



DEFERRED COMPENSATION PLAN (NYCDCP)

Domestic Relations Order (DRO) Procedures Manual

Revised MARCH 14, 2019

This manual is designed to assist the parties involved in a divorce, separation or dissolution of marriage and their attorneys or Domestic Relations Order (“DRO”) preparers in dispositions of marital property and interests in the plans described below. The New York City Deferred Compensation Plan (“the Plan”) is governed by the applicable Plan documents and by the Internal Revenue Code of 1986, as amended (the “Code”) Sections 457(b), 401(k), 401(a), 408(q) and 414(p). The information provided is not intended to provide investment, financial, tax, legal or any other expert advice. This manual applies to the following plans:

- The 401(a) Plan for Employees of the City of New York and Related Agencies and Instrumentalities;
- The 401(k) Plan for Employees of the City of New York and Related Agencies and Instrumentalities; and
- The Deferred Compensation Plan for Employees of the City of New York and Related Agencies and Instrumentalities (457 Plan)

A DRO cannot require a Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan. At times, retirement benefits do not have to be split due to a divorce. For instance, retirement benefits do not have to be divided if the Participant and spouse agree to exchange other assets instead of splitting the retirement benefits. Since the division of marital assets takes many forms, there is no requirement that Plan benefits be split upon divorce.

Please Note: This manual does not constitute the offering of investment, financial, tax, legal, or any other expert advice. The material contained in this manual is for informational purposes only. You may wish to consult an investment advisor, legal counsel or other expert before reaching any decisions.

This booklet will be periodically updated as necessary.

You may reach the NYCDPCP at:

New York City Deferred Compensation Plan
Client Service Center
22 Cortlandt Street
18th Floor
New York, NY 10007

Phone Number: (212) 306-7760

Outside NYC: (888) 327-3113

Fax Number: (212) 306-7376

I. DOMESTIC RELATIONS ORDER OVERVIEW

A. What is a Domestic Relations Order?

A Domestic Relations Order (“DRO”), also known as a Conforming Equitable Distribution Order, is a court order, judgment, or decree issued under a state's domestic relations law. It recognizes the right of the following individuals (referred to as "Alternate Payees") to receive all or part of the Participant's account balance or accrued benefit in an employer retirement plan:

1. Spouse
2. Former spouse
3. Child
4. Other dependent of the Participant

In order for the Plan to separate a Participant's assets in the event of a divorce, it is necessary for the Plan to receive a **certified DRO** (a court order that is signed by a judge and certified by the clerk of the court) detailing how the Participant's assets are to be separated. The Plan will separate the assets in the manner described in the DRO, provided that the Plan is able to comply with the order. The assets that the Alternate Payee is entitled to will be transferred into a separate account established under the Plan in the Alternate Payee's name (see page 3).

Judgments of Divorce and Stipulations of Settlement are insufficient in and of themselves to separate the assets. The Plan can only separate a Participant's assets when it is served with a certified DRO.

B. Release of Plan Information or the Participant's Specific Benefit Information

Prior to drafting a DRO, it may be necessary to obtain the Participant's specific account balance information, or provisions of the Plan (e.g. distribution options, beneficiary provisions, etc.). Specific information regarding the Participant's benefits can be released to a party involved in a domestic relations matter provided that the Plan receives:

1. A signed statement from the Participant authorizing the Plan to release the information;
OR
2. A court document that legally requires the Plan to provide a party with the Participant's account information (e.g. subpoena).

II. DRO CREATION

A. Introduction: Steps for Creating a DRO

Dividing retirement benefits in domestic relations proceedings involves complex matters such as marital rights, legal issues, and tax consequences. You may first want to consult with an attorney or DRO preparer to best handle your case.

There are many ways to draft the terms of a DRO. Refer to the steps below (using the model language form as a guide) to complete a draft DRO that meets the Plan's requirements. The Plan's model language form is acceptable for a DRO, if the required information is accurately completed by the DRO preparer.

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B. DROs: Requirements and Sample Language

The following guidelines are designed to assist the DRO preparer in creating a domestic relations order that would be acceptable to the Plan. Attached as **Exhibit A** is sample language for a DRO. The sample language provided may need to be revised to align with a particular agreement's specifications. Please note that, if the Participant has more than one account with the Plan, (e.g. a 401(a), 401(k), 457, etc.), then a separate DRO is required for **each** account.

The Plan recommends that the DRO preparer submit a draft DRO to the Plan **prior to** submitting the DRO to the court for certification. Please note that a Participant's account will be restricted upon receipt of a draft DRO by the Plan (see pg. 4). In the event that the Plan cannot comply with a certified DRO, the certified DRO may be returned to the DRO preparer for revision due to noncompliance with the Plan's requirements.

- **Note:** The term "qualified" should not be used to describe a domestic relations order that is directed toward the Plan or any section thereof. Since the Plan is a governmental plan, it is not subject to the "qualified domestic order" provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

In order for a DRO to meet the Plan's requirements, it must contain all of the following:

1. Name of the Plan and mailing address

The DRO preparer must clearly identify the Plan's name in the DRO itself.

- The following language must serve as the **opening** paragraph of the order:

This order is directed to the Deferred Compensation Plan & NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities, hereinafter referred to as "the Plan".

The Plan's mailing address is: 22 Cortlandt Street, 18th Floor, New York 10007

2. Participant/Alternate Payee Information

- The order must include the account holder's name. The account holder shall be referred to as "Participant."
- The order must include the name of the individual who is entitled to the participant's assets. This individual shall be referred to as the "Alternate Payee."
- The order must include the current and last known mailing address, the Social Security number and the date of birth for each party named in the order.
- The order must include a statement asserting that neither the Participant nor the Alternate Payee are currently members of the military in this country or any other country or territory. (See **Exhibit A**)

3. Award Paragraph

In order to establish a separate account under the Plan for the Alternate Payee, the order must contain specific language specifying the dollar amount or percentage of the Participant's account that is to be transferred from the Participant's account into the separate account established for the Alternate Payee. This language must be contained in the award paragraph.

Based on the award paragraph contained in the order, the Plan will establish a separate account under the Plan for the Alternate Payee in his/her own name, using proceeds from the Participant's account. The award proceeds will only be transferred into the Alternate Payee's separate account under the Plan.

The award paragraph must include the following:

- Award paragraph must include a determinable portion of the Participant's account payable to the Alternate Payee (expressed as either a dollar amount or percentage) as of the date the account is established. See **Exhibit A**.
- Award language must specify that a separate account must be established under the Plan for the Alternate Payee. See **Exhibit A**.

If the Alternate Payee is entitled to an award from a Participant's 457 account, the Plan can only establish a 457 account for the Alternate Payee with proceeds from that account. Similarly, if the Alternate Payee is entitled to an award from a Participant's 401(k) account, the Plan can only establish a 401(k) account for the Alternate Payee with proceeds from that account.

The Alternate Payee will not be required to withdraw their funds from the Plan, or to transfer funds to another employer plan or IRA upon receipt of the award. The Alternate Payee will be able to maintain their account with the Plan at their option and will be allowed flexibility with respect to withdrawing funds in accordance with the Plan's rules. The Alternate Payee will also have the option of rolling over their award proceeds into their own employer plan or IRA, but only after their separate account is established under the Plan.

4. Required Ordered Paragraphs

All orders submitted to the Plan must contain the following paragraphs after the award paragraph (see **Exhibit A**):

- ORDERED, that nothing contained in this order shall, in any way, require the Plan to provide any form, type or amount of benefits not otherwise available by law; and it is further
- ORDERED, that the Plan shall have no obligation or responsibility as a consequence of this action apart from the specific direction contained in this order; and it is further
- ORDERED, that in the event of a change of address of said Alternate Payee, the Alternate Payee shall immediately notify the Plan in writing; and it is further
- ORDERED, that this order shall not require the Plan to pay any benefits to the Alternate Payee, including a spouse, which are required to be paid to another alternate payee; and it is further
- ORDERED, that this Order is applicable solely with respect to the interest of the Alternate Payee and Participant named herein under the Plan; and it is further
- ORDERED, that this order is deemed appropriate to effectuate division of the benefits earned by the Participant pursuant to his participation in the Plan; and it is further
- ORDERED, that taxes shall be withheld from any distributions to the Participant and the Alternate Payee, and reported for tax purposes, in accordance with the applicable laws in effect at the time of distribution; and it is further
- ORDERED, that the Alternate Payee has a marital property or equitable distribution interest in the Participant's contractual right to receive Deferred Compensation as provided by the Plan. In the event that the Participant makes any type of withdrawal that causes the account balance to fall below the amount awarded to the Alternate Payee, the Participant shall be responsible for reimbursing the Alternate Payee for any shortfall, directly to the Alternate Payee, from the Participant's own separate assets. In no event shall the Plan be responsible for reimbursing the Alternate Payee for any shortfall including, but not limited to, any shortfall arising out of market fluctuation.

C. Certified Copies of DROs

A court-certified domestic relations order is signed or stamped by a judge or other court official and has a stamp or seal from the clerk of the court stating that the order is a certified copy. The Plan must receive a certified copy of the DRO in order to separate a Participant's account and process the award for the Alternate Payee. A photocopy or a faxed copy of a court-certified order is not acceptable under the Plan's requirements.

III. DRO PROCESSING

A. Placement of Restrictions on a Participant's Account(s)

Upon receipt of a draft DRO, the Plan will automatically place a restriction on the Participant's account(s). The Plan will also place a restriction on a Participant's account(s) if required to do so by a court order. None of the following account activities will be allowed by the Participant during the restriction period:

1. Loans,
2. Hardship withdrawals, or
3. Any other distribution permitted under the Plan

However, during the restriction period, the Participant will be permitted to make contributions to the Plan, make investment changes, and change beneficiary designations.

B. Removal of Restrictions on a Participant's Account(s)

A restriction on a Participant's account will be removed if one of the following events occur:

1. If the Plan receives a certified DRO with which it is able to comply, the Plan will separate the account(s) for the Alternate Payee in accordance with the certified DRO and remove the restriction;
2. If the Plan receives a Stipulation of Settlement, which states that the Alternate Payee waives their right to the Participant's account(s) under the Plan or that the Participant is entitled to 100% of their account(s) under the Plan;
3. If the Plan receives a waiver, signed by the Alternate Payee, stating that the Alternate Payee waives their rights to the Participant's account(s);
4. If the Plan receives a Notice of Discontinuance, or other similar Court order relating to the status of the matrimonial action; **OR**
5. If more than **twenty-four (24)** months have elapsed from the **date** that the Plan received the **initial draft DRO**, then the restriction will be removed at the **Participant's request**. This means that, if the DRO preparer does not submit a certified order to the Plan within twenty-four (24) months of submitting the draft DRO, then the Participant may request to have the restriction removed from their account(s) after the twenty-four (24) months have elapsed.

C. Processing the Award Specified in the Certified DRO

Once the Plan receives the certified DRO, the Plan will separate the account according to the award paragraph. This process may take approximately 3-4 weeks. After the account is established for the Alternate Payee, confirmation letters will be sent to both the Participant and Alternate Payee stating the amount that was transferred into the Alternate Payee's. The parties may choose to contact the Plan on their own accord should they need assistance with managing their account, changing beneficiaries, changing addresses, etc.

D. Additional Information After the Plan Has Processed a DRO

If you are a **Participant**, please note the following:

- The division of the account is not a taxable event to the Participant.

If you are an **Alternate Payee**, please note the following:

- The division of the account is not a taxable event to the Alternate Payee, however, taxes shall be withheld from any distributions to the Alternate Payee, and reported for tax purposes, in accordance with the applicable laws in effect at the time of distribution.
- The Alternate Payee may maintain his or her newly established account with the Plan. The Alternate Payee may designate beneficiaries to the account and make investment changes. The Alternate Payee's account will incur any applicable administrative or investment management fees while funds remain in the Plan.
- The Alternate Payee cannot make contributions to a DRO account, nor can the Alternate Payee take a loan from the DRO account. However, the Alternate Payee can roll over their outside retirement assets into the Deferred Compensation Plan account that was established under the Plan.
- The Alternate Payee is not subject to early withdrawal penalties for the 401(k) account, if withdrawing funds prior to age 59 ½, in accordance with Code Section 72(t)(2)(C).
- The Alternate Payee is not subject to early withdrawal penalties for the 401(a) account, if withdrawing funds prior to age 62, in accordance with Code Section 72(t)(2)(C).
- The Alternate Payee will not be subject to early withdrawal penalties for the 457 account.
- The Alternate Payee may elect to leave their account(s) in the Plan up until the date that the Participant turns age 70 ½. At that point, the Alternate Payee would have to begin taking required minimum distributions.
- After a separate account is established for the Alternate Payee under the Plan, the Alternate Payee will have the option of rolling their account funds out of the Deferred Compensation Plan into their own separate employer plan or IRA.

Exhibit A

Note: This exhibit does not constitute the offering of investment, financial, legal, or any other expert advice.

SAMPLE DOMESTIC RELATIONS ORDER

(This sample is effective March 14, 2019)

At an IAS Term Part _____ of the Supreme Court of the State of New York, held in and for the County of (county where divorce was issued), at the Courthouse thereof located (street address where the court is located) on _____, _____.

P R E S E N T:

Justice Supreme Court

-----X

Plaintiff,

-against-

Index No.

**DOMESTIC RELATIONS
ORDER**

Defendant,

-----X

This order is directed to The Deferred Compensation Plan & NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities, hereinafter referred to as the "Plan."

The Plan's address is 22 Cortlandt Street, 18th Floor, New York, NY 10007.

John Doe is hereinafter referred to as "Participant", whose date of birth is [*insert full DOB*], whose Social Security Number is [*insert full SSN*], and whose current and last known mailing address is [*insert street, unit number, city, state, and zip code*]. The Participant is not in the military service in this country or in any other country or territory.

Jane Doe is hereinafter referred to as “Alternate Payee”, whose date of birth is [*insert full DOB*], Social Security Number is [*insert full SSN*], and whose current and last known mailing address is [*insert street, unit number, city, state, and zip code*]. The Alternate Payee is not in the military service in this country or in any other country or territory.

[*Note: It is acceptable to provide the Participant’s and/or Alternate Payee’s personal information on a separate addendum and reference it in the order (e.g. See addendum for the Social Security Number, Date of Birth, and last known address). If the personal information is to remain confidential between the parties, the addendum must have a statement stating such. The addendum must be provided to the Plan with the proposed draft order for pre-approval.*]

Date of marriage

Date of commencement of divorce

Date of separation agreement or stipulation of settlement [*choose one*]

[Please select one of the award paragraphs below, indicating the applicable account (e.g. 401(a), 401(k), 457, Special 401(k) Rollover, etc.). Separate orders are required for each account if the Plan is to establish multiple accounts.]

ORDERED, that the Plan Administrator shall establish a separate [*insert account name (e.g. 457, 401(k), etc.)*] account payable in the name of the Alternate Payee, in the amount of [*insert flat dollar amount*] of the Participant’s [*reinsert account name*] or 100% of the account value, if the account value is less than [*reinsert flat dollar amount*] as of the date the account is established for the Alternate Payee. The aforesaid amount shall be transferred to said account in the name of the Alternate Payee from the Participant’s account under the Plan; and it is further

OR

ORDERED, that the Plan Administrator shall establish a separate [*insert account name (e.g. 457, 401(k), etc.)*] account payable in the name of the Alternate Payee, in the amount of [*insert % amount*] of the Participant’s [*reinsert account name*] as of the date the account is established for the Alternate Payee. The aforesaid amount shall be transferred to said account in the name of the Alternate Payee from the Participant’s account under the Plan; and it is further

ORDERED, that nothing contained in this order shall, in any way, require the Plan to provide any form, type or amount of benefits not otherwise available by law; and it is further

ORDERED, that the Plan shall have no obligation or responsibility as a consequence of this action apart from the specific direction contained in this order; and it is further

ORDERED, that in the event of a change of address of said Alternate Payee, the Alternate Payee shall immediately notify in writing to the Plan's address; and it is further

ORDERED, that this order shall not require the Plan to pay any benefits to the Alternate Payee, including a spouse, which are required to be paid to another alternate payee; and it is further

ORDERED, that this Order is applicable solely with respect to the interest of the Alternate Payee and Participant named herein under the Plan; and it is further

ORDERED, that this order is deemed appropriate to effectuate division of the benefits earned by the Participant pursuant to his participation in the Plan; and it is further

ORDERED, that taxes shall be withheld from any distributions to the Participant and the Alternate Payee, and reported for tax purposes, in accordance with the applicable laws in effect at the time of distribution.

ORDERED, that the Alternate Payee has a marital property or equitable distribution interest in the Participant's contractual right to receive Deferred Compensation as provided by the Plan. In the event that the Participant makes any type of withdrawal that causes the account balance to fall below the amount awarded to the Alternate Payee, the participant shall be responsible for reimbursing the Alternate Payee for any shortfall, directly to the Alternate Payee, from the Participant's own separate assets. In no event shall the Plan be responsible for reimbursing the Alternate Payee for any shortfall including, but not limited to, any shortfall arising out of market fluctuation.

E N T E R:

J.S.C.