



Denver Employees Retirement Plan

Domestic
Relations
Order

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Introduction

The Denver Employees Retirement Plan (the “Plan”) is a governmental defined benefit (DB) pension plan operating as a tax-qualified plan under section 401(a) of the Internal Revenue Code. In a DB plan, those who vest and meet certain age and service requirements are guaranteed a lifetime monthly retirement benefit when they retire.

Section 18-418 of the Revised Municipal Code of the City and County of Denver permits the Plan to divide a member’s retirement benefit in the event of a divorce, if that divorce is final on or after July 1, 2004. The law allows a portion of a member’s pension benefit to be paid directly to a member’s former spouse at the time the member begins receiving retirement benefits from the Plan. If a member terminates prior to vesting with the Plan, the law allows a portion of the member’s refund of contributions to be paid directly to a member’s former spouse at the time the member receives the refund.

This brochure is designed to give the parties involved in a dissolution of marriage a better understanding of how the retirement benefit from the Plan can be divided in a divorce, legal separation, or invalidity of marriage proceeding through a Domestic Relations Order (DRO).

A member’s retirement benefit from the Plan is considered marital property just like a house, car, or other items of value. If a member has been married at any time while an active member of the Plan and is considering a divorce, the member’s spouse may be legally entitled to receive a portion of the member’s retirement benefit, refund of contributions (if the member terminates employment prior to earning five (5) years’ credited service with the Plan) and/or DROP or DROP II account.

In addition, if the member is retired at the time the DRO is entered into, the member's retirement benefit is also part of marital property.

The information in this brochure should not be considered legal advice. Each party in a divorce should consult with his or her own attorney.

WHAT IS A DOMESTIC RELATIONS ORDER (DRO)?

A Domestic Relations Order (DRO) is a judgment, decree, or other Court order made in accordance with Section 18-418 of the Revised Municipal Code of the City and County of Denver which relates to the division of a member's retirement benefit and/or DROP or DROP II account in conjunction with an action for dissolution of marriage, legal separation, or declaration of invalidity of marriage.

The DRO cannot provide for payment of any benefit of a type or form, or any option, not otherwise provided under the terms of the Plan. The DRO cannot provide for payments for which the member and spouse would not otherwise be eligible if there were no dissolution of marriage, legal separation, or declaration of invalidity, or provide for payment of benefits to a former spouse from the Plan prior to the member's retirement.

Please do not use a "Qualified Domestic Relations Order" (QDRO). A QDRO cannot and will not be accepted by the Plan. The Plan is exempt from QDROs provided for by the 1984 Retirement Equity Act. Those relate only to private sector pension plans. Government pension plans like the Denver Employees Retirement Plan are exempt from this provision of federal law.

SUMMARY OF DRO PROVISIONS

- In order for a DRO to divide a member's monthly retirement benefit, the member must be vested (five (5) years of credited service). If a member terminates employment prior to be-
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coming vested with the Plan, the DRO may require that a portion of the refunded contributions be paid directly to the former spouse.

- The Plan's DRO Order and Agreement forms must be used.
- The DRO Order and Agreement forms must be approved by the Plan before submitting them to the Court.
- The Court/Judge must sign the Order with the Agreement attached and a certified copy sent to the Plan. The DRO must be approved by the Plan.
- The DRO Order with the attached Agreement must be approved and entered by the Court either upon the entry of the decree and permanent orders, or within 180 days afterwards. The Court-approved DRO Order with the Agreement must be submitted to the Plan within 90 days after entry of the DRO by the Court.
- The payment to a member's former spouse will be either an agreed upon percentage or an exact amount of the retirement benefit calculated, as of the date of dissolution, for the period of a member's marriage.
- If a member was a DROP I or II participant, and the Court orders that the DROP account be divided, the former spouse shall receive a lump-sum payment from the DROP account 60 days after the member's effective retirement date. If this is a post-retirement DRO, the lump-sum payment from the DROP account will be made to the former spouse on the first available date after the Plan and the Court have approved the DRO and an application is received by the Plan from the former spouse.
- No payment will be issued to the member's former spouse until the member begins receiving retirement benefits from the Plan. Age 55 is the

Plan's earliest retirement age for members hired before July 1, 2011, and age 60 is the Plan's earliest retirement age for members hired on or after July 1, 2011. Age 65 is the Plan's normal retirement age, but there is no mandatory retirement age.

- If the member dies prior to retirement, the former spouse can receive monthly payments specified in the DRO that will commence the first day of the month following the date the member would have reached age and other requirements for a Normal Retirement benefit under the Plan provisions, but only if a benefit is being paid to the member's beneficiary by the Plan at that time.
- If the DRO is issued after a member has retired, the payment to the former spouse will start on the first day of the month 30 days after the valid DRO is received and the former spouse has completed and submitted an application to the Plan.
- The former spouse's payment will include any Cost of Living Adjustments if adopted by the Retirement Board for all retirees.
- The former spouse will not be eligible to participate in the Plan's group health insurance or any other benefit from the Plan.
- The payment to the former spouse will continue until the member's death, unless the former spouse elected to take the extended payment option, in which the payments will end upon the former spouse's death. The extended payment option actuarially reduces the agreed upon DRO payment to the former spouse, to provide an ongoing payment after the member's death.
- The DRO will terminate upon the death of the former spouse. No contingent beneficiary can be named by the former spouse or anyone else for continued payments after his or her death.

- If a member marries and divorces more than once, the Court can authorize more than one DRO to be applied against the member's retirement benefit. Each DRO can only divide the benefit accrued during that marriage.

DRO FOR A NON-VESTED MEMBER

If a member is not vested (does not have five (5) years of credited service with the Plan) on the date of divorce, the Plan can calculate the member's personal contributions that were made during the period of the member's marriage. The amount of a member's personal contributions may be a part of the marital assets and can be included with the division of other marital property. A DRO cannot be used to divide a member's personal contributions unless the member terminates employment prior to vesting, at which time the member's former spouse may be paid either an agreed upon percentage or an exact dollar amount of the marital portion of the member's refunded contributions.

DRO AND THE PLAN'S MEMBER

A member's retirement benefit will be divided at the time of payment of the first retirement benefit or, if the member is already retired, on the first day of the month 30 days after the approved DRO is received by the Plan. The amount to be withheld from a member's benefit and paid to the former spouse will be set forth in the DRO. If a percentage was elected, the amount may be reduced up to 30% depending on the member's age at retirement, and may be reduced depending on the retirement option elected by the member at the time of retirement. If a member is remarried at the time of retirement, the member must elect a Joint and Survivor option for the then current spouse, unless waived by that spouse.

If a member is retired when the former spouse

dies, the member's benefit is increased the month after the former spouse's death to include the amount of the retirement benefit the former spouse was receiving.

WHEN THE FORMER SPOUSE'S PAYMENTS BEGIN

The former spouse's payments under a DRO will begin when the member begins receiving retirement benefit payments from the Plan or, if the member is already retired, on the first day of the month 30 days after the date the approved DRO is received by the Plan. The Plan's earliest retirement age for members hired before July 1, 2011 is 55, and the earliest retirement age for members hired on or after July 1, 2011 is 60.

The Normal Retirement age for all members is 65. However, there is no mandatory retirement age and active members can continue to work indefinitely. Payments to a former spouse will not begin until the member retires.

If a member was a participant in DROP or DROP II, and that account is part of the DRO, please refer to section below titled A MEMBER WITH A DROP OR DROP II ACCOUNT.

If a member dies as an active member, the former spouse will begin to receive the approved DRO payments at the time the member would have (but for death) been eligible for a Normal Retirement, but only if benefit payments are being made by the Plan to a beneficiary at that time. If all benefit payments have ceased or no benefit payments are to be made by the Plan at the time of the member's death, the former spouse shall not be entitled to any benefit payments from the Plan.

The Plan benefits are paid on the first of the month for that month. If the completed application for the DRO payment is received by the 15th of the month, the first payment will be made on

the first of the following month. If the completed application is received later, the first payment will be made on the first of the month 30 days after receipt.

The Plan will attempt to notify the former spouse of the member's retirement or death. A notice will be sent to the last known address on file with the Plan at the time of the member's retirement or death. It is very important that the former spouse keep the Plan informed of any address changes. The Plan is not responsible for benefits not being paid to the former spouse due to the Plan having an incorrect address on file.

THE FORMER SPOUSE'S EXTENDED PAYMENT OPTION

When the former spouse completes an application for the agreed upon DRO payment, the former spouse may choose to have the DRO payment actuarially reduced to provide a lifetime annuity to the former spouse which does not stop upon the member's death, but instead will continue until the death of the former spouse. The reduction will be based on the age of the member and the age of the former spouse at the time the DRO payment begins. The Plan will prepare an estimate of the reduction at the time the former spouse applies for the DRO payment. The reduction or division of the member's retirement benefit is based on the agreed upon DRO payment, not the monthly amount the former spouse will actually receive.

A MEMBER WITH A DROP or DROP II ACCOUNT

If a member was a participant in DROP or DROP II, that account is also eligible to be distributed through a DRO. The DROP/DROP II account cannot be distributed until 60 days after the member terminates employment. The DRO can stipulate a percentage or exact amount of the DROP/DROP II account to be distributed.

If the DROP or DROP II account is part of the DRO, the former spouse shall receive a lump-sum payout from the DROP account 60 days after the member's effective retirement date. If this is a post-retirement DRO, the lump-sum payment from the DROP account will be made to the former spouse on the first available date after the Court and the Plan have approved the DRO and a completed application has been received.

THE DRO CALCULATION FOR AN ACTIVE OR DEFERRED VESTED MEMBER

The payment to the former spouse will be based on a percentage or exact specified dollar amount of the member's retirement benefit earned during the period of marriage. The calculation for a lifetime monthly retirement benefit for members employed before September 1, 2004 is based on the average monthly salary (highest 36-consecutive months) multiplied by 2%* multiplied by years and months of credited service earned by the member. The calculation for a lifetime monthly retirement benefit for members employed on or after September 1, 2004 and before July 1, 2011 is based on the average monthly salary (highest 36-consecutive months) multiplied by 1.5% multiplied by years and months of credited service. The calculation for a lifetime monthly retirement benefit for members employed on or after July 1, 2011 is based on the average monthly salary (highest 60-consecutive months) multiplied by 1.5% multiplied by years and months of credited service earned by the member. The years and months of credited service used in the estimate calculation for the DRO will be the service accrued during the period of marriage and the retirement date will be age 65, the normal unreduced retirement age. The average monthly salary will be the highest 36 or 60-consecutive months as of the date of the dissolution.

**PLEASE NOTE: Deferred vested members may have a different multiplier.*

For example:

Assumptions:

Date of employment: 9/1/1985

Date of marriage: 10/1/1994

Date of dissolution: 10/1/2004

Average monthly salary: \$3,000

Former spouse awarded 50% of the member's retirement benefit

The benefit calculation is:

$$\begin{array}{r} \$3,000 \text{ Average monthly salary} \\ \times \quad .02 \text{ 2\% multiplier} \\ \times \quad \underline{10} \text{ 10 years of marriage/service} \\ = \quad \$600.00 \text{ Benefit eligible for division} \\ \times \quad \underline{.50} \text{ Percentage specified in the DRO} \\ = \quad \$300.00 \text{ Former Spouse payment} \end{array}$$

The actual DRO payment will be calculated when the DRO is received by the Plan, unless the member is already retired or the DRO payment is based on the date the member and the former spouse legally separated. A Dissolution of Marriage is not always complete when it is estimated to be. There may be a slight change from the estimated benefit based on additional service earned by the member between the date the DRO estimate was prepared and the actual date the dissolution is granted by the Court. When the Plan receives the DRO that has been entered by the Court, letters will be sent to the member and the former spouse acknowledging the Plan's approval of the documents and setting forth the division of the retirement benefit earned during the marriage.

For example: If the dissolution was final on 11/1/2004 instead of 10/1/2004 the calculation would be as follows:

$$\begin{array}{r} \$3,000 \text{ Average monthly salary} \\ \times \quad .02 \text{ 2\% multiplier} \\ \times \quad \underline{10.083} \text{ 10 years 1 month of marriage/service} \\ = \quad \$604.98 \text{ Benefit eligible for division} \\ \times \quad \underline{.50} \text{ Percentage specified in the DRO} \\ = \quad \$302.49 \text{ Former Spouse payment} \end{array}$$

At the time the member retires or when the DRO is entered, if the member is already retired, the former spouse will be required to complete an application for the DRO payment and, at that time, can elect an extended payment option. The former spouse's payment will be actuarially reduced to provide a lifetime annuity which does not cease upon the member's death. The example below is calculated with both parties having an age of 65:

The DRO has ordered a \$302.49 per month payment to the former spouse. This payment will stop at the Member's death. If the former spouse elects the extended payment option, based on the applicable mortality table the former spouse would receive \$262.47 per month until his or her death.

THE DRO CALCULATION FOR A RETIRED MEMBER

If a member is retired when the DRO is entered, the calculation for the division of the member's retirement benefit is based on the retirement benefit the member is currently receiving. The DRO must stipulate a percentage or exact amount of the current retirement benefit.

HOW TO OBTAIN A DOMESTIC RELATIONS ORDER

1. Contact the Plan and request a DRO estimate and the required forms for a DRO. You may also visit our website, www.derp.org, to obtain the required forms for a DRO.

The DRO estimate will show the amount of credited service and accrued monthly retirement benefit attributable to the period of the marriage. The retirement benefit will be calculated as if the member will retire at age 65, the normal unreduced retirement age. In order to provide information regarding a member's retirement benefit to anyone other than the member, the Plan will need a release signed by the member or a sub-

poena duces tecum. When the Plan responds to a subpoena, the member will also receive a copy of the response.

2. A DRO information packet will be sent to the member with an estimate of the member's retirement benefit earned during the period of marriage, and the amount in the member's DROP/DROP II account, if applicable.

3. The member and the former spouse must agree to the terms of the DRO, using the Plan's Agreement for Domestic Relations Order form ("Agreement").

4. Complete the information contained on the Domestic Relations Order and Agreement forms and submit them to the Plan for approval at least two weeks prior to anticipated submission of them to the Court. The Agreement submitted to the Court, after approval by the Plan, must be signed by all parties and must be notarized.

5. The Plan-approved Domestic Relations Order with the Agreement attached must be signed by the Judge.

6. A certified copy of the Court-approved DRO must be submitted to the Plan for processing within 90 days of the Court approving the DRO. The Court Clerk can provide this for you.

7. For the DRO and Agreement to be valid, they must be signed by both parties, and signed by a Judge or Magistrate. If the Plan does not approve the DRO because what the Court ordered does not comply with the Plan's requirements, the Plan cannot accept the DRO and will not be required to divide a member's retirement benefit. The member and the former spouse will have to go back to the Court to file the appropriate documents if both parties wish the retirement benefit to be divided by the Plan. If a member and the former spouse cannot reach agreement on how the member's retirement benefit with the Plan

should be divided, the Court can require the member to directly pay to the former spouse a portion of the member's retirement benefit as part of the division of marital property without involving the Plan.

8. The DRO Order with the attached Agreement must be approved and entered by the Court either upon the entry of the decree and permanent orders, or within 180 days afterwards. The DRO Order with the Agreement must be submitted to the Plan within 90 days after entry of the DRO by the Court and 30 days prior to the Plan making any distribution.

ACCEPTANCE OF THE DRO

When the Court-entered DRO is accepted by the Plan, letters will be sent to both parties acknowledging the acceptance of the DRO and setting forth the division of the retirement benefit earned during the marriage and/or the amount to be distributed to the former spouse from the DROP or DROP II account. If the payment can be made immediately after acceptance of the DRO by the Plan, application forms will be sent to the former spouse.

WHEN THE DRO TERMINATES

The former spouse's payment stops the month after the member's death, unless the former spouse elected an extended payment option. In that case, the DRO terminates upon the death of the former spouse.

FREQUENTLY ASKED QUESTIONS

What authority governs the Denver Employees Retirement Plan Domestic Relations Orders?

Section 18-418 of the Revised Municipal Code of the City and County of Denver.

Does the member need to have a DRO to divide marital property?

No. The member should discuss this with his/her attorney. At times, retirement benefits are not divided if the member and spouse have agreed to exchange other assets instead of dividing the retirement benefit. To retain full ownership of a member's Denver Employees Retirement Plan retirement benefit, the member's property settlement must clearly state that the member's account is not to be divided. The member's dissolution documents should individually name each account (the Denver Employees Retirement Plan, DROP/DROP II account, the deferred compensation account, or other retirement accounts) and clearly state the former spouse has no claim against specific benefits. As an alternative to the DRO, the parties may choose to divide the present value of a member's retirement benefit at the time of divorce as part of the property division. There may be other alternative methods available to the parties as well. The member and the member's attorney should decide which method of dividing the member's benefit is best.

Can the member be forced to use a DRO during a divorce?

No. If the parties cannot reach a written agreement, the Court cannot order a DRO. However, the Court may consider other options in dividing the marital estate.

Is there a fee for processing a DRO?

The Plan does not charge a fee at this time. However, the Ordinance does allow a fee to be charged.

Does the member have to obtain pre-approval by the Plan of the proposed DRO Agreement?

Pre-approval is recommended. If the forms are not properly completed or the administrative requirements are not met, the Plan will reject the DRO. It is recommended that the parties send a copy of the completed DRO Agreement and Order to the Plan at least two weeks prior to the anticipated submission of the DRO to the Court.

May the member make any changes to the Plan's DRO forms?

No. The forms must be used without change. In addition, please do not retype any form.

If the Plan determines the DRO Agreement is invalid, what can the member do?

If the DRO was submitted for pre-approval, a member will only have to make the necessary changes before submitting it to the Court. If the DRO was not submitted for pre-approval and it has been signed by the Court and rejected by the Plan, the parties will have to go to Court again, if time permits, to get a DRO that can be approved by the Plan.

What if the member remarries?

If the member and the member's new spouse elect a Joint and Survivor* benefit at the time of retirement, the benefit paid after the member's death to the member's new spouse will be based on the member's chosen retirement benefit after the agreed upon division to the former spouse has been paid. If the member is already retired when he/she remarries, the member's new spouse will not be eligible to be a Joint and Survivor beneficiary since the options elected at retirement are irrevocable.

**A Joint and Survivor beneficiary receives a continuing benefit upon a member's death. The member's retirement benefit is reduced to provide a benefit over two lifetimes.*

Is the former spouse's payment eligible for cost of living adjustments (COLA's)?

Yes. If a cost of living adjustment is approved by the Retirement Board, the former spouse will receive the increase under the same terms as the retirees.

Are the former spouse's payments subject to taxes?

Yes. The Plan can withhold federal and state taxes and the former spouse will receive a Form 1099R for the portion of the member's benefit paid to the former spouse. This is true even if the agreement says the member will pay all taxes. The payment will be considered retirement income to the former spouse and may be eligible for a Colorado exemption. Colorado currently exempts the first \$20,000 of retirement income from state tax if a person is between the ages of 55-64 and \$24,000 if a person is age 65 or older and a resident of Colorado. Ask your tax consultant for further tax information.

Is the former spouse eligible to participate in the group health insurance offered by the Plan?

No. These benefits are for the Plan members and qualified dependents only.

Will the Plan accept an out-of-state DRO?

Yes. The Plan will accept an out-of-state DRO if the DRO meets the Plan's procedural and administrative requirements.

When must the final DRO be submitted to the Plan?

The DRO with the attached Agreement must be approved and entered by the Court either upon the entry of decree or within 180 days thereafter.

The final Court-approved DRO must be submitted to the Plan within 90 days after entry of the DRO by the Court. It must be received at least 30 days before the Plan will make its first payment pursuant to the DRO.

Can a DRO be modified?

Yes, as long as any modification is within the timeline set forth in the Plan's Ordinance. The Plan and Court must approve any modification to an existing DRO. The modification must be entered by the Court within 180 days after entry of the decree of dissolution, and be submitted to the Plan within 90 days thereafter. Again, the Agreement must be received by the Plan at least 30 days before the Plan will make its first payment pursuant to the modified DRO.

What happens if the member becomes disabled as an active employee?

If a member meets all the disability requirements, a disability retirement benefit for an On-the-Job disability would be calculated based on the higher of 20 years credited service or actual service plus 10 years. In either case, the credits cannot exceed service that would have been earned by the member at age 65. An Off-the-Job disability benefit would be 75% of the calculated amount for an On-the-Job disability.

The amount of the disability pension payment paid to the member will be reduced by the amount to be paid to the former spouse which is designated in the DRO. A member's former spouse would be notified of the member's retirement and payment to the former spouse would begin at the same time as payments begin to the member.

What happens if the member dies as an active employee?

A former spouse will receive the agreed upon DRO payment at the time the member would have been eligible for a Normal Retirement, if a retirement benefit is being paid by the Plan to the member's beneficiary at that date. If a member has a valid beneficiary at the time of death, the member's beneficiary will receive a survivor annuity based on the credited service earned until the member's death plus additional service. The death benefit for an active member, whose death is classified as On-the-Job, is calculated as the

higher of 15 years' service or actual service plus five years. In either case, the credits cannot exceed service that would have been earned by the member at age 65. If the member's death is Off-the-Job, the member's valid beneficiary will receive 75% of the On-the-Job death benefit calculated amount.

The member's valid beneficiary will receive the full retirement benefit until the member would have been eligible for a Normal Retirement and then the payments to the beneficiary will be reduced by the payments required to be made to the former spouse. The former spouse will be required to take the extended payment option for his/her portion of the death benefit. The death benefit must be paid to any current spouse, if the member was married at the time of the member's death. If the member was not married at the time of death, the benefit as noted above would be paid to the member's children under age 21 (if there are any) until they reach age 21, at which time all benefits cease being paid by the Plan. If the member was not married and did not have children under age 21 at the time of death, the member's named beneficiary would receive the death benefit. If all benefit payments have ceased or no benefit payments are to be made by the Plan at the time of the member's death, the former spouse shall not be entitled to any benefit payments from the Plan. As life-status changes occur, active members should keep their named beneficiary current with the Plan.

This publication is for informational and educational purposes only. The Denver Employees Retirement Plan (“The Plan”) and the administration of the Plan is governed by the Revised Municipal Code of the City and County of Denver, as well as the Internal Revenue Code and its rules and regulations which are complex and subject to change. Though the information and explanations contained in this publication are based on the pertinent laws in effect as of this date, it cannot be relied on as legal authority, and any conflict or inconsistencies between this publication and the governing laws are resolved and controlled by those governing laws. The Plan makes no guarantees pertaining to the information contained within this publication.

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