

**THIS DOCUMENT AND THE MODEL DOMESTIC RELATIONS ORDER ARE FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED AS A RECOMMENDATION OR ADVICE TO ANY PERSON.**

*This Supplemental Guide is intended to provide additional information for Participants and/or Alternate Payees of the New York City Police Pension Fund ("NYCPPF") (the "Plan") in regards to filing a domestic relations order.*

## **I. Acronyms**

- DRO: Domestic Relations Order
- QDRO: Qualified Domestic Relations Order
- VSF: Variable Supplements Fund
- VSF DROP: Deferred Retirement Option Plan
- COLA: Cost-of-Living Adjustment

## **II. QDRO Requirements**

Internal Revenue Code ("Code") § 414(p) defines the terms "qualified domestic relations order" and "domestic relations order," and permits a governmental plan to avail itself of the QDRO rules if the governmental plan makes a payment or distribution that meets statutory conditions. NYCPPF meets those conditions by:

1. Payments and distributions are made pursuant to a DRO, which is defined as any judgment, decree, or order which relates to the marital property rights of a spouse is made pursuant to the New York State Domestic Relations Law.
2. The DRO must create or recognize "the existence of an alternate payee's right to ... receive all or a portion of the benefits payable with respect to a participant under the plan."
3. NYCPPF only makes payments under a DRO to an alternate payee, who, for purposes of NYCPPF, is defined as a former spouse of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant."

## **IV. Additional Information for QDROs**

- ***Applicable Participants.*** The Qualified Domestic Relations Orders model form is intended to be used by Participants/Alternate Payees who are (or are in the process of being) legally divorced. A QDRO will not be implemented until the divorce is finalized.

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- ***Variable Supplements Fund.*** The VSF should only be included in the DRO if the parties have agreed to equitably divide the VSF.
  - Because it is a separate fund from the retirement allowance, if the VSF is to be included, it must be pleaded with particularity. NYCPPF will not pay the VSF to an alternate payee unless it is specifically stated.
  - The VSF is available to both Tier 2 and Tier 3 Participants who retire for Service. The VSF benefits are not payable to disability retirees, Participants who resign or are terminated, or die in active service. VSF payments cease upon the death of the Participant.
  - For parties utilizing the fixed dollar amount choice, if a set amount is listed for the Retirement Allowance, and the Alternate Payee is entitled to the VSF, a percentage for set amount, or a fixed dollar amount, for the VSF should be included.
- ***VSF Deferred Retirement Option Plan.*** In addition to the annual VSF benefit, members who continue on active duty beyond the 20<sup>th</sup> anniversary of allowable police service, and ultimately retire for Service, are entitled to the VSF DROP, also known as the "Banked Variable." If the VSF is included in the DRO, and DROP payments have not yet been paid, the Fund will automatically pay the marital portion to the Alternate Payee unless the DRO specifically excludes the DROP.
- ***Cost of Living Adjustments.*** COLA should only be included if the parties have agreed to its equitable division. If a set dollar amount is listed to pay the Alternate Payee, there must be a percentage listed for the COLA. The Pension Fund will not honor this portion of a DRO without a percentage listed. If the parties are using the Coverture Fraction, that percentage will be applied to COLA.
  - A retiree becomes eligible for COLA at age 62 if retired for at least five years, or at age 55 if retired for at least ten years. Additionally, all disability retirees are eligible for COLA after being retired for five years. The COLA amount is applied to the first \$18,000 of the retirement allowance, or to the full retirement allowance if less than \$18,000.
  - Pursuant to statute, when a Participant begins to receive COLA increases, the VSF benefit is offset by the COLA amount. However, as of December 2007, COLA will no longer offset the VSF benefit for all eligible Service retirees age 62 and older.

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- ***COLA and Escalation.*** COLA and Escalation should only be included if the parties have agreed to its equitable division. COLA is payable to Tier 3 Participants who do not receive Escalation.
  - If a set dollar amount is listed to pay the Alternate Payee, there must be a percentage listed for the COLA and Escalation. The Fund will not honor this portion of a DRO without a percentage listed. If the parties are using the Coverture Fraction, that percentage will be applied to COLA and Escalation.
  - Escalation is applied to the pull pension amount. Tier 3 Participants accrue 1/36<sup>th</sup> in escalation credit for **(a)** every month in active service beyond 22 years, or **(b)** for every month collection of the benefit is deferred beyond what would have been 22 years of allowable police service. Full Escalation is awarded after 25 years of allowable police service. Disability retirees and death beneficiaries receive full escalation upon deferral of one month of the benefit. Escalation does not offset the VSF.
  - Tier 3 Participants receive the better of Escalation or COLA annually.
- ***Loans.*** Language regarding pension loans is optional. If not included, the Pension Fund will divide the actual benefit the Participant receives. The parties should contemplate, and language in the DRO should reflect, whether pension loans taken during the marriage constitute marital property and, thus, any account shortage created should be shared by the parties. Please note that all loans cause shortages, but not all account shortages are caused by loans. The Fund **will only** calculate loan balances and account shortages from the date a member's appointment to a specified date; the Fund will not separate out date ranges.
- ***Voluntary Contributions.*** Language regarding voluntary contributions is optional. If not included, the Pension Fund will divide the actual benefit the Participant receives. The parties should contemplate, and language in the DRO should reflect, whether voluntary contributions made during the marriage constitute marital property and, thus, any account shortage created should be shared by the parties.

The Fund **will only** calculate additional contributions or account excesses from the Member's appointment date to a specified date; the Fund will not separate out date ranges.

- ***Disability Pension.*** Language regarding disability pension is optional. If not included, the Pension Fund will divide the actual benefit the Participant receives. If included, the Fund will calculate what the Participant would have received had he retired on a Vested or

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Service Retirement based upon the Participant's eligibility for such retirement type, and award the marital portion of that hypothetical pension to the Alternate Payee.

- Due to a 2012 Tax Court decision (*Shannon Fernandez v. Commissioner of Internal Revenue*, 138 T.C. No. 20 (2012)), Alternate Payees are responsible for all taxes on their portion, regardless of the tax status of the Participant's retirement allowance.
- **Coverture Fraction.** This calculation method applies only for participants utilizing Choice 1 (with a *Majauskas* ruling). See *Majauskas v. Majauskas*, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984).

NUMERATOR: The amount of time between:

The later of: Participant's membership date or the party's date of marriage. <i>Select whichever is latest.</i>	and	The earlier of: the date of division of marital assets; or (b) the date of Participant's retirement, termination of employment, or death. <i>Select whichever is earliest.</i>
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DENOMINATOR: Participant's total credited service.

- Alternatively, the parties may agree to set a period of months for the numerator, which should be accordingly stated in the DRO.
- While *Majauskas* multiplies the coverture fraction by 50%, this percentage may be negotiated by the parties.
- **Timing of Payments.** A benefit cannot be paid to the Alternate Payee until the Participant has retired. The Fund will place the Alternate Payee on the next available payroll after receipt of a certified DRO. Parties should note that the Pension Fund pays retirement allowances monthly on the last day of each month, and pays the VSF on or about December 15 of each year. If a pay date falls on a weekend or legal holiday, funds are paid on the next business day. If there are arrears due to the Alternate Payee, they must be specified with particularity.
- **Pre-retirement Survivor Benefit.** This provision should only be selected if the parties have agreed that the Alternate Payee is entitled to a share of the pre-retirement survivor benefit, which is only the Ordinary Death Benefit and Return of Contributions. Alternate Payees are not entitled to the Accidental Death Benefit, because beneficiaries for such benefit are dictated by statute.

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- ***Post-Tax Contributions.*** The Post-Tax Contributions made to the Fund (also referred to as "basis") are required to be recovered under certain regulations specific to Code § 72. The DRO must specify whether the Post-Tax Contributions are being allocated between the parties. If allocation between the parties is selected, the Fund will split the basis proportionally (*i.e.* in accordance with the coverture fraction) between the parties.
- ***Options.*** This provision should only be selected if the parties have agreed that the Alternate Payee is entitled to a post-retirement survivor benefit. Option choices can be found in the Tier 2 and Tier 3 Plan Summary documents, available on NYCPPF's website. A DRO which does not specify which party is to bear the cost of the option will be split proportionally (*i.e.* in accordance with the coverture fraction) between the parties.
- ***Taxability.*** Police pensions are not subject to New York State or City tax; however, they are subject to federal tax. Various states may tax Pension Fund distributions differently. Accordingly, the Participants are advised to consult a tax professional if they live outside of New York State. The Fund will issue a 1099-R to each party at the end of the tax year to reflect the benefit(s) received by each of them.
- ***Minimum Benefit to Participant.*** In order to preserve a Participant's eligibility for health insurance through the Pension Fund and the New York State Constitutional guarantee to a pension, the Fund requires Participants receive a *de minimis* benefit. Therefore, the Pension Fund will not implement a DRO which would prevent the Participant from receiving less than \$500 a month.
- ***Arrears.*** Arrearages must be explicitly stated in the DRO. Arrears provisions should state the total amount of arrears and the rate in which the arrears should be paid in monthly installments.
- ***Retiree in Pay Status.*** For Participants who have retired and are receiving a retirement allowance, the DRO must specify a set amount, rather than a percentage, of the monthly retirement allowance to be paid to the alternate payee.
- ***Orders Outside of New York State.*** Orders received from outside the State of New York must be registered in New York State. In lieu of registration, the Fund will accept an executed Consent to New York Jurisdiction and Release.