

COPERS Domestic Relations Orders (DRO's) Guidelines

The City of Phoenix Employees' Retirement System (COPERS) adopted the following policy concerning DRO's.

Policy: COPERS will implement domestic relations orders (DRO's) that comply with the following:

1. The Plan will affirmatively respond to DRO's that contain the following provisions:
 - a. The name and the last known mailing address (if any) of the Participant and the name and mailing address of the Alternate Payee covered by the order;
 - b. The amount or percentage of the Participant's benefits to be paid by the Plan 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. Does not require the Plan to provide increased benefits (determined on the basis of actuarial value or otherwise); and
 - e. Does not require the payment of benefits to an Alternate Payee which are required to be paid to another spouse under another court order.
2. All COPERS retirement benefits awarded to an Alternate Payee are devisable to the heirs of the Alternate Payee.
3. All retirement benefits awarded to an Alternate Payee and devisable to his/her heirs cease upon the Member's death, unless the DRO contains the following provisions:
 - a. The payment of benefits to an Alternate Payee will continue after the Member's death until the Alternate Payee's death if:
 - i) The Alternate Payee and Member agree an actuarial reduction in benefits will be required for the payment of a lifetime benefit to the Alternate Payee and
 - ii) The Member's spouse, if the Member is married at the time of the Member's retirement agrees to an actuarial reduction in potential future benefits if the Member elects a joint and survivor option (Option A Standard, Option A Pop-up, Option B Standard, Option B Pop-up or Option C pursuant to Charter § 24.1).
 - b. 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, if the Member is married at the time of the Member's retirement, or of the Member and the Alternate Payee, whichever provides the greater actuarial reduction. 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 the plan. In addition, under no circumstances shall the combined monthly benefits amounts

paid to the surviving Spouse and Alternate Payee exceed the amount otherwise payable to the surviving Spouse under the Plan.

- c. If the Member is married at the time of the Member's retirement and the Member's spouse does not agree to an actuarial reduction of potential future benefits, payments to the Alternate Payee will cease upon the Member's death.
4. Neither an Alternate Payee nor his/her heirs are entitled to a survivor's (widow's/widower's) pension.
5. A child's pension cannot be awarded to persons or for periods or in amounts different from those specified by the COPERS plan.
6. The COPERS anti-alienation provision (§ 37.1) precludes a COPERS member or Alternate Payee from assigning their rights to COPERS benefits to any third parties.
7. The Plan will not participate in the allocation formula between the parties other than to verify that the DRO complies with the Plan terms and contains sufficient clarity that the formula for dividing benefits may be properly applied when benefits are due.
8. The Plan will require that provisions be contained in the DRO that specify that in the event of a conflict between the terms and conditions of the DRO and the Plan, as it currently reads or as same may be amended from time to time, the Plan will prevail over any inconsistent provision of the DRO (i.e., the divestiture provisions).
9. In the event that a party refuses to adopt the Plan's requested language for a domestic relations order, the Plan will reject the order for non-compliance with the Plan's domestic relations order requirements.

Attached hereto is a proposed domestic relations order section addressing division of the Plan benefits which may be provided to parties, or their counsel, seeking advice for DRO's dealing with the Plan.

CITY OF PHOENIX EMPLOYEES' RETIREMENT PLAN

It is specifically intended that this Property Settlement Agreement and Decree shall allocate the parties' respective interest in the defined benefit pension plan ("Plan") adopted by the City of Phoenix Employees' Retirement System.

A. (Employee's Name) is the Participant, and (Spouse's Name) is the Alternate Payee under the Plan. Participant's social security number is _____ with residence at _____.

Alternate Payee's social security number is _____ with residence at _____. Each is hereby responsible for notification to the Plan of any change in address.

B. Participant and Alternate Payee (the "Parties") were married on _____, and divorced on _____. Participant has been a member of the Plan from _____ until _____.

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

[Note: The Plan does not participate in the allocation process other than to demand sufficient clarity in the order upon which the Plan may calculate the benefit division if and when payable. Your attention is, however, directed to a full discussion of the issue by the courts in Koelsch v. Koelsch, 148 Ariz. 176, 713 P. 2d 1234 (1986); Parada v. Parada, 196 Ariz. 428, 999 P.2d 184 (2000); Snyder v. Tucson Police, 198 Ariz. 239, 8 P.3d 1153 (App. 2001); and Cooper v. Cooper, 167 Ariz. 482, 808 P.2d 1234 (App. 1991)].

D. The number of payments or period to which this order applies shall be _____.

E. This Order applies to the Plan in which Participant has an interest.

F. This Order shall not: (1) require the Plan to presently provide any type or form of benefit or any option not otherwise provided under the Plan; or (2) require the Plan to provide any future benefits or payment options contrary to the terms and conditions of the Plan or, as same may be amended from time to time, at the time any said benefits or payments are due and payable, or (3) require the Plan to make payments to an Alternate Payee which are required to be paid to another person under another Court Order.

G. Under no circumstances shall the combined monthly benefit amounts paid to Participant and Alternate Payee exceed the amount otherwise payable to Participant under the Plan.

H. The Parties acknowledge that the Plan contains terms and conditions providing considerable variable contingencies including, but not necessarily limited to, divestiture of the Alternate Payee's interest upon remarriage and/or death of the Participant prior to retirement. It is understood and agreed by the Parties that the terms and conditions of the Plan, as it currently exists, or as same may from time to time be amended, shall be controlling of the interest of the Participant and Alternate Payee. To the extent of any conflict between the terms and conditions of the Plan and the provisions of the Order, the Plan shall control.

I. This order applies to (Contributions and/or future monthly benefit).

J. The Alternate Payee (is or is not) entitled to future increases.

Choose one of the following:

K. All retirement benefits awarded to an Alternate Payee and devisable to his/her heirs cease upon the Member's death:

OR

K. The payment of benefits to an Alternate Payee will continue after the Member's death until the Alternate Payee's death if:

- iii) The Alternate Payee and Member agree that an actuarial reduction in benefits will be required for the payment of a lifetime benefit to the Alternate Payee and
 - iv) The Member's spouse, if the Member is married at the time of the Member's retirement, agrees to an actuarial reduction in potential future benefits if the Member elects a joint and survivor option (Option A Standard, Option A Pop-up, Option B Standard, Option B Pop-up or Option C pursuant to Charter § 24.1).
1. 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, if the Member is married at the time of the Member's retirement, or of the Member and the Alternate Payee, whichever provides the greater actuarial reduction. 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 the plan. In addition, under no circumstances shall the combined monthly benefits amounts paid to the surviving Spouse and Alternate Payee exceed the amount otherwise payable to the surviving Spouse under the Plan.
 2. If the Member is married at the time of the Member's retirement and the Member's spouse does not agree to an actuarial reduction of potential future benefits, payments to the Alternate Payee will cease upon the Member's death.

DOMESTIC RELATIONS ORDER SPOUSAL CONSENT FORM – Adopted 10/28/09

Board policy (as amended) in parts provides that a Domestic Relations Order (DRO) may contain the following provisions concerning benefits payable to an alternate payee (former spouse of retiring member):

The payment of benefits to an alternate payee will continue after the member's death until the alternate payee's death if:

- a. The alternate payee and member agree, via a certified DRO, that an actuarial reduction in benefits will be required for the payment of a lifetime benefit to the alternate payee; and
- b. The member's spouse, if the member is married at the time of the member's retirement, agrees to an actuarial reduction in potential future benefits if the member elects a joint and survivor option (retirement options are explained on Page 2 of this application).

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, if the Member is married at the time of the Member's retirement, or of the Member and the Alternate Payee, whichever provides the greater actuarial reduction. 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 the plan. Under no circumstances shall the combined monthly benefits amounts paid to the surviving Spouse and Alternate Payee exceed the amount otherwise payable to the surviving Spouse under the Plan.

If the member is married at the time of the member's retirement and the member's spouse does not agree to an actuarial reduction of potential future benefits, payments to the alternate payee will cease upon the member's death.

If the member has a certified DRO with these provisions, it is necessary that legally married members applying for retirement benefits under the City of Phoenix Employees' Retirement System (the "City Retirement System") must obtain his/her spouse's agreement through this "DOMESTIC RELATIONS ORDER SPOUSAL CONSENT FORM." The language below, therefore, is an expressed agreement to and understanding of an actuarial reduction of future benefits.

CONSENT

I, _____, legally married to _____ as of this date,
Spouse's Name Retirement Applicant's Name

hereby acknowledge and **consent to an actuarial reduction of potential future benefits.**

I hereby release the City Retirement System, the City Retirement System Board, the City, or any of their predecessors, successors, assigns, agents, officials, officers, employees, representatives and attorneys from any and all causes of action in law or in equity, contracts, agreements, promises, claims, liability, demands, costs or expenses of any nature, fixed or contingent, that may be asserted as a result of this consent. I further understand that I will no longer have any claims against the City Retirement System, the City Retirement System Board, the City, or any of their predecessors, successors, assigns, agents, officials, officers, employees, representatives and attorneys with respect to the actuarial reduction of potential future benefits, whether based on tort, contract, express or implied, constitutional provisions, or any federal, state or local law, statute, charter, ordinance or regulation.

I acknowledge that I have read this consent, I am fully aware of its contents and of its legal effect, that this application recites the rights I am giving up, and that this consent is made freely, without coercion, and based on my own judgment and not in reliance upon any representations or promises made by any party, other than those contained herein.

I further understand that I have the right to discuss this document with any adviser of my choice (lawyer, accountant, tax preparer, etc.) prior to signing this consent form, and have either reviewed this document with an adviser or waived that right.

Date _____

Signature _____

State of Arizona; County of Maricopa

This foregoing instrument was acknowledged before me this _____ day of _____, 20_ _ ,

by _____
Consenting Spouse's Name

Form of ID

Notary Public

My commission expires