

## **Adams County Retirement Plan Domestic Relations Orders Procedures**

### **Purpose**

This brief summary will provide information to Members, spouses, and partners in a civil union (and their attorneys) who may be considering a domestic relations order (“DRO”).

### **Retirement Plan Background**

The Adams County Retirement Plan (“Retirement Plan”) is a defined benefit pension plan under the Internal Revenue Code (“Code”).

Generally, for a Member hired in covered employment with Adams County or the Rangeview Library District (the “Library District”) before January 1, 2010, the retirement benefit offered under the Retirement Plan is a monthly amount comprised of two parts: the Component A Benefit and the Component B Benefit. The formula for the Component A Benefit is 2.5% of the Member’s average monthly compensation multiplied by the Member’s years of full-time employment prior to January 1, 2014. The Member’s average monthly compensation is equal to the member’s regular compensation during either: (i) the 36 highest-paid consecutive calendar months (if the Member was hired in covered employment before January 1, 2005), or (ii) the 60 highest-paid consecutive calendar months (if the Member was hired in covered employment on or after January 1, 2005), within the last 120 completed calendar months of employment. The formula for the Component B Benefit is 1.75% of the Member’s career compensation earned on or after January 1, 2014 divided by 12.

Generally, the retirement benefit offered under the Retirement Plan for a Member hired in covered employment with Adams County or the Library District on or after January 1, 2010 is a monthly amount equal to 1.75% of the Member’s career compensation divided by 12.

The monthly amount of the retirement benefit under the Retirement Plan may not be greater than 80% of the Member’s average monthly compensation during any consecutive 12-month period in which the Member receives the highest average monthly compensation.

The basic form of retirement benefit under the Retirement Plan for a Member hired prior to January 1, 2010 is a monthly benefit payable for the Member’s lifetime, with a guarantee that the monthly payments will be made for at least 120 months after retirement. The basic form of retirement benefit under the Retirement Plan for a Member hired on or after January 1, 2010 is a monthly benefit payable for the Member’s lifetime. Other payment options are available to the Member at retirement; however, certain payment options require written consent of the Member’s spouse.

The monthly retirement benefit is *not* based on the amount of the contributions made to the Retirement Plan by the Member over his/her career or those made by the employer (Adams County or the Library District).

Under the Retirement Plan, the monthly retirement benefit is payable when the Member reaches age 65 and retires. Under certain conditions, the Member may request payment of the

monthly retirement benefit earlier than age 65, provided the Member has terminated his or her employment. Survivor benefits may be available upon the Member's death.

The Retirement Plan Executive Director must verify the Member's lawful presence in the United States prior to the Member's receipt of "public benefits," which include retirement benefits. The benefit of a Member who is not lawfully present in the United States may be reduced.

More details on the Retirement Plan can be obtained from the Member's Retirement Plan booklet, which summarizes the Retirement Plan, or from the Retirement Plan legal documents.

## **DRO Procedures**

The legal requirements for a valid DRO are very technical. In addition to the legal requirements, you must also comply with rules or procedures established by the Retirement Plan Executive Director before the Retirement Plan will honor the DRO and pay any benefit to the Alternate Payee.

Colorado divorce law permits a Member and an "Alternate Payee" (which must be the Member's spouse, former spouse, partner in a civil union, or former partner in a civil union) to sign an agreement to allow the Retirement Plan to pay some or all of a Member's retirement benefit to the Alternate Payee.

The standardized DRO form provided by the Retirement Plan Executive Director is required to be used for all domestic relations orders pertaining to the Retirement Plan, pursuant to Colorado Revised Statutes Section 14-10-113(6)(d). It is highly recommended that a copy of the written agreement be provided to the Retirement Plan Executive Director before it is approved by the court.

Note that Section 3 of the standardized DRO form contains two (2) versions of Paragraph C. The first version of Paragraph C should be used in cases where the Member is not yet retired. The second version of Paragraph C should be used in cases where the Member is retired and receiving retirement benefit payments.

Colorado Revised Statutes Section 14-10-113(6)(c)(I) states that a copy of the written agreement concerning the division of a public employee retirement benefit **MUST** be provided to the Retirement Plan Executive Director within 90 days after entry of the decree and permanent orders regarding property distribution in a proceeding for divorce, legal separation, dissolution of a civil union, or declaration of invalidity of marriage. In the event that the date of entry of the decree for dissolution of marriage, legal separation, dissolution of a civil union, or declaration of invalidity of marriage differs from the date of entry of the permanent orders regarding property distribution, a copy of the final written agreement (after it is approved and certified by the court) **MUST** be provided to the Retirement Plan Executive Director within 90 days after the later of entry of the decree or entry of the permanent orders regarding property distribution. The effective date of entry of the decree or of the permanent orders is the actual date of signing by the Court of the decree and/or the permanent orders regarding property distribution.

The Retirement Plan Executive Director will review the agreement each time it is provided and notify the parties as to whether the agreement (after it is approved and certified by the court) will be honored by the Retirement Plan.

The signed agreement must be submitted to, and approved by, the court before it can be considered a valid DRO. After approval by the court, a certified copy of the DRO MUST be submitted to, and received by, the Retirement Plan Executive Director at least 30 days before the Retirement Plan can make its first payment in accordance with the provisions of the DRO. The Retirement Plan Executive Director will review the court-certified DRO to ensure it will be honored by the Retirement Plan.

A valid DRO cannot provide for payments to be made to the Alternate Payee: (i) prior to the date the Member actually retires or, if earlier, age 65, except that for an Alternate Payee who does not meet the definition of an alternate payee under Code Section 414(p), the payment(s) shall not commence to such Alternate Payee until the payment(s) commences to the Member; or (ii) in an amount greater than the amount the Member is entitled to receive under the Retirement Plan.

Generally, the Alternate Payee's payments under a valid DRO will cease upon the death of either the Member or the Alternate Payee, whichever occurs first. The Member and Alternate Payee may agree in the DRO that the Member will elect a form of payment that would allow benefits to continue to the Alternate Payee, as a beneficiary or cobeneficiary, after the Member dies. In this situation, the person who was the Alternate Payee prior to the Member's death would be called a cobeneficiary upon the Member's death. However, if the Member is remarried, the new spouse must consent to this provision. In addition, if the Member is remarried and dies before beginning to receive payments, the new spouse will usually have greater rights to the Member's survivor benefits than the Alternate Payee.

#### **In the Event You Cease This Action**

*In the event you decide not to proceed with a divorce, legal separation, dissolution of a civil union, or declaration of invalidity of marriage, or not to divide retirement benefits, you must notify the Retirement Office as soon as possible. You will need to provide a copy of the decree so stating and any exhibits, if appropriate.*

*If you do not provide this information, the Adams County Retirement Board will consider this matter open until such time as the matter can officially be closed. If you subsequently terminate your employment with Adams County or the Rangeview Library District, the payment of your refund of contributions or monthly pension benefit (whichever is applicable) could be delayed if the Retirement Office does not have information that you did not proceed with a divorce, legal separation, dissolution of a civil union or declaration of invalidity of marriage, or that you decided not to divide retirement benefits.*

## **Glossary of Terms**

Following are definitions you might find useful:

**Alternate Payee** is the spouse, former spouse, partner in a civil union, or former partner in a civil union of the retirement plan member in a divorce, separation, dissolution of a civil union or declaration of invalidity of marriage action who is to receive, is receiving, or has received all or a portion of the member's retirement benefit under a DRO.

**Defined benefit pension plan** is a retirement plan that usually provides a monthly retirement benefit based on a formula that considers several factors including an individual's length of service, compensation, and age at the time of retirement.

**Domestic Relations Order (DRO)** is a property division order under Colorado law which approves a written agreement between a member and a spouse, former spouse, partner in a civil union, or former partner in a civil union for payment of some or all of a member's retirement benefit directly by a retirement plan to such spouse, former spouse, partner in a civil union, or former partner in a civil union.

**Member** is any person who is an active, inactive or retired member of the retirement plan.

### **Summary**

The Retirement Plan Executive Director has the authority to take any and all actions with respect to domestic relations orders including, but not limited to, the power to interpret and construe the intent of any domestic relations order.

**THE ADAMS COUNTY BOARD OF RETIREMENT AND THE BOARD'S  
STAFF CANNOT PROVIDE YOU WITH LEGAL ADVICE.  
IF YOU ARE CONSIDERING A DRO, YOU SHOULD OBTAIN LEGAL COUNSEL.**

## ARTICLE XII

### Guarantees and Liabilities

12.1 Nonguarantee of Employment: Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees at any time, with or without cause.

12.2 Rights to Retirement Trust Fund Assets: No Member shall have any right to, or interest in, any assets of the Retirement Trust Fund upon termination of his employment or otherwise, except as provided under this Plan, and then only to the extent of the benefits payable to such Member out of the assets of the Retirement Trust Fund. Neither the Employer, the Funding Agent, nor any member of the Retirement Board shall be liable to any Member or Beneficiary for benefits from this Plan, except for those payable from the Retirement Trust Fund in accordance with the terms of the Plan and the Funding Agreement.

12.3 Nonalienation of Benefits: Benefits payable under this plan shall not be subject in any manner to anticipation, attachment, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any liability for alimony or other payments for property settlement or support of a spouse or former spouse, or for any other relative of the Member but excluding devolution by death or mental incompetence, prior to being received by the person entitled to the benefit under the terms of the Plan. Any attempt to anticipate, attach, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder shall be void.

The Retirement Trust Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits hereunder. To the maximum extent permitted by law, none of the unpaid Plan benefits or Retirement Trust Fund assets shall be considered an asset of the Member in the event of his divorce, insolvency, or bankruptcy.

Notwithstanding the foregoing, the Retirement Board may, in conformity with Colorado Revised Statutes §24-54-111, approve payment or payments, which shall not commence until the payment or payments commence to the Member unless the payment or payments are for an alternate payee who meets the definition of alternate payee under Code Section 414(p), that are: (a) for child support purposes, (b) to an "alternate payee" pursuant to a "domestic relations order" (DRO) in accordance with Colorado Revised Statutes §14-10-113(6), (c) for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property, and/or (d) in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to Article 54 of Title 24 of the Colorado Revised Statutes where the offender or a related party received direct financial gain, and such payment or payments shall not be deemed a prohibited alienation of benefits.

The rights of a former spouse under a DRO end upon the death of the Member unless named as a Beneficiary or cobeneficiary. The designation of a former spouse as a Beneficiary (subject to the designation of Beneficiary provisions of Section 7.9) or cobeneficiary is subject to the spousal consent provisions of Section 8.4. If a former spouse is designated as cobeneficiary, such person shall receive a portion of the benefit which would otherwise be payable to the Beneficiary.

12.4 Bankruptcy: If any Member shall become bankrupt or attempt to anticipate, assign, or pledge any benefits under the Plan, then, in the discretion of the Retirement Board, such benefits shall cease, and in that event the Retirement Board shall have the authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such Member, his spouse, children, or other dependents, or any of them, in such manner and in such proportions as the Retirement Board may deem proper.

**AUTHORIZATION TO RELEASE PENSION INFORMATION**

To: Retirement Plan Executive Director  
4430 South Adams County Parkway  
Suite C3406  
Brighton, CO 80601-8202  
Phone No. (720) 523-6167 Fax (720) 523-6322  
Website www.acretirement.org

From: \_\_\_\_\_ Last 4 digits of SSN: \_\_\_\_\_  
(Member's Name)

Re: Adams County Retirement Plan ("Retirement Plan")

This authorizes you to furnish and release the information described below to the following company(ies), organization(s), or individual(s) ("information recipient(s)"):

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Street/Mailing Address: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Street/Mailing Address: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Street/Mailing Address: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Street/Mailing Address: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_

You may release to the above information recipient(s) any information and records requested regarding my participation in the Retirement Plan including, but not limited to, the following:

- (1) a copy of the Retirement Plan and summary plan description;
- (2) confirmation of contributions made by me into the retirement fund;
- (3) names of my beneficiaries;
- (4) information with respect to any existing assignment or income assignment for child support purposes, writ of garnishment that is the result of a judgment taken for arrearages for child support or for child support debt, and/or domestic relations order relating to my retirement benefit, if applicable; and

- (5) information as to the amount of monthly retirement benefit I have accrued under the Retirement Plan, forms of payment available, and survivor benefits in the event of my death.

I understand that the actual information to be released will be determined at the sole discretion of the Retirement Plan Executive Director and nothing in this Authorization requires the Retirement Plan Executive Director to furnish any information that the Retirement Plan Executive Director determines to be inappropriate. Furthermore, I understand that any benefit information furnished will be based on data then reasonably available to the Retirement Plan Executive Director. I also understand that, unless revoked, this Authorization will remain valid as long as I am entitled to a benefit under the Retirement Plan. I may revoke this Authorization by submitting a written revocation to the Retirement Plan Executive Director.

Copies of all written information released shall also be provided to me. Photocopies of this authorization are to be given the same effect as the original.

\_\_\_\_\_  
(Member's Signature)

\_\_\_\_\_  
(Date)

The foregoing authorization to release pension information was acknowledged before me this ___ day of _____, 20___, by _____	
_____ (Notary's official signature)	Notary Seal
_____ (Commission Expiration)	

**ADVANCE CHECKLIST FOR DRO DRAFTER TO  
DETERMINE IF PROPOSED DRO WILL BE HONORED  
BY THE RETIREMENT PLAN**

FOR THE ADAMS COUNTY RETIREMENT PLAN (the "Retirement Plan")

- |  | Yes                      | No                       |
|--|--------------------------|--------------------------|
| 1. Does the proposed DRO specify the name, social security number and last-known mailing address of the Member?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does the proposed DRO (1) specify the name, social security number, and last-known mailing address of the Alternate Payee, and (2) indicate whether the Alternate Payee is the Member's spouse, former spouse, partner in a civil union, or former partner in a civil union?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Does the proposed DRO specify the full legal name of the plan to which the proposed DRO relates?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Does the proposed DRO clearly specify the time-rule formula distributed method determined by dividing the number of months of service credit acquired under the Retirement Plan during the marriage, as set forth in the court's order, by the number of months of service credit in the Retirement Plan at the time of the Member's retirement, as determined by the Retirement Plan, which quotient shall be multiplied by a percentage specified in the court's order, and the product thereof shall be further multiplied by the amount of the payment to the Member at the date of retirement? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Does the proposed DRO clearly state that the distribution method is subject to benefit adjustments payable at the same time and in the same manner as any benefit adjustments applied to the Member's distribution?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. If another DRO, an assignment, or a lien, already exists with respect to the Member's retirement benefit, will payments to the Alternate Payee under the proposed DRO neither conflict with the previous DRO, assignment or lien, nor cause the Retirement Plan to pay benefits in excess of 100% of the benefit to which the Member would otherwise be entitled if there were no dissolution of marriage, legal separation or declaration of invalidity of marriage action?  | <input type="checkbox"/> | <input type="checkbox"/> |

- |  | Yes                      | No                       |
|--|--------------------------|--------------------------|
| 7. Does the proposed DRO clearly state or show that:   |                          |                          |
| a) the type or form of benefit payment required by the proposed DRO is permissible under the Retirement Plan; and  | <input type="checkbox"/> | <input type="checkbox"/> |
| b) it does not provide for the payment of benefits to the Alternate Payee or to the Member for which he or she would not otherwise be eligible if there were no dissolution of marriage, legal separation, dissolution of a civil union, or declaration of invalidity of marriage action?  | <input type="checkbox"/> | <input type="checkbox"/> |
| c) the benefit to the Alternate Payee cannot exceed 100% of the benefit to which the Member would otherwise be entitled if there were no dissolution of marriage, legal separation, dissolution of a civil union, or declaration of invalidity of marriage action?   | <input type="checkbox"/> | <input type="checkbox"/> |
| d) no payment will be made to the Alternate Payee until the Retirement Plan Executive Director determines that it complies with the statutes and rules governing DROs and the Retirement Plan, the provisions of the Retirement Plan, and the rules or procedures established by the Retirement Plan Executive Director?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Does the proposed DRO clearly require that payments to the Alternate Payee:   |                          |                          |
| a) begin on the date that the Member commences receipt of benefits under the Retirement Plan; or the date the Member attains age 65, if earlier, and the Alternate Payee meets the definition of an alternate payee under Internal Revenue Code Section 414(p). Alternatively, the proposed DRO (pursuant to the parties' written agreement) may provide for payments to commence at a date <u>later</u> than the date the Member attains age 65, except in situations where the Alternate Payee is a partner in a former civil union and does not meet the definition of an alternate payee under Internal Revenue Code Section 414(p), in which case the payment shall commence when paid to the Member; and | <input type="checkbox"/> | <input type="checkbox"/> |
| b) shall terminate upon (i) the involuntary termination of benefits payable to the Member (i.e., the death of the Member) or (ii) the death of the Alternate Payee, whichever occurs first, unless the parties have already elected, or have agreed to elect, a benefit option under the Retirement Plan   | <input type="checkbox"/> | <input type="checkbox"/> |

Yes No

that provides for a cobeneficiary benefit to the Alternate Payee? [Note that under the terms of the Retirement Plan, the Member's subsequent spouse (if any) must consent to such cobeneficiary benefit.]

9. Does the proposed DRO clearly state that it shall apply to any successor plans?  Yes  No
10. Does the proposed DRO clearly specify that, once approved by the court, the order approving the proposed DRO must be certified by the clerk of the court and submitted to, and received by, the Retirement Plan at least thirty (30) days before the Retirement Plan may make its first payment?  Yes  No
11. Note that the proposed DRO must be submitted to the Retirement Plan Executive Director within ninety (90) days after the later of entry of the decree or entry of the permanent orders regarding property distribution in proceeding for dissolution of marriage, legal separation, dissolution of a civil union, or declaration of invalidity of marriage. The effective date of the entry of the decree or entry of the permanent orders regarding property distribution is the actual date of signing by the Court of the decree and/or permanent orders. Will the proposed DRO meet this deadline?  Yes  No

**Note: A Participant must submit a copy of the proposed DRO (before it is certified by the court) for review to determine if the court-certified DRO will be honored by the Retirement Plan.**

**SAMPLE**

DISTRICT COURT, _____ COUNTY, COLORADO  Court Address:  <b>In re: the Marriage of:</b>  <b>Petitioner:</b> _____  v.  <b>Respondent:</b> _____	<b>▲ COURT USE ONLY ▲</b>
Attorney: _____, # _____ Firm Name: Address: Telephone: Facsimile: E-mail:	Case No.  Ctm.
<b>DOMESTIC RELATIONS ORDER</b>	

**1. THE PARTIES ARE AS FOLLOWS:**

THE MEMBER

THE ALTERNATE PAYEE

\_\_\_\_\_  
Name (Last, First, MI)

\_\_\_\_\_  
Name (Last, First, MI)

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Date of Birth (Mo/Day/Yr)

\_\_\_\_\_  
Date of Birth (Mo/Day/Yr)

The Alternate Payee's relationship to the Member is \_\_\_\_\_.

**2. THE PARTIES AGREE TO PAYMENT TO THE ALTERNATE PAYEE AS FOLLOWS:**

The amount paid to an Alternate Payee from the Adams County Retirement Plan (the "Retirement Plan") shall be paid only when, and if, the Retirement Plan pays the Member. Any payment to an Alternate Payee shall be in the same form (i.e., one-time refund or monthly retirement benefit) as the form selected by the Member and shall not exceed 100% of the benefit which would have been payable to the Member from the Retirement Plan but for this Agreement.

A. The amount to be paid to the Alternate Payee from the Retirement Plan (and deducted from the Member's benefit) shall be determined as follows:

By a time-rule formula determined by dividing the number of months of service credit acquired under the Retirement Plan during the marriage or civil union, from \_\_\_\_\_, \_\_\_\_\_, to \_\_\_\_\_, \_\_\_\_\_, by the number of months of service credit in such Retirement Plan at the time of the Member's retirement, as determined by the Retirement Plan Executive Director, which quotient shall be multiplied by \_\_\_\_\_ percent (\_\_\_\_%), and the product thereof further multiplied by the amount of payment due the Member at the date of retirement, subject, if the Retirement Plan permits, to benefit adjustments (including, but not limited to, adjustments for early commencement and/or an optional form of payment elected by the Member) payable at the same time and in the same manner as any benefit adjustments applied to the Member's distribution.

B. No payment shall be made to the Alternate Payee by the Retirement Plan unless and until: (1) the Retirement Plan Executive Director has reviewed this Agreement and determined that it complies with: (a) the statutes and rules governing domestic relations orders and the Retirement Plan, (b) the provisions of the Retirement Plan and (c) the rules or procedures of the Retirement Plan Executive Director; (2) the Retirement Plan Executive Director has received all required applications, forms, and information from both the Member and the Alternate Payee; (3) the Parties have submitted to the Retirement Plan Executive Director, and the Retirement Plan Executive Director has received, the certified, valid Court Order approving this Agreement; and (4) payments have commenced to the Member.

C. Upon approval of this Agreement by the Court, the Court Order approving the Agreement shall be certified by the Clerk of the Court and submitted to and received by the Retirement Plan Executive Director at least thirty (30) days before the Retirement Plan may make its first payment to the Alternate Payee.

**3. THE PARTIES UNDERSTAND AND AGREE TO THE FOLLOWING:**

A. The Parties shall submit this written Agreement to the Retirement Plan Executive Director within ninety (90) days after the later of entry of the decree or entry of the permanent orders regarding property distribution in a proceeding for dissolution of marriage or civil union, legal separation, or declaration of invalidity of marriage or civil union. The effective date of the entry of the decree or entry of the permanent orders regarding property distribution is the actual date of signing by the Court of the decree and/or permanent orders.

B. If the Member dies before the Retirement Plan Executive Director receives a certified, valid Court Order approving this Agreement and before all other requirements have been satisfied, an Alternate Payee shall not be entitled to any benefits under Paragraph 2.A. of this Agreement. Under such circumstances, the Retirement Plan shall pay the beneficiary, as defined in the Retirement Plan.

C. After the death of the Alternate Payee, no payment shall be made to the Alternate Payee, based on such designation, and no beneficiary, heir, estate or other claimant of the Alternate Payee shall receive any payment from the Retirement Plan. The Alternate Payee's rights to payments terminate upon the involuntary termination of benefits payable to the Member or upon the death of the Alternate Payee, whichever occurs first, unless the Parties have elected a benefit option under the Retirement Plan that provides for a cobeneficiary benefit to the Alternate Payee, pursuant to C.R.S. Section 14-10-113(6)(c)(II)(G).

D. This Agreement does not require any payment to the Member or Alternate Payee by the Retirement Plan:

- (1) in any form or type not otherwise permitted under the Retirement Plan;
- (2) of any benefit, benefit amount, or distribution option not otherwise permitted under the Retirement Plan;
- (3) of any amount for which the Alternate Payee or the Member would not otherwise be eligible if there were no dissolution of marriage or civil union, legal separation, or declaration of invalidity action pending;
- (4) of any amount required to be paid to a different Alternate Payee, or as otherwise permitted by C.R.S. Section 24-54-111;
- (5) prior to the Member's actual retirement date; or
- (6) of any benefits that are already subject to an assignment or lien.

E. The Member's after-tax contributions, if any, shall be apportioned pro rata between the Member and the Alternate Payee who is a spouse or former spouse, based on the amount of benefit each Party receives.

F. This Agreement applies to any successor plans to the Retirement Plan. Any reference to the law or the Retirement Plan applies to any corresponding provision, as subsequently amended or enacted. Any payment pursuant to this Agreement shall be made based upon the law and the Retirement Plan in effect at the time of payment.

G. This Agreement may only be modified or changed at any subsequent time for any reason by both of the Parties' written agreement to the modification. A court may retain jurisdiction to supervise the implementation of the order dividing the retirement benefits.

H. Each Party confirms that such Party has read and understands this Agreement. Each Party confirms that such Party has sought all legal, tax, and other advice from such Party's own advisors. Each Party acknowledges that members of the Adams County Board of Retirement, agents of the Adams County Board of Retirement, the Retirement Plan's trustees, the Retirement Plan Executive Director, and the employers participating in the

Retirement Plan (including their respective employees) cannot give, and have not given, any advice to such Party. Each Party acknowledges that such Party is solely responsible for all of his or her tax and other consequences as a result of this Agreement.

I. Both the Member and the Alternate Payee shall complete satisfactorily and provide to the Retirement Plan Executive Director on a timely basis all appropriate forms, documents, and information before any payment can be made to the Alternate Payee.

J. Each Party releases and discharges the Retirement Plan, its trustees, the Adams County Board of Retirement (and its agents), the Retirement Plan Executive Director, the employers under the Retirement Plan and all of their respective employees so that the Retirement Plan may share one Party's information with the other Party and/or the other Party's agent to the extent that the Retirement Plan Executive Director, in his or her sole discretion, determines that it would be either necessary or helpful in carrying out the terms of this Agreement.

K. This Agreement constitutes the entire agreement of the Parties concerning the Retirement Plan and distributions thereunder, and supersedes any and all other prior and contemporaneous oral and written agreements concerning the Parties' division of the Member's interest in the Retirement Plan.

AGREED:

\_\_\_\_\_  
Member

Subscribed and Sworn to before me in the county of _____, State of Colorado, this ____ day of _____, 20____, by _____.	
_____ (Notary's official signature)	Notary Seal
_____ (Commission Expiration)	

AGREED:

\_\_\_\_\_  
Alternate Payee

Subscribed and Sworn to before me in the county of _____, State of Colorado, this ____ day of _____, 20____, by _____.	
_____ (Notary's official signature)	Notary Seal
_____ (Commission Expiration)	

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
ATTORNEY FOR PETITIONER

\_\_\_\_\_  
ATTORNEY FOR RESPONDENT

Done and signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

By the Court,

\_\_\_\_\_  
District Court Judge/Magistrate

**C.R.S. 14-10-113 (2016)**

**14-10-113. Disposition of property**

(1) In a proceeding for dissolution of marriage or in a proceeding for legal separation or in a proceeding for disposition of property following the previous dissolution of marriage by a court which at the time of the prior dissolution of the marriage lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, subject to the provisions of subsection (7) of this section, shall set apart to each spouse his or her property and shall divide the marital property, without regard to marital misconduct, in such proportions as the court deems just after considering all relevant factors including:

(a) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

(b) The value of the property set apart to each spouse;

(c) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse with whom any children reside the majority of the time; and

(d) Any increases or decreases in the value of the separate property of the spouse during the marriage or the depletion of the separate property for marital purposes.

(2) For purposes of this article only, and subject to the provisions of subsection (7) of this section, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(a) Property acquired by gift, bequest, devise, or descent;

(b) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(c) Property acquired by a spouse after a decree of legal separation; and

(d) Property excluded by valid agreement of the parties.

(3) Subject to the provisions of subsection (7) of this section, all property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property described in this subsection (3) is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

(4) Subject to the provisions of subsection (7) of this section, an asset of a spouse acquired prior to the marriage or in accordance with subsection (2) (a) or (2) (b) of this section shall be considered as marital property, for purposes of this article only, to the extent that its present value exceeds its value at the time of the marriage or at the time of acquisition if acquired after the marriage.

(5) For purposes of this section only, property shall be valued as of the date of the decree or as of the date of the hearing on disposition of property if such hearing precedes the date of the decree.

(6) (a) (I) Notwithstanding any anti-assignment, anti-alienation, or other provision of law to the contrary, all retirement benefits of any nature for public employees from a plan described in section 401 (a), 403 (b), 414 (d), or 457 of the federal "Internal Revenue Code of 1986", as amended, that is established pursuant to Colorado law shall be, in all actions for dissolution of marriage, legal separation, and declaration of invalidity of marriage, divisible directly by the plan upon written agreement of the parties to such an action pursuant to paragraph (c) of this subsection (6).

(II) The provisions of this subsection (6) shall apply to all dissolution of marriage, legal separation, and declaration of invalidity of marriage actions filed on or after January 1, 1997, and all dissolution of marriage, legal separation, or declaration of invalidity of marriage actions filed prior to January 1, 1997, in which the court did not enter a final property division order concerning the parties' public employee retirement benefits prior to January 1, 1997.

(b) As used in this subsection (6), unless the context otherwise requires:

(I) "Alternate payee" means a party to a dissolution of marriage, legal separation, or declaration of invalidity action who is not the participant of the public employee retirement plan divided or to be divided but who is married to or was married to the participant and who is to receive, is receiving, or has received all or a portion of the participant's retirement benefit by means of a written agreement as described in paragraph (c) of this subsection (6).

(II) "Defined benefit plan" means a retirement plan that is not a defined contribution plan and that usually provides benefits as a percentage of the participant's highest average salary, based on the plan's benefit formula and the participant's age and service credit at the time of retirement.

(III) "Defined contribution plan" means a retirement plan that provides for an individual retirement account for each participant and the benefits of which are based solely on the amount contributed to the participant's account and that includes any income, expenses, gains, losses, or forfeitures of accounts of other participants that may be allocated to the participant's account.

(IV) "Participant" means the person who is an active, inactive, or retired member of the public employee retirement plan.

(c) (I) The parties may enter into a marital agreement pursuant to part 3 of article 2 of this title or a separation agreement pursuant to section 14-10-112 concerning the division of a public employee retirement benefit between the parties pursuant to a written agreement. The parties shall submit such written agreement to the plan administrator within ninety days after entry of the decree and the permanent orders regarding property distribution in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage.

(II) A written agreement dividing a public employee retirement benefit shall:

(A) Specify the full legal name of the retirement plan or plans to which it applies;

(B) Specify the name, social security number, and last-known mailing address of the participant and the alternate payee as well as the alternate payee's relationship to the participant;

(C) For an agreement concerning a defined benefit plan, specify the distribution method, as described in subparagraph (III) of this paragraph (c), subject, if the plan permits, to benefit adjustments payable at the same time and in the same manner as any benefit adjustments applied to the participant's distribution;

(D) For an agreement concerning a defined contribution plan, specify the alternate payee's portion of the participant's account as a fixed lump-sum amount, or as a percentage, in either case, as of a specified date, from specific accounts of the participant and, unless the plan adopts rules and regulations pursuant to paragraph (d) of this subsection (6) permitting the plan to retain the alternate payee's portion of the participant's account, require that distribution to the alternate payee be made within one hundred twenty days after a certified court order approving the agreement has been submitted to and received by the plan;

(E) Not provide for payments to the alternate payee or to the participant for which he or she would not otherwise be eligible if there were no dissolution of marriage, legal separation, or declaration of invalidity action pending;

(F) For an agreement concerning a defined benefit plan, not require the plan to pay the alternate payee prior to the date payments commence to the participant or prior to the participant attaining age sixty-five or actual retirement date, whichever date is earlier, or at such later date as the parties may otherwise agree in writing;

(G) For an agreement concerning a defined benefit plan, provide that the alternate payee's rights to payments terminate upon the involuntary termination of benefits payable to the participant or upon the death of the alternate payee, whichever occurs first, unless the parties agree to elect, or have already elected, a benefit option under the plan that provides for a cobeneficiary benefit to the alternate payee;

(H) Provide that the manner of payment shall be in a form or type permissible under the plan. The agreement shall not require through this subsection (6) the payment of a benefit, benefit amount, or distribution option not otherwise set out in the plan document or statute.

(I) Not require the plan to pay benefits that are already required to be paid to another alternate payee or are already subject to an assignment or lien;

(J) Specify that it shall apply to successor plans;

(K) Comply with any rules or procedures promulgated pursuant to paragraph (d) of this subsection (6); and

(L) Specify that, once approved by the court, the order approving the agreement shall be certified by the clerk of the court and submitted to and received by the retirement plan at least thirty days before the plan may make its first payment.

(III) The written agreement between the parties described in subparagraph (II) of this paragraph (c) shall contain only one method or formula to be applied to divide the defined benefit plan. For purposes of sub-subparagraph (C) of subparagraph (II) of this paragraph (c), the parties may select any one of the following methods by which to divide the defined benefit plan:

(A) A fixed monetary amount;

(B) A fixed percentage of the payment to the participant;

(C) The time-rule formula determined by dividing the number of months of service credit acquired under the plan during the marriage as set forth in the court's order by the number of months of service credit in such plan at the time of the participant's retirement as determined by the plan, which quotient shall be multiplied by a percentage specified in the court's order, and the product thereof shall be further multiplied by the amount of the payment to the participant at the date of retirement;

(D) A formula determined by dividing the number of months of service credit acquired under the plan during the marriage as set forth in the court's order by the number of months of service credit in such plan as of the date of the decree as determined by the plan, regardless of when the participant is expected to retire, which quotient shall be multiplied by a percentage specified in the court's order, and the product thereof shall be further multiplied by the amount of the payment the participant would be entitled to receive as if the participant were to retire and receive an unreduced benefit on the date of the decree; or

(E) Any other method or formula mutually agreed upon by the parties that specifies a dollar amount or percentage payable to the alternate payee.

(d) The trustees or the administrator of each retirement plan may promulgate rules or procedures governing the implementation of this subsection (6) with respect to public employee retirement plans that they administer. Such rules or procedures may include the requirement that a standardized form be used by the parties and the court for an order approving the parties' agreement to be effective as well as other provisions consistent with the purpose of this subsection (6).

(e) Compliance with the provisions of this subsection (6) by a public employee retirement plan shall not subject the plan to any portions of the federal "Employee Retirement Income Security Act of 1974", as amended, that do not otherwise affect governmental plans generally. Any plan that reasonably complies with an order approving an agreement entered into pursuant to this subsection (6) shall be relieved of liability for payments made to the parties subject to such order.

(f) A court shall have no jurisdiction to enter an order dividing a public employee retirement benefit except upon written agreement of the parties pursuant to this subsection (6). A court shall have no jurisdiction to modify an order approving a written agreement of the parties dividing a public employee retirement benefit unless the parties have agreed in writing to the modification. A court may retain jurisdiction to supervise the implementation of the order dividing the retirement benefits.

(7) (a) For purposes of subsections (1) to (4) of this section only, except with respect to gifts of nonbusiness tangible personal property, gifts from one spouse to another, whether in trust or not, shall be presumed to be marital property and not separate property. This presumption may be rebutted by clear and convincing evidence.

(b) For purposes of subsections (1) to (4) of this section only, "property" and "an asset of a spouse" shall not include any interest a party may have as an heir at law of a living person or any interest under any donative third party instrument which is amendable or revocable, including but not limited to third-party wills, revocable trusts, life insurance, and retirement benefit instruments, nor shall any such interests be considered as an economic circumstance or other factor.

(c) (I) The provisions of this subsection (7) shall apply to all causes of action filed on or after July 1, 2002. The provisions of this subsection (7) shall also apply to all causes of action filed before said date in which a final property disposition order concerning matters affected by this subsection (7) was not entered prior to July 1, 2002.

(II) For purposes of this paragraph (c), "final property disposition order" means a property disposition order for which the time to appeal has expired or for which all pending appeals have been finally concluded.