

ARTICLE 82-08
QUALIFIED DOMESTIC RELATIONS ORDERS

Chapter
82-08-01 Qualified Domestic Relations Orders

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QUALIFIED DOMESTIC RELATIONS ORDERS

Section
82-08-01-01 Payment in Accordance With Qualified Domestic Relations Orders [Repealed]
82-08-01-02 Qualified Domestic Relations Order Procedures
82-08-01-03 Format for a Qualified Domestic Relations Order

82-08-01-01. Payment in accordance with qualified domestic relations orders.

Repealed effective May 1, 2000.

82-08-01-02. Qualified domestic relations order procedures.

Upon receipt of a domestic relations order, the plan shall:

1. Send an initial notice to each person named therein, together with an explanation of the procedures followed by the fund.
2. If the teacher or alternate payee receives any distribution that should not have been paid per the order, the teacher or alternate payee is designated a constructive trustee for the amount received and shall immediately notify the retirement and investment office and comply with written instructions as to the distribution of the amount received.
3. Review the domestic relations order to determine if it follows the model language format in section 82-08-01-03.
4. Forward the domestic relations order to the fund's legal counsel and actuarial consultant for their review and recommendation to the board.
5. The board shall review the domestic relations order and make the final determination of a qualified order.
6. The domestic relations order must be considered a qualified order when the plan notifies the parties the order is approved by the board and a certified copy of the court order has been submitted to the fund office.
7. If the order is determined to be qualified within eighteen months of receipt:
 - a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
 - b. Comply with the terms of the order.
 - c. Distribute the amounts as outlined in the order.
8. In the event that the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order:

- a. Send written notification of such to all parties.
- b. Apply the qualified domestic relations order prospectively only if determined after the expiration of the eighteen-month period the order as modified, if applicable, is a qualified domestic relations order.

History: Effective September 1, 1990; amended effective May 1, 1992; April 1, 1994; May 1, 1998; May 1, 2004.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-12.2

82-08-01-03. Format for a qualified domestic relations order.

A qualified domestic relations order must be substantially in the following form:

ACTIVE OR INACTIVE MEMBERS

STATE OF NORTH DAKOTA			IN DISTRICT COURT
COUNTY OF _____		_____	JUDICIAL DISTRICT
_____ ,)		
)		
Plaintiff,)		
)		QUALIFIED DOMESTIC
)		RELATIONS ORDER
-VS-)		
)		Case No. _____
)		
_____ ,)		
Defendant.)		

.....

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

BACKGROUND INFORMATION

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

I. BENEFITS

Benefits under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [_____] % of the member's accrued annuity benefit as of [DATE OF DIVORCE]; (OR)
2. The alternate payee is awarded [\$_____] of the member's accrued annuity benefit as of [DATE OF DIVORCE].

If payments to the alternate payee begin prior to the member's sixty-fifth birthday, such benefits shall be reduced actuarially, except that if the member retires or dies prior to the member's sixty-fifth birthday, the alternate payee shall receive a commensurate share of any early retirement subsidy, beginning as of the date of the member's retirement or death. Such increase shall be determined actuarially.

II. TIME OF BENEFIT RECEIPT

Benefit payments to the alternate payee will begin: (Choose one)

1. When the participating member qualifies for normal retirement benefits under the plan. (OR)
2. When the participating member qualifies for early retirement. (OR)
3. When the alternate payee reaches [DATE OR EVENT]. The date or event must be after the date participating member would qualify for early retirement. (OR)
4. When the participating member retires and begins receiving retirement benefits from the plan.

Benefits to the alternate payee are payable even if the member has not separated from covered employment. In all cases, the payment will not begin later than when the participating member retires.

If the participating member begins receiving disability retirement benefits, the alternate payee will also begin receiving the benefits awarded in section I of this Order. The alternate payee's benefit will begin when the member's benefits begin and will be actuarially reduced to reflect the earlier disability payment start date.

III. DURATION OF PAYMENTS TO ALTERNATE PAYEE OVER THE LIFE OF THE ALTERNATE PAYEE (Choose one)

1. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and shall cease upon the alternate payee's death and will not revert back to the member. The payment shall be calculated on the basis of a single life annuity and will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.

(OR)

2. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and calculated on the basis of:

(Choose one)

- (a) a 20-year term certain and life option; (OR)
- (b) a 10-year term certain and life option.

The payment will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.

Upon the alternate payee's death, payments will not revert back to the member, but will continue to the alternate payee's designated beneficiary under the term certain and life option identified above.

IV. MEMBER WITHDRAWS FROM RETIREMENT SYSTEM (Choose one)

- A. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [____%] of the member's account balance as of [DATE OF DIVORCE] accumulated with interest as required by the Plan from the divorce date until the refund is paid; (OR)
- B. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [\$____] from the member's account balance accumulated with interest as required by the Plan from [DATE OF DIVORCE] until the refund is paid. [Note: The dollar amount in this option cannot exceed the member's account balance.]

V. LIMITATIONS OF THIS ORDER (Order must reflect all provisions of this section.)

- A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.
- B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:
 - 1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.
 - 2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.
 - 3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.
 - 4. To provide to the alternate payee any increased benefit due to the participating member under the disability provisions of this plan.
- C. If the alternate payee dies prior to beginning receipt of benefits under this Order, the entire amount that may be due to the alternate payee reverts to the participating member.
- D. If the participating member dies prior to retirement and before the alternate payee begins benefits, the alternate payee will receive [____%] share of the member's survivor benefits based on service as of [DATE OF DIVORCE]. The alternate payee and any other beneficiaries will each select their own form of survivor benefit.

If the alternate payee is already in payment, the benefits will continue and the value of the benefits to the alternate payee will reduce any survivor payment to other beneficiaries.

- E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.
- F. If participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.

- G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with Internal Revenue Code and any applicable regulations.
- H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.
- I. Alternate payee shall furnish a certified copy of this Order to RIO.
- J. 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. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this _____ day of _____, 20____.

(Judge Presiding)

OR
RETIRED MEMBERS

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

BACKGROUND INFORMATION

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

I. BENEFITS

Benefits to the participating member under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [_____] of the monthly retirement benefit as of [DATE OF DIVORCE]; (OR)
2. The alternate payee is awarded [\$_____] of the monthly retirement benefit as of [DATE OF DIVORCE].

II. TIME OF BENEFIT RECEIPT.

The benefits are payable to the alternate payee in the month following receipt of this signed Order by the plan or plan administrator as the participating member is currently retired and receiving benefits under the Plan.

III. DURATION OF BENEFITS TO ALTERNATE PAYEE OVER THE LIFE OF THE PARTICIPATING MEMBER

The payments shall be made to the alternate payee on a monthly basis over the life of the participating member and, if applicable, a continuing monthly annuity will be payable to the surviving alternate payee after the member's death. The amount of the payments to the alternate payee will be calculated on the basis of: (Choose the annuity option in existence at the time of the divorce or legal separation.)

- (1) Single life annuity option (OR)
- (2) 100% joint and survivor option (OR)
- (3) 50% joint and survivor option (OR)
- (4) 20-year term certain and life option (OR)
- (5) 10-year term certain and life option.

If the alternate payee is the designated beneficiary, the alternate payee must remain as the beneficiary under the joint and survivor options.

IV. LIMITATIONS OF THIS ORDER (Order must reflect all provisions of this section.)

- A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.
- B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:
 1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.
 2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.
 3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.
- C. If the provisions of this Order are applied to disability benefits, the benefits will cease to all parties upon the member's recovery. The parties will then need to submit a new order to allow for the equitable distribution of any future benefits payable from the plan.
- D. Upon the alternate payee's death, if the member is still surviving, the entire amount that may be due to the alternate payee reverts to the participating member. Upon the member's death, if the alternate payee is still surviving, the entire benefit will cease under a single life option.

Under a joint and survivor option, the alternate payee will receive the one hundred percent or fifty percent survivor benefit for the remainder of the alternate payee's life, since the alternate payee is the joint annuitant. If a term certain option was selected, and the member passes away before the term certain period has expired while the alternate payee is still living, then the benefit to the alternate payee will continue and the member's portion will continue to the member's designated beneficiary to complete the term certain period. If in the last case, the alternate payee dies before all payments due under the certain period have been made, the alternate payee's share will continue to the alternate payee's designated beneficiary.

- E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.
- F. If the participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.
- G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with the Internal Revenue Code and any applicable regulations.
- H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.
- I. Alternate payee shall furnish a certified copy of this Order to RIO.
- J. 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. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this _____ day of _____, 20 ____.

(Judge Presiding)

History: Effective April 1, 1994; amended effective January 1, 1998; May 1, 1998; May 1, 2002; May 1, 2004.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-12.2