



DIVORCE AND YOUR PERSI ACCOUNTS

If a member of the Public Employee Retirement System of Idaho (PERSI) has been married at any time while actively participating in the plan and is considering a divorce, the former spouse may be legally entitled to a portion of the member's PERSI retirement accounts and/or benefits. Because the issues surrounding divorce and the allocation of pension benefits are complex, PERSI is providing this brochure to help members, their spouses, and attorneys regarding the division of PERSI accounts and/or benefits upon divorce. *Nothing in this brochure should be considered as legal advice.* PERSI encourages members to consult an attorney experienced in divorce matters for more information.

PERSI Benefits May Be Community Property

Idaho is a community property state, which means property acquired during a marriage belongs to the "community" of the marriage rather than to one individual as separate property. Under Idaho community property law, PERSI benefits accumulated by a member during marriage are assets of the marriage community. In many cases, the retirement benefits are the most valuable asset of the marriage.

Some or all of a member's PERSI accounts and/or benefits may be a community property asset. If the member was married the entire time he or she was a member, all accounts and/or benefits are normally community property. If the member was married part of the time, generally only the account contributions and interest and/or benefits accumulated during that period are a community property asset. The accounts and/or benefits accumulated during a period when a member was not married are the member's separate property.

NOTE: *Decisions regarding the division of assets are not made by PERSI.*

Base Plan vs. Choice Plan 401(k)

Most PERSI members have two separate plans – the traditional defined benefit plan known as the Base Plan (pension), and the supplemental defined contribution plan known as the Choice Plan 401(k). It is important to understand these are separate and distinct plans, and require separate orders if the accounts are to be divided upon divorce. The requirements for dividing a Base Plan account are different from the requirements for dividing a Choice Plan 401(k) account. This brochure focuses primarily on the requirements for dividing a Base Plan account because they are somewhat unique. Requirements for dividing a Choice Plan 401(k) account are summarized near the end of the brochure.

Dividing the Base Plan Account and Benefit

Differences Between "Account" and "Benefits"

A PERSI *account* consists of contributions made by the member plus interest credited by PERSI. Employer contributions are not credited to member accounts; they are placed in an employer pool. The member has no individual interest in the employer pool. Employer contributions are not subject to division upon divorce.

Once a member is vested, he/she has the right to a retirement *benefit*. Members are generally vested after 60 months of creditable service; although, members may be vested with less than 60 months if they are elected or appointed officials. A member retains vested status even when his/her credited service is divided in a divorce settlement. Until members are vested and before they retire, their account contributions (plus interest) and months of service are the only community property assets subject to division. After a member retires, his/her monthly retirement benefit is the only asset subject to division in a divorce. *These funds are not subject to execution, levy, or garnishment except for certain statutory exceptions such as federal tax liens and delinquent child support (§59-1317, Idaho Code).*

Retirement Benefit Does Not Depend on Account Accumulations

The monthly retirement benefit does not depend on the member's account accumulations. Formulas are established by statute and differ for the various funds (PERSI, Firefighters and Police). These formulas are usually based on the member's credited service (which may be reduced because of a divorce), highest average salary over a particular period, and a multiplying factor, less any applicable early retirement penalties. Account accumulations are only relevant to Base Plan account withdrawals upon separation or death.

Obtaining Account and Benefit Information

PERSI may provide account information to a current spouse at any time for any reason (§59-1316 (4), Idaho Code). Limited account information may be released to a former spouse when a court has ordered a division of benefits. Upon request, PERSI will prepare a worksheet on the member's account and benefit entitlement accrued during the marriage. The worksheet typically shows:

- If the member is vested
- Account accumulations attributable to the marriage
- Amount of credited service attributable to the marriage
- Retirement benefit formula
- Estimated monthly retirement benefit attributable to the period of the marriage projected to age 65/60 and 55/50.

The finalized worksheet along with other requested or explanatory information is sent to all persons listed on the written release (spouse, attorneys, court, etc.).

Ex-Spouse is not a "Surviving Spouse"

An ex-spouse cannot be a "surviving spouse" under PERSI statutes. PERSI uses the probate code definition, which provides that a person who is divorced is not a surviving spouse. Therefore, for the purposes of a death benefit, an ex-spouse cannot receive a death benefit payment from PERSI *unless* he or she is the member's named beneficiary or contingent annuitant. *It is important to review your beneficiary choice upon divorce to ensure it accurately reflects your wishes.*

Receipt of Divorce Decree Triggers Special Handling

When PERSI receives a divorce decree relating to an impending divorce action, the member's account is flagged to indicate a divorce is in progress. Any benefits requested after the decree has been received will not be acted upon until the divorce matter is settled. PERSI will act on benefit requests if a divorce decree has not been received.

Method of Dividing PERSI Benefits Prior to July 1, 1998

In the past, the process of dividing PERSI benefits upon divorce was complicated and difficult for all parties because the law did not allow for payment of any benefits until the member retired, separated from employment, or died. This meant the ex-spouse could not receive anything until one of these events occurred, which often took many years.

Beginning in 1985, PERSI was required by law to forward payments to the courts for distribution to the member and ex-spouse. Over the years this proved to be an increasingly troublesome process for a number of reasons.

Rollovers: When a divided benefit payment was sent to the court for distribution, an otherwise eligible rollover could not be directly rolled over to another eligible retirement plan to avoid the federally required 20 percent tax withholding.

Child Support: Satisfying income withholding orders related to child support was complicated because the shares of the divided benefits were not known until the court made the payments.

Other problems included delays in payments because of court involvement, the inability to find current addresses for ex-spouses, and tax complications related to reporting income to the Internal Revenue Service.

Responding to these concerns, PERSI proposed legislation to reform the division of benefits upon divorce. With input from the family law bar, the judiciary, and court clerks, legislation was developed for the immediate division of benefits and elimination of continued court involvement. The legislation passed and went into effect on July 1, 1998.

Approved Domestic Retirement Order (ADRO) After July 1, 1998

The division of PERSI benefits is made with an Approved Domestic Retirement Order (ADRO). An ADRO is a Domestic Retirement Order (DRO) that has been submitted to PERSI and complies with legal requirements. The DRO is a judgment, decree, or order dividing PERSI benefits issued by a court on or after July 1, 1998. After a DRO is approved by PERSI, it becomes an ADRO and PERSI divides the member's account or benefit payments. No further court involvement is necessary. If a submitted DRO is not approved, the parties are notified so they can amend the DRO to comply with statutory requirements.

Segregated Accounts vs. Divided Benefit Payments

An ADRO divides the benefit at the time of the divorce rather than waiting for some other distributable event to occur. For non-retired members, dividing the member's account and creating a segregated (separate) account for the ex-spouse does this. The ex-spouse may then choose to do one of the following:

- Take an immediate lump sum payment of the amount in the segregated account;
- Roll over the distribution to an eligible retirement plan; OR
- Leave the money in the PERSI account established for them and remain eligible for a lifetime annuity upon reaching retirement age, if the member was vested at the time of divorce.

An account is segregated only if the member has not yet retired. If the member is retired, a segregated account will not be established; instead, the ex-spouse will be paid a portion of the member's monthly benefit directly from PERSI. That portion is either a set dollar amount or a percentage of the monthly benefit.

What Happens When the Member or Ex-Spouse Dies?

Segregated Accounts: Since two separate and distinct accounts exist, when the member dies it will not affect the ex-spouse's segregated account. The member's account will pass to his/her named beneficiary for a death benefit, if any, or to a Contingent Annuitant (CA). [A Contingent Annuitant is a person chosen by the member to receive a monthly lifetime benefit after the member's death.] Likewise, when the ex-spouse dies, his/her account will pass to his/her named beneficiary for a death benefit, if any, or to a CA.

Divided Benefit: When the retired member dies, depending on the retirement option selected, benefit payments may cease. If the ex-spouse is the CA, 100% of the benefit is paid to him/her for the remainder of his/her life. If the ex-spouse predeceases the member, the amount that was being paid to them reverts to the member. (If the former spouse was also the CA, the death of the CA may result in an increased monthly payment to the member.)

NOTE: Firefighters' Retirement Fund (FRF) accounts are not segregated. The ex-spouse must wait until the member retires before receiving a benefit. At that time, PERSI can use an ADRO to pay a portion of the member's benefit to the former spouse. The portion paid to the ex-spouse is payable only for his/her lifetime and will not revert to the member.

Contingent Annuitant May Waive Benefits at Time of Divorce

Effective July 1, 2004, a Contingent Annuitant of a retired member who last contributed to PERSI after June 30, 1992, may waive interest in survivor benefits at the time of divorce as part of a DRO. Contact an attorney or PERSI for more information.

ADRO Requirements

There are three requirements common to all ADROs.

1. The order must indicate which PERSI account the order applies to specifically. It is not enough to refer to "retirement benefits," "state benefits," or "employer benefits." The order must specifically reference PERSI Base Plan (pension) or Choice Plan 40(k).
2. The order must contain sufficient information including an effective date, and the name, address, date of birth, gender, and last known mailing address of both parties. It must also include the member's PERSI identification number. The alternate payee's (ex-spouse) Social Security number is also required, but may be provided under separate cover.
3. The order must provide for a proportional reduction of the amount awarded to the ex-spouse should law reduce the benefits available to the member. This applies to a Base Plan DRO only.

Additional information may be required in an ADRO depending on which plan it addresses, and whether the member is active or inactive, retired, or an FRF member.

Because an active or inactive member's account must be segregated, the order must specify the amount or percentage of the member's contributions in proportion to the months of credited service to be transferred to the segregated account.

If the member is retired or is an FRF member, the order must specify the amount or percentage of the member's benefit to be paid to the ex-spouse. In these cases, there is no account segregation and no transfer of contributions or credited service.

There are also several prohibitions related to ADROs. The DRO will not be approved if it provides for benefits inconsistent with the PERSI plan or if it imposes conditions or contingencies. The order cannot provide benefits to an ex-spouse that have previously been ordered paid to a different payee under another order. It also cannot segregate the right to repay previous credited service. Finally, an order cannot result in a benefit greater than what would have existed had the member's account not been divided.

Approval Process

The DRO must be submitted to PERSI to become an ADRO. PERSI will examine the DRO and notify the involved parties within 90 days if it has been approved or rejected. If the order is not approved, PERSI will notify the court and the parties so action can be taken to amend the order. Effective July 1, 2004, Social Security numbers are no longer required in the order. However, the alternate payee's Social Security number must be provided to PERSI before an order will be approved.

Changing Pre-July 1, 1998 Decrees

The new process is effective only for DROs issued on or after July 1, 1998. Any divorce order issued before July 1, 1998, falls under the pre-existing law that requires divided benefits to be sent to the court for distribution. However, pre-July 1, 1998, orders can be modified to meet the requirements of an ADRO if the modifications are limited to the distribution of PERSI benefits, the value of the division is not materially changed, and the court-approved DRO is submitted and approved by PERSI as an ADRO.

Dividing the Choice Plan 401(k) Account

A Choice Plan 401(k) account comprises voluntary, employer, or rollover contributions, along with interest earned on investments and any gain sharing contributions that may have been made. Because the benefit in the Choice Plan consists solely of the funds in that account (rather than contributions and service as in the Base Plan), dividing the account is less complicated than dividing the Base Plan account. Certain information is still needed to set up a separate account for the alternate payee.

To divide the Choice Plan 401(k) account, a separate DRO that substantially meets the requirements of a Qualified Domestic Relations Order (QDRO) as required by section 414(p) of the Internal Revenue Code, excluding subsection (9), must be submitted. Most attorneys, particularly those experienced in divorce actions, will be familiar with QDRO requirements. The order should clearly designate it applies to the PERSI Choice Plan 401(k). If the order is approved by PERSI, the member's Choice Plan 401(k) account will be segregated and a separate account will be established for the alternate payee who will then be entitled to certain benefits in their own right.

For most couples, retirement benefits comprise a major portion of the marital estate. Since divorce and dissolutions usually require a financial settlement between the parties involved, consulting with an attorney regarding division of assets is recommended.

Terms You Should Know and Understand

Account

Contributions made by a PERSI member towards retirement, plus the interest earned on the contributions. Does not include employer contributions.

Alternate Payee

The former spouse who is recognized as having a right to receive some or all of the member's account or benefit upon divorce according to an Approved Domestic Retirement Order (ADRO).

Approved Domestic Retirement Order (ADRO)

A domestic retirement order that creates or recognizes the existence of an alternate payee's rights or assigns to an alternate payee the right to all or a portion of the accrued benefits (Base Plan) of a member under the retirement system. It directs the system to establish a segregated account or disburse benefits to an alternate payee. PERSI's executive director will determine if the ADRO meets the requirements of sections 59-1319 and 59-1320 of Idaho Code.

Base Plan

A defined benefit plan funded by members and employers. It guarantees a payout at retirement according to a fixed formula that factors the member's highest average monthly salary over a base period of 42 consecutive months of service, a multiplier, and the member's months of creditable service.

Benefit

A payment or entitlement. PERSI retirement benefits are paid monthly.

Choice Plan 401(k)

A defined contribution plan. It provides a payout at retirement based on the amount of money contributed and the performance of the investment vehicles utilized.

Contingent Annuitant (CA)

A person chosen by the member to receive a monthly lifetime benefit after the member's death.

Creditable Service

Months that count towards retirement. Members are generally vested after 60 months of creditable service.

Domestic Retirement Order (DRO)

A judgement, decree, or order designating an alternate payee to receive all or a portion of a member's PERSI retirement benefits as court ordered on or after July 1, 1998. It is made pursuant to domestic relations law, including the community property law of the state of Idaho or of another state.

Qualified Domestic Relations Order (QDRO)

A court order that recognizes the right of an ex-spouse (alternate payee) to receive all or a portion of their former spouse's qualified plan account (Choice Plan).

Vested

Having the rights of ownership for future benefits. Vesting occurs when the member completes the number of months of service (60) required to receive benefits under the plan at some point in the future.

If you have any questions about how your benefits might be affected by a divorce, or if you would like to receive a divorce packet for a new or existing divorce decree, contact PERSI for assistance.

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The information in this booklet is also available
on PERSI's Web site at www.persi.idaho.gov

*The information in this booklet is based on 2008 law.
If there are any discrepancies between this information and the law, the provisions of the law will prevail.*

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