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## QUALIFIED DOMESTIC RELATIONS ORDERS

The following information is provided to assist active and retired members who are going through a divorce and whose retirement account might be subject to division as marital property or withholding for child support or alimony/maintenance. **All members are strongly advised to seek financial, legal, or other expert advice. Kentucky Public Pensions Authority is not rendering legal, financial, or any other type of professional advice in this booklet and nothing in this booklet should be construed as providing legal, financial, or any other type of professional advice.** Kentucky Public Pensions Authority cannot make a determination whether or not an active or retired member's retirement account is marital property, if any part of the retirement account is marital property, if the retirement account should be divided, or how the retirement account should be divided.

### **NECESSARY INFORMATION**

In order to properly make a determination about the status of a retirement account as marital property it is absolutely essential that the Court, the attorneys, and the parties to the dissolution of marriage action understand how retirement benefits are determined. Information can be found on Kentucky Public Pensions Authority's website [kyret.ky.gov](http://kyret.ky.gov). The Summary Plan Description found at <http://kyret.ky.gov/> provides detailed information regarding Kentucky Public Pensions Authority's benefits. For members whose membership began on or after September 1, 2008, the Guide to House Bill 1 provides essential information regarding the changes made by the General Assembly in 2008. <http://kyret.ky.gov/>.

Kentucky Employees Retirement System (KERS), County Employees Retirement System (CERS), and State Police Retirement System (SPRS) are governmental qualified defined benefit plans created pursuant to Section 401(a) of the Internal Revenue Code. This means that the retirement benefit paid to a retired member is based on a formula consisting of the retired member's final compensation, service credit, and a factor set by statute.<sup>1</sup> There is absolutely no correlation between the amount of contributions made by the member and the retirement benefits to which the member may be eligible to receive at the time of retirement.

The Participant is still required to submit a copy of the divorce decree even if the Participant submits a QDRO.

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## **INSTRUCTIONS FOR COMPLETION OF THE FORM 6435 POST-RETIREMENT QUALIFIED DOMESTIC RELATIONS ORDER FOR DIVISION OF MARITAL PROPERTY**

**The printed language on the Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property" (QDRO) cannot be altered. The QDRO will be rejected by Kentucky Public Pensions Authority if the printed language is altered in any manner. (See KRS 61.690 and 105 KAR 1:190).**

Kentucky Public Pensions Authority cannot make a determination of the status of a Participant's retirement account as marital property. Kentucky Public Pensions Authority can only inform the Court of the amount of service earned and purchased during the marriage (marital service). The Court must decide what is marital property and how the marital property is to be divided.

This form will be used if the Participant has already retired and is receiving a monthly retirement benefit. The Participant is required to submit a Form 6433, "Authorization for Release of Information and Request for Information for a Qualified Domestic Relations Order" to obtain the information necessary for the Court to make a determination regarding the division of marital property. The Kentucky Public Pensions Authority will provide the Participant's current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit, the total number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit, and the total number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.

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<sup>1</sup> This is different from a defined contribution plan such as a 401k or an IRA in which the retiree is only eligible to receive his/her contributions and investment earnings.

## **SECTION BY SECTION INSTRUCTIONS**

**These instructions will only cover sections that require completion by the Court.**

**Section 2.** The Court must enter the Participant's name, the Participant's Kentucky Public Pensions Authority's member identification number, and current mailing address.

**Section 3.** The Court must enter the Alternate Payee's name and current mailing address.

**Section 4.** The Court must mark all retirement systems to which this order applies. If a Participant has service credit in multiple retirement systems, the Court should mark only the systems affected by the QDRO in which service was earned or purchased during the marriage.

**Section 5.** The Court must enter the date of the marriage that is the subject of this divorce action.

**Section 6.** The Court must enter the date of the dissolution of the marriage that is the subject of this divorce action.

**Section 8.** Payment Options. There are three options for division of the retirement account. The Court can only choose one payment option.

**(Option A).** The first payment option allows the Court to determine a specific dollar amount to be paid to the Alternate Payee from Participant's monthly retirement benefit. The amount of the Participant's monthly retirement benefit will be provided by the retirement systems after the Participant submits the Form 6433 "Authorization for Release of Information and Request for Information for a Qualified Domestic Relations Order"

**(Option B).** The second payment option establishes a percentage that is based on the marital service.

For example, a percentage based on marital service would be calculated by the Court as follows:

Fred and Sue are getting divorced. Fred is receiving a monthly retirement benefit of \$2,000. The retirement systems provides information that there were 243 months of service credit earned or purchased during the marriage. Fred retired with a total of 324 months of service credit. The marital percentage is:

243 months of service earned or purchased

324 total months of service at the time of retirement = 75%

75% is divided by 2 = 37.5%.

Sue will be paid 37.5% of Fred's monthly retirement benefit.

**(Option C).** The third option allows the Court to set a percentage that may or may not be based on the marital service. For example, the Court awards Sue 50% of Fred's monthly retirement allowance from the payment option Fred selected at retirement. The Court would complete Option C as follows:

X      C      Alternative percentage designation pursuant to 105 KAR 1:190 Section 14(2)(c):

The Retirement System(s) shall pay to the Alternate Payee 50% of the Participant's monthly retirement allowance affected by this Order.

**Section 9.** In this section the Court shall order the time period the payments under the QDRO shall be made. The Court shall choose whether to limit the payments to a certain number of months or until the Participant's or Alternate Payee's death, whichever comes first.

**Section 10.** The Court must decide how the cost of living increase provided in KRS 61.691 is to be divided if the Court ordered that the Alternate Payee be paid a specific dollar amount under Section 8, Option A. The cost-of-living adjustment is made in July unless the General Assembly takes action to stop the cost-of-living adjustment. The Court may order that all of the cost-of-living adjustment be made to the Participant's monthly payment or that it be divided as provided in KRS 61.690(9).

**Section 11.** The Court must also decide how the administrative fee for filing the QDRO is to be paid. The Court may order that the fee be paid entirely by the Participant, entirely by the Alternate Payee, or divided equally between the parties. NOTE: The Kentucky Public Pensions Authority can only accept one check for the fee so the parties will need to determine who will submit the check with the QDRO. The fees are \$50.00 for the original QDRO and \$25.00 for an amended QDRO. **Any QDRO that comes in without an attached certified check or money order payable to the Kentucky State Treasurer for the administrative fee cannot be reviewed by Kentucky Public Pensions Authority.**

# Kentucky Public Pensions Authority

**Form 6435**

Revised 04/2021



This Order is: ☐ New ☐ Corrected ☐ Amended ☐ Corrected Amended

## COMMONWEALTH OF KENTUCKY

\_\_\_\_\_ Family/Circuit Court

Division \_\_\_\_\_

Civil Action No. \_\_\_\_\_ -CI- \_\_\_\_\_

PETITIONER

\_\_\_\_\_  
Name

vs.

RESPONDENT

\_\_\_\_\_  
Name

## POST-RETIREMENT QUALIFIED DOMESTIC RELATIONS ORDER FOR DIVISION OF MARITAL PROPERTY

The Court finds the following facts and issues the following Order pursuant to KRS 403.190, KRS 61.690, and 105 KAR 1:190:

1. This Order is intended to comply with and be administered and interpreted in conformity with 26 U.S.C. Sections 401(a) and 414(p), KRS 61.690, and KRS Chapter 403.

2. The following information is provided for the Participant:

Name: \_\_\_\_\_

Kentucky Public Pensions Authority \_\_\_\_\_

Current Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
City, State, Zip Code

3. The following information is provided for the Alternate Payee:

Name: \_\_\_\_\_

Current Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
City, State, Zip Code

4. The "Retirement System(s)" affected by the Order are (check the box below for each retirement system to which this Order applies):

**State Police Retirement System**

☐ 1260 Louisville Road  
Frankfort, Kentucky 40601

**County Employees Retirement System**

☐ 1260 Louisville Road  
Frankfort, Kentucky 40601

**Kentucky Employees Retirement System**

☐ 1260 Louisville Road  
Frankfort, Kentucky 40601

5. The date of the marriage is \_\_\_\_\_.
6. The date that the dissolution of the marriage was entered is \_\_\_\_\_.

7. **Obligation of Participant and Alternate Payee:** The Participant and the Alternate Payee are ordered to notify the Retirement System(s) in writing of a change in the individual's mailing address. The Retirement System(s) shall not be responsible for any failure of communication or receipt of payment caused by the failure of the Participant or the Alternate Payee to provide a current mailing address. The Retirement System(s) is under no statutory or regulatory duty to attempt to find any party who does not inform the Retirement System(s) of his/her current address and shall not attempt to locate any party who does not inform the Retirement System(s) of his/her current address.

8. **Amount Payable to the Alternate Payee:** The Court orders that the Retirement System(s), in accordance with KRS 61.690 and 105 KAR 1:190, shall withhold and pay to the Alternate Payee the following: ***[Designate only one option (A, B or C)]***

☐ **OPTION A - DOLLAR AMOUNT PURSUANT TO 105 KAR 1:190 SECTION 14(2)(a):**

The Retirement System(s) shall pay \$ \_\_\_\_\_ directly to the Alternate Payee from the Participant's monthly retirement benefit.

**OR**

☐ **OPTION B - PERCENTAGE PURSUANT TO 105 KAR 1:190 SECTION 14(2)(b):**

The Retirement System(s) shall pay to the Alternate Payee 50% of the benefit attributable to the member's earned and/or purchased service credit during the marriage to be determined as set forth below:

Fraction:

i. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The Kentucky Public Pensions Authority shall utilize the marital period as provided by the Court in the QDRO.

ii. The denominator shall be the Participant's total months of service credit with the Retirement System(s).

iii. The resulting fraction shall be converted to a percentage which will be divided by 2.

**OR**

☐ **OPTION C - ALTERNATIVE PERCENTAGE DESIGNATION PURSUANT TO 105 KAR 1:190 SECTION 14(2)(c):**

The Retirement System(s) shall pay to the Alternate Payee \_\_\_\_\_ % of the Participant's monthly retirement allowance affected by this Order.

9. The Retirement System(s) shall withhold the dollar amount or percentage provided in Section 8 of this Order: *(Select one option below)*

☐ for a time period of \_\_\_\_\_ months, subject to the provisions of KRS 61.690.

**OR**

☐ until the Participant's or the Alternate Payee's death, whichever comes first.

10. Any cost of living increase provided in KRS 61.691 shall be administered as follows:

*(Do not complete this item if the Participant has been ordered to pay the Alternate Payee a percentage of his/her monthly retirement benefit.)*

☐ All to the Participant.

**OR**

☐ Divided between the Participant and the Alternate Payee pursuant to KRS 61.690(9).

11. The payment of the administrative fee provided for in KRS 61.690(10) and in 105 KAR 1:190 Sections 5 and 7 shall be paid as follows:

☐ All to be paid by the Participant.

**OR**

☐ All to be paid by the Alternate Payee.

**OR**

☐ Equally shared between the Participant and the Alternate Payee.

12. This Order applies to payments to be made after the approval of the Order for enforcement by the Retirement System(s) under KRS 61.690 and 105 KAR 1:190.

13. The Participant is ordered to notify the Retirement System(s) of the death of the Alternate Payee.
14. The Retirement System(s) shall not be liable to the Participant for payments made to the Alternate Payee after the Alternate Payee's death or for other payments made to the Alternate Payee to which the Alternate Payee was not entitled.
15. The Alternate Payee is ordered to immediately return any payments made pursuant to this Order that are received by the Alternate Payee after the death of the Participant.
16. The terms of this Order can only be amended or terminated by subsequent order of this Court.
17. If the Participant's monthly retirement benefit payment is subject to more than one Order under KRS 61.690 the amount paid to the Alternate Payee under this Order may be reduced based on the priority of the other Orders;
18. The Alternate Payee's right to receive a payment under this Order shall terminate upon:
- a. The death of the Participant; or
  - b. The death of the Alternate Payee; or
  - c. The termination of a benefit paid to the Participant; or
  - d. Subsequent Order of the Court terminating the Alternate Payee's rights.
19. Payments under this Order shall commence as provided by KRS 61.690.
20. As provided in KRS 61.690(4)(a), this Order does not and shall not be construed to require the Retirement System(s) to take any action not authorized under state or federal law.
21. As provided in KRS 61.690(4)(b), this Order does not and shall not be construed to require the Retirement System(s) to provide any benefit, allowance, or other payment not authorized under state or federal law.
22. As provided in KRS 61.690(4)(c) and (d), this Order does not and shall not be construed to grant the Alternate Payee any separate right, title, interest, or to any retirement benefit other than to the payment from the Participant's account provided under this Order.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Judge \_\_\_\_\_ Family/Circuit Court, Div. \_\_\_\_\_

(Clerk's Certification Seal)

### CERTIFICATION OF SERVICE

I, Clerk of the above Court, do hereby certify that an attested copy of the foregoing has been served by mailing same to the following on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ to:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

\_\_\_\_\_  
Clerk \_\_\_\_\_ Circuit Court

By: \_\_\_\_\_ D.C.

HAVE SEEN AND AGREED: (Not Required)

\_\_\_\_\_  
Signature of the Participant

\_\_\_\_\_  
Signature of the Alternate Payee

\_\_\_\_\_  
Signature of Attorney for Participant

\_\_\_\_\_  
Signature of Attorney for Alternate Payee

Printed Name  
of Participant: \_\_\_\_\_

Printed Name  
of Alternate Payee: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_