

**EMPLOYEES' RETIREMENT SYSTEM
OF THE
CITY OF BALTIMORE**

DOMESTIC RELATIONS ORDER GUIDELINES

The following Guidelines apply to the design and administration of domestic relations orders served upon the Employees' Retirement System of the City of Baltimore (the "Retirement System"). The Retirement System is a governmental pension plan qualified under Internal Revenue Code Section 401(a).

These Guidelines provide general guidance for the administration of court orders which are served upon the Retirement System for the purpose of assigning a member's benefit thereunder in connection with a divorce or for the provision of child support. These Guidelines will be applied in a manner consistent with the definition of "qualified domestic relations order" in Section 414(p) of the Internal Revenue Code, but only to the extent applicable to qualified governmental plans under Internal Revenue Code Section 414(p)(11), and consistent with the provisions of Article 22 of the Baltimore City Code ("Article 22").

It must be recognized that no set of Guidelines can anticipate all the possible situations and questions that may arise in administering domestic relations orders. No inference is to be drawn from any subject not addressed in these Guidelines. The Board of Trustees of the Employees' Retirement System of the City of Baltimore ("Board") reserves the right to modify these Guidelines at any time including retroactively if appropriate in their judgment.

Whenever used herein:

(1) "member" means a person who is a current active participant in the Retirement System, a retiree who is receiving benefits from the Retirement

System, or any former member who is or may be entitled to future benefits from the Retirement System;

(2) “benefit” means all benefits provided by the Retirement System under Article 22, whether in the nature of retirement, disability or other benefits;

(3) “assign” means any assignment, alienation or other transfer of a member’s benefit;

(4) “order” means any judgment, decree, or order issued by a court of competent jurisdiction under a state domestic relations law;

(5) “alternate payee” means those persons to whom a court is empowered under applicable law to assign a pension interest, and

(6) “method of distribution” means the actual method of benefit payment in effect or to be in effect for a member in accordance with Article 22.

1. Only certified copies of orders issued under and in accordance with Section 8-205 of the Maryland Code, Family Law Article, or under and in accordance with similar provisions of the laws of another state or territory of the United States, will be recognized by the Retirement System.

These Guidelines do not apply to liens placed on benefits under Sections 10-120 *et seq.* of the Maryland Code, Family Law Article, which address earnings withholdings for child and spousal support.

2. Unless otherwise provided herein, a member’s benefit will only be assigned to an alternate payee to the extent expressly provided for in an order. Any refund of accumulated contributions to the member will only be paid to an alternate payee to the extent expressly provided for in an order. That which is not expressly assigned by an order remains the benefit of the member. Any ambiguities or omissions in an order will be resolved in favor of the member.

3. No order will be honored to the extent it requires provision of a benefit or a method of distribution which is not provided under a provision of Article 22 which applies to the member.

4. Any assignment will only be applied to the actual benefit amount and method of distribution elected by or otherwise in effect for a member. An order can direct the method of distribution which a member must elect for his or her pension benefit, but only if the member has not yet elected a method of distribution or is within the 30 day time period for changing his or her election of a method of distribution.

5. Unless an order expressly provides otherwise, the portion of the member's benefit which is assigned shall be based on the amount of the member's benefit which has accrued as of the date of termination of employment. The "Bangs" rule (*Bangs v. Bangs*, 59 Md. App. 350 (1984)), which awards to the ex-spouse a portion of a member's eventual benefit at termination of employment, will be followed unless the order expressly provides otherwise.

6. In cases involving payment of benefits following the death of a member, an order cannot override a beneficiary mandated by an applicable provision of Article 22. For example, under Sections 9(m)(1) and 9.2(k)(1) of Article 22, a member who elects the maximum benefit has an automatic death benefit for his spouse or certain children. An order therefore cannot provide that such a death benefit will be paid to an ex-spouse or a child who does not meet the requirements of that section. An order further cannot provide that an ex-spouse shall be treated as a surviving spouse.

7. If an order requires a member to designate a specified person as the beneficiary of the member's death benefit, and if Article 22 allows the member to

designate such a beneficiary to receive benefit payments upon the member's death, then the Retirement System will recognize the beneficiary designation directed by the order and made by the member. The Retirement System is not responsible to the member's estate or the designated beneficiary if the member's beneficiary designation on file does not comply with a court ordered beneficiary designation.

8. If an order requires a member to elect a certain method of distribution with respect to his entire benefit, the Retirement System will not honor an optional method of distribution election selected by the member that does not comply with a court ordered method of distribution. The Retirement System will not recognize an order that permits or requires payment of the assigned portion of a member's benefit in one method of distribution and payment of the member's portion in some other method of distribution.

9. Except to the extent the alternate payee is the validly designated beneficiary for a death benefit provided by Article 22; is the designated beneficiary under the method of distribution in effect for a member; or is assigned by an order a portion of a benefit payable under Article 22 after the death of the member, no payments will be made to an alternate payee following the death of a member before or after the member's retirement.

10. The Retirement System will not recognize any provision of an order which attempts to partition a member's interest under Article 22 into a separate interest for an alternate payee. An order may transfer to an alternate payee the ownership of a portion of a member or beneficiary's interest, but the order cannot create a separate ownership interest for the alternate payee. For example, an order cannot provide that a percentage of a member's benefit will be converted to

and paid as an actuarially equivalent single life annuity for the life of the alternate payee.

11. An order cannot give an alternate payee the power to designate a beneficiary to receive any payments following the alternate payee's death. If an alternate payee predeceases the member or beneficiary, a portion of whose benefit was assigned to the alternate payee, then payments that were being paid to the alternate payee will revert to the member or beneficiary, as applicable. However, if the order validly provides for a contingent alternate payee(s), then payment will be made in accordance with the order. If the order validly provides for contingent alternate payees, then upon the death of one alternate payee, that alternate payee's share will revert to the member or beneficiary, as applicable, unless the order provides that the deceased payee's share will be paid to one or more of the remaining alternate payees. Note: In the case of contingent alternate payees, the Retirement System must confirm that each named payee is a person to whom the court has the power to transfer property under the applicable domestic relations law. Under Maryland law, only ex-spouses and dependent children can be alternate payees.

12. Unless the order expressly states otherwise, any post-retirement benefit increases, including any ad hoc increases, will be paid to an alternate payee on a pro rata basis.

Example: Assume a member has a monthly benefit of \$1,000 which is divided equally between the member and the alternate payee under an order. A 1.5% post-retirement increase would thus result in a \$7.50 monthly increase to the member (1.5% of \$500), and a \$7.50 increase to the alternate payee (1.5% of \$500).

13. Payments to an alternate payee under an order cannot be made until (a) the member actually begins receiving benefit payments or (b) the member has terminated employment and satisfied the requirements for normal retirement under Article 22. Payments cannot begin if the member is eligible to retire but continues working. Therefore, any provision of an order which calls for payments to an alternate payee to begin upon a member's "earliest retirement age" will be disregarded.

Notwithstanding the preceding paragraph, if the order specifies that payments to the alternate payee shall be made "if, as and when" they are made to the member, then payments to the alternate payee may not begin until payments to the member actually are paid, no matter what the reason for the delay. If the member returns to work with the City of Baltimore and payments are suspended, then payments to the alternate payee will be suspended until the member re-retires and payments resume.

14. If a member who is subject to an order which applies to the Retirement System transfers to another retirement system, including one maintained by the City of Baltimore, the Retirement System shall be responsible for paying benefits under the order only if and to the extent the Retirement System continues to provide a benefit to the member after the transfer. The Retirement System has no obligation to notify an alternate payee about any transfer of a member to another system. It is the alternate payee's responsibility to obtain a new order which applies to the transferee system.

If a member who transfers to the Retirement System from another retirement system, including one maintained by the City of Baltimore, was subject to a domestic relations order under the former system, the Retirement System is not bound by that order. In that event, the alternate payee must obtain a new order which applies to the Retirement System in accordance with these Guidelines.

15. A member or alternate payee should submit a proposed order to the Retirement System for review before it is finalized. Retirement System personnel will spend a reasonable amount of time working with the submitter to resolve any ambiguities or omissions in the proposed order. Retirement System personnel may advise the submitter about whether specific provisions of an order are acceptable, but Retirement System personnel cannot advise the submitter (or any other person) as to the substantive design of a transfer of benefits. Unless a party to the order has waived his or her right to confidentiality, the Retirement System shall comply with any restrictions on disclosure of information set forth in Sections 10-611 *et seq.* of the Maryland Code, State Government Article, or any other applicable provision of law.

16. Upon receipt of a final order, a letter will be sent to both parties to the order acknowledging receipt of the order and stating whether the Retirement System will make payments in accordance with the order.

17. It is the responsibility of the alternate payee to keep the Retirement System informed of the alternate payee's current address.