONLY TO THE DEFINED CONTRIBUTION PLAN ARE AVAILABLE AT SERS' RETIREMENT COUNSELING CENTERS AND ON SERS' WEBSITE. (SERS.pa.gov)

NOTE: The materials contained in this document provide general guidance for drafting domestic relations orders in the format suggested by the Commonwealth of Pennsylvania State Employees' Retirement System ("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 any benefit is paid; benefit estimates are not guarantees of payment. 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 policies of SERS and/or the Commonwealth, the statutes, regulations and administrative policies will control.

COURT OF COMMON PLEAS OF [COUNTY NAME] COUNTY, PENNSYLVANIA

[PLAINTIFF] : FAMILY DIVISION
Plaintiff: :
v. : NO. _____
: :
[DEFENDANT], : IN DIVORCE
Defendant: :
: :

ORDER

AND NOW, this _____ day of _____, 20_____, the attached Stipulation and Agreement dated _____ of the parties in this case is incorporated, but not merged, into this Order of Court.

J.

ATTEST:

COURT OF COMMON PLEAS OF [COUNTY NAME] COUNTY, PENNSYLVANIA

[PLAINTIFF] : FAMILY DIVISION
Plaintiff :
v. : NO. _____
Defendant : IN DIVORCE

STIPULATION AND AGREEMENT^{1, 2}
FOR THE ENTRY OF "DOMESTIC RELATIONS ORDER"
STATE EMPLOYEES' RETIREMENT SYSTEM
DEFINED BENEFIT PLAN PENSION AND
DEFINED CONTRIBUTION PLAN ACCOUNT

AND NOW, this _____ day of _____, 20____, the parties,

[PLAINTIFF], Plaintiff, and [DEFENDANT], Defendant, having been divorced by Decree dated _____ of the Court of Common Pleas of [COUNTY NAME] County, entered at Docket Number _____, do hereby stipulate and agree as follows:

- 1. PLAINTIFF³:** [PLAINTIFF], (hereinafter "Primary Payee") is a Primary Payee of a State Employees' Retirement System ("SERS") Defined Benefit Plan Pension ("Defined Benefit Plan Pension") and a Defined Contribution Plan Account. Primary Payee's date of birth and Social Security Number shall be provided on a separate document submitted together with a certified copy of this Stipulation and Agreement at the time the Stipulation and Agreement is submitted for final approval.

¹ This sample form presumes that the Plaintiff and Defendant have agreed to the terms upon which the Primary Payee's benefit will be divided. SERS does not require that the parties stipulate to the DRO.

²This sample form presumes that the Primary Payee has not yet retired and is or will be eligible for an annuity. If the Primary Payee has already retired or is not eligible for an annuity, please contact SERS for more information on how to divide the Member's annuity payments.

³ This sample form presumes that the Plaintiff is the Primary Payee and the Defendant is the Alternate Payee. If your situation is different, please make the appropriate adjustments to your DRO.

2. DEFENDANT: [DEFENDANT], (hereinafter “Alternate Payee”) is the former spouse of Primary Payee. Alternate Payee’s date of birth and Social Security Number shall be provided on a separate document submitted together with a certified copy of this Stipulation and Agreement at the time the Stipulation and Agreement is submitted for approval.

3. STATUS OF SERS: The Benefit attached by this Stipulation and Agreement is a creation of statute controlled by the State Employees’ Retirement Code (“Retirement Code”), published at 71 Pa. C.S. §5101 *et seq.*

4. PRIMARY PAYEE’S ADDRESS: Primary Payee’s current mailing address is:

[STREET ADDRESS]

[CITY, STATE, ZIP CODE]

5. ALTERNATE PAYEE’S ADDRESS: Alternate Payee’s current mailing address is:

[STREET ADDRESS]

[CITY, STATE, ZIP CODE]

It is the responsibility of Alternate Payee to keep a current mailing address on file with SERS at all times.

6. ALTERNATE PAYEE’S PORTION OF PRIMARY PAYEE’S DEFINED CONTRIBUTION ACCOUNT:

[Choose ONLY (a) or (b) below; do not include both alternatives in your order]

- a. Alternate Payee shall be entitled to \$ _____ of the vested balance of the Primary Payee’s individual investment account as of [mm/dd/yyyy], the date of valuation for purposes of this Domestic Relations Order, plus any gains or losses on the Alternate Payee’s flat amount that have accumulated from that date to the date of distribution of the Alternate Payee’s portion to the Alternate Payee by the Plan Administrator. The total amount assigned to Alternate Payee may not exceed the vested balance of the Primary

Payee's individual investment account. The "vested balance of the Primary Payee's individual investment account" includes the vested portion of the Primary Payee's accumulated employer defined contributions, the entire amount of the Primary Payee's accumulated mandatory participant contributions and accumulated voluntary contributions, as well as all gains and losses on such contributions.

- b. Alternate Payee shall be entitled to _____ percent (____%) of the vested balance of the Primary Payee's individual investment account as of [mm/dd/yyyy], the date of valuation for purposes of this Domestic Relations Order. The "vested balance of the Primary Payee's individual investment account" includes the vested portion of the Primary Payee's accumulated employer defined contributions, the entire amount of the Primary Payee's accumulated mandatory participant contributions and accumulated voluntary contributions, as well as all gains and losses on such contributions.

The Alternate Payee's portion of the vested balance of the Primary Payee's individual investment account shall be allocated to the Alternate Payee on a pro rata basis from all of the accounts and/or investment options maintained under the Plan by the Plan Administrator on behalf of the Primary Payee.

7. DISTRIBUTION OF ALTERNATE PAYEE'S PORTION OF PRIMARY PAYEE'S DEFINED CONTRIBUTION INDIVIDUAL INVESTMENT ACCOUNT:

The portion of the vested balance of Primary Payee's individual investment account set forth in Paragraph Six (6) shall be payable to Alternate Payee and shall be distributed to the Alternate Payee by the Plan Administrator as soon as administratively feasible after SERS approves this Stipulation and Agreement as a Domestic Relations Order in accordance with 71 Pa. C.S. §5953.1. The Plan shall not be required to recoup or make good for losses in value to the Primary Payee's individual investment account incurred between the date of valuation used for equitable distribution purposes and the date of distribution to the Alternate Payee, nor shall the Plan be required to make payment of the Alternate Payee's portion of the vested

balance of the Primary Payee's individual investment account as set forth in Paragraph Six (6) pursuant to any lien regardless of the priority of such lien. The Alternate Payee's distribution will be made in a single lump sum payment, either as a direct payment to the Alternate Payee or as an eligible rollover or trustee-to-trustee transfer to an eligible retirement plan or other qualified account owned by the Alternate Payee. Alternate Payee's portion of the vested balance of Primary Payee's individual investment account shall not be segregated into a subaccount or newly established individual account titled in the name of the Alternate Payee. Nothing in this DRO shall be construed to prevent the Alternate Payee from treating the Alternate Payee's portion of the vested balance of Primary Payee's individual investment account as "voluntary contributions" as that term is defined in 71 Pa. C.S. §5102, if the Alternate Payee is otherwise eligible to do so.

8. ALTERNATE PAYEE'S SHARE OF PRIMARY PAYEE'S DEFINED BENEFIT PENSION:

- a. The marital property component of the Primary Payee's Defined Benefit Plan Pension equals⁴:
 1. The Coverture Fraction, multiplied by
 2. The Defined Benefit Plan Pension on the effective date of Primary Payee's retirement calculated using the Retirement Code in effect on mm/dd/yyyy, the date of the parties' separation, and Primary Payee's final average salary at the time of retirement, provided however, that if an amount other than the Primary Payee's final average salary is used to calculate the Defined Benefit Pension, then that number shall be used.

⁴ This sample uses the coverage fraction to determine the Alternate Payee's share of the Member's retirement benefit. The parties are free to define the Alternate Payee's share using another method if they so desire. Please note that using a different method to divide the benefit may require the Member to select specific retirement options and/or use other provisions in the DRO which differ from the language in this sample form.

If the parties have determined that the Alternate Payee's share of the benefit is an aggregate dollar amount, Paragraph 10 must specify the annuity option the Member is required to select and the terms by which the Alternate Payee's share is to be paid (for example, a certain dollar amount per month for a period of months). If you want to pay the Alternate Payee's share in this manner, contact SERS for information regarding how these terms may be incorporated in the DRO

- b. The Coverture Fraction is a fraction with a value less than or equal to one. The numerator is the amount of Primary Payee's service, as defined by SERS, for the period of time from mm/dd/yyyy (date of marriage), to mm/dd/yyyy (date of separation). The denominator is the total amount of Primary Payee's service, as defined by SERS, on the effective date of Primary Payee's retirement.
 - c. [NUMERAL] percent ([NUMBER] %) of the marital property component of the Defined Benefit Plan Pension is to be allocated to Alternate Payee as the equitable distribution portion of this marital asset.
- 9. DEFINITION OF PRIMARY PAYEE'S "DEFINED BENEFIT PENSION":** The Primary Payee's Defined Benefit Plan Pension is the benefit payable to Primary Payee from the State Employees' Retirement Fund ("Fund"). The Primary Payee's Defined Benefit Plan Pension includes any lump sum withdrawals from the Fund and any scheduled or ad hoc increases but excludes the disability portion of any disability annuities paid to Primary Payee from the Fund as a result of a disability which occurs before Primary Payee's marriage to Alternate Payee or after the date of Primary Payee's and Alternate Payee's separation. Primary Payee's Defined Benefit Plan Pension does not include any deferred compensation benefits paid to Primary Payee by SERS or any enhancements to the Primary Payee's Benefit arising from post-separation monetary contributions made by Primary Payee. The equitable distribution portion of the marital property component of Primary Payee's Defined Benefit Plan Pension, as set forth in Paragraph Eight (8), shall be payable to Alternate Payee and shall commence as soon as administratively feasible on or about the date Primary Payee actually enters pay status and SERS approves a Domestic Relations Order incorporating this Stipulation and Agreement, whichever is later.
- 10. DEATH BENEFITS:** Primary Payee hereby nominates Alternate Payee as an irrevocable beneficiary to the extent of Alternate Payee's equitable distribution portion of Primary Payee's Defined Benefit Plan Pension for any death benefit payable by SERS from the Fund. This nomination shall become effective upon approval by the Secretary of the Retirement Board, or authorized representative of the Secretary, of any Domestic Relations Order incorporating this Stipulation and Agreement. The balance of any death benefit remaining after the

allocation of the equitable distribution portion payable to Alternate Payee and any other alternate payees named under other SERS-approved Domestic Relations Orders (“Balance”) shall be paid to the beneficiaries named by Primary Payee on the last Nomination of Beneficiaries Form filed with the Retirement Board prior to Primary Payee’s death. If the last Nomination of Beneficiaries Form filed by Primary Payee prior to Primary Payee’s death (a) predates any approved Domestic Relations Order incorporating this Stipulation and Agreement, and (b) names Alternate Payee as a beneficiary, then: (1) the terms of the Domestic Relations Order shall alone govern Alternate Payee’s share of any death benefit, and (2) for purposes of paying the Balance via the last Nomination of Beneficiaries Form filed with the Retirement Board prior to Primary Payee’s death, Alternate Payee shall be treated as if Alternate Payee predeceased Primary Payee. No portion of the Balance shall be payable to Alternate Payee’s Estate.

- 11. AUTHORIZATION TO ACCESS INFORMATION:** In accordance with the requirements of 71 Pa. C.S. §5953.1(a)(7) and (a.1)(9), Primary Payee shall execute and deliver to Alternate Payee an authorization, in a form acceptable to SERS, which will authorize the release to Alternate Payee all relevant information concerning Primary Payee’s Benefit so that Alternate Payee shall be able to monitor Primary Payee’s compliance with the provisions of this Stipulation and Agreement. Such authorization shall be construed as an authorization for the Alternate Payee to receive information concerning the Primary Payee that relates to the administration, calculation, and payment of the Alternate Payee’s share of the Primary Payee’s Benefit.
- 12. TAX REPORTING:** SERS shall issue individual tax forms to Primary Payee and Alternate Payee for amounts paid to each. For tax reporting purposes, any Alternate Payee who is the spouse or former spouse of the Primary Payee shall be treated as the distributee of any distribution made to the Alternate Payee under the terms of this Domestic Relations Order in accordance with applicable law and shall be required to pay the appropriate taxes on the distribution.

13. DEATH OF ALTERNATE PAYEE: In the event of the death of Alternate Payee prior to receipt of any funds payable pursuant to a Domestic Relations Order incorporating this Stipulation and Agreement, any such funds payable to Alternate Payee by SERS shall:

[CHOOSE EITHER (a) OR (b); DO NOT INCLUDE BOTH OPTIONS IN THE DRO]

- a. Be paid to Alternate Payee's Estate.

OR

- b. Revert to Primary Payee.

Under no circumstances shall this provision be construed as requiring SERS to recover or attempt to claw back any distribution made to an Alternate Payee or Alternate Payee's Estate.

14. RETIREMENT OPTION ELECTION⁵: The term and amounts of Primary Payee's retirement benefits payable to Alternate Payee after SERS approves a Domestic Relations Order incorporating this Stipulation and Agreement depends upon which option(s) Primary Payee elects at retirement. Primary Payee and Alternate Payee expressly agree that upon filing a regular Application for Retirement Allowance with SERS:

- a. **LUMP SUM WITHDRAWAL FOR ACCUMULATED DEDUCTIONS:**

Primary Payee may elect to withdraw an amount equal to or less than Member's total accumulated deductions at the time of retirement. Alternate Payee's portion of such withdrawal shall be calculated in accordance with the provisions of this Stipulation and Agreement and paid to the Alternate Payee by SERS.

⁵This sample form presumes that the Member has not yet retired and is or will be eligible for an annuity. If the Member has already retired or is not eligible for an annuity, please contact SERS for more information on how to divide the Member's annuity payments.

MONTHLY ANNUITY⁶: Primary Payee and Alternate Payee agree that Primary Payee shall select the following option for Member's monthly annuity⁷:

Special Option 4. -- A joint and equitable distribution portion (as defined in paragraph 6) annuity payable during the lifetime of the Primary Payee, with an equitable distribution portion (as defined in paragraph 6) of such annuity payable thereafter, to the Primary Payee's survivor annuitant, if living at the Primary Payee's death, as set forth in 71 Pa. C.S. §5705(a)(4), or any succeeding statute.

The Primary Payee shall designate the Alternate Payee as an irrevocable survivor annuitant. The intent of this Special Option 4 selection is to maintain level payments to the Alternate Payee for the Alternate Payee's life in the event of Member's death after retirement. The Alternate Payee's portion of the Member's benefit will be deducted from the Member's monthly annuity payment and paid by SERS to the Alternate Payee during the Member's lifetime. If the Alternate Payee dies while the Primary Payee is receiving retirement benefits, the Alternate Payee's portion of the Member's annuity shall *[choose one AND ONLY ONE ALTERNATIVE: (revert to the Member) OR (be paid to the Alternate Payee's estate)]* for the remainder of the Member's lifetime. If the Primary Payee predeceases the Alternate Payee after retiring, the Alternate Payee will receive the Alternate Payee's equitable distribution portion of the Member's benefit in the form of a survivor annuity payable to the Alternate Payee for the duration of the Alternate Payee's life.

Primary Payee may select any option offered by SERS for the portion of the retirement payable to Primary Payee after the Alternate Payee's share of the benefit has been calculated⁸.

⁶ Retirement options are codified at 71 Pa. C.S. §5705. Please note that the survivor annuities payable under Option 2 and Option 3 as described in that section are based upon the entire amount of the Member's annuity payment, and NOT the marital portion of the benefit. Additional, information regarding retirement benefit options can be found on SERS' website at www.sers.pa.gov.

⁷ Instead of describing the specific option the Primary Payee is required to elect, this section may state that the Primary Payee may elect any option offered by SERS under the Retirement Code at the time the Primary Payee files for retirement benefits. In that case, the Alternate Payee's share will be deducted from all payments made to or on behalf of the Primary Payee by SERS, including any lump sum withdrawals, death benefits and/or survivor annuities payable to persons other than the Alternate Payee.

⁸ If this provision is not included, the Member's share of the retirement benefit will cease to be paid upon the Member's death, and the Member will not be permitted to create a death benefit or survivor annuity for anyone other than the Alternate Payee.

b. **DISABILITY RETIREMENT⁹:** Primary Payee and Alternate Payee agree that if Primary Payee applies for a disability retirement benefit from SERS and such application is approved, Primary Payee shall elect the Disability Maximum Single Life Annuity option. Alternate Payee's share of the Member's retirement benefit shall be calculated in accordance with the provisions of this Stipulation and Agreement and shall be deducted from the annuity and death benefits paid to or on behalf of Primary Payee pursuant to Member's election of the Disability Maximum Single Life Annuity.

15. LIMITATIONS: Nothing in this Stipulation and Agreement shall be construed to:

- a. Require the provision of any type or form of benefit or any option not otherwise available under the Retirement Code;
- b. Require the segregation of the Alternate Payee's share of the Primary Payee's Benefit into a subaccount or newly established individual account titled in the name of the Alternate Payee;
- c. Require the recovery or redistribution of any funds distributed to the Primary Payee or at the Primary Payee's direction prior to the approval of this Stipulation and Agreement as a Domestic Relations Order;
- d. Require the payment of more than the lesser of the vested amount of the Primary Payee's individual investment account balance as specified by this Stipulation and Agreement or the vested amount of the Primary Payee's individual investment account as of the date of the transfer of the Alternate Payee's share to the Alternate Payee;
- e. Require the recoupment or making good of losses in value to the Primary Payee's individual investment account incurred between the date of valuation for equitable distribution purposes and the date of distribution to the Alternate Payee;

⁹ The benefit options for disability retirement benefits are significantly different from those available under a non-disability retirement. Special Option 4 benefits (including the joint and equitable distribution portion annuity described in Paragraph 10(b) of this sample) are NOT available to disability annuitants under any circumstances. More information about disability benefit options can be found on SERS' website at www.sers.pa.gov.

- f. Grant the Alternate Payee any of the rights, privileges, and options available to the Primary Payee;
- g. Require distributions to Alternate Payee after the death of Primary Payee and the final settlement of the Primary Payee's individual investment account.

Primary Payee and Alternate Payee acknowledge that the Benefit is and shall remain subject to the Public Employee Pension Forfeiture Act, 43 P.S. §1311, *et seq.*

14. **INTENTION OF THE PARTIES:** The parties intend and agree that the terms of this Stipulation and Agreement shall be approved, adopted and entered as a Domestic Relations Order.
15. **AMENDMENTS TO DRO:** The Court of Common Pleas of [COUNTY NAME] County, Pennsylvania, shall retain jurisdiction to amend any Domestic Relations Order incorporating this Stipulation and Agreement, but only for the purpose of establishing it or maintaining it as a Domestic Relations Order; provided, however, that such amendment shall not require the provision of any type or form of benefit, or any option not otherwise provided to Primary Payee under the Retirement Code, and further provided that such amendment or right of the Court to so amend will not invalidate the parties' existing Domestic Relations Order.
16. **EFFECTIVE DATE OF DRO:** Upon entry of a Domestic Relations Order incorporating this Stipulation and Agreement, a certified copy of the Domestic Relations Order and this Stipulation and Agreement and any attendant documents shall be served upon SERS by immediately mailing a certified hard copy of the document together with all confidential information necessary to process the document to:

**State Employees' Retirement System
Domestic Relations Order Approval
30 N. 3rd Street, Suite 150
Harrisburg, PA 17101-1716**

The Domestic Relations Order shall take effect immediately upon the approval of the Order as a Domestic Relations Order and the approval of any attendant documents and then shall remain in effect until such time as a further Order of Court amends or vacates the Domestic Relations Order. The parties understand and acknowledge that such approval cannot be granted unless and until all confidential information required for the processing and approval of the DRO is received by SERS.

WHEREFORE, the parties, intending to be legally bound by the terms of this Stipulation and Agreement, do hereunto place their hands and seals.

Plaintiff/Primary Payee

Date

Attorney for Plaintiff/Primary Payee

Date

Defendant/Alternate Payee

Date

Attorney for Defendant/Alternate Payee

Date

DO NOT FILE THIS DOCUMENT WITH THE COURT

CONFIDENTIAL ADDENDUM TO DOMESTIC RELATIONS ORDER

The following information is necessary for the Plan Administrator to approve and process the Domestic Relations Order once it is entered by the Court. This form must be filled out and submitted together with a CERTIFIED HARD COPY of the DRO after the DRO is entered by the Court. Photocopies or fax copies of DROs that do not bear the original seal or certification stamp of the Court will not be accepted for approval and processing.

NOTE: DROs NOT ACCOMPANIED BY THIS FORM WILL NOT BE REVIEWED, PROCESSED OR APPROVED UNTIL THIS INFORMATION IS RECEIVED. DROs which are not approved by SERS are NOT effective to attach the Primary Payee's account.

Primary Payee

Name: _____

Address: _____

Date of Birth: _____

Social Security No.: _____

Primary Payee's Attorney

Name: _____

Firm: _____

Address: _____

Telephone: _____

Fax: _____

Alternate Payee

Name: _____

Address: _____

Date of Birth: _____

Social Security No.: _____

Alternate Payee's Attorney

Name: _____

Firm: _____

Address: _____

Telephone: _____

Fax: _____

Section 5954 of the State Employees' Retirement Code provides that any person who knowingly makes any false statements or falsifies or permits to be falsified any record or records of the State Employees' Retirement System in an attempt to defraud the State Employees' Retirement System is guilty of a misdemeanor of the second degree.

Authorization for Release of Account Information to Alternate Payee

I, _____, authorize the State Employees' Retirement System, the State Employees Defined Contribution Plan and/or the administrator of any defined contribution retirement plan offered pursuant to the State Employees' Retirement Code, 71 Pa. C.S. §5101 *et seq.*, to release to _____ any and all information that he/she may request regarding my retirement benefits, in accordance with 71 Pa. C.S. §5953.1.

This authorization is granted pursuant to the Approved Domestic Relations Order entered by the _____ County Court of Common Pleas on _____

at Docket Number _____ which names _____
as Alternate Payee, so that the Alternate Payee may monitor my compliance with the provisions of the Domestic Relations Order as required by law.

Upon the distribution of the Alternate Payee's share of my individual investment account to the Alternate Payee in accordance with the terms of my Approved Domestic Relations Order, this authorization shall expire with regard to the defined contribution portion of my retirement benefit but shall remain in force with regard to the defined benefit portion of my retirement benefit. A photocopy or faxed copy of this Authorization shall have the same force and effect as the original.

Date

Primary Payee's Signature

Primary Payee's Printed Name

Primary Payee's Social Security Number