

# Domestic Relations

The 11-member OPERS Board of Trustees is responsible for the administration and management of OPERS. Seven of the 11 members are elected by the groups that they represent (i.e., college and university non-teaching employees, state, county, municipal, and miscellaneous employees, and retirees); the Director of the Department of Administrative Services for the State of Ohio is a statutory member, and three members are investment experts appointed by the Governor, the Treasurer of State, and jointly by the Speaker of the Ohio House of Representatives and the President of the Ohio Senate.

For a current listing of OPERS Board members, please visit [www.opers.org](http://www.opers.org)

It is your responsibility to be certain that OPERS has your current address on file. If OPERS is not made aware of address changes, we cannot guarantee that you will receive important information pertaining to your OPERS account.

This booklet is written in plain language for use by members of the Ohio Public Employees Retirement System. It is not intended as a substitute for the federal or state law, namely the Ohio Revised Code, the Ohio Administrative Code, or the Internal Revenue Code, nor will its interpretation prevail should a conflict arise between it and the Ohio Revised Code, Ohio Administrative Code, or Internal Revenue Code. Rules governing the retirement system are subject to change periodically either by statute of the Ohio General Assembly, regulation of the Ohio Public Employees Retirement Board, or regulation of the Internal Revenue Code. If you have questions about this material, please contact our office or seek legal advice from your attorney. OPERS is not required to provide health care coverage to retirees or their dependents and will only do so at the discretion of the Board of Trustees.

# Domestic Relations

## OPERS accounts and termination of marriage

An OPERS member or benefit recipient's marriage termination by divorce, dissolution or annulment may impact their OPERS Traditional Pension Plan, Combined Plan, or Member-Directed Plan account. If a member and their spouse are getting a legal separation, this proceeding may also impact the member's OPERS account.

The following general information is provided to assist OPERS members and benefit recipients in understanding Ohio domestic relations and retirement law and is not legal advice.

OPERS members or benefit recipients who are considering or proceeding in divorce, dissolution, annulment or legal separation should seek the advice of independent legal counsel about the impact of these proceedings on their OPERS account. Legal counsel may assist the member or benefit recipient in determining the options available in dividing the member's or benefit recipient's OPERS funds upon marriage termination or legal separation.

### OPERS Accounts and Support Withholding

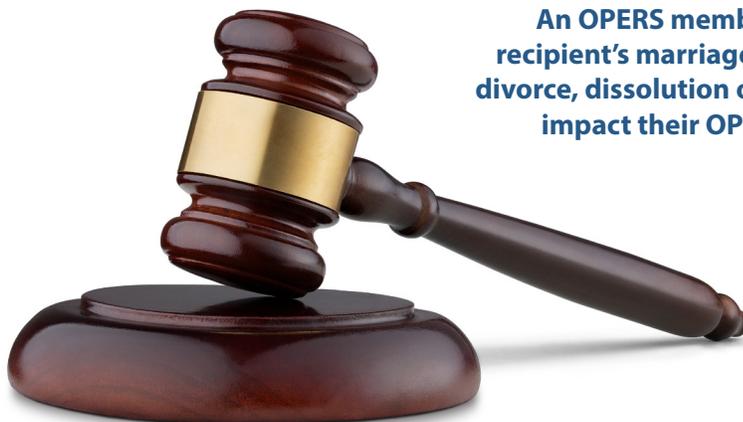
Ohio retirement law provides that OPERS member funds cannot be garnished, attached or assigned, except as permitted by Ohio's support laws, Ohio Revised Code Chapters 3119, 3121, 3123 and 3125, or Ohio's laws on the equitable distribution of marital property, Ohio Revised Code Sections

3105.171 and 3105.65. If OPERS is issuing a payment, either as an account refund or as a periodic benefit, the retirement system complies with support withholding orders issued for spousal support or child support as authorized by Ohio's support laws.

OPERS begins withholding upon receipt of a support withholding order and when a member begins receiving either a benefit or a refund. Withholding ends when the retirement system receives an order terminating withholding. If a support withholding order is received for a member being paid a benefit or a refund, the retirement system will acknowledge receiving the order to the issuing county Child Support Enforcement Agency (CSEA). At the time when a payment is being made to the member, the retirement system will notify the CSEA that the member is receiving a benefit or refund to permit the CSEA to issue any subsequent orders.

OPERS will also withhold upon receipt of a support withholding order issued by an out-of-state child support enforcement agency provided the out of state support withholding order complies with Ohio child support laws.

**An OPERS member or benefit recipient's marriage termination by divorce, dissolution or annulment may impact their OPERS account.**



# Domestic Relations

## OPERS accounts and termination of marriage (continued)

### OPERS Accounts as Marital Property

Under Ohio domestic relations law, retirement benefits acquired by a spouse during marriage are marital property and are subject to equitable distribution, or division, between the spouses when the marriage is terminated. Private pension plans, as distinguished from public retirement plans such as OPERS, may be divided directly pursuant to a Qualified Domestic Relations Order (QDRO), which is a court order issued to the parties and the private pension plan when the marriage is terminated.

Under state retirement law, OPERS funds are not subject to QDROs. QDROs are authorized under the Retirement Equity Act of 1984 (REA), a federal law that amended sections of the Employee Retirement Income Security Act (ERISA). However, ERISA only applies to private pension plans. Governmental pension plans, such as OPERS, are exempt from ERISA and, therefore, are also exempt from REA.

### OPERS Accounts and Division of Property Orders

Ohio domestic relations and public retirement law provide a method for parties in divorce, dissolution, annulment or legal separation proceedings to divide their marital property when one of the parties is an OPERS member. Ohio law permits a court to issue a division of property order (DPO), as specified by Ohio Revised Code Sections 3105.80 through 3105.90. The DPO allows OPERS to make direct payments to a former spouse (“alternate payee”) from either a periodic benefit or lump-sum payment being paid to an OPERS recipient (“participant”). The DPO must be filed with a court having jurisdiction in Ohio.

### The division of property order is not a QDRO.

The differences between a DPO and a QDRO include:

1. The DPO does not establish a separate account for the alternate payee;
2. Under a DPO, the alternate payee may only receive funds from the retirement system when the member receives a benefit or lump sum payment, such as a refund, that is designated as a type of payment subject to the DPO; and
3. The DPO does not provide survivorship rights for the alternate payee.

The DPO is a standard form jointly created by the five Ohio public retirement systems, the Ohio State Bar Association and the Ohio Domestic Relations Judges Association. The form is available from at [opers.org](http://opers.org). Please note, this form may be reproduced, but it may not be altered. Alterations to the DPO form are a basis for the retirement system not approving the DPO.

The DPO sets forth the name and address of the public retirement system subject to the order. The DPO sets forth the names, Social Security numbers and current addresses of the participant and the alternate payee.

The DPO provides for the type of OPERS payment received by the member that is subject to the order. If no type of payment is checked in the DPO, OPERS will administer the DPO against the first type of payment that the member applies for and receives. Determining the member’s status as actively employed and contributing to OPERS or receiving a benefit and the type of benefit will enable proper completion of the type of payment subject to the DPO. Please see *Release of OPERS Account Information* on how to obtain member account information from the retirement system.

# Domestic Relations

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## **OPERS accounts and termination of marriage (continued)**

The DPO specifies the amount to be paid to the alternate payee as either:

- A periodic dollar amount and/or a one-time lump-sum dollar amount; or
- A percentage of a fraction of a periodic benefit or lump sum payment. The fraction consists of a numerator, which is the number of years the participant was both a member of the retirement system and married to the alternate payee, and a denominator, which is the participant's total service credit in the retirement system. The fraction is multiplied against the benefit or lump sum payment to determine what portion of that payment is marital property. The alternate payee then receives a percentage of the marital portion of the payment.

OPERS does not track the payments made to the alternate payee under the DPO for the purpose of determining if the alternate payee's interest in the member's OPERS account is satisfied under the terms of the parties' decree. The parties are responsible for keeping track of payments to the alternate payee and, once the alternate payee's total payments satisfies their interest in the OPERS account, obtaining a court order to set aside the DPO.

The DPO remains in effect until the death of the OPERS participant, the death of the alternate payee, or the termination of benefits, whichever event occurs first, or upon OPERS' receipt of an order setting aside the DPO. Tax liability is allocated between the parties under a DPO and the participant and the alternate payee receive their own Form 1099-Rs. As required by Ohio's child support laws and Ohio Revised Code Section 145.571, a support withholding order has priority over a DPO.

Ohio retirement law provides that any cost-of-living adjustment (COLA) on a periodic benefit received by a participant will be allocated between the participant and alternate payee in the same proportion that the amount paid to the alternate payee under a DPO bears to the amount paid to the participant. The COLA is allocated between the participant and the alternate payee on the participant's next COLA anniversary date following approval of the DPO if the member is in payout status. The allocation of the COLA is prospective only and is administered by the retirement system without modification to or filing of a new DPO.

The appropriate clerk of courts must send a certified copy of the DPO approved by the court to the retirement system. Ohio Revised Code Sections 145.571 and 3105.88 provide that OPERS has 60 days from its receipt of a DPO filed with the court to approve or reject the DPO as not meeting the necessary statutory requirements. If the DPO is approved, a letter will be sent to the alternate payee notifying them of the approval. The member and attorneys will receive copies of the approval letter. If the DPO is rejected, a Notice of Non-approval, setting forth the reasons for the rejection, and the original DPO will be filed with the appropriate clerk of courts.

OPERS Legal Services staff will also review proposed DPOs for pre-approval prior to the DPO being filed with the court.

# Domestic Relations

## Release of OPERS Account Information

Ohio Revised Code Section 145.27 prohibits OPERS from releasing account information without the member's written authorization. Parties involved in divorce litigation or dissolution proceedings may provide OPERS with an *Authorization for Release of Account Information*, signed by the member, for OPERS to release information about a member's account to the member's attorney, spouse, the spouse's attorney, or a private pension evaluation firm. OPERS does not provide present value estimates of retirement benefits. *The Authorization for Release of Account Information* is available on the OPERS website at [opers.org](https://opers.org).

Alternatively, Ohio Revised Code Section 3105.87 permits the retirement system, upon receipt of a court order, to release a member's account information necessary to prepare a division of property order. Upon receipt of a court order or subpoena issued pursuant to Rule 45 of the Ohio Rules of Civil Procedure, the retirement system may release member account information for the purpose of the court issuing a division of property

order, such as the type of retirement plan in which the member is contributing, the status of the member's account (i.e. still publicly employed or receiving a benefit), total service credit, service credit that accrued from date of marriage to the date the marriage ended, account value and estimates of retirement benefits. A model R.C. 3105.87 may be found in Appendix A of this leaflet.

Ohio Revised Code Section 145.27(D) provides that, upon the written request of an alternate payee under an approved DPO, OPERS shall provide the alternate payee with information pertaining to:

1. The amount and
2. The status of any amount payable to the alternate payee under a DPO.

When the retirement system approves a DPO, it will contact the alternate payee when the member is receiving a payment and the DPO is being processed.



**Parties involved in divorce litigation or dissolution proceedings may provide OPERS with an *Authorization for Release of Account Information*, signed by the member, for OPERS to release information about the member's account to the member's attorney, spouse, the spouse's attorney, or a private pension evaluation firm.**

## Domestic Relations

### Applying for Retirement and Survivorship for Former Spouses

When applying to receive a retirement benefit, an OPERS member must elect a plan of payment and designate a beneficiary. As part of the division of marital property, an OPERS member may be ordered in their divorce or dissolution decree, and Separation Agreement, to designate their former spouse as a beneficiary on a joint and survivor annuity when the member applies for a retirement benefit. Joint and survivor annuity plans of payment are the Joint Life Plan and the Multiple Life Plan, offered under the Traditional Pension Plan, the Combined Plan (both the defined contribution and defined benefit portions of this plan), the Member-Directed Plan (when the member elects to annuitize their account), the Money Purchase Annuity for re-employed retirees, and the Additional Annuity (a voluntary supplemental account).

If the member is required to designate their former spouse as beneficiary and is remarried, the member must designate their former spouse and their current spouse under the Multiple Life Plan, and the member's current spouse's consent is not required. If the member is unmarried when they apply for retirement and wishes to designate additional beneficiaries, the member may elect

the Multiple Life Plan and will be required to designate their former spouse as beneficiary. Alternatively, if the member is unmarried, they may elect the Joint Life Plan and designate their former spouse as beneficiary. The member must designate their former spouse as a beneficiary on a joint and survivor annuity for a specified portion, which is a whole percentage only, as required by Ohio Administrative Code 145-2-46 and 145-2-60. OPERS has no statutory authority to determine the specified portion that is based on a percentage of the marital portion for the former spouse.

When OPERS receives the court order requiring the member to designate a former spouse as a beneficiary on a joint and survivor annuity, OPERS will not process the member's retirement application and issue benefits until the member has elected a plan of payment and designated their former spouse as beneficiary consistent with the court order. Once all contributions are received and the member's benefit is finalized, the member's plan of payment and designation of beneficiary or beneficiaries cannot be changed.

**Upon becoming eligible for and applying to receive a retirement benefit, an OPERS member must elect a plan of payment and designate a beneficiary.**



## Domestic Relations

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### Applying for Retirement and Survivorship for Former Spouses (Continued)

Court orders that are unclear on what the member should do or that do not provide a whole percentage will result in the retirement system requesting another order clarifying the member's obligation and/or providing the whole percentage prior to processing the member's retirement application. Members should consult with their attorney concerning their court-ordered obligations prior to applying for retirement from OPERS to avoid any delay in receipt of their retirement benefit.

Model Judgment Entry language and Instructions are available through OPERS' website, on the Legal page under the About OPERS tab, and in Appendix B of this leaflet. If a divorce or dissolution decree and Separation Agreement contain a provision obligating the member to designate a former

spouse as the beneficiary on a joint and survivor annuity at retirement, OPERS must receive a complete copy of the divorce or dissolution decree and Separation Agreement prior to the member applying for retirement to ensure that the member selects a plan of payment and designates their former spouse as beneficiary in compliance with the court order.



## Domestic Relations

### Retirement Benefit Plan of Payment and Beneficiary Designation Changes Following Marriage Termination

Ohio Revised Code Section 145.46(G)(2) provides that, following a divorce or dissolution, a retiree receiving an age and service retirement benefit under a payment plan designating the former spouse as beneficiary and providing for continuation of all or part of the allowance after death for the surviving former spouse may elect to cancel the plan and receive under the Single Life Plan only with the written consent of the former spouse or by court order.

For a retiree to change their plan of payment from the Joint Life Plan to the Single Life Plan following divorce or dissolution, the retiree needs to complete and return to OPERS the *Age and Service Retirement Benefit Pop Up Request*, including the retiree's former spouse's signature before a notary public in Section

3 of the form. Alternatively, the retiree may provide the retirement system with a copy of the court order permitting the retiree to change to the Single Life Plan and change beneficiary designation. Upon receipt of the completed *Age and Service Retirement Benefit Pop Up Request* and, when applicable, a copy of the court order permitting the change, OPERS will proceed in processing the retiree's request to change their plan of payment from the Joint Life Plan to the Single Life Plan.

If the former spouse does not provide written consent to, or the court order does not permit, the retiree to change to the Single Life Plan, the former spouse will remain the beneficiary on the retiree's Joint Life Plan.

### The OPERS Health Care Program and Termination of Marriage

Providing health care coverage to retirees and benefit recipients is at the discretion of the OPERS Board of Trustees, per Ohio retirement law, and is not guaranteed.

A retiree or benefit recipient enrolled in the OPERS HRA may seek reimbursement of a spouse's qualified medical expenses. After the termination of marriage, the former spouse's expenses incurred after the first day of the month following the date of the divorce or dissolution decree are ineligible for reimbursement.

The former spouse is eligible to enroll in COBRA coverage offered by OPERS' third party health care administrators, provided the spouse was a covered dependent under the recipient's health care coverage at the time the marriage is terminated. COBRA is subject to the policies and procedures of the health care administrator and the former spouse is responsible for paying the premium.



**IN THE COURT OF COMMON PLEAS, \_\_\_\_\_ COUNTY, OHIO  
DOMESTIC RELATIONS DIVISION**

<u>                  </u> Plaintiff,	)	
	)	Case No.:
	)	Judge
vs.	)	Magistrate
	)	
<u>                  </u> Defendant.	)	
	)	
	)	

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**JUDGMENT ENTRY**

This matter came before the Court upon \_\_\_\_\_'s Motion requesting that the Court issue an Order pursuant to O.R.C. 3105.87 requiring the Ohio Public Employees Retirement System to release information from the \_\_\_\_\_'s OPERS personal history record necessary for the preparation of a Division of Property Order.

Based upon the \_\_\_\_\_'s Motion and for good cause shown, the Court hereby grants the Motion.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that, pursuant to O.R.C. 3105.87, the Ohio Public Employees Retirement System is hereby ORDERED to release to \_\_\_\_\_'s counsel, \_\_\_\_\_ (Name and address), the information necessary to prepare a Division of Property Order regarding the OPERS account of \_\_\_\_\_ (Party's Name), Social Security number

\_\_\_\_\_, date of birth \_\_\_\_\_. The information to be released from \_\_\_\_\_'s OPERS account includes the following:

1. \_\_\_\_\_'s status with OPERS, i.e. active member or benefit recipient;
2. If \_\_\_\_\_ is currently receiving a benefit from OPERS, the type and amount of benefit;
3. If \_\_\_\_\_ is not currently receiving a benefit from OPERS, \_\_\_\_\_'s current account value;
4. \_\_\_\_\_'s account value from \_\_\_\_\_ through \_\_\_\_\_ (the term of the marriage).
5. If \_\_\_\_\_ is not currently receiving a benefit from OPERS, an estimate of \_\_\_\_\_'s age and service monthly retirement benefit, under the Single Life Plan, at \_\_\_\_\_'s earliest eligibility date assuming no further public service;
6. \_\_\_\_\_'s service credit from \_\_\_\_\_ (date of marriage) through \_\_\_\_\_ (date of termination of the marriage);
7. \_\_\_\_\_'s total service credit with OPERS.

IT IS SO ORDERED.

\_\_\_\_\_  
Judge

**OPERS Instructions for Model Entry**  
**For Member to Designate Former Spouse on Joint Survivor Annuity**

The model Judgment Entry is to be used in divorce decrees, separation agreements, or other post-decree orders when an OPERS member is ordered to designate a former spouse as the beneficiary for a specified portion under a joint survivor annuity upon division of the marital property.

The specified portion required in Paragraph 1 of the Judgment Entry must be expressed as a **whole percentage**, as required by Ohio Admin. Code 145-2-46 and 145-2-60. OPERS cannot administer the Judgment Entry if the percentage contains decimals. OPERS is unable to administer an Entry indicating the former spouse is to be designated as a beneficiary on a joint survivor annuity for a percentage of the marital portion as OPERS is without statutory authority to interpret this provision.

Ohio Revised Code Section 145.46 provides that the retirement system must receive a copy of the Entry, approved by the court, to ensure that the member complies with the court order when the member applies for retirement or to receive their Additional Annuity and/or Money Purchase Annuity accounts. Information about OPERS' three retirement plans (Traditional Pension Plan, Combined Plan, and Member Directed Plan), the Additional Annuity, or the Money Purchase Annuity is available on the OPERS website, [www.opers.org](http://www.opers.org)

The proposed Entry may be submitted to the OPERS Legal Services Department for review prior to filing with the court. The fax number for Legal Services is (614) 224-~~9462~~

To obtain member account information, including the retirement plan in which the member is participating or a retirement benefit estimate, please provide OPERS with the member's written authorization to release this information, as required by R.C. 145.27. The *Authorization for Release of Account Information* form is available on the OPERS website at [www.opers.org/about/legal/forms.html](http://www.opers.org/about/legal/forms.html).

For additional information, the *OPERS Member Guide to Domestic Relations Issues* is also available under Member and Retiree Publications on the OPERS website.

IN THE COURT OF COMMON PLEAS, \_\_\_\_\_ COUNTY, OHIO  
DOMESTIC RELATIONS DIVISION

Plaintiff,	)	
	)	Case No.:
	)	Judge
vs.	)	Magistrate
	)	
Defendant.	)	

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**JUDGMENT ENTRY**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that,

1. Upon becoming eligible and applying for a retirement benefit from the Ohio Public Employees Retirement System, (*name of OPERS member*) shall select a plan of payment that is a joint and survivor annuity providing for payment continuing after his/her death to a designated beneficiary or beneficiaries and shall designate (*former spouse's name*) as the beneficiary on the joint and survivor annuity plan of payment to receive a lifetime allowance which is \_\_\_\_\_ percent (\_\_\_%) of (*OPERS member's name*)'s reduced monthly allowance under the joint and survivor annuity plan of payment.
2. (*Former spouse's name*) shall provide OPERS with a certified copy of this order no later than 30 days from the date of issuance of this order.
3. (*Former spouse's name*) shall provide OPERS with a copy of his/her birth certificate no later than 30 days from the date of issuance of this order.
4. The court reserves jurisdiction to enforce these provisions.

IT IS SO ORDERED.

\_\_\_\_\_  
Judge







Ohio Public Employees Retirement System  
277 East Town Street  
Columbus, Ohio 43215

ISL-O (01/2022)