Divorce After Retirement

Divorce can have a significant impact on a TMRS retiree's retirement benefit. The retiree and the retiree'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 retiree's TMRS benefits will not be divided in the divorce, the divorce decree should specify this. Language to do so is included on page two 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.

The death of the retiree's divorced spouse ends the spouse's interest in the retiree's benefit. The retiree's spouse cannot designate a beneficiary for the TMRS benefits awarded to them in a QDRO.

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

- the retiree's spouse is also a TMRS member or retiree and you want to award each party a portion of their benefits, or
- if the retiree has returned to work for a TMRS city.

The following information describes TMRS' QDRO forms and answers common questions that retirees 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 retiree will be referred to as the "participant" and the retiree's spouse will be referred to as the "alternate payee."

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 if the participant selected the Retiree Life Only or Retiree Life and Guaranteed Term option.

If the participant selected a Retiree Life and Survivor payment option:

- the language below removes the alternate payee as the survivor beneficiary, and
- the participants should send the decree to TMRS.

> (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.

If the participant selected a Retiree Life and Survivor payment option and wants to keep the alternate payee as the survivor beneficiary, the divorce decree should include the following language and be sent to TMRS.

> (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, *save and except for any survivor benefit elected by [participant's name] at retirement from the Texas Municipal Retirement System that is payable to [alternate payee's name] in the event of the [participant's name] death*.

What to Do If TMRS Benefits Will Be Divided

There are two methods to divide the participant's benefits:

- the Carve-Out method, or
- the Conversion method.

The Carve-Out method must be used if the participant chose one of the following retirement options:

- Retiree Life Only,
- Retiree Life and Guaranteed Term, or
- Retiree Life and Survivor where the survivor beneficiary is **not** the alternate payee.

Either method can be used if the participant chose a Retiree Life and Survivor option at retirement, and the alternate payee is the designated survivor beneficiary.

To find information on which retirement option and beneficiary the participant chose, see "How To Get Information About the Participant's TMRS Benefits" below.

The Carve-Out Method

The Carve-Out method awards the alternate payee a portion of the participant's monthly retirement benefit payment. The payment to the alternate payee will end based on the retirement benefit option selected by the participant at retirement.

- If the Retiree Life Only benefit option was selected, payments to the alternate payee end when either the alternate payee or the participant dies.
- If the Retiree Life and Guaranteed Term benefit option was selected, payments to the alternate payee end when the alternate payee dies.
    - If the participant dies before the alternate payee, then:
        - if the guaranteed term has ended, the payments to the alternate payee end, or
        - if the guaranteed term has not ended, the payments to the alternate payee do not change and will end when the guaranteed term expires.
- If the Retiree Life and Survivor benefit option was selected, payments to the alternate payee end when the alternate payee dies.
    - If the participant dies first and the alternate payee is the survivor beneficiary, the alternate payee's payment changes to the survivor monthly retirement benefit payment (which may be a reduced amount, such as 50% or 75% of the participant's monthly payment, depending on the survivor option selected at retirement) until the alternate payee dies.
    - If the participant dies first and the alternate payee is not the survivor beneficiary, the alternate payee will receive a portion of the designated survivor's monthly retirement benefit payment (which may be a reduced amount depending on the survivor option selected at retirement and the portion of that benefit awarded by the QDRO) until the survivor dies.

The Conversion Method

The Conversion method may be used only where the alternate payee is the survivor beneficiary named by the participant under the Retiree Life and Survivor benefit option.

The Conversion method divides the participant's existing Retiree Life and Survivor benefit into two separate lifetime benefits:

- a monthly payment for the participant's lifetime, and
- a monthly payment for the alternate payee's lifetime.

The Conversion method also removes the alternate payee as the participant's beneficiary. Under the Conversion method, payments to the participant end when the participant dies, and payments to the alternate payee end when the alternate payee dies.

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.

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

Form for Carve-Out method: www.tmrs.com/down/forms/QDRO_After_Retirement_Carveout.pdf
Form for Conversion method:
www.tmrs.com/down/forms/QDRO_After_Retirement_Conversion.pdf
Form for TMRS Statement of Confidential Information:
www.tmrs.com/down/forms/TMRS_SOCI.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.

What Happens to the Participant's Benefit Payments Pending TMRS Approval of a QDRO

Carve-Out Method. When TMRS receives a divorce decree or a QDRO signed by a court that uses the Carve-Out method, TMRS may reduce the participant's monthly retirement payments pending TMRS approval of the QDRO. In this event, TMRS will hold the portion for the alternate payee pending approval. TMRS will notify both the participant and the alternate payee about the process and amount of time that TMRS will hold payments for this process.

Conversion Method. When TMRS receives written notice of a divorce decree or a QDRO signed by a court that uses the Conversion method, the participant's monthly retirement payments are not affected pending TMRS approval of the QDRO.

When Will TMRS Benefits Be Paid to an Alternate Payee

After TMRS has approved a QDRO, TMRS will send an approval letter to both the participant and alternate payee.

If no one contests the QDRO approval, payments to the alternate payee will begin. If either the alternate payee or the participant contests TMRS's approval of the QDRO, payments to the alternate payee will be delayed until the dispute is decided by the court that signed the QDRO.

Changing the Participant's Beneficiary After Divorce

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

Retiree Life Only or Retiree Life and Guaranteed Term. If the participant selected either the Retiree Life Only or the Retiree Life and Guaranteed Term payment option, and if the alternate payee is the beneficiary at the time of the divorce, the divorce voids the beneficiary designation. In this case, a participant must designate a new beneficiary. The participant can re-designate their former spouse after the divorce.

Retiree Life and Survivor. If the participant selected the Retiree Life and Survivor payment option, and if the alternate payee is the survivor beneficiary, the alternate payee remains the survivor beneficiary after the divorce except where the participant keeps all TMRS benefits.

If the survivor beneficiary designated at retirement is not the alternate payee, the divorce does not affect the beneficiary designation, and the participant cannot change the survivor beneficiary.

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

If the Participant Marries After Divorce

If the participant marries after divorce, in certain cases they may be able to change their benefit payment to a Retiree Life and Survivor benefit naming their new spouse as the survivor beneficiary. TMRS must receive the necessary form from the participant **before the first anniversary** of the new marriage.

How to Get Information About the Participant's TMRS Benefits

After retirement, a participant can find their TMRS monthly benefit payment, retirement option selected at retirement and designated beneficiary 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,
- 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.tmrs.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

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 in 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 the participant and alternate payee.
- Complete the separate TMRS Statement of Confidential Information with contact information for participant, alternate payee, their attorneys and the social security numbers and dates of birth of the participant and alternate payee.
- If using the TMRS QDRO form for the Carve-Out method, on page 2 of this Appendix:
    - At the end of paragraph 3, fill in the blank for the date on which participant and alternate payee were married.
    - In paragraph 4, fill the blank for "___%".
- If using the TMRS QDRO form for the Conversion method, on page 3 of this Appendix:
    - In paragraph 4, fill the blank for "___%", which cannot exceed the percentage of the survivor benefit under the Retiree Life and Survivor benefit option selected by the participant at retirement.

No_____

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, the Alternate Payee is hereby awarded a portion of the benefit payable with respect to Participant which Participant, or Participant's designated beneficiary, surviving spouse, or estate is entitled to receive from the Plan, such portion to be determined as ____% of the benefit payable to Participant or Participant's designated beneficiary, surviving spouse, or estate by the Plan.

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

Name:_____

_____
Alternate Payee Attorney's Signature

Name:_____

SAMPLE

No _____

IN THE MATTER OF	§	**IN THE DISTRICT COURT OF**
_____	§	
	§	_____ **COUNTY, TEXAS**
AND	§	
_____	§	_____ **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 monthly retirement benefit payable under the Plan to _____ in recognition of his/her marital rights in _____'s monthly retirement benefit 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. Alternate Payee is the same person designated as beneficiary under Participant's TMRS optional retirement benefit selection.

4. As part of a just and right division of the estate of the parties, Alternate Payee is hereby awarded a portion of the monthly retirement benefit which Participant is to receive from the Plan, such portion to be a monthly retirement benefit that is the actuarial equivalent of ____% of the present benefit payable to Participant.

The portion hereby awarded to Alternate Payee: (a) is payable throughout the remaining life of the Alternate Payee, and no payments from Alternate Payee's portion will be made after Alternate Payee's death; and (b) the percentage awarded to the Alternate Payee cannot exceed 50% of Participant's present benefit if Participant retired under the 50% retiree life/survivor option, or more than 66 2/3rds% of Participant's present benefit if Participant retired under the 66 2/3rds% retiree life/survivor option, or more than 75% of Participant's present benefit if Participant retired under the 75% retiree life/survivor option, or more than 100% of Participant's present benefit if Participant retired under the 100% retiree life/survivor

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:_____

SAMPLE

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

SAMPLE