



Andrea L. Rose
Executive Director

Policy Regarding the Distribution of Benefits **Under A Domestic Relations Order**

The Domestic Relations Order

Generally, plan benefits are not assignable. However, the Maryland-National Capital Park and Planning Commission Employees' Retirement System (ERS) does permit the assignment of benefits pursuant to a Domestic Relations Order (DRO). A DRO is a court decree or order that recognizes an alternate payee's right to receive a portion of benefits payable with respect to a member. An alternate payee can be a spouse, former spouse, child, or dependent of the member.

Unlike private pension plans, the ERS plan is exempt from the provisions of the Employees' Retirement Income Security Act (ERISA). Although the ERS is not directly governed by the State Personnel and Pensions Article of the Maryland Annotated Code, it does comply with that article in most areas. Therefore, DROs submitted to the ERS should comply with Maryland (not ERISA) laws and regulations concerning Eligible Domestic Relations Orders (See COMAR 22.01.03). Specifically, the rules relating to qualified domestic relations orders (QDROs) as defined in ERISA and the Internal Revenue Code are **NOT** applicable to DROs to be administered by the ERS.

Administration of an Acceptable Domestic Relations Order

The ERS has the discretion to accept or reject a DRO. DROs that contain provisions that are contradictory to the Plan Document contain vague or inconsistent provisions and/or contain complicated formulas or formulas based on information not known at the time the DRO is submitted will be rejected. A final DRO submitted to the ERS that complies with the Plan's provisions and is certified as true test copies is considered an Acceptable Domestic Relations Order (ADRO).

There are several important things to consider when drafting an ADRO.

1. An ADRO may not contain provisions that affect the rights of an alternate payee in an ADRO already accepted by the ERS.
2. The alternate payee may not select beneficiaries or methods of payment. Benefits will be paid to the alternate payee if, when, and as paid by the ERS.
3. Death Benefits. An ADRO may also require a member to designate the ex-spouse as a beneficiary of a pre-retirement or post-retirement death benefit. The payment of some death benefits is restricted to a surviving (current) spouse or minor child of the participant. Pay particular attention to the types of death benefits available under the Plan and the eligible beneficiaries of each type of benefit and/or option chosen.

4. An ADRO may require the member to select an optional form of benefit payment before or at retirement. However, any optional form of payment selected at retirement but, before the date of the order is irrevocable even if contrary to the provisions of a DRO.
5. Only one beneficiary/contingent annuitant may be assigned under the Plan's contingent annuity optional forms of benefit payments. The member may elect to have the alternate payee named as the sole contingent annuitant in accordance with a DRO so long as the provisions are consistent with the terms of the Plan. Any DRO provisions providing for the division of "survivor" or "pop-up" payments will be rejected.
6. ADROs should specify whether cost-of-living adjustments are included in the benefits to be divided.
7. The ERS cannot be designated as a trustee to pay benefits at the direction of an alternate payee. The ERS will make payments to a trustee if, and when the member has designated the trustee as a beneficiary.

Submitting a Domestic Relations Order

A proposed DRO may be submitted to the ERS for review prior to being forwarded to the court for signature. However, the ERS will only honor final orders that comply with the Plan's provisions and are certified as true test copies.

If you have questions concerning a proposed DRO or document you are preparing, please contact the ERS Office at (301) 454-1415 or contactERS@mncppc.org.

You may submit draft orders or documents to the ERS for review at:

The Maryland-National Capital Park and Planning Commission
Employees' Retirement System
6611 Kenilworth Avenue, Suite 100
Riverdale, MD 20737
Fax (301) 454-1413

Please note: The ERS will release information concerning a member's retirement benefits to the member and to an alternate payee who is determined by final court order to have an interest in the member's benefits. Without a final court order, information can only be released with the signed consent of the member.