| **SUBJECT**<br>Domestic Relations Orders (Requirements) | **POLICY NO**<br>153 |
|---|---|
| **BRIEF SUMMARY**<br>Requirements: Name of member and alternate payee - percentage or amount payable - number of payments or period - not provide for increased benefits - not required payment of benefits already payable under DRO – sample language provided | |

The City of Phoenix Employees' Retirement System (COPERS) adopted the following policy concerning Qualified Domestic Relations Orders ("DRO"). COPERS will not participate in the design or drafting of the allocation formula between the Parties other than to verify that the DRO complies with COPERS terms and contains sufficient clarity that the formula for dividing benefits may be properly applied when benefits are due. In the event that a Party or Parties refuses to adopt COPERS' requested language for a domestic relations order, COPERS will reject the order for non-compliance with COPERS' domestic relations order requirements. Parties shall submit a proposed DRO to COPERS for review and approval prior to submitting the DRO to the Court.

1. Parties shall ensure the DRO comports with the following requirements:

   a. The name and the last known mailing address (if any) of the Member and the name and mailing address of the Alternate Payee covered by the order;
   b. The amount or percentage of the Member's benefits to be paid by COPERS to the Alternate Payee, or the manner in which such amount or percentage is to be determined;
   c. The number of payments or period to which such order applies;
   d. A provision specifying whether the order applies to member withdrawals, transfers, rollovers and/or monthly pension benefits;
   e. A provision specifying whether the Alternate Payee is entitled to future increases;
   f. Affirmative statement that COPERS is not required to:
      i. provide increased benefits (determined on the basis of actuarial value or otherwise); and
      ii. pay benefits to an Alternate Payee which are required to be paid to any other person under another court order.
   g. An agreement that Parties shall submit Social Security Numbers and Dates of Birth to the COPERS under separate cover.

2. In addition, the DRO must contain language specifying the measuring life and divisibility of benefits, in accordance with subparagraph (a), (b), (c) or (d) below:

   a. All COPERS retirement benefits awarded to an Alternate Payee shall be paid over the life of the Member in the form of a and are devisable to the heirs of the Alternate Payee; or
   b. All retirement benefits awarded to the Alternate Payee shall be paid over the life of the Member. In the event the Alternate Payee predeceases the Member all benefit payments otherwise payable to the Alternate Payee shall revert to Member and shall not be devisable to the heirs of Alternate Payee. All benefits payments cease upon member's death; or

c. All COPERS retirement benefits awarded to an Alternate Payee shall be paid in the form of a single life annuity over the life of the Alternate Payee and may therefore continue after the Member's death provided the DRO includes the following provisions:

i. indicating an actuarial reduction in benefits will be required for the payment of a lifetime benefit to the Alternate Payee

ii. stating whether the actuarial reduction is assigned solely to the benefits awarded to the Alternate Payee or apportioned between the Member's benefit and the Alternate Payee's benefit.

iii. Acknowledging the $400 fee for the actuarial services for calculation of actuarial adjustment associated with this option. And agreeing that such fees are subject to change and must be paid in advance.

iv. Indicating whether the Member, the Alternate Payee or both shall pay for the actuarial services necessary to calculate the appropriate actuarial reduction.

v. Acknowledging if the Member is married at the time the DRO is approved by COPERS and the Member's spouse does not agree to an actuarial reduction of potential future benefits, payments to the Alternate Payee will be structured in accordance with paragraph (2)(a) above.

vi. Indicating that if the Member is married at the time the DRO is approved by COPERS and the spouse consents as evidenced by a fully executed Spousal Consent, the actuarial reduction will be based on either the ages, at the time of the Member's retirement, of the Member and the Member's spouse, or of the Member and the Alternate Payee, whichever provides the greater actuarial reduction.

vii. If the Member is not married or the Member marries after the DRO is approved by COPERS, the actuarial reduction will be based on the ages, at the time of the Member's retirement, of the Member and the Alternate Payee

viii. Stating that if a Member marries after the approval of a DRO by COPERS, neither the Member nor the Member's spouse shall have the right to challenge the previously approved DRO on the grounds that the spouse did not consent to the single life annuity calculation over the life of the Alternate Payee.

3. The DRO shall include the following paragraphs:

a. Parties agree that under no circumstances shall the combined monthly benefit amounts paid to the Member and Alternate Payee exceed the amount otherwise payable to the Member under COPERS.

b. Alternate Payee agrees that neither an Alternate Payee nor his/her heirs are entitled to a survivor's (widow's/widower's) pension under Section 25 of the Charter.

c. The Parties agree that a child's survivor pension cannot be awarded to persons or for periods or in amounts different from those specified by the COPERS plan.

d. The Parties agree that the COPERS anti-alienation provision (§ 37.1) precludes the Parties from assigning their rights to COPERS benefits to any third parties.

e. This DRO is not effective unless or until approved by COPERS and

f. The Parties agree that in the event of a conflict between the terms and conditions of the DRO and COPERS, as it currently reads or as same may be amended from time to time, COPERS will prevail over any inconsistent provision of the DRO (i.e., the divestiture provisions).

Name:

Address:

City, ST ZIP Code:

Phone:

Email:

[Attorneys for Petitioner/Respondent] or [Pro Per]

IN THE SUPERIOR COURT OF THE STATE OF

IN AND FOR THE COUNTY OF

| | |
|---|---|
| IN RE THE MARRIAGE OF:<br><br>________________________________<br>Petitioner<br><br>________________________________,<br>Respondent | Case No.: Number<br><br>DOMESTIC RLEATIONS ORDER<br>OR<br>AMENDED DOMESTIC RELATIONS ORDER |

This Domestic Relations Order ("Order") relates to the marital property rights of the above named Petitioner and Respondent (collectively "Parties") under the Community Property Laws of Arizona. This Order shall allocate the Parties' respective interest in the defined benefit pension plan adopted by the City of Phoenix known as the City of Phoenix Retirement System ("Plan" or "COPERS"). The Parties stipulate that they are responsible for notifying COPERS of any change in address. The Parties agree to provide COPERS with their dates of birth and Social Security numbers under separate cover simultaneously with the draft Order.

This Order shall meet the requirements of the Plan as set forth in the Charter of the City of Phoenix and Policy 153 adopted by the COPERS Board of Trustees. With regard to the Parties named above, the division of retirement benefits in this Order shall supersede any other prior Decree, Judgment or Order of the Court that relates to the Plan.

**SECTION 1** – MEMBER/PARTICIPANT INFORMATION

For the purposes of this Order "Participant" refers to a Member of COPERS. The Participant is the (choose one) ____ Petitioner; **OR** ____ Respondent in these proceedings, who's name and mailing address is:

(Name:) ____________________________________________

(Street address:) ____________________________________________

(City, State and Zip Code:) ____________________________________________

**SECTION 2** – NON-MEMBER/ALTERNATE PAYEE INFORMATION

"Alternate Payee" for the purposes of this Order refers to the former spouse of the Participant. The Alternate Payee is the (choose one) ____ Petitioner; **OR** ____ Respondent in these proceedings, whose name and mailing address is:

(Name:) ____________________________________________

(Street address:) ____________________________________________

(City, State and Zip Code:) ____________________________________________

**SECTION 3** – GENERAL INFORMATION

A. For the purposes of calculating benefits based on the elections provided herein, the Parties were married on ________________________ *(date of marriage)*.

B. The Parties were divorced or the Alternate Payee's community property interest in this Participant's pension ended on __________________ *(date marriage terminated)*.

C. Participant has been a member of COPERS from ________________ *(hire date)* until ________________ *(termination date)*, and Participant has accrued benefits under COPERS (subject to vesting and other restrictions). Notwithstanding the foregoing, Parties acknowledge that COPERS will be responsible for determining all dates of employment and contributions and COPERS determinations control.

**SECTION 4** – MEMBER RETAINS 100% OF COPERS BENEFIT

____ Alternate Payee waives all rights and future benefits in COPERS. Accordingly, by this Order Participant retains 100% of the Participant's interest in COPERS and there is not division of benefits between Participant and Alternate Payee as it relates to COPERS.

*(If you elect this option, do NOT complete any of the following sections. Sign and submit this Order to COPERS for approval and then file with the Court.)*

<u>**SECTION 5** – DIVISION OF RETIREMENT BENEFITS *(Select A, B or C)*</u>

[Note: COPERS does not participate in the allocation process other than to demand sufficient clarity in this Oder to enable COPERS to calculate the benefit division, if and when payable. Your attention is, however, directed to a full discussion of allocation issues in <u>Koelsch v. Koelsch</u>, 148 Ariz. 176, 713 P. 2d 1234 (1986); <u>Parada v. Parada</u>, 196 Ariz. 428, 999 P.2d 184 (2000); <u>Snyder v.</u> 239, 8 P.3d 1153 (App. 2001); and <u>Cooper v. Cooper</u>,167 Ariz. 482, 808 P.2d 1234 (App. 1991)].

**Select only ONE of the following (A, B, OR C):**

The amount or percentage and the manner of determination of the benefits to be paid by COPERS to the Alternate Payee shall be as follows:

____ **A. (Formula):** The Alternate Payee is entitled to receive as his or her sole and separate property, directly from the Plan, a percentage of the Participant's interest in the Plan, based on the following formula:

| | | | |
|---|---|---|---|
| NUMERATOR | Months of marriage during employment (including service purchases and transfers during marriage) | x .50 = | Alternate |
| DENOMINATOR | total months of credited service | Payee's % of benefits | |

**OR**

____ **B. (Specific Dollar Amount):** The Alternate Payee is entitled to receive as his or her sole and separate property, directly from the Plan, a specific dollar amount of $________.00 *(you MUST enter a dollar amount)* of the Participant's Plan benefits.

**OR**

____ **C. (Specific Percentage):** The Alternate Payee is entitled to receive as his or her sole and separate property, directly from the Plan, a specific percentage of _______% *(you MUST enter a percentage)* of the Participant's interest in the plan.

**SECTION 6** – DURATION OF BENEFITS – *(Select A, B, or C below)*

____ A. All retirement benefits award to an Alternate Payee pursuant to this Order shall be paid over the life of the Participant and are devisable to the heirs of the Alternate Payee in the event that Alternate Payee predeceases Participant. All such benefit payments cease upon Participant's death;

**OR**

____ B. All retirement benefits awarded to the Alternate Payee shall be paid over the live of the Participant. In the event the Alternate Payee predeceases the Participant, all benefit payments otherwise payable to the Alternate Payee shall revert to the Participant and shall not be devisable to the heirs of the Alternate Payee.

**OR**

____ C. Subject to the following section, all retirement benefits awarded to an Alternate Payee shall be paid in the form of a single life annuity over the life of the Alternate Payee. Per this election, all payments to the Alternate Payee cease upon Alternate Payee's death and are not devisable to the heirs of the Alternate Payee and such payment will be subject to an actuarial reduction of benefits and payment of an actuarial service fee as set forth in Section 7, below.

**SECTION 7** – OPTION C ACTUARIAL REDUCTION APPORTIONMENT, FEES, SPOUSAL CONSENTS AND COMPUTATION *(only complete this Section of Option C is selected in Section 6)*

**A. Apportionment.** Parties agree that the actuarial reduction in benefits will be assigned as follows: *(Parties must choose paragraph 1 or 2)*

____ 1. The actuarial reduction will be assigned to Alternate Payee's benefit; or

____ 2. The actuarial reduction will be assigned to Participant's benefit; or

____ 3. The actuarial reduction will be apportioned equally between Participant and Alternate Payee's benefit payments.

B. Fees. Parties agree that the actuarial service fee must be paid to COPERS consistent with its current Policies as follows: *(Parties must choose paragraph 1, 2 or 3)*

____ 1. The actuarial service fee will be paid by Alternate Payee; or

____ 2. The actuarial service fee will be paid by Participant; or

____ 3. The actuarial service fee will be apportioned equally and paid by Participant and Alternate Payee.

C. Spousal Consents and Computation of Benefits.

1. If Option C is elected, Parties acknowledge that Participant's current spouse must execute a written consent to an actuarial reduction of potential further benefits as evidenced by the attached DRO Spousal Consent Form. If the Participant's current spouse consents, the actuarial reduction will be based at the time of the Participant's retirement on the ages of the Participant and the Alternate Payee or the ages of the Participant and the current spouse, whichever provides the greatest actuarial reduction.

2. If Participant is married at the time this Order is entered and the Participant's spouse does not consent to a reduction is future benefits, the Alternate Payee's benefits shall be paid over the life of the Participant consistent with Section 6, Option A.

3. If the Participant is not married or marries after this Order is approved by COPERS, the actuarial reduction will be based on the ages of the Participant and the Alternate Payee.

4. If the Participant is married at the time the DRO is approved by COPERS, current spouse's consent to an actuarial reduction in potential future benefits is imputed if the Participant elects a joint and survivor option (Option A Pop-up, Option B Standard, Option B Pop-up or Option C pursuant to Charter § 24.1).

**SECTION 7** – SCOPE OF ELECTION *(select all that apply)*

Select all that apply:

A. The division and computation of benefits agreed to under Section 5 applies to the following:

____ 1. Refunds of Participant contributions; and

____ 2. Transfers of Participant's service credit; and

____ 3. Future increases (including without limitation, Pension Equalization Program (PEP) and 13th Check declarations.

**SECTION 9** – MISCELLANEOUS ORDERS

A. By this Order, COPERS shall not be required to:

1. Provide any type or form of benefit or any option not otherwise provided under the Plan; or

2. Provide any future benefits or payment options contrary to the terms and conditions of the Plan as is or as may be amended from time to time, at the time any said benefits or payments are due and payable; or

3. Make payments to an Alternate Payee which are required to be paid to another person under another Court Order.

B. The combined monthly benefit amounts paid to Participant and Alternate Payee shall not exceed the amount otherwise payable to Participant and Participant's current spouse, if applicable, under COPERS.

C. Alternate Payee nor his/her heirs are entitled to survivor's (widow's/widower's) pension under Section 25 of the City Charter.

D. The Parties acknowledge that COPERS and the administrative policies adopted by the COPERS Board (the "Policies") contain terms and conditions providing considerable variable contingencies affecting benefits payable to Participant and/or Alternate Payee. It is understood and agreed by the Parties that the terms and conditions of COPERS and the Policies, as they currently exist, or as they may from time to time be amended, shall be controlling.

E. The COPERS anti-alienation provision (§ 37.1) precludes a Participant or Alternate Payee from assigning their rights to benefits to any third parties.

F. Once approved, the Court retains jurisdiction over this Order solely for the purpose of enforcing its terms.

G. Participant shall serve a certified copy of this Order upon the System or Plan within ten (10) days of the date of this Order, at the following address: City of Phoenix Retirement Department, 200 West Washington Street, 10th Floor, Phoenix, AZ 85002

H. Participant and Alternate Payee shall provide the Plan written notification of any changes in mailing address. The Plan is not liable for failing to make payments to the Participant or Alternate Payee if the Plan does not have the current mailing address at the time of payment.

I. Participant and Alternative Payee are solely responsible for the payment of federal and state income taxes with respect to monies received under this Order.

Dated this _____ day of ____________, 20_______.

______________________________
Judge of the Superior Court

The following signatures are required if the Order is submitted by agreement of the Parties.

**Approved as to Form and Content by Participant:**

____________________________________________ *(signature of Participant)*

State of __________________, County of _________________

On this ______ day of ___________, 20______, before me personally appeared _______________________, whose identity was proven to me on the basis of satisfactory evidence to be the person who s/he claims to be and acknowledged that s/he signed the document.

(seal)

Notary Public

**Approved as to Form and Content by Alternate Payee:**

____________________________________________ *(signature of Alternate Payee)*

State of __________________, County of _________________

On this ______ day of ___________, 20______, before me personally appeared _______________________, whose identity was proven to me on the basis of satisfactory evidence to be the person who s/he claims to be and acknowledged that s/he signed the document.

(seal)

Notary Public