

RESOLUTION #2016-02 DOMESTIC RELATIONS ORDERS

(Supersedes Resolution #2006-07)

October 13, 2016

WHEREAS, Utah Code Annotated § 49-11-612 requires the Board to adopt rules governing domestic relations orders that provide for the division of certain benefits arising under Title 49 through an order of a court of competent jurisdiction;

WHEREAS, the Board previously adopted Instruction Sheets and Model Domestic Relations Orders; and

WHEREAS, the Board desires to update the rules governing domestic relations orders and delegate authority to the Utah State Retirement Office (Office) to establish instructions and model orders pursuant to its rules and with the approval of the Executive Director.

NOW, THEREFORE, BE IT RESOLVED, that the Board approves the rules described below.

BE IT FURTHER RESOLVED, that the Board directs the Office to establish and adopt instructions and model orders to ensure that orders for the division of domestic relations order benefits meet the necessary requirements.

BE IT FURTHER RESOLVED, that the Board directs the Office to prepare, maintain, and revise as necessary, instructions and model orders to ensure that orders for the division of domestic relations order benefits meet the necessary requirements to be accepted by the Office, based upon model orders and instructions previously approved by the Board, the rules provided in this resolution, and subject to the approval of the Executive Director.

THEREFORE BE IT FURTHER RESOLVED, the Board authorizes and directs the Executive Director to approve the instructions and models pursuant to the rules provided in this resolution.

THEREFORE BE IT FURTHER RESOLVED, the Board authorizes and directs the Office to provide the approved instructions and model orders online for the public on the Office's website.

A. GENERAL RULES

1. Since the Utah Retirement Systems (URS) is not governed by the Employee Retirement Income Security Act (ERISA), URS cannot accept the same type of order used by ERISA plans as a domestic relations order (DRO).
2. URS does not require benefits or account balances to be divided in a divorce situation.
3. URS does not mediate marital property disputes, nor does URS give legal advice concerning domestic relations law.
4. Each person submitting a DRO to URS is responsible to ensure that their order adequately protects their rights.
5. The defined benefit plan and defined contribution plans have separate model orders and separate DROs shall be filed if benefit plan and defined contributions plans are to be split.
6. Although the court determines how to divide a member's account balance, only URS can deem a DRO approved.
7. The DRO shall be properly issued by a court of competent jurisdiction of the State of Utah. Any DRO issued by another state shall be domesticated in Utah.

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8. The DRO submitted to URS shall be a certified copy.
9. All of the information in the model order prepared by URS shall be used and shall be fully provided in order for the DRO to be valid.
10. A DRO will not be approved until all provisions are acceptable to URS.
11. After a Judge has signed an acceptable DRO, URS shall receive a certified copy to be valid.
12. URS will send a letter of acceptance to both the participant and the alternate payee when URS officially determines an order qualifies as a DRO.
13. To be considered a surviving spouse of a member, a valid DRO shall be on file with URS before the member's death date in accordance with U.C.A. § 49-11-612.
14. All of the limitations in the "Limitations of this DRO" section of the model order shall be included within the DRO for it to be valid.
15. The alternate payee shall provide the plan prompt written notification of any changes in the alternate payee's mailing address. URS shall not be liable for failing to make payments to the alternate payee if URS does not have a current mailing address for the alternate payee at the time of payment.
16. Pursuant to U.C.A. § 49-11-1401, an alternate payee will forfeit benefits under a DRO if the member/employee has a forfeiture of retirement benefits due to an employment-related felony conviction.
17. The member and alternate payee shall comply with Internal Revenue Code and any applicable regulations.

B. DEFINED BENEFIT (DB) PLAN RULES

1. For URS to accept a DRO applicable to a defined benefit plan benefit, the DRO shall provide the name and last known address of both the member and the alternate payee. A separate addendum is required and shall accompany a copy of the DRO to be sent to URS with the requisite Social Security numbers and dates of birth.
2. Pursuant to U.C.A. § 49-11-612(4)(c)(i), once an alternate payee begins receiving monthly payments from the DB plan pursuant to the DRO, the amount to be paid or the period for which payments are being made under the original domestic relations order may not be altered.
3. A DRO filed with URS may modify the benefit option chosen at retirement.
4. If a member dies prior to retirement, to be considered a surviving spouse of a member for purposes of a benefit an alternate payee shall have a valid DRO on file with URS before the member's death date in accordance with U.C.A. § 49-11-612.
5. The provisions of a DRO may not apply to long term disability benefits that the member may be entitled to receive.
6. If the alternate payee dies prior to when monthly benefits should have begun based upon the effective date established by URS under a DRO, the member's benefit will not be reduced by a DRO.
7. If the alternate payee dies after monthly benefits should have or have begun based upon the effective date established by URS under a DRO, the alternate payee's portion of the benefit does not revert to the member.
8. An alternate payee may not assign the alternate payee's rights to benefits under a DRO.

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9. Nothing contained in a DRO shall be construed to require URS:
 - a. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the member under any plan;
 - b. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the member;
 - c. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order determined by the plan administrator to be a DRO; or
 - d. To provide the alternate payee a benefit or interest which exceeds the value of the account.
10. If a member or alternative payee receive any distribution that should not have been paid under a DRO, the member or alternate payee is designated a constructive trustee for the amount received and shall immediately notify URS and comply with written instructions as to the distribution of the amount received.
11. Once an alternate payee begins receiving monthly payments from the URS DB plan pursuant to the DRO, the amount to be paid or the period for which payments are being made under the original DRO may not be altered.
12. If URS determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to an alternate payee by a DRO and so notifies the parties, either or both parties shall immediately petition the court for an amended DRO.

C. DEFINED CONTRIBUTION (DC) PLAN RULES

1. A DRO shall specify the savings plan and identify if the participant is a member of the Tier II Defined Contribution plan.
2. A DRO shall give the name and last known address of both the member and the alternate payee. A separate addendum is required and shall accompany a copy of the DRO to be sent to URS with the requisite Social Security numbers and dates of birth.
3. In the event the participant is not 100% vested in the participant's 401(k) account, the alternate payee's rights to the assigned share of such 401(k) account shall not be diminished by this fact. Rather, the alternate payee's vesting status shall be considered identical to the participant's vesting status, and the alternate payee's vesting status shall continue to reflect the vesting status of the participant as it increases over time until both have attained 100% vesting in their respective shares of the account balance set forth herein.
4. URS will accept a new DRO that provides a fixed dollar division of accounts that have been previously divided.
5. Nothing contained in this DRO shall be construed to require the plan, plan administrator and/or URS:
 - a. To provide to the alternate payee any type or form of benefit or any investment option not otherwise available to the participant under the applicable plan;
 - b. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order determined by the plan administrator to be a DRO; or
 - c. To provide the alternate payee a benefit or interest which exceeds the value of the account.

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6. If a participant or alternate payee receives any distribution that should not have been paid under a DRO, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify URS and comply with written instructions as to the disposition of the amount received.
7. The alternate payee shall report any payments received on any applicable income tax return in accordance with the Internal Revenue Code provisions or regulations in effect at the time any payments are issued by URS. URS shall issue applicable tax forms on any direct payment made to the alternate payee.
8. The court retains jurisdiction to amend a DRO so that it will constitute a Domestic Relations Order under the plan even though all other matters incidental to the action or proceeding have been fully and finally adjudicated.
9. If URS determines at any time that changes in the law, administration of the plan, or any other circumstances make it impractical to calculate the portion of a distribution awarded to an alternate payee by a DRO and so notifies the parties, either or both parties shall immediately petition the court for a reformation of the DRO with fixed dollar amounts only.
10. A DRO with a valuation date requiring market adjustments of more than 7 years shall be in a fixed dollar amount and no market adjustments will be allowed

This Resolution is effective on October 13, 2016.