

# GUIDELINES FOR COMPOSING COURT ORDERS

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This section contains the preferred language for the purposes of PERA law. Please note that these are guidelines only and should not be construed to mean that other formats will not be accepted. If possible, please send proposed language to the PERA office before the court order is finalized. A separate court order is not required; the language may be incorporated into the Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree. The Findings should include a Finding that liquid marital property is not available for equitable division, thus requiring a division of the pension benefits.

*Note: The PERA member is the Participant and the former spouse is the Alternate Payee in the following paragraphs.*

## LANGUAGE FOR AWARDING ONE-HALF OF A PENSION

The following language should be used if the former spouse is to receive one-half (a different fraction or percentage may be used) of the marital portion of the benefits. In addition, language should spell out the specific benefits to which the division applies.

*The Alternate Payee shall receive a fixed percentage of Participant's interest in the pension plan if, as and when benefits become payable, as determined by application of the following formula:*

*One-half multiplied by the amount of each monthly retirement and disability benefit, multiplied by a fraction, the numerator of which shall be (insert number of years, dates covered, or date of entry of judgment and decree) representing the number of years of the parties' marriage during which the Participant was a contributing member of PERA and the denominator of which shall be the total number of years that the Participant was a contributing member of PERA at time of termination.*

Language in the court order should specify what would happen in the event the alternate payee should die before the participant: Specifically, whether any payment is to be made to the former spouse's estate or revert to the participant. If the court order is silent, payments will continue to the alternate payee's estate for the lifetime of the participant.

## SURVIVOR OPTIONS

If a former spouse is to be named as the survivor to receive monthly payments after the member's death (these options are not the same as pre-retirement survivor benefits, which are addressed separately):

*Participant shall elect the 50 percent survivor option, naming Alternate Payee as survivor for the period of their marriage.*

In conjunction with the above, the former spouse could be required to bear the cost of the survivor option, with the following language:

*Alternate Payee shall credit Participant during (his/her) lifetime the difference in monthly benefit attributable to Participant's exercise of the 50 percent Survivor Option payment as compared to the Single-life benefit. The purpose for such credit shall be to ensure that the Participant suffers no financial detriment as a result of the 50 percent Survivor option election as compared to the Single-life benefit.*

If a survivor option is required and the cost of the option is not addressed in the order, PERA will assume the cost of the option will be shared equally.

*Note: If the former spouse is more than 19 years younger than the member, the 75% Option cannot be elected. If the former spouse is more than 10 years younger than the member, the 100% Option cannot be chosen.*

## REFUNDS NOT ALLOWED

The following language prevents the member from applying for a refund:

*The Participant shall not assign, withdraw, or otherwise encumber (his/her) PERA contributions.*

## PRE-RETIREMENT SURVIVOR BENEFITS

The following language could be used if the former spouse is to receive a portion of the surviving spouse benefits payable if the member has remarried and dies before monthly benefits begin:

The Alternate Payee is to be paid that part of the survivor benefits payable due to Participant's death that is attributable to or was accumulated during the period of marriage between Participant and Alternate Payee.



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## **BENEFICIARY**

Dissolution of marriage revokes any prior beneficiary designation for dissolutions that occur after April 19, 2002. If the former spouse is to be named as beneficiary for the marital portion, the participant must file a change of beneficiary form with PERA specifying that the alternate payee is the beneficiary, in accordance with the terms of the court order. The language recommended to appear in the court order is:

*The Participant shall name the Alternate Payee as designated beneficiary of a portion of (his/her) PERA account to receive one-half of deductions reported during the period of marriage plus interest.*

## **TAXES AND POST-RETIREMENT ADJUSTMENTS**

If both parties are responsible for payment of state and federal income taxes on their respective portions, the recommended language is as follows:

*Taxes on the benefit amounts shall be the responsibility of each party receiving payments.*

If both parties are to receive Post Retirement Fund increases, the following language is suggested:

*Any increases paid after monthly benefits begin shall be prorated between both parties' portions.*