



## Divorce Before Retirement

Divorce can have a significant impact on a TMRS member's retirement benefit. The member and the member's spouse need to understand how divorce will affect that benefit. Because Texas divorce law is complicated, we recommend you discuss this with your attorneys.

Texas law presumes that TMRS benefits earned during the marriage are community property shared by the spouses. However, TMRS benefits do not have to be divided in a divorce.

If the member's TMRS benefits will not be divided in the divorce, the divorce decree should specify this. Language to do so is included on page three of this publication.

If TMRS benefits are going to be divided, Texas law requires the court to issue a Qualified Domestic Relations Order (QDRO). However, TMRS can only approve a QDRO that meets legal requirements applicable to the TMRS plan. To meet these legal requirements, TMRS has created QDRO forms for your use. To avoid unnecessary trips to court, we recommend that you use TMRS' QDRO forms.

Before deciding whether to divide TMRS benefits, both parties should consider:

- There is no immediate payment to a spouse at divorce. The member must be eligible, end employment with all TMRS cities and apply for a benefit.
- The member determines whether to refund or retire, and the spouse will be required to refund or retire based on the member's decision.
- The death of a member's spouse ends their interest in the member's benefit; therefore, the spouse cannot designate a beneficiary for their portion of the TMRS benefits.

In some circumstances more than one QDRO may be required. For example, multiple QDROs may be required if:

- the member's spouse is also a TMRS member or retiree and you want to award each party a portion of their benefits, or
- if the member previously retired from a TMRS city.

The following information describes TMRS' QDRO forms and answers common questions that members and their spouses have about how to divide TMRS benefits. If you have any questions, contact the TMRS Member Service Center at 800-924-8677.

*Going forward, to be consistent with court orders, the TMRS member will be referred to as the “participant” and the member’s spouse will be referred to as the “alternate payee.”*

## **When Will TMRS Benefits Be Paid to an Alternate Payee**

TMRS benefits are paid to the alternate payee only when the participant refunds or retires from TMRS:

- **Refund:** The participant must end employment with all TMRS cities and apply to refund their account balance, which is the total of their contributions into TMRS plus interest credited to those contributions. The alternate payee receives their portion of the refund when the participant is paid. A participant who refunds their account forfeits all city matching funds.
- **Retirement:** The participant must become eligible to retire, end employment with all TMRS cities and apply to retire from TMRS. The alternate payee will receive a monthly retirement payment, payable for their lifetime, when payments to the participant begin.

Once TMRS has received and approved a QDRO, TMRS will notify the participant and alternate payee.

When TMRS receives the participant’s application for either refund or retirement, TMRS will notify the alternate payee.

## **What Happens If the Alternate Payee Dies**

The death of an alternate payee ends their interest in the TMRS retirement benefits awarded by a QDRO:

- If an alternate payee dies before the participant refunds or retires from TMRS, the participant keeps the entire benefit.
- If an alternate payee dies after the participant retires from TMRS, all payments to the alternate payee end. The end of the alternate payee’s benefit payments does not affect the participant’s benefit payments.

## **TMRS May Delay Refund or Retirement Pending TMRS Approval of a QDRO**

When TMRS receives written notice of a divorce proceeding including the court-assigned cause number TMRS may delay action on any application for TMRS benefits. The delay allows a limited amount of time for the participant and the alternate payee to complete and get approval from both TMRS and the court for a QDRO to divide the TMRS benefits.

TMRS will notify the participant and the alternate payee about the process and amount of time for completing a QDRO and having it approved by TMRS and the court.

## If the Participant's Benefits Will Not Be Divided

If the participant's TMRS benefits will not be divided, no QDRO is needed, but the divorce decree should include the language below. TMRS does not need to receive a copy of the divorce decree.

(PARTICIPANT'S NAME) is awarded the following as [his/her] sole and separate property, and (SPOUSE'S NAME) is divested of all right, title, interest, and claim in and to that property: all sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, accrued unpaid bonuses, disability plan, or other benefits by reason of (PARTICIPANT'S NAME)'s past, present, or future employment.

## What to Do If TMRS Benefits Will Be Divided

The TMRS benefit due to a participant depends on whether the participant decides to refund or retire. In this publication, "benefit payable" refers to either:

- if refunding: the participant's account balance, which is the total of the participant's contributions into TMRS plus interest credited to those contributions, or
- if retiring: in most cases, a monthly benefit payment actuarially calculated from the reserves for a participant.

The term "reserves" refers to a participant's contributions into TMRS and interest credited to those contributions **plus** any city matching funds and other applicable credits. If at the time of the participant's retirement, the alternate payee's share of the reserves is \$10,000 or more, then the alternate payee's benefit will be paid as a monthly retirement benefit through the alternate payee's lifetime. If the alternate payee's share of the reserves is less than \$10,000 then their benefit will be paid as a one-time lump sum payment.

The participant and the alternate payee can use one of three methods to divide the participant's TMRS benefits. The first two methods use the term "community property ratio," which is based on dividing the benefits that were earned during the marriage but not the benefits that were earned before or after the marriage. **TMRS recommends that you consider each method shown on the QDRO form before selecting a method.**

## Dividing Benefits by the Accumulated Contributions Method

The Accumulated Contributions method takes the amount of the participant's contributions and interest credited during the marriage and compares it to the total of participant's contributions and interest credited at the time of refund or retirement.

In the TMRS QDRO Form, the term "community property ratio" under the Accumulated Contributions method divides benefits by: (1) taking the amount of the participant's contributions made during the marriage and interest credited on those contributions, and (2) comparing that to the total amount of the participant's TMRS contributions and interest credited to their account at the time of refund or retirement.

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Here is how the community property ratio and resulting benefits may be calculated under this method:

\_\_% = percentage awarded by court to alternate payee

$\frac{\text{contributions during marriage} + \text{annual interest credited}}{\text{total contributions and interest at refund or retirement}}$  = community property ratio

For refund: \_\_% × community property ratio × benefit payable = alternate payee's award

For retirement: \_\_% × community property ratio × reserves = alternate payee's award

Here are examples of how this method works:

**Refund example:** Assume that during the marriage, the participant's account received \$18,000 in contributions and interest. The divorce decree grants 50% of the participant's TMRS retirement benefits to the alternate payee. The participant remains employed by a TMRS city after the divorce, and \$6,750 in interest is credited after the divorce to the \$18,000. The participant's contributions and interest credits total \$60,000 when he or she ends employment with all TMRS cities and requests a refund. The alternate payee's benefit would be calculated as follows:

$$\frac{\$18,000 + \$6,750}{\$60,000} = 0.4125 \text{ (community property ratio)}$$

$$50\% \times 0.4125 \times \$60,000 \text{ (benefit payable)} = \$12,375 \text{ (alternate payee's award)}$$

**Retirement example:** Use the same facts as above, but when the participant ends employment with all TMRS cities, the participant applies to retire. The participant retires from a city that matches 2 for 1. The alternate payee's benefit would be calculated as follows:

$$\frac{\$18,000 + \$6,750}{\$60,000} = 0.4125 \text{ (community property ratio)}$$

$$\$60,000 + \$120,000 \text{ (city matching)} = \$180,000 \text{ (reserves)}$$

$$50\% \times 0.4125 \times \$180,000 \text{ (reserves)} = \$37,125 \text{ (alternate payee's portion of reserves)}$$

The alternate payee will not receive their portion as a lump sum. It will be a lifetime monthly benefit payment actuarially calculated from the alternate payee's portion of the reserves.

**Remember these are only examples. The actual benefits will vary depending on the participant's career, the age of the participant and alternate payee respectively and their life expectancies.**

### **Dividing Benefits by the Credited Service Method**

The Credited Service method takes the number of months of service earned during the marriage and compares it to the total number of months of credited service at the time of refund or retirement. The participant receives TMRS credited service for each month in which TMRS receives a contribution from their

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employing city. Using this method, the alternate payee's award is affected by how many months the participant worked for a TMRS city before or after the marriage as compared to how many months the participant worked during the marriage. Here is how the community property ratio is calculated under this method:

$\_\%$  = percentage awarded by court to alternate payee

$\frac{\text{credited service during marriage}}{\text{total credited service at time of refund or retirement}} = \text{community property ratio}$

For refund:  $\_\% \times \text{community property ratio} \times \text{benefit payable} = \text{alternate payee's award}$

For retirement:  $\_\% \times \text{community property ratio} \times \text{reserves} = \text{alternate payee's award}$

Here are examples of how this method works:

**Refund example:** Assume that during the marriage, the participant earned 60 months of credited service. The divorce decree grants 50% of the participant's TMRS retirement benefits to the alternate payee. The participant remains employed by a TMRS city after the divorce and, at the time of refund, has a total of 150 months of credited service. The participant's contributions and interest credited total \$60,000 when they end employment with all TMRS cities and request a refund. The alternate payee's benefit would be calculated as follows:

$\frac{60 \text{ months}}{150 \text{ months}} = .40$  (community property ratio)

$50\% \times .40 \times \$60,000$  (benefit payable) = \$12,000 (alternate payee's award)

**Retirement example:** Use the same facts as above, but when the participant ends employment with all TMRS cities, the participant applies to retire. The participant retires from a city that matches 2 for 1. The alternate payee's benefit would be calculated as follows:

$\frac{60 \text{ months}}{150 \text{ months}} = .40$  (community property ratio)

$\$60,000 + \$120,000$  (city matching) = \$180,000 (reserves)

$50\% \times 0.40 \times \$180,000$  (reserves) = \$36,000 (alternate payee's portion of reserves)

The alternate payee will not receive their portion as a lump sum. It will be a lifetime monthly benefit payment actuarially calculated from the alternate payee's portion of the reserves.

**Remember these are only examples. The actual benefits will vary depending on the participant's career, the age of the participant and alternate payee respectively and their life expectancies.**

## Dividing Benefits by the Specified Dollar Amount Method

The Specified Dollar Amount method states a specified amount from the participant’s total TMRS contributions and interest credited from which the alternate payee’s share of the benefits will be calculated.

If the participant refunds, the specified dollar amount, plus TMRS interest credited on that amount after the divorce date, will be paid to the alternate payee as a lump sum.

If the participant retires, a specified dollar amount award **does not** necessarily provide the alternate payee with a lump sum payment. The specified dollar amount, plus TMRS interest credited on that amount after the divorce date, but without any city matching dollars, is used to calculate the alternate payee’s benefit. If the specified amount plus interest is more than \$10,000, the benefit will be a monthly payment for the alternate payee’s lifetime. If the specified amount plus interest is less than \$10,000, then the alternate payee’s benefit will be a one-time lump sum payment.

Here are examples of how this method works:

$$\frac{\text{specified dollar amount} + \text{annual interest credited}}{\text{total contributions} + \text{interest at refund or retirement}} = \text{specified dollar fraction}$$

$$\text{specified dollar fraction} \times \text{benefit payable (or reserves)} = \text{alternate payee's award}$$

Refund example: Assume the divorce grants a specified amount of \$9,000 of the participant’s TMRS retirement benefits to the alternate payee. The participant remains employed by a TMRS city after the divorce, and \$3,375 in interest is credited after the divorce to the \$9,000 awarded. The participant’s contributions and interest credits total \$60,000 when he or she ends employment with all TMRS cities and requests a refund. The alternate payee’s benefit would be calculated as follows:

$$\frac{\$9,000 + \$3,375}{\$60,000} \times \$60,000 \text{ (benefit payable)} = \$12,375 \text{ (alternate payee's award)}$$

Retirement example: Use the same facts as above, but when the participant ends employment with all TMRS cities, the participant applies to retire. **Using this method, the city’s matching funds are not included in calculating the alternate payee’s portion of reserves.** The alternate payee’s benefit would be calculated as follows:

$$\frac{\$9,000 + \$3,375}{\$60,000} \times \$60,000 \text{ (reserves)} = \$12,375 \text{ (alternate payee's award)}$$

$$\$12,375 = \text{alternate payee's portion of "reserves"}$$

The alternate payee will not receive their portion as a lump sum. It will be a lifetime monthly benefit payment actuarially calculated from the alternate payee’s portion of the reserves.

**Remember these are only examples. The actual benefits will vary depending on the participant's career, the age of the participant and alternate payee respectively and their life expectancies.**

## **Use the TMRS QDRO Form**

Participants and alternate payees should use the TMRS QDRO form because it is designed to properly divide TMRS benefits under applicable laws and TMRS rules. The parties will also need to complete the TMRS Statement of Confidential Information, which is required for the QDRO.

A sample of the TMRS QDRO form is found in the Appendix. The actual forms that you should complete after choosing which method you prefer are found here:

QDRO Form: [www.tmr.com/download/forms/QDRO\\_Before\\_Retirement.pdf](http://www.tmr.com/download/forms/QDRO_Before_Retirement.pdf)

Form for TMRS Statement of Confidential Information:

[www.tmr.com/download/forms/TMRS\\_SOI.pdf](http://www.tmr.com/download/forms/TMRS_SOI.pdf)

You may mail or fax a draft QDRO to TMRS for review and pre-approval. **TMRS does not accept QDROs by email.**

## **Submit the QDRO to TMRS**

The QDRO and the Statement of Confidential Information should be submitted to TMRS as soon as possible after being approved by the court. TMRS must receive an original certified copy of the QDRO; a photocopy or fax is not acceptable. A certified copy of a QDRO can be obtained from the court clerk.

## **Changing the Participant's Beneficiary After Divorce**

When the divorce is final, a participant should update their beneficiary designation.

**If the alternate payee was the designated beneficiary, the divorce ends the designation, and the participant will need to designate a new beneficiary.** If a participant wants the alternate payee to remain the beneficiary after the divorce, the participant must re-designate the alternate payee after the divorce.

A participant may update their beneficiary designation through MyTMRS or by submitting a beneficiary designation form that may be found at tmrs.com.

The alternate payee cannot name a beneficiary because payments end upon the alternate payee's death.

## **How to Get Information About the Participant's TMRS Benefits**

A participant may find their account balance and service credit on their TMRS annual statement or on MyTMRS at tmrs.com.

TMRS can provide information about the participant's benefits to the participant and alternate payee. **A subpoena is not needed.**

A participant or alternate payee may obtain information about the account balance and service credit between specific dates by mailing or faxing a signed, written request with:

- the name and Social Security number or TMRS identification number of the participant,
- requestor's relationship to the participant,
- the date the marriage began,

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- current mailing address, and
- the information being requested.

If an attorney submits the request, they will need to state the information above, which party they represent and their State Bar number.

Faxes requesting this information may be sent to (512) 476-5576. TMRS does not accept requests by email.

### **Keep Contact Information Up To Date**

The participant and the alternate payee should keep TMRS informed of their current address and telephone number to avoid any delays in communications about a requested QDRO.

### **Laws Applicable to TMRS and QDROs**

TMRS benefits and QDROs are based on state and federal laws. TMRS is a public retirement system governed by laws in Title 8, Subtitle G, Chapters 851 through 855, Texas Government Code. TMRS is considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986. Texas law regarding QDROs is found in Chapter 804, Texas Government Code. TMRS also has rules for QDROs found in Title 34, Chapter 129, Texas Administrative Code. The law and rules will govern any question or interpretation that arises from this publication. ERISA does not apply to TMRS. Here are links to the applicable laws and rules:

Chapters 851 through 855: [https://www.tmr.com/legislative\\_rules.php](https://www.tmr.com/legislative_rules.php)

Chapter 804: <http://www.statutes.legis.state.tx.us/Docs/GV/pdf/GV.804.pdf>

TMRS Rules Chapter 129:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=34&pt=6&ch=129&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=34&pt=6&ch=129&rl=Y)



## APPENDIX

### How To Complete the TMRS QDRO Form

To complete the form:

- In the heading for the QDRO, fill the blanks with the district court case information from the divorce proceeding.
- Insert the date that the Decree of Divorce was granted.
- In paragraph 1, fill the first blank with the alternate payee's name and the second blank with the participant's name.
- In paragraphs 2 and 3, provide the names for participant and alternate payee.
  - Complete the separate TMRS Statement of Confidential Information with contact information for participant, alternate payee, their attorneys and with social security numbers and dates of birth for participant and alternate payee.
- At the end of paragraph 3, insert the date that participant and alternate payee were married.
- In paragraph 4, choose one of three methods for dividing the benefits: Accumulated Contributions, Credited Service, or Specified Dollar Amount.
  - If you choose the (1) Accumulated Contributions method *or* the (2) Credited Service method:
    - After checking the box for either method, also fill the blank for “\_\_%” under that same method.
    - Fill the blanks for the dates with (a) the date the marriage began, and (b) the date the marriage ended (which should match the date of the divorce decree).
  - If you choose the (3) Specified Dollar Amount method:
    - After checking the box for the Specified Dollar Amount, fill the blank “\$\_\_\_\_.”

IN THE MATTER OF

IN THE DISTRICT COURT OF

AND

§  
§  
§  
§  
§  
§

\_\_\_\_\_ COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**QUALIFIED DOMESTIC RELATIONS ORDER**

This Qualified Domestic Relations Order (this "Order") is intended to meet the requirements for a "qualified domestic relations order" relating to the TEXAS MUNICIPAL RETIREMENT SYSTEM (the "Plan"). This Order is an integral part of the Decree of Divorce granted on \_\_\_\_\_. In compliance with those requirements the following is specified:

1. This Order assigns a portion of the benefits payable under the Plan to \_\_\_\_\_ in recognition of his/her marital rights in \_\_\_\_\_'s benefits payable under the Plan.
2. Participant in the Plan is \_\_\_\_\_. Confidential information, including Participant's last known mailing address, date of birth and Social Security Number, is included in the Statement of Confidential Information, attached as an Exhibit, and hereby incorporated by reference.
3. Alternate Payee is \_\_\_\_\_. Confidential information, including Alternate Payee's last known mailing address, date of birth and Social Security Number, is included in the Statement of Confidential Information, attached as an Exhibit, and hereby incorporated by reference. Participant and Alternate Payee were married on \_\_\_\_\_.
4. As part of a just and right division of the estate of the parties, Alternate Payee is hereby awarded a portion of any benefits payable with respect to Participant which Participant, or Participant's designated beneficiary, surviving spouse, or estate may become entitled to receive from the Plan, by way of a return of accumulated contributions or by way of any monthly retirement benefit that may become payable as a result of Participant's participation in the Plan, such portion to be determined by:

Select only one of the following and include the dates of marriage and/or divorce for the dates of division.

**Accumulated Contributions**

multiplying \_\_\_\_\_% by the Community Property Ratio based on accumulated contributions between the following dates: \_\_\_\_\_ and \_\_\_\_\_.

**Credited Service**

multiplying \_\_\_\_\_% by the Community Property Ratio based on total creditable service between the following dates: \_\_\_\_\_ and \_\_\_\_\_.

**Specified Dollar Amount**

multiplying a fraction, the numerator of which is \$\_\_\_\_\_ of the accumulated contributions deposited to the Participant's individual account with the Plan, earned by Participant during this marriage, together with interest thereon as allowed by the Plan after the date the divorce was granted, to the date of such payment, and the denominator of which is the total of all contributions heretofore or hereafter made by Participant to Participant's individual account with the Plan (together with all accumulated interest thereon), by the benefit that would otherwise be payable (excluding any portion based on municipality contributions).

5. The provisions of 34 Texas Administrative Code, §129.13 and §129.14 are incorporated herein by reference.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge Presiding

Approved and consented as to form and content:

\_\_\_\_\_  
Participant's Signature

\_\_\_\_\_  
Alternate Payee's Signature

Approved as to form only:

\_\_\_\_\_  
Participant Attorney's Signature

\_\_\_\_\_  
Alternate Payee Attorney's Signature

Name: \_\_\_\_\_

Name: \_\_\_\_\_



# Statement of Confidential Information

Cause # \_\_\_\_\_

This form is part of the Qualified Domestic Relations Order (QDRO), but should be kept confidential in the court files; however, this page must be submitted to TMRS along with a certified court copy of the QDRO.

## PARTICIPANT INFORMATION

First Name	Middle Name	Last Name	Date of Birth
Social Security Number	Phone Number	E-mail Address	
Address	City	State	Zip

## ALTERNATE PAYEE INFORMATION

First Name	Middle Name	Last Name	Date of Birth
Social Security Number	Phone Number	E-mail Address	
Address	City	State	Zip

## PARTICIPANT ATTORNEY INFORMATION

First Name	Middle Name	Last Name	State Bar Number
Address	City	State	Zip
Phone Number	Fax Number		

## ALTERNATE PAYEE ATTORNEY INFORMATION

First Name	Middle Name	Last Name	State Bar Number
Address	City	State	Zip
Phone Number	Fax Number		

