



## **TEXAS MUNICIPAL RETIREMENT SYSTEM DIVORCE AND RETIREMENT**

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**Purpose of this Publication.** For most members of the Texas Municipal Retirement System ("TMRS®"), their accumulated benefit is one of the most valuable assets that they own. It is *very* important that any divorce decree involving a member of TMRS specifically state to whom that benefit is awarded, or how it is to be divided.

Texas courts have held that the portion of a person's retirement benefit earned during marriage is "community property"<sup>1</sup> -- property owned by both the husband and the wife, regardless of who "earned" that benefit. Since the portion earned during marriage is community property, a divorce decree or other domestic relations order must state whether the benefit is retained by the member or divided between the member and spouse. If the decree or order does not do either, the courts have held that the former husband and wife continue to jointly own that portion of the benefit earned during marriage.<sup>2</sup> An order silent on the issue can create a serious problem for a member at retirement or when a refund is requested. The member may need to go back to court and obtain the proper orders, or promptly reach an agreement with a former spouse.



This publication will help members of TMRS (as well as others who may have an interest in a member's TMRS benefits) understand the nature of that benefit, how it is determined and paid, and how it may be awarded to the member or may be divided upon divorce. Of course, TMRS cannot give legal advice to the parties to a divorce: the parties need to consult with their lawyers for such counseling.

This publication also is designed for use by attorneys representing TMRS members and members' spouses. Special rules govern domestic relations orders involving members of the statewide public retirement systems, such as TMRS, and this publication may help attorneys in locating and using those rules. This publication is an informal presentation and summary of the TMRS Act and related laws and rules. If any specific question of fact or law should arise, the statutes and rules will govern.

After reviewing this publication, if you have questions or concerns, contact the TMRS Support Services Department:

Texas Municipal Retirement System  
PO Box 149153  
Austin, TX 78714-9153  
(512) 476-7577 (800) 924-8677 Fax: (512)-476-5576  
E-mail: [Divorce@TMRS.org](mailto:Divorce@TMRS.org) Web: [www.TMRS.com](http://www.TMRS.com)

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<sup>1</sup> *Valdez v. Ramirez*, 574 S.W.2d 748, 749 (Tex. 1978).

<sup>2</sup> *Smith v. Smith*, 733 S.W.2d 915 (Tex.App.-Houston [1st Dist.] 1987, writ ref'd n.r.e.).

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## FREQUENTLY ASKED QUESTIONS



### ***Does the retirement benefit have to be divided?***

- No. Whether retirement benefits are part of a property settlement in a divorce or not is a determination made in the divorce proceedings. See page 6 “*Benefits Do Not Have To Be Divided.*”

### ***I'm still working for the city and I'm getting divorced. How much of my retirement can my spouse get, and when can my spouse get it?***

- The parties to the divorce determine the percentage. The “standard” division is ½ of the benefits accumulated during marriage. See page 10, “*Any Percentage Award Acceptable*” for further information.
- There is no immediate payment of an award to a former spouse. Your spouse will not receive a benefit or payment until you do. See page 4, “*No Immediate Payment or Segregation,*” for details.

### ***What information can be provided on my account and who can obtain information on my account?***

- Limited information is available to your attorney, your spouse’s attorney, and your spouse. See page 5, “*Requests for Account Information,*” for further details.

### ***My attorney has given me a questionnaire to complete that requests the value of my retirement benefit. Where do I get this value?***

- The value of the retirement benefit is not available unless you are already retired. Your account balance is the only information TMRS can provide. See page 5, “*Value of the Retirement Account.*”

### ***Can I buy out my former spouse’s interest in the retirement benefit at a later date, even if an order to divide the benefit has been completed?***

- Yes. Wording should be included in your order to allow that possibility. See page 10, “*Buy-Out of Alternate Payee’s Interest.*”

### ***We have agreed on my former spouse receiving only \$10,000. How do we put that in a qualified domestic relations order?***

- You can specify an exact dollar amount in your order. See page 10, “*Specific Dollar Amount Award,*” for the correct format.

### ***When can I change my beneficiary?***

- Generally, you can change your beneficiary any time prior to your retirement. You should review your designation after family changes occur. See page 6, “*Update Your Beneficiary,*” for recommendations.

### ***I am the former spouse of a member. Can I designate a beneficiary for my award?***

- No. Designation of a beneficiary is not available for an alternate payee. See page 11, “*Termination of Interest in Plan,*” for references to the laws.

### ***I retired with TMRS several years ago and am now getting divorced. How do I divide my retirement with my wife?***

- Numerous issues affect the divorcing member who is already retired. See page 11, “*Retired TMRS Members and Divorce,*” for details.

### ***Can child support payments be deducted from a monthly retirement payment?***

- Yes. Just as a division of a retirement benefit requires a domestic relations order, payments for child support also require a domestic relations order. See page 13, “*Child Support.*”

### ***If my former spouse and I are both members of the System and we divide our benefits, can we transfer the funds from one TMRS account to another?***

- No. The TMRS Act does not allow transfer of funds between accounts. See page 4, “*No Immediate Payment or Segregation.*”

## **PART ONE: GENERAL CONSIDERATIONS**

A decree of divorce is the document used by a court officially to terminate a marriage and to set out the decisions the parties have made (or that the court has made). These decisions usually include provisions for the care and support of minor children and the allocation of assets and debts. There is some flexibility in making these decisions. However, these decisions can be meaningless, or even legally unenforceable, if they are not set out correctly.

## **QUALIFIED DOMESTIC RELATIONS ORDERS**

The purpose of a Qualified Domestic Relations Order is to permit a retirement system to make direct payment to a non-member of the system. Because of the way TMRS calculates and pays benefits, orders that divide those benefits need to follow a special format correctly and completely -- informing TMRS *how* the benefit --whether a refund or an annuity --is to be divided. This division can occur only under a court order known as a "Qualified Domestic Relations Order" (QDRO--pronounced "QUA--DRO").

The term "Qualified Domestic Relations Order" is often confusing, since the words "qualified" and "order" may appear in the heading of an order that is **not qualified**. A "domestic relations order" is any judgment, decree, or order, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependant of a member or retiree, under domestic relations law, including a community property law of the State of Texas or of another state.<sup>3</sup> The order is a qualified order **only** when it has been approved by TMRS as meeting all requirements of applicable law and rules.<sup>4</sup> The "alternate payee" is the person, usually a former spouse, who is designated by the QDRO to receive a portion of the benefit.

## **ERISA DOES NOT APPLY TO TMRS**

Private pension plans, such as a plan governing the employees of a corporation or other for profit businesses, are subject to a 1974 federal law called The Employee Retirement Income Security Act of 1974 (ERISA). **Public retirement plans, such as TMRS, are exempt from the provisions of ERISA by 29 U.S.C.A. Sec. 1003.** Therefore, a QDRO that is acceptable under a private, ERISA-governed plan might not be acceptable by the TMRS plan.

<sup>3</sup> Texas Government Code, §804.001(2)

<sup>4</sup> Texas Government Code, §804.001(4)

## **TMRS QDRO LAW**

TMRS is a public retirement system and is governed by state law. The division of benefits

under a QDRO for a TMRS member is determined under the provisions of the TMRS Act (Title 8, Subtitle G, Texas Government Code), Texas general law for QDRO's (Chapter 804, Texas Government Code), and the Administrative Rules of TMRS (Title 34, Chapter 129, Texas Administrative Code).

Attorneys representing divorcing couples seeking to divide TMRS benefits should use the Standard Division Of Benefit Form (Exhibit 1 in this publication) *or* the Simplified Pre-Approved Domestic Relations Order (Exhibit 2 in this publication). These formats contain the information TMRS requires in order to divide any retirement benefit.



## **NO IMMEDIATE PAYMENT OR SEGREGATION**

A QDRO does not entitle either the TMRS member or the alternate payee to withdraw any part of a TMRS account *immediately* after the divorce. Furthermore, a QDRO does not allow an amount awarded to an alternate payee to be segregated into a separate account, even if the alternate payee is also a TMRS member.

## **WHEN BENEFITS ARE PAID**

When a QDRO is on file with TMRS, the retirement benefit is not distributed either to the member or to the alternate payee until one of two things happens.

1) The member terminates covered employment and applies for a refund of his or her TMRS deposits. In this case, the alternate payee will receive a one-time lump-sum payment (refund).

2) The member becomes eligible to retire, terminates employment and chooses to retire and receive a retirement benefit. In this case, the alternate payee will also receive a monthly retirement payment, payable for their lifetime. The alternate payee can choose to receive a portion of the retirement benefit as a lump-sum payment. Determinations of these amounts cannot be made until the member applies for retirement.

When either of these events occurs, and with a qualified order on file, TMRS will contact the alternate payee to complete the applications required to receive a benefit. **NOTE: the parties to the divorce should maintain current address and telephone number information with TMRS at all times.**

### **AGREEMENTS**

In some instances, the parties can enter into a written agreement dividing the benefit. TMRS will under certain circumstances, recognize agreements between the parties; however, such agreements usually are appropriate only when the benefit was not divided, or not divided correctly in the original divorce proceeding. Agreements between the parties will require TMRS approval.

### **VALUE OF THE RETIREMENT ACCOUNT**

TMRS cannot provide a determination of the value or present value of an account or benefits. Note that such a determination is **not** needed for the division of the benefit. TMRS can only provide the member's current account balance and the total deposits and interest earnings accumulated during the marriage. The value of a TMRS member's account will depend in part on timing and on decisions made by the member. For example, if a member terminates employment immediately after the divorce and applies for a refund of the accumulated deposits and interest, then those amounts fairly represent the account value. However, if a member stays in the System until retirement, the value of the account may be much larger, since deposits and interest will continue over the member's career.

*For this reason, if you or your attorney wish to obtain a valuation of the account, you must consult with a private actuary or other expert who can provide advice or testimony on the matter.*



### **REQUESTS FOR ACCOUNT INFORMATION**

If you are a member of the System and need information, you may phone the System directly at (800) 924-8677.

If you are a spouse or former spouse of a member, you can obtain information on the member's account or benefits relevant to you. You or your attorney must submit a written request identifying the member by name and Social Security number, your relationship to the member, the date of the marriage, a current address, what information you are requesting, and how the requested information relates to your interest. If your attorney is submitting the request, he or she

should include a statement of representation and State Bar number.

A FAX of this request will be accepted. You don't need a subpoena to obtain information.

### **REVIEW AND RESPONSE**

Once TMRS receives notification in writing indicating that a divorce is pending, (receipt of a Petition for Divorce, a Divorce Decree, QDRO, or letter clearly indicating the intent to divide the TMRS benefit along with the cause number assigned to the suit), the member's account is "flagged" so that payments are not made (if the member has already retired, payments will continue; see Part Three of this publication for further information). Flagging an account is necessary to preserve this marital asset while the divorce is pending, since state law views the account as community property. A phone call request for balance information from any party to a divorce is not sufficient to flag the member's account.

Once an account has been flagged, no payments will be issued to the member or a former spouse until TMRS receives one of the following:

- a certified copy of a Decree of Divorce awarding the entire benefit to the member;
- a certified copy of a QDRO; or
- an original signed agreement between the parties to the divorce.

After review of the QDRO, decree, or other relevant documents, TMRS will notify all parties whether that document complies with the rules governing the System, for **qualification**. If the order does not qualify, an "amended order" may be required. An amended order should specifically describe within the order the manner in which the amended order varies from the original order and that the amended order shall be controlling over the original or earlier order.

**UNQUALIFIED ORDER:** TMRS will notify all parties to a domestic relations order when an order received does not qualify. This notification will require that the parties commence action within 90 days to bring the order into compliance.<sup>5</sup> Unless documentation has been submitted to the System showing that action has been commenced to bring the order into compliance **before** the expiration of the 90-day period, the order will be determined to be unqualified, and the System will pay to the participant any sums that have been withheld up

<sup>5</sup> 34 Texas Administrative Code §129.9(a)

to that date, and shall thereafter make payment of benefits as if no order had been received.

**QUALIFIED ORDER:** All parties to the action will be notified if TMRS determines that the order received is a qualified order. The qualified order will remain on file with TMRS. Direct payment to the alternate payee will be processed only upon the member's termination of employment and subsequent application for refund or retirement.

### **CERTIFIED COPY**



State law requires that TMRS receive a *certified copy* of any domestic relations order relating to the division of benefits before we can begin our review. The certified copy will be retained by TMRS. A certified copy is one that bears the original stamp and seal of certification, followed by the signature of the clerk of the court in which the divorce was heard. A photocopy or FAX of the order is not acceptable.

If the domestic relations order is not prepared as a separate document but is included only within or as part of the divorce decree, then a certified copy of the entire divorce decree is required. The cover letter transmitting the order or decree to TMRS should contain the names and addresses of the attorneys (if any) for the parties, if the order or decree does not contain the information.

### **UPDATE YOUR BENEFICIARY**

When the divorce is final, the TMRS member should review their beneficiary designation with TMRS. If the former spouse is the designated beneficiary, after divorce the designation becomes inoperative. If a new beneficiary is not updated, the System will pay any death benefits to the alternate beneficiary, or if there is no alternate beneficiary, to the member's estate. If a member wishes their former spouse to remain beneficiary, the member must re-designate that person on the appropriate TMRS form with the new relationship being former spouse.

### **HOW TMRS BENEFITS ARE CALCULATED**

If a member terminates covered employment and applies for a refund, the benefit is limited to a return of the member's deposits and interest only.<sup>6</sup>

<sup>6</sup> Texas Government Code, §§852.103, 852.104.

If the member remains in covered employment until eligible for service retirement, the municipality will "match" (on a 1-to-1, 1½-to-1 or 2-to-1 basis) the member's deposits and interest earnings.<sup>7</sup> The contributions of both the member and the municipality are then used to "fund" the annuity the member receives at retirement.

A TMRS member is not entitled to withdraw or otherwise receive a lump-sum payment of the city's "matching" contributions. City matching funds are only available to the retiree through monthly benefit payments. Should a member with a QDRO choose to retire, the alternate payee will receive a proportionate amount of the city matching funds (paid as part of the benefit), unless the QDRO specifically provides to the contrary.

### **BENEFITS DO NOT HAVE TO BE DIVIDED**

TMRS does not require that benefits be divided. If the parties agree (or the court decides) that the member will retain the entire benefit, no QDRO is necessary. Instead, specific language should be placed in the divorce decree to inform TMRS of that decision. This may be the result of a "trade off" between husband and wife regarding other assets. Appropriate language to award the member 100% of the benefit must be inserted into the Decree of Divorce.



The Family Practice Manual published by the State Bar of Texas sets forth the following language for use when the member retains the entire retirement benefit earned during the marriage. It constitutes a correct method for awarding the member the entire benefit (earned during the marriage) so long as no other provision of the decree, or order is in conflict.

*(Name) is awarded any and all sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, pension plan, employee stock option plan, employee savings plan, accrued unpaid bonuses, or other benefit program existing by reason of (NAME)'s past, present, or future employment.*

**NOTE: This language will result in the removal of survivor benefits for the surviving spouse if the TMRS member has retired. Please review "Part Three: Retired TMRS Members and Divorce" for further information.**

<sup>7</sup> Texas Government Code, §§854.002.

### **THE QDRO FORM**

In general, most divorcing couples decide to divide the member's retirement benefits, and a properly drafted QDRO serves such a purpose. The QDRO sets forth the identities and addresses of the member and of an "alternate payee" (the person receiving an interest in a portion of the benefit). This information must be provided for it to be a qualified order. A QDRO also must inform the System how any benefit (refund or annuity) which becomes payable will be divided.

The two common ways benefits are divided by a QDRO are either based on the amount of a member's deposits during the marriage (the "**accumulated contributions**" method), or on the number of months of TMRS service performed while the member was married (the "**credited service**" method). **These two methods of division are discussed in Part Two of this publication.**

### **THE "SHORT FORM" TMRS QDRO FORMAT**

In addition to the Standard Division Of Benefit Form (see Exhibit 1), TMRS authorizes use of a simplified form (Exhibit 2). However, note that **no** changes can be made to the pre-approved format.

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This section is designed to assist those professionals drafting orders involving members of TMRS.

### **PART TWO: AN EXPLANATION OF DIVISION FORMULAS**

This section provides more detailed explanations of the methods that may be used to divide a TMRS member's benefit under a QDRO. Both parties to the divorce should be aware of the methods, and the different results they can yield. When benefits are to be divided, the method of division should be specified in the QDRO by choosing one of the two methods in paragraph 4 of the standard division of benefit form.

Benefits will usually be divided using one of two methods -- either the **Accumulated Contributions Formula** or the **Credited Service Formula**.

Both methods use the following terms and basic formula:

$$\frac{1}{2} \times \frac{\text{numerator}}{\text{denominator}} = \text{divorce factor}$$

$$\text{divorce factor} \times \text{benefit payable} = \text{alternate payee's award}$$

The numerator is the amount of deposits or service earned during the marriage -- the amount in which the alternate payee has an interest.

The denominator is the member's total amount of deposits or service at the time of payment.

The benefit payable is either:

- 1) the member's account balance if refunding; or
- 2) the member's account balance, city matching funds, and other credits if the member is retiring. This may be modified by the QDRO.

The divorce factor is the result of dividing the amount of deposits or service earned during marriage, by the total amount of deposits or service earned up through the time of payment of benefits. This calculation results in the percentage of the benefit awarded to the alternate payee.

The alternate payee's award is the result of multiplying the divorce factor by the benefit payable

### **DIVISION FORMULAS YIELD DIFFERENT RESULTS**

The Accumulated Contributions Formula divides benefits by calculating the amount of the member's deposits and interest accumulated during marriage and comparing that to the member's total deposits and interest at the time of payment of benefits.

The Credited Service Formula calculates the percentage of the member's total service under TMRS that was performed during marriage and compares it to the total length of the member's career at the time of payment of benefits.

In some cases, the two formulas will yield results that are very similar, but in many cases, the formulas produce considerably different results.

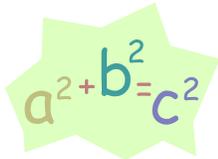
It is in the best interest of all parties to perform a rough calculation before choosing a formula.

**ACCUMULATED CONTRIBUTIONS FORMULA**

Under the accumulated contributions formula, benefits are divided based on deposits to the member's account through payroll deductions received from the employing municipality. Prior to the member retiring, the account represents only the member's deposits and the interest those deposits have earned.

Should the member terminate covered employment after divorce and apply for a refund, the member would only receive the accumulated deposits and interest balance in the account; the alternate payee would receive a percentage of that refund. Each party would receive his or her share of the refund in one lump-sum payment.

But if a member remains in covered employment until eligible for retirement and retires, the member's contributions are matched (or over matched) by the participating municipality, and the benefit is paid in monthly installments for the life of the member. The alternate payee then receives a monthly benefit based upon the alternate payee's court-ordered percentage of the total benefit. In other words, it is to the advantage of both the member and the alternate payee for the member to remain in covered employment until retirement so that each will receive a portion of the benefit provided by the municipality's contributions on behalf of the member. That benefit is always payable as an annuity, and is never payable before the member retires.



Note: both the member and alternate payee will have the choice to receive a portion of their award as a partial lump-sum distribution at retirement.

**EXAMPLE 1. DIVISION OF BENEFIT BASED ON ACCUMULATED CONTRIBUTIONS FOR THE REFUNDING MEMBER:**

Under this method the basic formulas used to determine an alternate payee's amount are:

$$\frac{1}{2} \times \frac{\text{deposits and interest earned during marriage}}{\text{total deposits and interest at date of refund or retirement}}$$

= divorce factor

divorce factor x benefit payable = alternate payee's award.

Let's look at two cases to see how the formula works.

1) The member was already married to the alternate payee when the member joined TMRS. During the term of the marriage, the member's account received \$10,000 in deposits and interest. The divorce decree grants a 50/50 split, and the member leaves covered employment and requests a refund of deposits and interest at the time of divorce. In this case the "benefit payable" is the member's account balance at the time of withdrawal (city matching funds are never part of a refund).

In this case the formula would look like this:

$$\frac{1}{2} \times \frac{\$10,000}{\$10,000} = .5000 \text{ (divorce factor)}$$

$$.5000 \times \$10,000 \text{ (benefit payable)} = \$5,000 \text{ (alternate payee's award)}$$

2) In the second case, circumstances are the same but the member remains in TMRS-covered employment after the divorce, continues to work until his or her deposits and interest total \$40,000, then leaves employment and receives a refund of the account. Using the formula, you can see the alternate payee will receive only 1/8 of that refund.

$$\frac{1}{2} \times \frac{\$10,000}{\$40,000} = .1250 \text{ (divorce factor)}$$

$$.1250 \times \$40,000 \text{ (benefit payable)} = \$5,000 \text{ (alternate payee's award)}$$

Note that, in this case, no matter how much time elapses between the date of the divorce and the date of the refund, the alternate payee is not receiving any portion of the interest the member's account earns after the divorce. If the parties or the court wish to have the alternate payee's award include a proportionate share of post-divorce interest, the words "together with interest thereon as allowed by the Plan after (enter date of divorce) to the date of such payment" should be inserted in paragraph 4 of Exhibit 1 (see pages 11 - 12). Footnote #11 indicates the location where the language must be placed.

**EXAMPLE 2. DIVISION OF BENEFIT BASED ON ACCUMULATED CONTRIBUTIONS FOR THE RETIRING MEMBER.**

To see how the accumulated contributions formula works in the case of a member who retires, consider the same facts as in the example above, except the member remains in TMRS-

covered employment another 10 years, until retirement, accumulating total deposits and interest of \$40,000.

If the employing city matches at a 2:1 ratio, the city will match the account at \$80,000, which gives the member a total reserves<sup>8</sup> amount of \$120,000.

$$\frac{1}{2} \times \frac{\$10,000}{\$40,000} = .1250 \text{ (divorce factor)}$$

$$.1250 \times \$120,000 \text{ (total reserves)} = \$15,000 \text{ (alternate payee's reserves)}$$

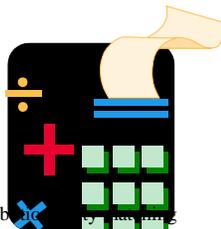
The alternate payee's reserves are used to calculate a monthly benefit for his or her lifetime. If the language of the QDRO provides for the alternate payee's award to include post-divorce interest (see discussion under Example 1), that amount would increase the divorce factor and increase the amount of the reserves allocated to the alternate payee.

### **CREDITED SERVICE FORMULA**

Using the Credited Service Formula, each month of a member's service is valued equal to every other month. In the case of a member who marries and divorces early in his or her career, if the months of service after the divorce occur during a period of higher salary and compounded interest, the value of the earlier service may be increased. Whether this division is suitable in a property settlement must be determined by both parties or by the court, but an understanding of the results of using the Credited Service Formula is very important.

A formula based on credited service compares the number of months of covered employment during marriage with the member's total covered employment at time of retirement or refund of deposits. **It assumes that each month of credited service has the same value as every other month**, which is not totally accurate with regard to TMRS. When parties to a divorce have been married only a portion of the time the employee spouse has been a member of the System, the Credited Service Formula and the Accumulated Contributions Formula can produce different results.

*The Credited Service Formula may not be the most appropriate method of dividing a TMRS benefit: since contributions (deposits) are at*



<sup>8</sup> Reserves : reserves are the total member contributions, including contributions from the member, the employer, and any other retirement credits available to fund the monthly annuity payments at retirement.

a fixed percentage of compensation (salary), and most people receive pay raises over their years of employment, each month is not necessarily equal to each other month for benefit calculation purposes. While we will approve a QDRO that utilizes the credited service formula, the credited service formula is more appropriate for use in defined benefit plans. (TMRS is not a pure defined benefit plan, but rather a "hybrid" plan containing features of both defined contribution and defined benefit plans.)

### **EXAMPLE 3. DIVISION OF BENEFIT BASED ON CREDITED SERVICE FOR THE REFUNDING MEMBER**

Under this method the basic formulas used to determine an alternate payee's amount are:

$$\frac{1}{2} \times \frac{\text{credited service during marriage}}{\text{total credited service at time of refund or retirement}} = \text{divorce factor}$$

$$\text{divorce factor} \times \text{benefit payable} = \text{alternate payee's award.}$$

Using the same assumptions from the example above (\$10,000 member account balance, married the entire five-year period of covered service, 50/50 split), the refund of deposits would be divided as follows:

$$\frac{1}{2} \times \frac{60 \text{ months}}{60 \text{ months}} = .5 \text{ (divorce factor)}$$

$$.5 \times \$10,000 \text{ (benefit payable)} = \$5,000 \text{ (alternate payee's award)}$$

If the member were to continue working after the divorce, until the member had accumulated 180 months of service and the member's account equaled \$40,000, the formula would look like this:

$$\frac{1}{2} \times \frac{60 \text{ months}}{180 \text{ months}} = .1667 \text{ (divorce factor)}$$

$$.1667 \times \$40,000 \text{ (benefit payable)} = \$6,668 \text{ (alternate payee's award)}$$

### **EXAMPLE 4. DIVISION OF BENEFIT BASED ON CREDITED SERVICE FOR THE RETIRING MEMBER.**

To see how the Credited Service Formula works in the case of a member who retires, consider the same facts as in the example above, except the member remains in TMRS-covered employment 10 years, until retirement, accumulating total deposits and interest of \$40,000. If the employing city matches at a 2:1 ratio, the city

will match the account at \$80,000, which gives the member a total reserves amount of \$120,000.  
 $\frac{1}{2} \times \frac{60 \text{ months}}{180 \text{ months}} = .1667$  (divorce factor)

.1667 X \$120,000 (total reserves) = \$20,004 (alternate payee's reserves)

The alternate payee's reserves are used to calculate a monthly benefit for his or her lifetime.

Remember, these are only examples and the actual benefits will vary depending on the member's career.

#### **SPECIFIC DOLLAR AMOUNT AWARD**



In the event the divorcing parties choose to divide the benefit based on a specific dollar amount, the amount must still be stated in the domestic relations order as a percentage of the member's total accumulated contributions. Stating that the alternate payee is awarded a sum of money does not adequately inform TMRS how to divide such a payment in the event the member retires and receives an annuity. An award based on a "specific dollar amount" does not necessarily provide the alternate payee with a lump-sum payment in that specific amount. If the member retires, the alternate payee must also receive his or her award through a monthly benefit payable over his or her lifetime.

EXCEPTION: Because of rules governing the Plan, if an alternate payee's total available benefit is \$10,000 or less, a one-time lump sum payment will be issued to the alternate payee.

NOTE: See Exhibit 3 for instructions on awarding a specific dollar amount.

#### **NO CHANGES TO PARAGRAPH 5 OF ORDER:**

In accordance with the System's governing law and rules, **NO** changes should be made to paragraph 5 of the Standard Division Of Benefit Form (Exhibit 1) without first consulting TMRS.

#### **ANY PERCENTAGE AWARD ACCEPTABLE**

If the QDRO so provides, the alternate payee can receive a percentage of any benefit payable to the member that is greater or less than the "standard" one-half division. Simply substitute the other fraction or percentage in lieu of "50%" in paragraph 4 of the standard QDRO format (see Exhibit 1). However, should the award to the

alternate payee be **100%**, please contact TMRS for assistance before you finalize the QDRO.

#### **"BUY-OUT" OF ALTERNATE PAYEE'S INTEREST:**

In some instances, the parties want the member to be able to acquire the alternate payee's interest in the plan for a fixed amount of money within some period of time after the divorce. This is appropriate when the alternate payee would rather have cash, but the member does not have sufficient personal funds to make payment at the time of the divorce. NOTE: The TMRS member cannot withdraw, borrow or obtain a loan with the TMRS benefit as collateral. The member must obtain any funds from his or her personal resources to "buy-out" the alternate payee's interest. If the parties agree that the member can provide full payment at some future date, add the following paragraph to the standard QDRO format:

Notwithstanding anything in this Order to the contrary, Participant shall have the right, at any time on or before \_\_\_\_\_, (mo & day), \_\_\_\_\_(year), to pay to Alternate Payee the sum of \$ \_\_\_\_\_, together with interest on such sum from the date the divorce was granted until the date so paid (at the rate of \_\_ percent per annum), which sum Alternate Payee agrees to accept (if timely paid) in lieu of any and all other benefits under the Plan. Upon receipt of such sum, Alternate Payee shall promptly sign and acknowledge that certain agreement attached hereto as Exhibit \_\_\_ and incorporated herein by reference, and deliver the signed original to Participant. In the event that Participant timely tenders such payment to Alternate Payee and Alternate Payee refuses to sign or acknowledge the said Exhibit, Participant shall be entitled to specific performance of this paragraph.

**Then attach Exhibit 5 "Agreement" to the order.**

#### **TIME OF ENTRY OF ORDER**

A QDRO can be entered at any time. This includes any time after a divorce has been granted. An amended order can also be entered after the divorce has become final. In a divorce, marital property, including retirement benefits are usually divided as of the date the divorce is granted. In the event the TMRS benefit is divided as of a date that is different from the date the divorce is granted, you should substitute the actual date the TMRS benefit is divided for the phrase "date the divorce was granted" in paragraph 4 of the TMRS Standard Division of Benefit form (Exhibit 1).

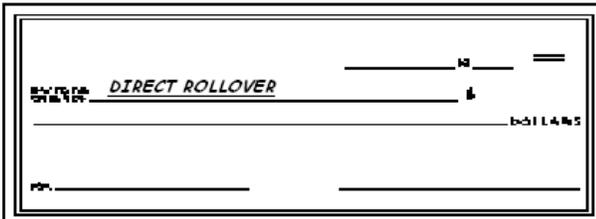


**CHANGE OF ADDRESS NOTIFICATION**  
**ADVISABLE**

If you are a party to a QDRO, please keep TMRS informed in writing of any address changes. At the time of payment, TMRS will require correct address information for both parties before payment can be made.

**“ROLL-OVER” APPLICABILITY TO A QDRO**

Under the Internal Revenue Code, a refund of contributions made to one retirement account can be transferred, or "rolled-over" (under certain conditions) into another retirement account or IRA with no immediate tax liability. Because a roll-over may not be applicable under all circumstances, you should first read the TMRS form entitled "Special Tax Notice Regarding Plan Payments", and consult with your attorney or tax advisor to ascertain whether you would be eligible for any roll-over considerations.



**TERMINATION OF INTEREST IN PLAN**

The death of an alternate payee terminates the interest of that alternate payee in the retirement system.<sup>9</sup> Should an alternate payee's death precede the member's date of retirement or withdrawal, the member will retain the entire benefit as if no QDRO had been filed.

Should an alternate payee die after the member's retirement (after monthly payments have begun), all payments to the alternate payee cease the month after the alternate payee's death. For this reason, an alternate payee cannot designate a beneficiary since there are no further payments after death.

If the divorce occurred after the member's retirement, the amount being received by the alternate payee may under certain circumstances be restored to the member after the alternate payee's death. See "*Part Three: Retired TMRS Members and Divorce.*"

**PART THREE: RETIRED TMRS MEMBERS**  
**AND DIVORCE**

At retirement, the TMRS member may choose either a Retiree Life Only Benefit (an annuity payable only to the member for his or her lifetime) or one of 6 other benefit options that provide benefits to a survivor.

Once retired, under the rules of the System, only a retiree who elected the Retiree Life Only Benefit or a "retiree life/guaranteed term payment" (5, 10, or 15 years from retirement date) may change the designated beneficiary. No change of beneficiary is permissible for a retiree who elected a "retiree life/survivor option" (50%, 66 2/3rds%, 75%, or 100% of deceased member's payment to a beneficiary).

The retiree life/survivor option plans are based on the projected life expectancies of both the member and surviving beneficiary as determined by an actuarial evaluation of the total deposits and a determination of how long TMRS will pay an annuity according to the benefit option selected.

The retired member's benefit payments will not be frozen or suspended by TMRS while a divorce suit is pending. No change in the benefit payments will be made unless and until a domestic relations order is received and approved by TMRS.

**ENTIRE BENEFIT AWARDED TO RETIRED**  
**MEMBER--FORMER SPOUSE'S SURVIVOR**  
**INTEREST TERMINATED.**

If a member retired under a "retiree life/survivor option" (50%, 66 2/3rds%, 75%, or 100%) and subsequently becomes divorced from the person who was to receive the survivor benefit, the decree or order may provide for TMRS to remove the former spouse as beneficiary and increase the member's future benefit payments to the monthly amount that would have been payable had the member retired under an annuity payable only during the member's lifetime (Retiree Life Only Benefit), but only if the following requirements are met:

- the divorce decree or order must be granted after December 31, 1999;
- the member must have retired under a retiree life/survivor option (50%, 66 2/3rds% 75%, or 100%);
- the member's former spouse must have been the designated beneficiary;
- the member must be awarded 100% of the retirement benefit; and

<sup>9</sup> Texas Government Code §804.101  
Saved as: F:\Benefits\Legal Confidential\#QDRO Publication 2004 Web update 3-04  
Revised 03-2004 Trish Wells

- the decree or order must provide for this adjustment.

**NOTE: The language used on page 6 under “Benefits Do Not Have to Be Divided” will meet the above requirements and will terminate the former spouse’s right to receive any future benefit as a survivor upon the death of the member.**

A decree or order under this provision applies only to payments made after TMRS receives and approves the order. Upon receipt of a certified copy of the decree of divorce and once TMRS has approved the decree, the member’s remaining benefit will be converted to a benefit payable for the remainder of his or her lifetime (Retiree Life Only benefit). Please contact TMRS for assistance with this provision.

**RE-MARRIAGE**

Should a member re-marry after the above process has been completed, the member may choose to reselect a survivor option retirement plan and add the new spouse as beneficiary. This process will reduce the member’s monthly benefit payment. The member must apply for this change within one year of marriage. Contact TMRS for assistance with this provision and an estimate of the reduced monthly benefit.

**ENTIRE BENEFIT TO RETIRED MEMBER-- FORMER SPOUSE REMAINS BENEFICIARY**

If the member retired under a retiree life/survivor option (50%, 66 2/3rds %, 75%, or 100%) and the former spouse and designated beneficiary are one and the same, the parties may choose to award the member 100% of his/her monthly retirement payments while maintaining the former spouse as beneficiary of the survivor benefit. Additional language will be required in the Decree of Divorce to accomplish this.

The standard language to award the member 100% of the TMRS benefit is located on page 6 of this publication (the boxed paragraph on page 6 under “Benefits Do Not Have To Be Divided”). Immediately after the final sentence of our sample paragraph or any similar language used in a Decree of Divorce, include: “save and except for any survivor benefit elected by [MEMBER’S NAME] at retirement, payable to [FORMER SPOUSE’S NAME] in the event of the [MEMBER’S NAME] death”

Please contact TMRS for assistance with this provision.

**BENEFIT DIVIDED BETWEEN THE PARTIES**

When a retired member of TMRS divorces and the parties prepare a QDRO to divide the present benefit, one of the following two formats should be used:

**FORMAT #1**

If the member has retired under a Retiree Life/Guaranteed Term option, the Standard Division Of Benefit Form provided in this publication (see Exhibit 1) should be used to divide the present benefit. This will provide the alternate payee with an annuity payment through the member’s lifetime and as long thereafter as the member’s beneficiary is receiving payments under a Retiree Life/Guaranteed Term option. The member may change the designated beneficiary at anytime. Should the alternate payee predecease the member, all payments to the alternate payee cease and the member’s benefit payments are restored to the full amount received by the member or beneficiary prior to the division under the QDRO.

The following paragraph should be substituted in place of paragraph 4 of the Standard Division Of Benefit Form (Exhibit 1) for the retired member:

*As part of a just and right division of the estate of the parties, the Alternate Payee is hereby awarded a portion of the benefit payable with respect to Participant which Participant, or Participant’s designated beneficiary, surviving spouse, or estate is entitled to receive from the Plan, such portion to be determined as \_\_\_\_\_% of the benefit payable to Participant or Participant’s designated beneficiary, surviving spouse, or estate by the Plan.*

**CAUTION:** If the divorcing couple divides the benefit using the above format and the member retired under a retiree life/survivor option (50%, 66 2/3rds%, 75%, or 100%) and **if the alternate payee is also named as the beneficiary**, the alternate payee will receive the entire survivor benefit should the member predecease the alternate payee.

FOR EXAMPLE: The member retired electing retiree life/100% to beneficiary annuity naming his spouse as beneficiary. He is receiving \$1,000 per month, and she is awarded 1/3 of the present benefit payable in the QDRO.

1/3 x \$1,000 = \$333.00

At the member's death, the former spouse **as the designated beneficiary** will receive the full benefit of \$1,000 per month for the remainder of the former spouse's lifetime. If this is not the intent of the parties and the member is retired under a joint and survivor annuity, FORMAT #2, described below, should be used to remove the former spouse as beneficiary in the event of the member's death.

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**FORMAT #2**

If the member has retired under a retiree life/survivor option (50%, 66 2/3rds %, 75%, or 100%) and the designated beneficiary and alternate payee are the same person, the QDRO format in Exhibit 4 (Modified QDRO Form For Certain Retirees) may be used to divide the benefit. This format will remove the alternate payee as the member's beneficiary while creating two separate lifetime annuities, one for the member and one for the alternate payee.

This can be done only with orders dated after December 31, 1993 and only if the order has authorized such a division. In many instances this will result in the payment to the retiree being higher. It will also result in the alternate payee receiving the same amount before and after the member's death, for the alternate payee's lifetime.

Under this procedure there is no requirement that the two resulting annuities must be equal in value to each other, only that in combination they must be actuarially equivalent to the optional benefit being divided.

# **EXHIBIT #1 STANDARD DIVISION OF BENEFIT FORM**

## **ALL BOXED FIELDS REQUIRE COMPLETION**

**ENTER YOUR CAUSE NUMBER, STYLE AND CAPTION**

### **QUALIFIED DOMESTIC RELATIONS ORDER**

This Order is intended to meet the requirements for a "qualified domestic relations order" relating to the TEXAS MUNICIPAL RETIREMENT SYSTEM, hereinafter called the "Plan." This Order is an integral part of the Decree of Divorce granted on

**DATE DIVORCE WAS GRANTED**. In compliance with those requirements, the following is specified:

1. This qualified domestic relations order assigns a portion of the benefits payable under the Plan to **NAME OF ALTERNATE PAYEE** in recognition of (his/her) marital rights in **NAME OF PARTICIPANT**'s benefits payable under the Plan.
2. Participant in the Plan is **NAME OF PARTICIPANT**, whose last known mailing address is **PARTICIPANT'S ADDRESS** whose birth date is **BIRTH DATE**, and whose Social Security Number is **NUMBER**.
3. Alternate Payee is **NAME OF ALTERNATE PAYEE**, whose last known mailing address is **ALTERNATE PAYEE'S ADDRESS**, whose birth date is **BIRTH DATE**, and whose Social Security Number is **NUMBER**. Participant and Alternate Payee became married on **DATE OF MARRIAGE**.
4. As part of a just and right division of the estate of the parties, Alternate Payee is hereby awarded a portion of any benefits payable with respect to Participant which Participant, or Participant's designated beneficiary, surviving spouse, or estate may become entitled to receive from the Plan, by way of a return of accumulated contributions or by way of any annuity that may become payable as a result of Participant's participation in the Plan, such portion to be determined by (*select one of the following:*)

multiplying **A PERCENT (GENERALLY 50%)** by a fraction, the numerator of which is all accumulated contributions deposited to Participant's individual account with the Plan between **DATE OF MARRIAGE** and the **DATE DIVORCE WAS GRANTED**,<sup>10</sup> and the denominator of which is the total of all contributions heretofore or hereafter made by Participant to Participant's individual account with the Plan (together with all accumulated interest thereon), and then multiplying that product by the benefit that would otherwise be payable to Participant or Participant's designated beneficiary, surviving spouse or estate by the Plan.

**OR**

multiplying **A PERCENT (GENERALLY 50%)** by a fraction, the numerator of which is the amount of credited service with the Plan earned by Participant between **DATE OF MARRIAGE** and the **DATE DIVORCE WAS GRANTED**, and the denominator of which is the amount of credited service by Participant under the Plan, and then multiplying that product by the benefit that would otherwise be payable to Participant or Participant's designated beneficiary, surviving spouse or estate by the Plan.

<sup>10</sup> Possible Insert, see discussion on page 6 of this publication for information. ***"together with interest thereon as allowed by the plan after the date the divorce was granted"***

5. The award to Alternate Payee under paragraph 4 of this order is expressly made subject to the following provisions:

- (a) This order shall not be interpreted in any way to require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.
- (b) This order shall not be interpreted in any way to require the Plan to provide increased benefits determined on the basis of actuarial value.
- (c) This order shall not be interpreted in any way to require the Plan to pay any benefits to (an/any) Alternate Payee named in this order which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.
- (d) This order shall not be interpreted in any way to require the payment of benefits to the Alternate Payee before the retirement of the Participant, the distribution of a withdrawal of contributions to the Participant as authorized by the statutes governing the Plan, or other distribution to the Participant required by law.
- (e) If the Plan provides for a reduced benefit upon "early retirement", this order shall be interpreted to require that, in the event of Participant's retirement before normal retirement age, the benefits payable to Alternate Payee shall be reduced in a proportionate amount.
- (f) This order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of the Participant's death, or to require the selection of a particular benefit payment plan or option.
- (g) In the event that, after the date the divorce was granted, the amount of any benefit otherwise payable to Participant is increased as a result of amendments to the law governing the Plan, Alternate Payee shall receive a proportionate part of such increase unless such an order would disqualify this order under the rules the Plan has adopted with regard to qualified domestic relations orders.
- (h) In the event that, after the date the divorce was granted, the amount of any benefit otherwise payable to Participant is reduced by law, the portion of benefits payable to Alternate Payee shall be reduced in a proportionate amount.
- (i) If, as a result of Participant's death after the date the divorce was granted, a payment is made by the Plan to Participant's estate, surviving spouse, or designated beneficiaries, which payment does not relate in any way to Participant's length of employment or accumulated contributions with the Plan, but rather is purely a death benefit payable as a result of employment or retired status at the time of death, no portion of such payment is community property, and Alternate Payee shall have no interest in such death benefit.
- (j) If the board of trustees of the Plan has by rule provided that, in lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the Plan may pay the alternate payee an amount that is the actuarial equivalent of (1) an annuity payable in equal monthly installments for the life of the alternate payee, or (2) a lump sum, then and in that event the Plan is authorized to make such a payment under this order.
- (k) All payments to Alternate Payee under this order shall terminate upon Alternate Payee's death or at such earlier date as may be required as a result of the retirement option selected by Participant.

6. All benefits payable under the Plan other than those payable under paragraph 4, above, to Alternate Payee shall be payable to Participant in such manner and form as Participant may elect in (his/her) sole and undivided discretion, subject only to Plan requirements.

7. Alternate Payee is ORDERED to report any retirement payments received on any applicable income tax return, and to promptly notify the Plan of any changes in Alternate Payee's mailing address. The Plan is authorized to issue a Form 1099R on any direct payment made to Alternate Payee.

8. Participant is designated a constructive trustee for receiving any retirement benefits under the Plan that are due to Alternate Payee but paid to Participant. Participant is ORDERED to pay the benefit defined in this paragraph directly to Alternate Payee within three days after receipt by Participant. All payments made directly to Alternate Payee by the Plan shall be a credit against this order.

9. The Court retains jurisdiction to amend this order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:  
(SIGNATURES OF PARTIES AND COUNSEL, AS APPROPRIATE)

# **EXHIBIT #2 SIMPLIFIED PRE-APPROVED QUALIFIED DOMESTIC RELATIONS ORDER**

NOTE: You may access this form through the TMRS Web Site [www.TMRS.org](http://www.TMRS.org). To receive this form as an e-mail attachment (in Word 2000) that can be downloaded, send your request to TMRS at [Divorce@TMRS.org](mailto:Divorce@TMRS.org), identifying the form you want forwarded.

## **ALL BOXED FIELDS REQUIRE COMPLETION**

PLEASE NOTE: A domestic relations order in substantially the same form as the following model 'Qualified Domestic Relations Order' is pre-approved under the rules of the System as a qualified order if appropriately completed. The use of this model order is NOT mandatory; however, an order in other than the pre-approved form must be reviewed by the System's Legal department for a determination as to its qualification.

### **Cause Number, Style and Caption**

#### QUALIFIED DOMESTIC RELATIONS ORDER *Texas Municipal Retirement System*

This Order is intended to meet the requirements for a "qualified domestic relations order" relating to the TEXAS MUNICIPAL RETIREMENT SYSTEM, hereinafter called the "Plan". This Order is an integral part of the Decree of Divorce signed on **DATE DIVORCE WAS GRANTED**. In compliance with those requirements the following is specified:

1. This qualified domestic relations order assigns a portion of the benefits payable under the Plan to **NAME OF ALTERNATE PAYEE** in recognition of (HIS/HER) marital rights in **NAME OF PARTICIPANT**'s benefits payable under the Plan.

2. Participant in the Plan is **NAME OF PARTICIPANT**, whose last known mailing address is **PARTICIPANT'S ADDRESS**, whose birth date is **BIRTH DATE**, and whose Social Security Number is **NUMBER**.

3. Alternate Payee is **NAME OF ALTERNATE PAYEE**, whose last known mailing address is **ALTERNATE PAYEE'S ADDRESS**, whose birth date is **BIRTH DATE**, and whose Social Security Number is **NUMBER**. Participant and Alternate Payee became married on **DATE OF MARRIAGE**.

4. A portion of any benefit payable with respect to Participant which Participant, or Participant's designated beneficiary, surviving spouse, or estate may become entitled to receive from the Plan, by way of a return of accumulated contributions or by way of any annuity that may become payable as a result of Participant's participation in the Plan is hereby awarded to Alternate Payee, such portion to be determined by multiplying **INSERT FRACTION** by the Community Property Ratio based on (*select and complete **one** of the following*):

\_\_\_\_\_ accumulated contributions between the following dates:  
\_\_\_\_\_ and \_\_\_\_\_.

\_\_\_\_\_ total creditable service between the following dates:  
\_\_\_\_\_ and \_\_\_\_\_.

5. The provisions of 34 Texas Administrative Code, §129.13 and §129.14 are incorporated herein by reference.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

TEXAS ADMINISTRATIVE CODE  
TITLE 34. PUBLIC FINANCE  
Part V. Texas Municipal Retirement System  
Chapter 129. Domestic Relations Orders

The following §129.13 and §129.14 were adopted to be effective January 10, 1996.

**§129.13. Form of Qualified Domestic Relations Order**

(a) The following form has been pre-approved by the retirement system as meeting the requirements of this title for a qualified order. A qualified domestic relations order in substantially the following form incorporates by reference the definitions set forth in this section and the provisions set forth in §129.14 of this title (relating to Provisions Incorporated by Reference).

(b) It is the responsibility of the parties to insert the correct information in the pre-approved form at those places marked by parentheses enclosing capital letters, and to provide the system with a certified copy of the order after it has been entered.

(c) The term "community property ratio" as used in the pre-approved form shall mean the ratio that contributions and interest deposited to Participant's individual account with the retirement system between the dates shown bears to Participant's total contributions and interest at time of retirement or withdrawal of accumulated contributions if "accumulated contributions" is shown in the order to be the basis for division.

(d) The term "community property ratio" as used in the pre-approved form shall mean the ratio that Participant's credited service between the dates shown bears to Participant's total credited service at time of retirement or withdrawal of accumulated contributions if "total credited service" is shown in the order to be the basis for division.

(e) The order shall not be considered qualified unless it clearly reflects which of the ratios described above is intended to be used in computing the division of benefits.

(f) The fraction inserted in paragraph 4 of the pre-approved form customarily would be one-half; however, nothing in this section shall preclude the parties inserting any fraction that is intended to control the division of the benefit.

(g) The dates inserted in paragraph 4 of the pre-approved form customarily would be the dates the marriage began and ended; however, nothing in this section shall preclude the parties inserting any dates that are intended to control the division of the benefit.

**§129.14. Provisions Incorporated by Reference**

An order on the form set forth in §129.13 of this title (relating to Form of Qualified Domestic Relations Order) expressly incorporates all of the following by reference:

- (1) The order shall not be interpreted in any way to require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.
- (2) The order shall not be interpreted in any way to require the Plan to provide increased benefits determined on the basis of actuarial value.
- (3) The order shall not be interpreted in any way to require the Plan to pay any benefits to an/any Alternate Payee named in the order which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.
- (4) The order shall not be interpreted in any way to require the payment of benefits to Alternate Payee before the retirement of Participant, the distribution of a withdrawal of contributions to Participant as authorized by the statutes governing the Plan, or other distribution to Participant required by law.
- (5) If the Plan provides for a reduced benefit upon "early retirement", the order shall be interpreted to require that, in the event of Participant's retirement before normal retirement age, the benefits payable to Alternate Payee shall be reduced in a proportionate amount.
- (6) The order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of Participant's death, or to require the selection of a particular benefit payment plan or option.
- (7) In the event that, after the date of the order, the amount of any benefit otherwise payable to Participant is increased as a result of amendments to the law governing the Plan, Alternate Payee shall receive a proportionate part of such increase unless such an order would disqualify the order under the rules the Plan has adopted with regard to qualified domestic relations orders.
- (8) In the event that, after the date of the order, the amount of any benefit otherwise payable to Participant is reduced by law, the portion of benefits payable to Alternate Payee shall be reduced in a proportionate amount.
- (9) If, as a result of Participant's death after the date of the order, a payment is made by the Plan to Participant's estate, surviving spouse, or designated beneficiaries, which payment does not relate in any way to Participant's length of employment or accumulated contributions with the Plan, but rather is purely a death benefit payable as a result of employment or retired status at the time of death, no portion of such payment is community property, and Alternate Payee shall have no interest in such death benefit.
- (10) If the board of trustees of the Plan has by rule provided that, in lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the Plan may pay the alternate payee an amount that is the actuarial equivalent of (a) an annuity payable in equal monthly installments for the life of the alternate payee, or (b) a lump sum, then and in that event the Plan is authorized to make such a payment under the order.
- (11) All payments to Alternate Payee under the order shall terminate upon Alternate Payee's death or at such earlier date as may be required as a result of the retirement option selected by Participant.
- (12) All benefits payable under the Plan, other than those payable under paragraph 4 of the order to Alternate Payee, shall be payable to Participant in such manner and form as Participant may elect in his/her sole and undivided discretion, subject only to Plan requirements.
- (13) Alternate Payee is ORDERED to report any retirement payments received on any applicable income tax return, and to promptly notify the Plan of any changes in Alternate Payee's mailing address. The Plan is authorized to issue a Form 1099R on any direct payment made to Alternate Payee.
- (14) Participant is designated a constructive trustee for receiving any retirement benefits under the Plan that are due to Alternate Payee but paid to Participant. Participant is ORDERED to pay the benefit defined in this paragraph directly to Alternate Payee within three days after receipt by Participant. All payments made directly to Alternate Payee by the Plan shall be a credit against this order.
- (15) The Court retains jurisdiction to amend the order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated.

## EXHIBIT #3 SPECIFIC DOLLAR AMOUNT AWARD (Replacement Paragraph)

### ALL BOXED FIELDS REQUIRE COMPLETION

In order to provide the alternate payee a specific dollar amount, use the paragraph below instead of paragraph 4 of the Exhibit 1 format (Standard Division of Benefit Form). This format will only provide the dollar amount inserted to the alternate payee. This payment will not be made until such time as the member has terminated covered employment and makes application for the benefit.

*As part of a just and right division of the estate of the parties, Alternate Payee is hereby awarded a portion of any benefits payable with respect to Participant which Participant, or Participant's designated beneficiary, surviving spouse, or estate may become entitled to receive from the Plan, by way of a return of accumulated contributions or by way of any annuity that may become payable as a result of Participant's participation in the Plan, such portion to be determined by multiplying a fraction, the numerator of which is \$  of the accumulated contributions deposited to the Participant's individual account with the Plan, earned by Participant during this marriage,  and the denominator of which is the total of all contributions heretofore or hereafter made by Participant to Participant's individual account with the Plan (together with all accumulated interest thereon), by the benefit that would otherwise be payable (excluding any portion based on municipality contributions).*

Should the parties choose to include city matching funds to the alternate payee's award, the wording "(excluding any portion based on municipality contributions)" must be removed.

Should the parties choose to provide a proportionate share of post-divorce interest awarded by TMRS to the alternate payee's award, the words "**together with interest thereon as allowed by the plan after (the date the divorce was granted), to the date of such payment**" should be inserted immediately prior to the words "and the denominator of which is", marked by the  symbol, in the language of the above paragraph.

## **EXHIBIT #4 MODIFIED QDRO FORMAT FOR CERTAIN RETIREES**

NOTE: You may review this form through the TMRS Web Site [www.TMRS.com](http://www.TMRS.com). To receive this form as an e-mail attachment (in Word 2000) that can be downloaded, send your request to TMRS at [Divorce@TMRS.org](mailto:Divorce@TMRS.org), identifying the format you want forwarded. This is NOT a fill in, printable form.

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### **ALL BOXED FIELDS REQUIRE COMPLETION**

**This format may be used only where Participant has already retired under a Retiree Life –Survivor Option (50%, 66 2/3rds %,75%, or 100%) retirement, the Alternate Payee is the designated beneficiary under that Plan and the parties desire to convert the current benefit into two separate lifetime annuities payable to the retiree and alternate payee.)**

### **CAUSE NUMBER, STYLE AND CAPTION**

### **QUALIFIED DOMESTIC RELATIONS ORDER**

This Order is intended to meet the requirements for a "qualified domestic relations order" relating to the TEXAS MUNICIPAL RETIREMENT SYSTEM, hereinafter called the "Plan." This Order is an integral part of the Decree of Divorce granted on **DATE DIVORCE WAS GRANTED**. In compliance with those requirements, the following is specified:

1. This qualified domestic relations order assigns a portion of the annuity payable under the Plan to **NAME OF ALTERNATE PAYEE** in recognition of (his/her) marital rights in **NAME OF PARTICIPANT'S** annuity payable under the Plan.
2. Participant in the Plan is **NAME OF PARTICIPANT**, whose last known mailing address is **PARTICIPANT'S ADDRESS** whose birth date is **BIRTH DATE**, and whose Social Security Number is **NUMBER**.
3. Alternate Payee is **NAME OF ALTERNATE PAYEE**, whose last known mailing address is **ALTERNATE PAYEE'S ADDRESS**, whose birth date is **BIRTH DATE**, and whose Social Security Number is **NUMBER**. Alternate Payee is the same person designated as beneficiary under Participant's TMRS optional retirement benefit selection.
4. As part of a just and right division of the estate of the parties, Alternate Payee is hereby awarded a portion of the annuity which Participant is to receive from the Plan, such portion to be an annuity that is the actuarial equivalent of percent ()% of the present benefit payable to Participant. The portion hereby awarded to Alternate Payee: (a) is payable throughout the remaining life of the Alternate Payee, and no payments from Alternate Payee's portion will be made after Alternate Payee's death; and (b) the percentage awarded to the alternate payee can not exceed 50% of Participant's present benefit if Participant retired under the 50% retiree life/survivor option, or more than 66 2/3rds% of Participant's present benefit if Participant retired under the 66 2/3rds% retiree life/survivor option, or more than 75% of Participant's present benefit if Participant retired under the 75% retiree life/survivor option, or more than 100% of Participant's present benefit if Participant retired under the 100% retiree life/survivor option.

5. The award to Alternate Payee under paragraph 4 of this order is expressly made subject to the following provisions:

- (a) This order shall not be interpreted in any way to require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.
- (b) This order shall not be interpreted in any way to require the Plan to provide increased benefits determined on the basis of actuarial value.
- (c) This order shall not be interpreted in any way to require the Plan to pay any benefits to (an/any) Alternate Payee named in this order which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.
- (d) This order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of the Participant's death.
- (e) In the event that, after the date the divorce was granted, the amount of any benefit otherwise payable to Participant is increased as a result of amendments to the law governing the Plan, Alternate Payee shall receive a proportionate part of such increase unless such an order would disqualify this order under the rules the Plan has adopted with regard to qualified domestic relations orders.
- (f) In the event that, after the date the divorce was granted, the amount of any benefit otherwise payable to Participant is reduced by law, the portion of benefits payable to Alternate Payee shall be reduced in a proportionate amount.
- (g) If, as a result of Participant's death after the date the divorce was granted, a payment is made by the Plan to Participant's estate, surviving spouse, or designated beneficiaries, which payment does not relate in any way to Participant's length of employment or accumulated contributions with the Plan, but rather is purely a death benefit payable as a result of employment or retired status at the time of death, no portion of such payment is community property, and Alternate Payee shall have no interest in such death benefit.
- (h) If the Board of Trustees of the Plan has by rule provided that in lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the Plan may pay the alternate payee an amount that is the actuarial equivalent of (1) an annuity payable in equal monthly installments over the life of the alternate payee or (2) a lump-sum, the Plan is authorized to make such a payment under this order.

6. The remaining portion of Participant's retirement benefit under the Plan shall be paid to Participant in the form of an annuity payable throughout Participant's remaining life; and no payments shall be made under that annuity after Participant's death.

7. Alternate Payee is ORDERED to report any retirement payments received on any applicable income tax return, and to promptly notify the Plan of any changes in Alternate Payee's mailing address. The Plan is authorized to issue a Form 1099R on any direct payment made to Alternate Payee.

8. Participant is designated a constructive trustee for receiving any retirement benefits under the Plan that are due to Alternate Payee but paid to Participant. Participant is ORDERED to pay the benefit defined in this paragraph directly to Alternate Payee within three days after receipt by Participant. All payments made directly to Alternate Payee by the Plan shall be a credit against this order.

9. The Court retains jurisdiction to amend this order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated.

SIGNED this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

JUDGE PRESIDING

# **EXHIBIT #5 AGREEMENT FOR BUY-OUT OF ALTERNATE PAYEE'S INTEREST**

NOTE: You may review this form through the TMRS Web Site [www.TMRS.com](http://www.TMRS.com). To receive this form as an e-mail attachment (in Word 2000) that can be downloaded, send your request to TMRS at [Divorce@TMRS.org](mailto:Divorce@TMRS.org), identifying the format you want forwarded. This is NOT a fill in, printable form.

**ALL BOXED FIELDS REQUIRE COMPLETION**

## **AGREEMENT**

**HUSBAND'S NAME**, Social Security number **NUMBER**, and **WIFE'S NAME**, Social Security number **NUMBER**, were formerly husband and wife. On **DATE DIVORCE WAS GRANTED**, the parties were divorced in cause number **NUMBER**, styled In the Matter of the Marriage of **PETITIONER'S NAME** and **RESPONDENT'S NAME**, in the **COURT** Judicial District Court of **COUNTY**, Texas.

**PARTICIPANT'S NAME** is a member of the Texas Municipal Retirement System (the "System"), and the decree of divorce in the above styled and numbered cause divided his/her benefits under that System as more particularly set forth on pages  through  of said decree.

In lieu of the benefits that (he/she) was to receive under the above described provisions of the decree, **ALTERNATE PAYEE'S NAME** ("Alternate Payee") has been offered and has agreed to accept the sum of \$  paid to (him/her) in cash by **PARTICIPANT'S NAME** ("Participant") and to waive and relinquish all other benefits that (he/she) might be entitled to receive from the System under the decree.

Recognizing that the System will rely upon this agreement in paying benefits resulting from Participant's membership in the System, Alternate Payee has agreed and does agree as follows:

(1) That Alternate Payee has received from Participant the sum of \$ , which sum is good and sufficient consideration for this agreement.

(2) That in consideration of such payment, Alternate Payee hereby waives and relinquishes any and all right that (he/she) might have, under the decree or otherwise, to any benefit that may be or hereafter become payable as a result of Participant's membership in the System, and that such benefits will be paid in such manner as Participant may direct, consistent with the Act governing the System.

(Signature)

**ALTERNATE PAYEE'S PRINTED NAME**

STATE OF TEXAS COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me by **ALTERNATE PAYEE'S NAME** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(seal)

\_\_\_\_\_  
Notary Public, State of Texas