



PSERS

Divorce Guidelines

PSERS Divorce Guidelines

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NOTE: The information contained in this document is not intended as legal advice and is not to be used in place of legal counsel. The information is intended to provide general information to PSERS' Members regarding their retirement benefits and divorce actions. PSERS strongly recommends that Members involved in a divorce contact a family law attorney.

Public School Employees' Retirement System - Who are we?

The **Public School Employees' Retirement System (PSERS)** is an agency of the Commonwealth of Pennsylvania that manages a governmental pension plan for Pennsylvania public school employees. **PSERS** is defined under the **Internal Revenue Code (IRC)** as a **401(a), Defined Benefit Plan**.

Because of PSERS' status as a governmental pension plan, **PSERS** is exempt from pension plan requirements outlined in the **Employee Retirement Income Security Act (ERISA)**, the **Retirement Equity Act of 1984**, and the **IRC** regarding a **Qualified Domestic Relations Order (QDRO)** and **Spousal Consent**. This means that in the absence of a divorce action, a **Member** may take any action with regard to his or her retirement benefit without notice or consent from anyone, including the **Member's** spouse.

How is a PSERS retirement benefit affected by a divorce?

As the retirement benefit may be one of the largest financial assets a **Member** may have, the division of the benefit may become an important issue in a divorce agreement.

The retirement benefits payable to a **Member** of **PSERS** are sometimes classified as **Marital Property** that can be divided in a divorce. The division of **Marital Property** in a divorce is known as **Equitable Distribution**.

Any attachment of a **Member's** retirement benefit for the purpose of **Equitable Distribution** must be accomplished through the terms of an **Approved Domestic Relations Order (ADRO)** as set forth in the **Public School Employees' Retirement Code (Retirement Code)**, 24 Pa.C.S. § 8101 et seq.

*Note: Although a **Property Settlement Agreement (PSA)** may be incorporated into the **Divorce Decree** and may form part of the language used in the **ADRO**, the **PSA**, in itself, is not sufficient to constitute an **ADRO**.*

What portion of the PSERS' account is Marital Property?

Pennsylvania law identifies the **Marital Property Component** in terms of a **Coverture Fraction**, which is defined by law as follows: The denominator is the number of months the **Member** worked to earn the total benefit and the numerator is the number of such months during which the parties were married and not finally separated. 23 Pa.C.S. §3501(c).

*Note: The **Divorce Code** defines the **Coverture Fraction** in terms of months. The **Retirement Code**, however, defines the benefit based on eligibility points earned over a period of time. Accordingly, **PSERS** calculates the benefit, for purposes of the **Coverture Fraction**, based on the percentage of service credit earned during the months of marriage, divided by the service credit earned during the entire period of employment. See example in the definition of **Coverture Fraction**.*

PSERS, however, will allow the **ADRO** to define the **Marital Property Component** using a different numerator and denominator or a pre-defined amount. See the section entitled, “*Do you have any examples of an ADRO?*” for further information.

The benefit to which the **Coverture Fraction** is applied will include any lump sum withdrawals and/or scheduled or ad hoc increases, but will exclude, unless otherwise stated in the **ADRO**, the disability supplement of any disability annuity paid to the **Member** by **PSERS** and any enhancements to the **Member’s** retirement benefit arising from post-separation monetary contributions made by the **Member**. 23 Pa.C.S. § 3501(a.1).

If the **Member** is a **Multiple Service Member**, the **Member’s** credited state service with the **State Employees’ Retirement System (SERS)** will be included in the value of the **Member’s** account and the calculation of the **Coverture Fraction** unless otherwise stated in the **Domestic Relations Order (“DRO”)**.

PSERS’ role in interpreting **DROs** is to determine compliance with the **Retirement Code** and not whether the terms are beneficial to either party or are in compliance with other agreements (e.g. **PSA**) established between the parties.

*Note: A separate interest approach is not authorized under the **Retirement Code**. The **Retirement Code** provides, in pertinent part, that **PSERS** shall approve a **DRO** only if: (i) the benefit provided is of the same type or form already provided by the **Retirement Code**; (ii) the **DRO** specifies the retirement option to be elected by the **Member** upon retirement (or states the **Member** can elect any option provided under the **Retirement Code**); and (iii) the **DRO** does not grant an **Alternate Payee** any of the rights, options or privileges of a **Member** under the **Retirement Code**. 24 Pa.C.S § 8533.1(a).*

How is the value of a Member’s account obtained?

PSERS can provide the valuation of the **Marital Property Component** of the **Member’s** account. The valuation is different from a retirement estimate. The value of the **Marital Property Component** is based on the value of the **Member’s** account as of the date the valuation is calculated, not as of the estimated date of retirement.

*Note: Any valuation of a **Member’s** account is an estimate and does not guarantee that the benefit stated on the valuation will actually be the benefit at the time of retirement.*

To request a valuation of the **Member’s** account, **PSERS** must receive a written request. The written request must include the date of marriage and the date of legal separation. The valuation should be requested at least four weeks in advance of when the information is needed. If the request cannot be submitted at least four weeks in advance, please provide the date the information is needed and **PSERS** will try to accommodate the request, if possible.

*Note: If the **Member** is a **Multiple Service Member**, the valuation of the **Member’s** account with **SERS** will not be included. A separate valuation should be obtained from **SERS**.*

If someone other than the **Member** is requesting a valuation, an authorization for release of information signed by the **Member** must be submitted with the request.

How is PSERS informed of the results of Equitable Distribution of the Member's account with PSERS?

PSERS requires the submission of a **DRO** for review and approval. The proposed **DRO** should be submitted to **PSERS** for review and approval prior to obtaining the court signature.

To submit the **DRO** for review, mail it to:

Specialized Service Section
PSERS
5 North 5th Street
Harrisburg PA
17101-1905

In the event that there is no **Equitable Distribution** of the **PSERS** account, the former spouse must submit a *Waiver of Pension Benefits* (PSRS-1286) form to **PSERS**. This waiver form is available by calling **PSERS** or by accessing **PSERS'** website, www.psers.state.pa.us.

Are there any rules regarding a DRO?

1. In no case can the **DRO** alter the **PSERS'** benefit structure. The benefit structure is limited to the retirement options established by the General Assembly under the **Retirement Code**. 24 Pa.C.S. §§ 8341-8349. The **DRO** cannot require **PSERS** to pay benefits other than those described in the **Retirement Code**. The total benefits payable to the **Member** and the **Alternate Payee**, therefore, cannot exceed the benefit which would have been payable in the absence of a divorce. Any substantive changes to the benefit structure are outside the jurisdiction of the Courts of Common Pleas. *Millick v. Millick*, 592 A.2d 788 (Pa.Cmwlt. 1991). Additionally, the **DRO** cannot allow the **Alternate Payee** to exercise any of the rights, options or privileges of a **Member**. See the section entitled, "*Do you have any examples of an ADRO?*" for further information on the benefit structure available.
2. The **Alternate Payee** may not receive disbursements (of a monthly annuity or lump sum) before the **Member** terminates service and submits either (1) an *Application for Retirement* (PSRS-8), (2) an *Application for Disability Retirement* (PSRS-49) or (3) an *Application for Refund* (PSRS-59).

*Note: To have a retirement date effective the first day after termination of service or the day a **Vestee** reaches superannuation retirement age, **PSERS** must receive the **Member's** Application for Retirement (PSRS-8) within 90 days of the **Member's** termination date or attainment of superannuation retirement age for **Vestees**. See the sections entitled, "*When are the benefits paid under an ADRO?*" and "*Can a Member retire before the divorce is finalized?*" for further information.*

3. If the **Member** chooses an option other than the Maximum Single Life Annuity (MSLA), the monthly annuity is reduced by the cost of the option. The **DRO** must state whether the **Alternate Payee** is required to share the cost of the retirement option.

*Note: If not mentioned, **PSERS** will not accept the **DRO**. See the section entitled, “Do you have any examples of an **ADRO**?” for more information.*

4. Although the parties can provide for an interim distribution or assignment of **Marital Property** prior to the issuance of a **Divorce Decree**, there is no such thing as an “interim retirement application.” Once a **Member** files an application, the option elected on the **Member**’s portion can be changed only: (1) under the option change regulation or (2) if the **Member** had chosen a joint and survivor annuity and the **Member** later divorces or marries.

*Note: If the **Member** chooses a MSLA or Option 1 on the **Alternate Payee**’s portion under an **Interim Domestic Relations Order (IDRO)**, an amended **DRO** cannot override the **Retirement Code** to allow the **Member** to change this option election. In this case, the amended **DRO** can only divide the existing payments (or **Member** can name the **Alternate Payee** as **Beneficiary** for all or part of the death benefit, if any). To preserve the right to change the option on the **Alternate Payee**’s portion, the **Member** must elect a joint and survivor annuity option prior to the issuance of a **Divorce Decree** (or re-marriage). See the section entitled, “Do you have any examples of an **ADRO**?” for more information on options.*

5. A **DRO** is not required for support orders or orders for enforcement of arrearages under the **Divorce Code**. These orders will be approved separately provided they do not exceed the Pennsylvania or federal law limits on attachment.

6. If a divorce court amends an **ADRO** for any reason, the amended order must be submitted to **PSERS** for approval as an **ADRO**.

7. If the **Member** retires under a disability, the **Member**’s disability supplement is excluded from the calculation of the **Marital Property Component** unless the **DRO** specifically states it is to be included.

*Note: Option elections are limited for disability annuitants, e.g., cannot withdraw **Accumulated Deductions**. Payments made under a disability MSLA provide a death benefit that depletes over the life of the annuity.*

8. An **Alternate Payee** may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan by way of a **Direct Rollover**.

*Note: The IRS requires that **PSERS** withhold 20% federal withholding tax from the taxable portion not rolled over to an eligible retirement plan.*

9. The **DRO** should state whether the **Member** is required to name a specific **Beneficiary** and/or **Survivor Annuitant** for all or part of the benefit.

*Note: If not mentioned, **PSERS** will allow the **Member** to name any **Beneficiary** or **Survivor Annuitant** for the entire benefit.*

How does a DRO become an ADRO?

A **DRO** is not effective unless it is approved by **PSERS**. Upon **PSERS'** acceptance of the proposed **DRO**, signatures of both parties and the court, or, at a minimum, the court, are required.

Once **PSERS** receives the court-signed **ADRO**, a final approval letter will be provided. If either party does not agree with the **PSERS'** interpretation of the **ADRO**, they must contact **PSERS** immediately. If they do not, **PSERS** will administer the **ADRO** as stated in the approval letter.

Do you have any examples of an ADRO?

The following guidelines correspond with the numbered paragraphs on the sample ADRO attached as Appendix A. This is **NOT** an exhaustive list of what should/could appear in the DRO; however, failure to include the below information may result in the DRO being rejected by PSERS.

1. Plan Information – The name of the plan to which the Order applies and a statutory reference to the **Retirement Code**.
2. Member Information – Name, date of birth, social security number, and mailing address.
3. Alternate Payee Information – Name, date of birth, social security number, and mailing address.
4. Address Notification – A statement indicating that it is the responsibility of the **Member** and **Alternate Payee** to maintain current address information on file with **PSERS**.
5. Definition of Retirement Benefits – A statement defining the **Member's** retirement benefit as all monies payable to or on behalf of **Member** by **PSERS**. The **DRO** must state whether the following is included or excluded: lump sum withdrawals, scheduled or ad hoc increases, the disability supplement of any disability annuity paid to **Member** by **PSERS**, and enhancements to the **Member's** retirement benefit arising from post-separation monetary contributions made by **Member**. If the **Member** is a **Multiple Service Member**, then the **Present Value** of the **Member's** credited state service with the SERS will be included unless otherwise stated in the **DRO**.

*Note: Deferred Compensation is not part of the **PSERS** benefit; therefore, if the **DRO** states that Deferred Compensation is to be included, the **DRO** will be rejected by **PSERS**.*
6. Defining the **Alternate Payee's Equitable Distribution** – The paragraph must clearly set forth the **Marital Property Component** of the **Member's** retirement benefit by describing the method by which to calculate, or the pre-defined amount of, the **Alternate Payee's Equitable Distribution** portion of the **Member's** retirement benefit, i.e. **Alternate Payee's** portion. Because the **PSERS** retirement benefit is comprised of both **Accumulated Deductions** and monthly annuity, the **DRO** must

state what portion of the **Member's** benefit (lump sum, monthly annuity, or both) the **Alternate Payee** is to receive.

*Note: If the **Alternate Payee** is not entitled to a portion of the **Member's** lump sum withdrawal, or the lump sum is to be determined in a different way (other than the method used to calculate the monthly annuity), this must be specified in the **DRO**; otherwise, the lump sum distribution to the **Alternate Payee** will be calculated by applying the same method used for the monthly annuity. The monthly annuity is actuarially reduced by the lump sum withdrawn.*

There are two recommended methods:

➤ **Marital Property Component** – If the **Alternate Payee's** portion is to be determined using a **Marital Property Component** methodology, observe the following:

- a) **The components to be used in determining the Marital Property**
The date of retirement, final average salary, service, and **Accumulated Deductions** determine the **Member's** retirement benefit, and subsequently, the **Alternate Payee's** portion. The parties must specify the dates to be used to calculate the **Marital Property** [e.g. actual retirement date or date of separation].

*Note: If the parties choose to limit the final average salary, service, and/or **Accumulated Deductions** to a different date [e.g. date of separation], this must also be stated in the **DRO**.*

- b) **The Coverture Fraction**
A **Coverture Fraction** can be used to isolate the **Marital Property**. The **Coverture Fraction** is a fraction with a value less than or equal to one. Although the Divorce Code defines the **Coverture Fraction** in terms of months, the **Retirement Code** defines the benefit based on eligibility points earned over a period of time because public school employees do not always work 12 months to receive a full year of service credit. Accordingly, **PSERS** calculates the benefit, for purposes of the **Coverture Fraction**, based on the percentage of service credit earned during the months of marriage, divided by the service credit earned during the entire period of employment. **PSERS** will allow the **DRO** to utilize a different numerator and denominator if the parties are in agreement. If the **Member** is a **Multiple Service Member**, then the **Member's** credited state service with the **SERS** will be included in the **Coverture Fraction** unless otherwise stated in the **DRO**.

Note: Include the actual dates (month, day, year) of the measuring period.

- c) **The Alternate Payee's share of the Marital Property Component**
This figure should be expressed in a percentage.

- OR -

➤ **Pre-defined amount** – If the **Alternate Payee's** portion is a sum certain, observe the following:

- a) The **DRO** must specify whether the amount is to be paid as a lump sum, monthly annuity, or both.

- b) If the **Alternate Payee's** portion is to be paid as a lump sum (from the **Member's** lump sum withdrawal), this amount cannot be more than the **Member's Accumulated Deductions**.

*Note: If the **Member** retires under a disability retirement, the **Member** is prohibited from withdrawing any **Accumulated Deductions**.*

- c) If the **Alternate Payee's** portion is to be paid over a period of time from the **Member's** monthly annuity, the **DRO** must specify the amount or percentage that the **Alternate Payee** will receive each month.

*Note: The retirement option elected by the **Member** must be sufficient to protect the **Alternate Payee's** specific monthly amount.*

7. **Death of Member (naming Alternate Payee as Irrevocable Beneficiary)** – A statement indicating that the **Member** is nominating the **Alternate Payee** as an **Irrevocable Beneficiary** for all or part of the death benefit paid by **PSERS**.

If the **DRO** requires the **Alternate Payee** to be named as **Irrevocable Beneficiary**, then, regardless of whether the **Member** is required to elect a specific option on the **Alternate Payee's** portion at the time of retirement, the **Alternate Payee's** portion of any pre-retirement death benefit will be calculated based on an Option 1 death benefit, unless stated otherwise in the **DRO**. See 24 Pa.C.S. § 8347.

*Note: If the **Alternate Payee** is entitled to a portion of the **Member's** pre-retirement death benefit and the **Alternate Payee's** portion of the **Member's** retirement benefit is to be a specific amount or percentage, the **DRO** must specify the **Alternate Payee's** portion of the death benefit as a specific amount or percentage of the **Member's** death benefit.*

8. **Authorization for Release of Information** – A statement indicating that the **Member** is authorizing **PSERS** to release information to the **Alternate Payee**.

*Note: If not specifically authorized, **PSERS** will not release information to the **Alternate Payee**.*

9. **Death of Alternate Payee Prior to and After the Member's Retirement** – A statement indicating what happens if the **Alternate Payee** dies before the **Member's** retirement and a statement indicating what happens if **Alternate Payee** dies after the **Member's** retirement. If the **Alternate Payee** dies before the **Member**, the **Alternate Payee's** right to a share of the benefit (regardless of whether the **Alternate Payee** is named as **Irrevocable Beneficiary**) is presumed to end and the interest of the **Alternate Payee** reverts to the **Member**. If the **Alternate Payee's** share of the benefit is not to revert to the **Member**, the **DRO** must specifically state that any payments payable to the **Alternate Payee** shall be payable to the estate of the **Alternate Payee**, or to a **Contingent Alternate Payee(s)**.

- If the **Alternate Payee's** portion is to be paid to the **Alternate Payee's** estate, the **Alternate Payee's** estate must remain open and unsettled so that payments can be made – this could force the estate to remain open for many years.
- If the **Alternate Payee's** portion is to be paid to a **Contingent Alternate Payee(s)**, include the name(s), address(es), date(s) of birth, social security number(s) and percentage(s) (totaling 100%) payable to each **Contingent**

Alternate Payee, including the relationship of each **Contingent Alternate Payee** to the **Member**. If a **Contingent Alternate Payee** is under the age of 18, guardian information must be provided. It is the responsibility of the **Contingent Alternate Payee(s)** to maintain a current address on file with **PSERS**.

*Note: If the **Alternate Payee** dies prior to the retirement of the **Member**, then the **DRO** must state how the **Alternate Payee's** interest in the marital portion is to be paid.*

10. **Retirement Option Election** – A statement indicating whether the **Member** is required to elect a specific option. When choosing an option, the **Member** has several choices in the way the benefit may be received. As a result of divorce, the **Member's** benefit is considered to have a non-marital and marital portion.

- **Non-marital** – Typically, the **Member** may choose any option offered by **PSERS**.
- **Marital** – Typically, the **Member** is required to elect a specific option on the **Alternate Payee's** share of the marital portion. The actual retirement option should be identified as it is described in the **Retirement Code** 24 Pa.C.S. § 8345 (e.g. Maximum Single Life Annuity, Option 1, Option 2, Option 3, or Option 4 (Customized Option)).

The following information is provided to give a better understanding of how each option is applied to the **Alternate Payee's** portion upon the **Member's** death. (Option 4 (Customized Option) is frequently used in divorce proceedings).

- **Maximum Single Life Annuity** – If the **Member** retires under the Maximum Single Life Annuity and the **Alternate Payee** is named as the **Irrevocable Beneficiary**, the **Alternate Payee** is entitled to receive the remaining **Equitable Distribution** interest in any **Accumulated Deductions** that have not been paid out.
- **Option 1** – If the **Member** retires under Option 1, and the **Alternate Payee** is named as the **Irrevocable Beneficiary**, the **Alternate Payee** is entitled to the remaining **Equitable Distribution** interest of the **Member's** remaining **Present Value**, if any.
- **Options 2 or 3** – If the **Member** retires under Option 2 or 3 and the **Alternate Payee** is named as a **Survivor Annuitant**, the **Alternate Payee** as **Survivor Annuitant** will begin to receive a monthly lifetime benefit. An Option 2 lifetime benefit would be equal to the combined monthly payments that the **Member** and the **Alternate Payee** had been receiving prior to the **Member's** death. An Option 3 lifetime benefit would be equal to one-half of the combined monthly payment amounts that the **Member** and the **Alternate Payee** had been receiving prior to the **Member's** death.
- **Option 4 (Customized Option)** – If the **Member** retires under this option, the benefit can be customized in the event that none of the other options meet the needs of the parties; provided the benefit continues to be actuarially equivalent to the Maximum Single Life Annuity. This benefit, in most cases, provides a survivor benefit to the **Alternate Payee** as a levelized benefit based on the **Alternate Payee's** portion from the **Member's** date of retirement until the

Member's death, and thereafter for the life of the **Alternate Payee**. See Appendix A for sample language of a levelized benefit.

*Note: DROs with more complicated directions as to the form of the option to be elected by the **Member** or the way in which the parties' benefits are to be computed may require review by **PSERS'** actuary to determine the impact of such provisions, which may delay the approval process.*

- Lump Sum Benefit – (For Class T-C and T-D **Members**) A paragraph should define the amount of withdrawal of **Accumulated Deductions** the **Member** must elect at retirement, if any. Unless otherwise specified in the **DRO**, the **Member** may elect to withdraw all or a portion of the **Accumulated Deductions**.

11. Tax Liabilities – A statement indicating tax liability. Liability for taxable payments will be the responsibility of the individual receiving the payment. A *Form 1099-R* will be issued annually to each individual receiving payments.

*Note: If not mentioned, the **Member** will receive the benefit of any nontaxable payments.*

12. Limitations on the **Alternate Payee** – See Appendix A for standard language on the limitations of the **Alternate Payee** in relation to the rights of the **Member**.
13. Standard Concluding Language (Intent of Parties, Amendments, Effective Date) – See Appendix A for standard concluding language.

Can a Member file an Application for Retirement before the divorce is finalized?

Yes. A pending divorce proceeding does NOT prevent a **Member** from filing an application with **PSERS**. Once **PSERS** is notified of a pending divorce, however, **PSERS** will flag the **Member's** account and will not process any payments until the appropriate divorce documents are submitted and approved. Failure to submit the required documents will result in substantial delays in payment of the retirement benefit.

*Note: If the **Member's** application is received more than 90 days after the **Member's** termination date or the date the **Member** reaches superannuation retirement age if the **Member** is a **Vestee**, the effective date of retirement will be the date the application is received by **PSERS** and the **Member's** annuity will begin as of that date, rather than the day after the termination or superannuation retirement date. See the section entitled "When are the benefits paid under an **ADRO**?" for further information.*

If the parties agree in writing that the **Member's** benefit is not affected by the divorce proceeding, **PSERS** can process the application before the divorce is finalized. See the section entitled, "How is **PSERS** informed of the results of **Equitable Distribution** of the **Member's** account with **PSERS**?" for further information.

When are the benefits paid under an ADRO?

PSERS can pay benefits under an **ADRO** only after the **Member** terminates employment and completes and submits to **PSERS** one of the following:

- *Application for Refund* (PSRS-59)
- *Application for Disability Retirement* (PSRS-49)
- *Application for Retirement* (PSRS-8)

We highly recommend that the submission of a **DRO** to **PSERS** for review takes place before the **Member** terminates employment, if possible. Otherwise, the processing and payment of the benefit to the **Member** and the **Alternate Payee** may be delayed.

If the **Member** is considering retirement, **PSERS** must receive the **Member's** application within 90 days of his or her termination date to have a retirement date effective the first day after termination of service or within 90 days of the date the **Member** reaches superannuation retirement age if the **Member** is a **Vestee**. If an application is received beyond 90 days of the termination or superannuation retirement date, the retirement date will be the date the application is received by **PSERS**. The annuity will begin as of that date, rather than the day after the termination date or the date the **Vestee** reaches superannuation retirement age.

*Note: A pending divorce proceeding does NOT prohibit a **Member** from filing a retirement application with **PSERS**. **PSERS**, however, will not process any payments until the appropriate divorce documents are submitted and approved. If the **Member** is unable to fully complete the application because of a pending divorce action, the **Member** should complete as much as possible and submit the application with a letter stating the reason for the incomplete application. After a court-signed **ADRO** is received, **PSERS** will work with the **Member** to complete the application. See section entitled, "Can a **Member** retire before the divorce is finalized?" for further information.*

After an application for a refund or retirement is received, **PSERS** will review the requirements of the **ADRO** and process the retirement benefit payments as stated. **PSERS** will pay the **Alternate Payee's** portion of the retirement benefit separately.

A refund application can be filed after all Pennsylvania public school employment is terminated. Interest does not accrue once the **Member** terminates all public school employment.

Any **Member** of **PSERS** who is leaving employment and eligible for a monthly retirement benefit should attend a **PSERS Foundations for Your Future** program. A schedule of these meetings is available on the **PSERS'** website, www.PSERS.state.pa.us, and in the *Active Member Newsletter*.

Also, a **PSERS'** counselor can assist the **Member** at a *Retirement Exit Counseling* meeting with the completion of the *Application for Retirement* or the *Application for Disability Retirement* in compliance with a court-signed **ADRO**.

If the **ADRO** states that the **Member** and the **Alternate Payee** both receive a portion of the **Accumulated Deductions**, and both elect to roll over these funds, both must complete a **PSERS Direct Rollover** form at the time of retirement.

What is an Interim Domestic Relations Order (IDRO)?

Under prior Pennsylvania law, the entire **PSERS** pension had to be distributed in one agreement under the **ADRO** and after the issuance of a **Divorce Decree**. Now, however, Pennsylvania courts have explicit authority to enter an order, at any stage of the divorce proceedings, providing for an interim partial distribution or assignment of **Marital Property**. 23 Pa.C.S. § 3502(f).

This change means that **PSERS** now allows the **Member** to retire and take a lump sum distribution and/or receive an annuity (monthly benefit paid over a lifetime) before the divorce becomes final. **PSERS** must ensure, however, that the order is specific enough to administer its provisions without violating the **Retirement Code**. Any modification of the terms of the **IDRO** after a **Divorce Decree** is issued will be prospective only, based on the value of the account at the time of the change. **PSERS** will continue to implement the terms of the **IDRO** until a subsequent order of court is received, if any.

If the **IDRO** is issued before the **Divorce Decree** has been issued, the **Retirement Code** allows the **Member** to re-elect an option after the **Divorce Decree** is issued only if the **Member** chooses a survivor annuity option at the time of retirement. See the section entitled, "*Are there any rules regarding a DRO?*" for further information.

How will taxes on the benefit be handled?

Any tax liabilities will be the responsibility of the person receiving the payment. A *Form 1099-R* will be mailed to the person who received the payment.

The parties should independently determine that all allocations are in compliance with federal and state law, including the **IRC**.

PSERS will pay any nontaxable benefits to the **Member** unless otherwise directed in the **ADRO**.

What happens if the Alternate Payee or the Member dies before a Divorce Decree is entered?

The death of a party before a **Divorce Decree** has been entered will not prevent the court from completing the **Equitable Distribution of Marital Property**, provided certain statutory grounds have been established. 23 Pa.C.S § 3323(d.1). If one of the grounds in the **Divorce Code** applies and the court proceeds with the divorce action, **PSERS** will review and process the **DRO** as if the death had not occurred. If not, then the death abates the divorce action and any death benefits will be payable as if the **Member** did not divorce.

Are there circumstances other than death in which an Alternate Payee's share of the Member's retirement benefit would stop?

If a **Member** retires then returns to active school service in Pennsylvania, the **Retirement Code** requires that the payment of the **Member's** retirement benefit be suspended during the return to service. 24 Pa.C.S. § 8346. If the payment of a **Member's** retirement benefit is suspended due to a return to service, the payment of the **Alternate Payee's** share of that benefit will cease as well. Note, however, that a suspension is only required if the **Member** returns to school service in Pennsylvania. A suspension is not required if the **Member** goes to work in the private sector, in public service in another state or in federal government service. The **Retirement Code** does allow, however, retirees to return to school service in Pennsylvania without a suspension of pension benefits under certain circumstances, which is reviewed by **PSERS** on a case-by-case basis.

Additionally, all benefits paid by **PSERS** are subject to the **Public Employee Pension Forfeiture Act**, 43 P.S. § 1311 et seq. Under certain circumstances, a **Member's** conviction for one of the crimes enumerated in the **Public Employee Pension Forfeiture Act** may cause the forfeiture of all benefits payable to the **Member**. Because the **Alternate Payee's** portion is wholly derived from the **Member's** right to the benefit, the **Alternate Payee's** portion of the **Member's** benefit is also forfeited.

Glossary of Terms

401(a) – The section of the **IRC** under which **PSERS** qualifies for certain tax treatment.

ADRO – See **Approved Domestic Relations Order**.

Accumulated Deductions – The total contributions paid by a **Member** and the statutory interest credited on all such contributions.

Alternate Payee – The spouse, former spouse, child or dependent of a **Member** who is recognized by an **ADRO** as having the right to receive money payable to a **Member** under the **Retirement Code**.

Approved Domestic Relations Order (ADRO) – A **Domestic Relations Order** that meets the requirements of the **Retirement Code** (24 Pa.C.S. §§ 8533.1–8533.4) and that has been approved by **PSERS**. *Note: An **ADRO** is not required for support orders or orders for the enforcement of arrearages issued under the **Divorce Code**. **PSERS** will enforce these orders provided they do not exceed the limits under Pennsylvania or federal law regarding attachments.*

Beneficiary – The person or persons, institution, trustee or estate receiving or eligible to receive **Accumulated Deductions** or a lump sum benefit upon the death of a **Member**.

Contingent Alternate Payee – The spouse, former spouse, child, or dependent of a **Member** who is recognized by an **ADRO** as having the right to receive the **Alternate Payee's** portion of the **Member's** retirement benefit in the event the **Alternate Payee** predeceases the **Member**.

Coverture Fraction – The **Coverture Fraction** is expressed as a fraction. The denominator is the number of months the **Member** worked to earn the total benefit and the numerator is the number of such months during which the parties were married and not finally separated. Although the **Divorce Code** defines the **Coverture Fraction** using the actual dates (month, day, year) of the retirement benefit attributed to a marriage, **PSERS** must calculate the **Coverture Fraction** using the service credit earned during the months of marriage, divided by the service credit earned during the entire period of employment. Example: **Member** starts work September 1980. He gets married September 1984. The **Divorce Decree** is entered September 2002. **Member** intends to retire September 2004. **Member's Present Value** is \$600,000. The **Coverture Fraction** is $18 \text{ (years of credited service during marriage)} / 24 \text{ (total years of credited service)}$, or .75. The marital portion of **Member's** benefit is \$450,000 ($\$600,000 * .75$).

Defendant – A person charged in a lawsuit (i.e., the person being sued).

Defined Benefit Plan – A retirement plan, such as **PSERS**, offering fixed and definable retirement benefits. The benefit calculation is fixed and not dependent on the amount of the employee contributions.

Direct Rollover – At retirement or termination, an election to have **PSERS** directly transfer a portion of contributions and interest to an eligible retirement plan, such as an Individual Retirement Account (IRA). This would defer taxation of any taxable portion of the money.

Divorce Code – The law that governs divorce proceedings in Pennsylvania, 23 Pa.C.S. § 3101 et seq.

Divorce Decree – A court order approving the termination of a marriage.

Domestic Relations Order (DRO) – The general term for a court order made pursuant to a state domestic relations law that provides for the **Equitable Distribution of Marital Property** to an **Alternate Payee** (i.e., spouse, former spouse, child or other dependent of a **Member**). Includes an **Interim Domestic Relations Order**.

DRO – See **Domestic Relations Order**.

Employee Retirement Income Security Act (ERISA) – A 1974 federal law establishing legal guidelines for private pension plans. Government plans are exempt from **ERISA** pursuant to section 1004(b)(1) of **ERISA**, 29 U.S.C. § 1004(b)(1). This exemption means that, in the absence of an appropriate court order, the **Member** may elect any option with regard to the **Member's** retirement benefits without notice to, or consent from, anyone, including the **Member's** spouse.

Equitable Distribution – The division of **Marital Property** in a divorce.

ERISA – See **Employee Retirement Income Security Act**.

IDRO – See **Interim Domestic Relations Order**.

Interim Domestic Relations Order (IDRO) – A **Domestic Relations Order** providing for an interim partial distribution or assignment of **Marital Property** typically issued prior to a **Divorce Decree**.

Internal Revenue Code (IRC) – A 1986 federal law establishing tax law in the United States.

IRC – See **Internal Revenue Code**.

Irrevocable Beneficiary – The person or persons permanently designated in an **ADRO** to receive all, or a portion of, the **Accumulated Deductions** or lump sum benefit payable upon the death of a **Member**.

Marital Property – Assets (cash, property, pension, stocks, etc.) that can be divided between spouses in a divorce.

Marital Property Component – The portion of a **Member's** retirement benefit with **PSERS** that constitutes **Marital Property**.

Member – A person with qualifying employment in a Pennsylvania public school or other qualified entity resulting in an account with **PSERS**. The term includes active **Members**, inactive **Members**, **Vestees** and annuitants.

Multiple Service Member – A **Member** who has elected to combine his school service in **PSERS** and his state service in **SERS**.

Plaintiff – The party initiating a lawsuit (i.e., the person suing).

Present Value (PV) – The total value of a **Member's** retirement account used to fund the annuity payments over the **Member's** lifetime or the amount paid to a **Beneficiary** when a vested **Member** dies in service. *Note: the PV is a statutorily defined term, which accurately describes the amount of the Option 1 death benefit, using factors identified by our actuaries. Other actuaries, however, may come up with a different valuation. PSERS will use its valuation not that of another actuary.*

Property Settlement Agreement (PSA) (also known as Marital Settlement Agreement or Separation Agreement) – An agreement between the **Member** and the **Alternate Payee**, establishing the terms of the **Equitable Distribution** of the parties' **Marital Property**.

PSERS – See **Public School Employees' Retirement System**.

Public Employee Pension Forfeiture Act – A 1978 state law providing that, under certain circumstances, a **Member's** conviction for one of the crimes enumerated in the Act may cause the forfeiture of all benefits payable to the **Member**. *Note: Because the Alternate Payee's right to receive a benefit is entirely derivative of the rights of the Member; the forfeiture of the Member's benefit will also result in the forfeiture of the Alternate Payee's benefit.*

Public School Employees' Retirement Code (Retirement Code) (Act 96 of October 1975) – Pennsylvania law governing the administration of **PSERS**.

Public School Employees' Retirement System (PSERS) – An agency of the Commonwealth of Pennsylvania that manages a governmental pension plan for Pennsylvania public school employees. **PSERS** is a **Defined Benefit Plan** under section **401(a)** of the **IRC**. **PSERS** is exempt from pension plan requirements outlined in **ERISA**, the **Retirement Equity Act of 1984**, and the **IRC** regarding **QDROs** and **Spousal Consent**. Any attachment of a **Member's** retirement benefit for the purpose of an **Equitable Distribution** must be accomplished through an **ADRO** under terms set forth in the **Retirement Code**.

QDRO – See **Qualified Domestic Relations Order**.

Qualified Domestic Relations Order (QDRO) – A **Domestic Relations Order** that meets the requirements of the **IRC**, section **401(a)(13)** and the **Retirement Equity Act of 1984** (**IRC** § 414(p); **ERISA** §§ 206, 514(b)(7)). *Note: **PSERS** is not subject to these laws.*

Retirement Code – See **Public School Employees' Retirement Code**.

Retirement Equity Act of 1984 – A 1984 amendment to **ERISA** that provided more benefits for surviving spouses, lowered the age for participation, and addressed gender equity concerns.

SERS – See **State Employees' Retirement System**.

Spousal Consent – A requirement under **ERISA** requiring the plan administration to pay a benefit as a joint and survivor annuity with the **Member's** spouse named as the **Survivor Annuitant** unless the spouse consents otherwise. *Note: This provision does not apply to **PSERS**, although **PSERS** does require a certification from the **Member** that the benefit is not subject to a pending or existing **Divorce Decree**.*

State Employees' Retirement System (SERS) – An agency of the Commonwealth of Pennsylvania that manages a governmental pension plan for Pennsylvania state employees and employees of certain independent agencies.

Survivor Annuitant – The person or persons designated by a **Member** under a joint and survivor annuity option to receive a lifetime monthly benefit upon the **Member's** death.

Vestee -- A **Member** with five or more eligibility points who has terminated school service, has left his accumulated deductions in the fund and is deferring filing of an application for receipt of an annuity. For Class T-E and Class T-F members, a **Member** with ten or more eligibility points who has terminated school service, has left his accumulated deductions in the fund and is deferring filing of an application for receipt of an annuity.

Contacting PSERS

PSERS can be contacted toll-free at 1-888-773-7748 from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on major holidays. **PSERS** also has regional offices located throughout the state. Their core operating hours are 8:30 a.m. to 5:00 p.m. A complete list of all **PSERS** regional offices is on **PSERS'** website under Regional Offices.

PSERS is located at:

5 North 5th Street

Harrisburg PA 17101-1905

Toll-Free: 1-888-773-7748

Local Telephone: (717) 787-8540

E-mail address: ***ra-ps-contact@state.pa.us***

Website: ***www.psers.state.pa.us***

SAMPLE –Domestic Relations Order

COURT OF COMMON PLEAS OF _____ COUNTY,
COMMONWEALTH OF PENNSYLVANIA

_____	:	FAMILY DIVISION
PLAINTIFF	:	
	:	
v.	:	NO. _____
_____	:	
DEFENDANT	:	ACTION IN DIVORCE
	:	

DOMESTIC RELATIONS ORDER

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

J.

ATTEST:

COURT OF COMMON PLEAS OF _____ COUNTY,
COMMONWEALTH OF PENNSYLVANIA

_____,
PLAINTIFF : FAMILY DIVISION
: :
: :
v. : NO. _____
: :
_____, :
DEFENDANT :
: ACTION IN DIVORCE

STIPULATION AND AGREEMENT

AND NOW, this _____ day of _____, 20____, the parties, _____,
Plaintiff, and _____, Defendant, do hereby Stipulate and Agree as follows:

1. **Plan Information.** This Order relates to the Commonwealth of Pennsylvania, Public School Employees' Retirement System (hereinafter "Plan" or "PSERS"), as provided by the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq. ("Retirement Code").

2. **Member Information.** _____ (hereinafter "Member"), is a Member of the PSERS. The Member's date of birth is _____, and social security number is _____. The Member's mailing address is _____.

3. **Alternate Payee Information.** _____ (hereinafter "Alternate Payee") is the former spouse of Member. Alternate Payee's date of birth is _____ and social security number is _____. The Alternate Payee's mailing address is _____.

4. **Address Notification.** The parties shall promptly notify PSERS of any change in their address from those set forth in this Order.

5. **Retirement Benefits.** Member's retirement benefit is defined as all monies paid to or on behalf of Member by PSERS, including any lump sum withdrawals and/or scheduled or ad hoc increases, but excluding the disability supplement of any disability annuity paid to Member by PSERS. Member's retirement benefit does not include any enhancements to the Member's retirement benefit arising from post-separation monetary contributions made by Member. Equitable distribution of the marital property component of Member's retirement benefit, as set forth in Paragraph Six (6) shall commence as soon as administratively feasible after Member's effective date of retirement or the approval by PSERS of a Domestic Relations Order incorporating this Stipulation and Agreement, whichever is later.

Note: If the Member is a multiple service member, then the Present Value of the Member's credited state service with the State Employees' Retirement System will be included unless otherwise stated in the DRO.

6. Equitable Distribution.

[Using a Marital Property Component]:

(a) The marital property component of Member's retirement benefit equals (1) the Coverture Fraction multiplied by (2) the Member's retirement benefit as of _____ [the Member's actual date of retirement or other agreed upon date] .

(b) The Coverture Fraction is a fraction with a value less than or equal to one (1.00). The numerator shall equal the amount of Member's service, as defined by PSERS, for the period from _____ to _____. The denominator shall equal the amount of Member's [total service] OR [service, for the period from _____ to _____].

(c) _____ percent (____%) of the marital property component of Member's retirement benefit is to be allocated to Alternate Payee for the purpose of equitable distribution of this marital asset.

Note: If the Member is a multiple service member, then the Member's credited state service with the State Employees' Retirement System will be included in the Coverture Fraction unless otherwise stated in the DRO.

OR

[Using a pre-defined amount.]:

Alternate Payee's share of Member's retirement benefit shall be \$(specific amount) or (____)% of Member's monthly annuity. [The DRO must specify how a lump sum amount is to be paid – Please contact PSERS for sample language.]

7. Death of Member. Member hereby nominates Alternate Payee as an irrevocable beneficiary to the extent of the Alternate Payee's equitable distribution interest in Member's retirement benefit for any death benefits payable by PSERS. The balance of any death benefit remaining after the allocation of the equitable distribution portion payable to Alternate Payee and any other Alternate Payees named under other PSERS-approved Domestic Relations Orders ("Balance") shall be paid to the beneficiaries named by Member on the last Nomination of Beneficiaries form filed with PSERS prior to Member's death. If the last Nomination of Beneficiaries form filed by Member prior to Member's death (a) predates any approved Domestic Relations Order incorporating this Stipulation and Agreement, and (b) names Alternate Payee as a beneficiary, then: (1) the terms of the Domestic Relations Order shall alone govern Alternate Payee's share of any death benefit, and (2) for purposes of paying the Balance via the last Nomination of Beneficiaries form filed with PSERS prior to Member's death, Alternate Payee shall be treated as if Alternate Payee predeceased Member.

8. Authorization. Member hereby authorizes PSERS to release to Alternate Payee all information concerning Member's retirement account as it relates to the terms of this Order.

9. Death of Alternate Payee. If Alternate Payee dies prior to the receipt of all payments potentially payable to the Alternate Payee from PSERS under this Order, then any payment payable to the Alternate Payee by PSERS shall:

Revert to Member.

OR

Be paid to Alternate Payee's estate to the extent of the Alternate Payee's equitable distribution portion of the Member's retirement benefit as set forth in Paragraphs Five (5) through Eight (8).

OR

Be paid to a/each "Contingent Alternate Payee" [include the name(s), address(es), date(s) of birth, social security number(s) and percentage(s) (totaling 100%) payable to each Contingent Alternate Payee, and the relationship of each Contingent Alternate Payee to the Member].

Note: If the Alternate Payee is entitled to a portion of the Member's pre-retirement death benefit and the Alternate Payee's equitable distribution portion of the Member's retirement benefit is to be a monthly "sum certain" amount, the DRO must specify the Alternate Payee's equitable distribution portion as a percentage of the Member's death benefit or a specific lump sum up to the amount of the available death benefit.

10. Retirement Option Election. The term and amount of Member's retirement benefit payable to Alternate Payee under the terms of this Stipulation and Agreement after its entry as a Domestic Relations Order acceptable to PSERS are dependent upon which option is elected by Member upon retirement. Member and Alternate Payee expressly agree that

Member shall elect [Maximum Single Life Annuity] OR [Option 1] OR [Option 2] OR [Option 3] OR [Option 4 - Customized Option] for the Alternate Payee's portion at the time Member files an Application for Retirement with PSERS. Member may elect any option on the remaining portion as long as it does not negatively affect the Alternate Payee's portion. The Alternate Payee shall share equally in the cost of such option election on the Alternate Payee's portion.

Note: If the parties want to provide a levelized benefit under the Option 4 - Customized Option, please utilize the following language:

The Alternate Payee shall receive his or her portion of the annuity which is payable to Member during his/her lifetime, so that the Alternate Payee shall receive a portion of the Member's benefit during his/her lifetime and the same amount as a survivor annuity if the Member predeceases the Alternate Payee after the Member's retirement. The Alternate Payee acknowledges that if he/she predeceases the Member after the Member's retirement, then under this levelized survivor annuity option, no survivor annuity is payable to the Alternate Payee's estate or contingent alternate payee. Member may elect any option for the remaining portion as long as it does not negatively affect the Alternate Payee's portion. The Alternate Payee shall share equally in the cost of such option election.

OR

Member may elect any retirement option offered by PSERS under the Retirement Code at the time Member files an application to retire with PSERS with the Alternate Payee bearing [a proportionate share] OR [no share] OR [specific percentage] in the cost of such option elected.

Note: The DRO must specifically state how the cost of an option election is to be allocated among the Member and the Alternate Payee. If the Alternate Payee is to share in the cost, then the Alternate Payee's portion of the Member's retirement benefit will not be based on the Maximum Single Life Annuity but will be reduced by such cost.

For T-C and T-D Members only:

LUMP SUM BENEFIT. Upon retirement, Member [shall] OR [may] OR [may not] elect to receive a lump sum payment pursuant to 24 Pa.C.S. § 8345(a)(4)(iii) as part of their retirement benefit. Member shall elect to receive a lump sum in an amount equal to [the total accumulated deductions], OR [\$ (specific amount)] of which the Alternate Payee:

is entitled to receive the equitable distribution portion as outlined in Paragraph Six (6).

Note: If the allocation of the lump sum benefit to the Alternate Payee is not specifically stated, it is assumed that the Alternate Payee will receive his/her equitable distribution portion of the lump sum benefit.

OR

is not entitled to receive any portion of the Member's lump sum.

OR

State your own method.

Note: If the Alternate Payee's equitable distribution portion of the Member's retirement benefit is to be a monthly "sum certain" amount, the DRO must specify the Alternate Payee's equitable distribution portion of the lump sum benefit in a percentage or a specific lump sum up to the amount available to be withdrawn.

11. Tax Liabilities. PSERS shall issue individual tax forms to Member and Alternate Payee for the amounts paid to each.

12. Limitations on the Alternate Payee. Alternate Payee may not exercise any right, privilege or option offered by the Retirement Code. In no event shall the Alternate Payee or his/her estate have greater benefits or rights than those that are available to the Member. The Alternate Payee or his/her estate is not entitled to any benefit not otherwise provided by the Retirement Code. The Alternate Payee or his/her estate is only entitled to the specific benefits offered by the Retirement Code as provided in this Order. All other rights, privileges, and options offered by the Retirement Code not granted to the Alternate Payee or his/her estate by this Order are preserved for the Member. Member and Alternate Payee acknowledge that benefits paid

pursuant to this Stipulation and Agreement are and shall remain subject to the Public Employee Pension Forfeiture Act, 43 P.S. § 1311, et seq.

13. **Intent of the Parties.** The parties intend and agree that the terms of this Stipulation and Agreement shall be approved, adopted, and entered as a Domestic Relations Order.

14. **Amendments.** The Court of Common Pleas of _____ County, Commonwealth of Pennsylvania, shall retain jurisdiction to amend any Domestic Relations Order based on this Stipulation and Agreement, but only for the purpose of establishing it or maintaining it as a Domestic Relations Order; provided, however, that no such amendment shall require PSERS to provide any type or form of benefit, or any option not otherwise provided by PSERS, and further provided that no such amendment or right of the Court to so amend will invalidate any existing Order.

15. **Effective Date.** Upon its entry as a Domestic Relations Order, a certified copy of this Stipulation and Agreement and any attendant documents shall be served upon PSERS immediately. The Domestic Relations Order shall take effect immediately upon its approval and the approval of any attendant documents by PSERS, and shall remain in effect until further Order of Court.

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

Dated: _____ (Member)

Dated: _____ (Alternate Payee)

Dated: _____ (Attorney for Member)

Street

City, State, Zip

Dated: _____ (Attorney for Alternate Payee)

Street

City, State, Zip

Public School Employees Retirement System
5 N 5th Street
Harrisburg PA 17101-1905