

The Effect of Divorce on TRS Benefits



Under New York State law, retirement benefits are considered marital assets. Therefore, they are subject to the equitable distribution provisions of the Domestic Relations Law in a divorce. However, the division of your retirement benefits is not mandatory in a divorce. The decision to include retirement benefits in a divorce settlement, and the division of those funds, is determined by you, your former spouse, and your attorneys, or by the court on the recommendation of your attorneys.

This brochure is intended to provide a general understanding of how a divorce may affect TRS benefits. The Teachers' Retirement System of the City of New York (TRS) will honor a court directive for the division of your retirement benefits, provided there is a signed court order on file.

What is a Qualified Domestic Relations Order (QDRO)?

A QDRO is a court order that designates the distribution of your assets, including retirement benefits, in a divorce. The division of your assets can be decided by agreement between you and your former spouse (with your attorneys), or by the court on the recommendation of your attorneys.

What court orders does TRS honor?

The division of your retirement benefits must be detailed in a court order, signed by a judge, and submitted to TRS. In addition to QDROs, TRS will honor signed Divorce Orders containing details about how to split your benefits, Judgments of Divorce, and Domestic Relations Orders; however, the provisions of these orders must correspond with TRS rules and regulations. Provisions that do not correspond with TRS policy will not be honored. This includes Employment Retirement Income Security Act (ERISA) regulations. TRS, as a public pension plan, is not governed by ERISA provisions and is not obligated to

fulfill any provisions made under these regulations. Therefore, for example, a separate account for a former spouse would not be established, even if indicated in a court order. In addition, a former spouse would be unable to appoint beneficiaries for his/her portion of the distribution.

What if my Divorce Order was issued in a state other than New York?

TRS will administer out-of-state Divorce Orders.

Who must file the court order with TRS?

As a TRS member, you must make sure the court order is filed with TRS. You may file the order, or your attorney or former spouse may file this document with TRS. Until an order is on file, we cannot execute the distribution of your retirement benefits. Once you file the order, TRS will carry out the provisions as soon as it is administratively feasible.

If you are under direction to file a court order and put off doing so, your benefits may be delayed until the

order is filed with TRS. If the order requires retroactive payments and the funds in question have already been paid to you, it would be your responsibility to pay the retroactive funds “out-of-pocket.”

How can a QDRO and other court orders affect my retirement benefits?

The court can order that you choose a particular option for your retirement payments, or mandate that any or all of your retirement benefits be divided between you and your former spouse. This includes your Qualified Pension Plan (QPP) benefits, as well as your Tax-Deferred Annuity (TDA) Program benefits. For instance, if your former spouse is named an “alternate payee” by the court, (s)he can receive as much as 100% of your retirement benefits. Under the most common distribution formula for the division of retirement benefits in New York State, your former spouse would receive one-half of the benefit you earned during the marriage (*i.e.*, from your marriage date until the date you filed for divorce). However, this is not required; your benefits may be divided any way agreed upon by you, your former spouse, and your attorneys, as long as the distribution corresponds with TRS policy.

The court can require that a portion of your TDA funds be directed to your former spouse (usually via rollover to an IRA or other eligible program). These transactions are subject to Internal Revenue Code restrictions and TRS regulations.

It is also possible that the court can stipulate that you name your former spouse as a beneficiary for your pre- and/or post-retirement death benefits. In some cases, a court order can restrict you from utilizing other TRS benefits that can affect your former spouse’s prospective distribution amount, such as taking out loans or withdrawing funds.

In general, the payment option selected for a retirement allowance or TDA annuity cannot be changed once it is effected. Certain payment options allow members to change beneficiaries, while others do not.

Please refer to the *Retirement Payment Options: Tiers I/II and TDA Annuitization Options* brochure or the *Retirement Payment Options: Tiers III/IV* brochure for detailed information about your payment options. If you retire under an option that does not allow for a

beneficiary change, you may be eligible to receive retirement allowance payments under the Maximum Payment Option if your former spouse waives his/her beneficiary status.

What information must be contained in the court order?

The following information must be specified in the court order:

- Your name, address, Social Security number, date of birth, and those of your former spouse;
- Your marriage date and date that divorce was filed;
- The number of months to be used in the calculation of your service credit earned during the marriage (if applicable);
- Retirement option to be elected (if applicable);
- Percentage of your retirement benefit(s) to be paid to the alternate payee (your former spouse) and;
- The assignment of beneficiary status to your former spouse (if applicable).

The language used in the court document must be comprehensive in the division of your retirement benefits. TRS will not fulfill any provision not specifically accounted for in the court order. TRS recommends that you or your attorney send a copy of the proposed order to our Legal Department, so that the language can be reviewed. The Legal Department will send a letter in reply, either detailing the language that must be changed, or approving the language of the order.

When would the distribution of my retirement benefits to my former spouse begin?

For court-mandated TDA distributions, payments to your former spouse would begin once TRS completes processing the proper form for the order. For example, if the court mandates that a portion of your TDA funds be withdrawn and distributed to your former spouse, you must file a “TDA Withdrawal Application” (code TD32), as well as a “TDA Direct Rollover Election Form”(code TD22), as applicable. Upon receipt of the forms, TRS would process and fulfill the request. No early distribution penalties would apply, because the withdrawal was directed by court order.

The QPP payments to your former spouse would not begin until you retire and start collecting benefits. Once your monthly retirement payments begin, your former spouse would also begin receiving monthly payments. (Payments to an alternate payee must be in the same form as to the member; therefore, your former spouse could not receive payments in a lump sum.) If you receive a Cost-of-Living Adjustment (COLA) in your retirement payments, your former spouse would also receive the adjustment. Likewise, if your monthly benefit is suspended (e.g., if you return to public service), your former spouse's payments would also be suspended. In addition, just as you will be required to pay taxes on your benefits and adhere to IRS restrictions regarding fund access, so will your former spouse. Once payments begin, you and your former spouse will each receive 1099 Forms for any distributions you receive in a given tax year.

How long your former spouse receives payments can depend on the retirement payment option you have chosen (or were required to choose by court order), and whether (s)he has been designated your beneficiary. Generally, your former spouse will continue to receive retirement payments until either you or (s)he dies. If your former spouse predeceases you, any monies payable to him/her automatically revert to you. Conversely, if you predecease your former spouse, the relevant funds would be payable to your beneficiary(ies) on file. If your former spouse is your sole beneficiary and has predeceased you, any relevant funds would be payable to your estate.

Do I need to do anything after I submit an order to TRS?

After you submit an order to TRS, it is incumbent upon you to follow up on the orders specified in the document. For example, if the order specifies that you name your former spouse as a beneficiary, repay

loans before retirement (so as not to reduce the payments of your former spouse), or choose a particular retirement option, it is your responsibility to fulfill these requirements.

How can I determine the amount of accumulated benefits I have?

TRS regularly issues account statements, which note the value of your accumulated benefits to date. In addition, you may utilize our website to access this information. If you are retirement-eligible, you may also obtain estimates of your accumulated retirement benefits on the TRS website. TRS recommends that you consult an actuary or other financial professional for additional advice on benefit calculations.

What if someone else needs information about my account from TRS?

TRS cannot release any information regarding your account without a subpoena or a signed, notarized authorization from you. The authorization must include your name, TRS Membership/Retirement Number, the recipient's name and address, and the information to be sent to the recipient. The authorization must be notarized before it is sent to the attention of TRS' Legal Department.

Please be advised that all of TRS' actions regarding divorce proceedings are in compliance with the court order submitted, which must be administrable under the New York State and New York City retirement law. The information supplied in this brochure is based on information currently available to TRS; if you have any further questions about divorce and your TRS benefits, TRS recommends you contact your lawyer or tax advisor.

For your convenience, TRS forms and publications are available on our website.

If you require additional assistance, we encourage you to contact our Member Services Center at 1 (888) 8-NYC-TRS.

This publication should not be solely relied upon, as it is based on currently available information that is subject to change. TRS suggests that you consult with an attorney and/or a tax advisor if you have any specific legal or tax questions concerning this information. In all cases, the specific provisions of the governing laws, rules, and regulations prevail.



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