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PERA Benefits and Divorce

**Colorado
Public
Employees'
Retirement
Association**

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Contents

Statutory Authority for a Colorado PERA DRO.....	1
Colorado PERA Benefit Plans	1
Who's Who in a DRO?	1
Payment to the Parties.....	2
Requirements to Create a Valid DRO.....	2
QDRO Distinction.....	3
Access to Colorado PERA Records.....	3
Consequences of Death.....	3
Designation of a New Cobeneficiary or Beneficiary.....	4
Instructions to Complete a DRO Agreement.....	4
Instructions to Complete a DRO Order.....	14
Modification of a Prior DRO	15
Taxes.....	15
Frequently Asked Questions About Divorce and Colorado PERA Benefits.....	16

Colorado PERA Benefits and Divorce

This booklet is designed to give Colorado PERA Participants and their spouses information about the Colorado PERA Domestic Relations Order (“DRO”) procedures for the division of a retirement benefit in conjunction with a dissolution of marriage, legal separation, or declaration of invalidity of marriage (hereinafter referred to collectively as “divorce”).

A DRO is not appropriate or necessary in every case involving a public employee benefit plan. It is important that the parties consult with their respective attorneys regarding the use and effect of a DRO. Whether a DRO is appropriate in a particular case depends upon the particular facts and circumstances of each individual party.

The information contained in this booklet should not be considered legal advice. Since a divorce is a complicated procedure, each party in a divorce should consult with his or her own attorney. Colorado PERA cannot provide legal or other advice to any party regarding a DRO.

Statutory Authority for a Colorado PERA DRO

C.R.S. § 14-10-113(6) permits the division of benefits through a DRO for certain domestic relations actions filed on or after January 1, 1997. This statute, along with the Colorado PERA statutes in C.R.S. §§ 24-51-101 *et seq.*, and Colorado PERA Rule 15, form the statutory and administrative framework for creating a valid DRO.

Colorado PERA Benefit Plans

Colorado PERA has four public employee retirement plans that are subject to a DRO. These four Colorado PERA plans are: the Colorado PERA defined benefit (DB) Plan, which includes the PERA and Denver Public Schools (DPS) benefit structures, the PERAPlus 401(k) Plan, the PERAPlus 457 Plan, and the PERA defined contribution Plan (PERA DC Plan). The Colorado PERA DB Plan covers PERA and DPS benefit structure participants, the PERAPlus 401(k) and PERAPlus 457 Plans are voluntary defined contribution plans, and the PERA DC Plan covers certain State Division participants who elected this plan instead of the PERA DB Plan.

An *Agreement For Domestic Relations Order* (“Agreement”) may be entered into by the parties for one or more of the plans. The parties must indicate in the Agreement which plan(s) will be included in the DRO.

Who's Who in a DRO?

- Participant:** The person who is either a Colorado PERA retiree or a Colorado PERA member. A Colorado PERA retiree is a person who is currently receiving a monthly retirement benefit under the PERA and/or DPS benefit structure. A Colorado PERA member is a person who is not yet receiving a monthly retirement benefit from a Colorado PERA DB plan, but may receive a monthly retirement benefit in the future.
- Alternate Payee:** The person who is the spouse of a Colorado PERA Participant in divorce proceedings.
- Cobeneficiary:** The person selected by the Participant under PERA benefit structure Options 2 or 3, or DPS benefit structure Options P2 or P3 pursuant to the provisions of C.R.S. §§ 24-51-801 *et seq.*, and C.R.S. §§ 24-51-1723 or 24-51-1724, whichever is applicable to receive a continuing benefit upon the retiree’s death. Under the PERA benefit structure, a member may select a cobeneficiary to receive an Option 3 upon the Participant’s death pursuant to the provisions of C.R.S. § 24-51-906.
- Named Beneficiary:** The person(s) designated in writing by the Participant to receive a single payment upon the death of the Participant when survivor benefits or continuing benefits are not payable.
- DPS Option B Beneficiary:** The person(s) designated under the DPS benefit structure Option B to receive the remainder of monthly retirement benefits should the retiree die before the end of the guaranteed period of payments.

For questions on DROs or for current forms, please call Colorado PERA’s Legal Department at 303-832-9550 ext. 6271 or 1-800-759-7372 ext. 6271.

Payment to the Parties

A DRO does not require any payment by Colorado PERA to the Participant or Alternate Payee in any amount, form, or type except as permitted under a Colorado PERA plan. No payment will be made to the Alternate Payee unless and until Colorado PERA has reviewed the Agreement and *Domestic Relations Order* (“Order”) and determined that it complies with the statutes, rules, and procedures governing the Colorado PERA plan and DROs.

Under both the PERA and DPS benefit structures, the payment to the Alternate Payee will be in the same form (Lump-Sum Dollar Amount or Monthly Dollar Amount) as selected by the Participant. Except as provided by the Alternate Retirement Age exception as provided herein, and for the PERAPlus 401(k) Plan, the PERAPlus 457 Plan, and the PERA DC Plan, the Alternate Payee must wait until the Participant retires or terminates employment and requests a lump-sum rollover/refund to receive payment under the Agreement. Within 30 days of applying for a benefit, the Participant will notify the Alternate Payee in writing of such application at the Alternate Payee’s last known address.

Colorado PERA will mail required forms to the Alternate Payee which must be completed and returned to Colorado PERA before payment to the Alternate Payee will begin. It is the responsibility of the Alternate Payee to notify Colorado PERA of any change of mailing address.

Requirements to Create a Valid DRO

For the parties to enter into a valid DRO that Colorado PERA will recognize, the following requirements must be met:

- Both parties to the action must agree to use the DRO and agree to all of its terms and conditions. If the parties cannot reach a written agreement, the court cannot order a DRO.
- The parties must use the Agreement and Order forms provided by Colorado PERA, without retyping, changing, or altering the forms, and all of the appropriate blanks in the forms must be completed.
- The parties must voluntarily sign the Agreement, and the signatures of the parties on the Agreement must be dated and notarized before it is submitted to the Court. The signed Agreement must be submitted to Colorado PERA within 90 days after entry of the decree and permanent orders.
- The proposed Agreement and Order may be submitted to Colorado PERA for review at least two weeks prior to submission to the Court.
- Upon preapproval of the proposed Agreement and Order, Colorado PERA will send a letter to the parties or their attorneys indicating its approval.
- Once the Agreement and Order have been preapproved by Colorado PERA, they should then be submitted to the Court for approval, and the Court must execute and enter the Order, which must have the fully executed Agreement attached.
- The Order with attached Agreement must be approved and entered by the Court either upon the entry of the decree and permanent orders, or within 90 days thereafter.
- Certified copies of the Order with attached Agreement will be submitted to Colorado PERA within 90 days after entry of the Order and Agreement, but must be received by Colorado PERA at least 30 days before Colorado PERA will make its first payment pursuant to the DRO.
- Upon receipt by Colorado PERA of certified copies of the Order with attached Agreement and any other required documents, Colorado PERA will make its determination on whether the DRO is valid with respect to Colorado PERA and will send a letter to the parties or their attorneys indicating its determination.
- Forms and other information required to implement the DRO will be sent to the Participant and/or Alternate Payee prior to the commencement of payment of any benefits or lump-sum rollover/refund under the DRO. It is the responsibility of the Alternate Payee to notify Colorado PERA of any change of mailing address.
- Colorado PERA must receive all required forms and information from the Participant and/or the Alternate Payee prior to the payment of any benefits pursuant to the DRO.

- No payment will be made to the Alternate Payee unless and until Colorado PERA has reviewed the Agreement and Order and determined that they comply with the applicable statutes, rules, and procedures governing the Colorado PERA Plan and DROs, including these Instructions.
- Benefit payments will be made in accordance with applicable statutes, rules, and procedures.

Failure to meet these requirements may result in a DRO that is invalid with respect to Colorado PERA and that cannot be recognized or honored by Colorado PERA for purposes of C.R.S. § 24-51-212. Colorado PERA cannot pay the Alternate Payee pursuant to an invalid DRO. Similarly, for out-of-state DROs, the parties must comply with all requirements of Colorado law as to form, content, approval, and timing in order for Colorado PERA to recognize and honor the DRO.

QDRO Distinction

Colorado PERA will not accept or honor a Qualified Domestic Relations Order (“QDRO”) under any circumstances. As a governmental plan, Colorado PERA is not subject to the QDRO provisions of the Employee Retirement Income Security Act (“ERISA”). To obtain a valid DRO that Colorado PERA will recognize, the provisions for a DRO as specified under Colorado State law, which are different from the QDRO provisions under federal law or laws of other states, must be followed. A QDRO under federal law is not the same as a DRO under Colorado law, and as a governmental plan, Colorado PERA cannot recognize, honor, or make any payment pursuant to a QDRO.

Access to Colorado PERA Records

Colorado PERA Participant records are confidential pursuant to C.R.S. § 24-51-213. Therefore, Colorado PERA must receive a properly executed *Authorization to Release Financial Information in a Divorce Matter* form before it can provide copies of a Participant’s records to anyone other than the Participant. In a divorce, the Participant should either obtain the records from Colorado PERA and provide them to the other party or provide Colorado PERA with a Release to provide the records to the other party. A *Authorization to Release Financial Information in a Divorce Matter* is available from Colorado PERA.

Consequences of Death

The death of either the Participant or the Alternate Payee stops all payment to the Alternate Payee based on the designation as an Alternate Payee.

Death of Alternate Payee

The parties to a DRO should be aware that the death of a party affects the receipt of benefits under the Agreement. After the death of the Alternate Payee, no further payment is made to the Alternate Payee based on that designation. If payment to the Alternate Payee did not start prior to the Alternate Payee’s death, no payment to the Alternate Payee is ever made pursuant to the DRO. No payment is ever made to any beneficiary, heir, or estate of the Alternate Payee. When the Alternate Payee dies, the Participant’s benefit payment is adjusted to the full benefit amount to which the Participant is entitled.

Death of Participant

If the Participant dies, no further payment is made to the Alternate Payee based on that designation. If the Participant dies prior to retirement, the provisions of C.R.S. §§ 24-51-901 *et seq.* govern for the PERA benefit structure and the provisions of C.R.S §§ 24-51-1735 to 24-51-1746 govern for the DPS benefit structure.

If the Participant is retired and receiving a single-life benefit prior to death, the payment to the Alternate Payee based on that designation stops when the Participant dies. Any subsequent payment, if a balance remains in the Participant’s member contribution account, is governed by C.R.S. §§ 24-51-801 *et seq.* for the PERA benefit structure or C.R.S. §§ 24-51-1717 to 24-51-1721 for the DPS benefit structure.

If the Participant is receiving an Option 2 or 3 benefit under the PERA benefit structure or an Option P2 or P3 benefit under the DPS benefit structure prior to death, the payment to the Alternate Payee based on that designation stops when the Participant dies. The cobeneficiary under the PERA benefit structure at C.R.S. § 24-51-101(10) or under the DPS benefit structure at C.R.S. § 24-51-1719, § 24-51-1721, or §§ 24-51-1723 to 1724, will receive any subsequent benefit payments. The Alternate Payee may or may not be designated as the cobeneficiary. If the Alternate Payee is designated as the cobeneficiary, the

To request records or estimates, please call Colorado PERA’s Customer Service Center at 303-832-9550 or 1-800-759-7372 (PERA).

Alternate Payee's payment will stop and the new cobeneficiary payment will then be paid (assuming that the cobeneficiary survives the Participant); the amount paid to the cobeneficiary could be more or less than what the Alternate Payee was receiving prior to the death of the Participant based on the DRO. If the Alternate Payee is not designated as the cobeneficiary, no payment will be made to the Alternate Payee after the Participant's death.

Designation of a New Cobeneficiary or Beneficiary

In those instances where a new cobeneficiary or beneficiary of the Participant's benefits is to be named, the parties should make a request to Colorado PERA to send the appropriate forms and information regarding the proposed change. It is important that the parties follow the proper Colorado PERA procedures and appropriately complete the required documentation before Colorado PERA can change a cobeneficiary or beneficiary. The parties must obtain a court order clearly and unequivocally ordering or allowing a retiree who is a petitioner or respondent to change or delete the cobeneficiary that was named by the retiree at retirement. If the parties contemplate changing or deleting the cobeneficiary in a dissolution of marriage action, Colorado PERA would like to review the proposed order prior to submission to the court. For retirees only, the Colorado PERA DRO Agreement provides a space in which the parties can indicate their desire to allow a change or deletion as may be applicable. By executing the DRO, the court is creating an acceptable order allowing a change or deletion of a cobeneficiary. Because cobeneficiary designations are not made until retirement, there is no such space in the DRO Agreement for Colorado PERA members who have not retired. For more information regarding a change of cobeneficiary or beneficiary, please refer to C.R.S. § 24-51-802 and C.R.S. § 24-51-1716 or contact Colorado PERA. Please note that retirees under the DPS benefit structure may only be allowed to delete and not change their cobeneficiary under the process above.

Instructions to Complete a DRO Agreement

Preamble to the Agreement

The names of the respective parties to the Agreement and the Case Number, County, and State must be written in the Agreement. The Participant is either the member or retiree of Colorado PERA, and the Alternate Payee is the spouse of the Participant.

Section 1—Colorado PERA Benefit Plans Covered by this Agreement

Colorado PERA has four benefit plans to which this Agreement may apply, namely the Colorado PERA DB Plan, which includes PERA and DPS benefit structures, the PERAPlus 401(k) Plan, the PERAPlus 457 Plan, or the PERA DC Plan. The parties should check the applicable plan(s) that applies. Depending on which plan(s) applies, please complete the following sections:

- If the Colorado PERA DB Plan is covered by this Agreement, Sections 2, 3, 4, or 5 must be completed.
- If the PERAPlus 401(k) Plan is to be covered by this Agreement, Section 6 must be completed.
- If the PERAPlus 457 Plan is to be covered by this agreement, Section 7 must be completed.
- If the PERA DC Plan is to be covered by this Agreement, Section 8 must be completed.
- If multiple plans are to be covered by this Agreement, the parties must complete all appropriate sections of the Agreement.

For a modification of a prior DRO, the section to be modified must have been selected in the original valid DRO. The Agreement must then be completed by the parties, with the appropriate sections of the Agreement being completed.

Section 2—Payment to the Alternate Payee of a Retiree Under the PERA Benefit Structure

This section establishes how Colorado PERA will calculate the gross monthly payment to an Alternate Payee of a current Colorado PERA retiree under the PERA benefit structure in the Colorado PERA DB Plan. If the parties do not desire the Agreement to cover payment to an Alternate Payee of a current retiree under the PERA benefit structure, skip Section 2. Please note that this section applies to the Colorado PERA DB Plan.

It is essential that these instructions be followed if the parties desire to create a valid DRO that Colorado PERA will recognize.

Section 2 of the Agreement is to be completed for a retiree under the PERA benefit structure. There are two selections to be made in this part. The first is the method of division of the monthly retirement benefit and the second is the cobeneficiary designation.

(1) Method of Division of Monthly Retirement Benefit

Under Subsection 1 of Section 2 regarding the method of division of the monthly retirement benefit for retirees, the parties must select one of the following methods: (a) Percentage of Monthly Dollar Amount or (b) Fixed Monthly Dollar Amount.

If the Percentage Method is chosen, check the box and write in the appropriate Percentage. Under this method, the amount paid to the Alternate Payee is determined by applying the specified Percentage to the amount of the Participant’s monthly retirement benefit, including all subsequent annual increases pursuant to C.R.S. §§ 24-51-1001 *et seq.*

If the parties choose the Fixed Monthly Dollar Amount method, check the box and write in the dollar amount in the appropriate blank. The initial payment to the Alternate Payee will be the amount specified in the “Monthly Dollar Amount” in the Agreement. Thereafter, this Monthly Dollar Amount will be increased to include all subsequent annual increases pursuant to C.R.S. §§ 24-51-1001 *et seq.*

(2) Changing or Deleting the Cobeneficiary

If the Participant selected Options 2 or 3 and named the Alternate Payee as the cobeneficiary at the time the Participant applied for monthly retirement benefits, the parties can indicate whether the retiree is allowed to change or delete the cobeneficiary by selecting “Yes” in Subsection 2 of Section 2.

If the Participant selected an Option 1 at retirement, the cobeneficiary designation is not applicable and the “Not Applicable” box should be checked. Additionally, if the Alternate Payee was not named as the cobeneficiary of the Participant, check the “Not Applicable” box.

In the event that the Participant’s monthly retirement benefit later terminates for a reason other than death and the Participant has not yet reached the age specified in Subsection 2 of Section 3 of the Agreement pertaining to the Default Retirement Age, then payment to the Alternate Payee also will terminate until the specified age is reached, or if earlier, when the Participant again receives a monthly retirement benefit. See C.R.S. §§ 24-51-1101 *et seq.*

Section 3—Payment to the Alternate Payee of a Member Under the PERA Benefit Structure

This section establishes how Colorado PERA will calculate the future gross lump-sum rollover/refund or monthly payment to an Alternate Payee of a current Colorado PERA member under the PERA benefit structure in the Colorado PERA DB Plan. If the parties do not desire the Agreement to cover payment to an Alternate Payee of a current member under the PERA benefit structure, skip Section 3. Please note that this section applies to the Colorado PERA DB Plan.

If the Participant is presently a member, as opposed to being a retiree, under the PERA benefit structure, the parties should complete Section 3. Under Section 3, there are two elections for the parties to make: the Method of Division of Future Monthly Retirement Benefit and the Alternate Retirement Age.

(1) Method of Division of Future Monthly Retirement Benefit

Pursuant to C.R.S. § 14-10-113(6), there are five different methods for division of future payments under the PERA benefit structure from the Colorado PERA DB Plan. The parties can only select one method which must be indicated in the Agreement. These methods are described as follows:

a. PERCENTAGE METHOD

Under the Percentage Method, the parties must agree on payment to the Alternate Payee of a Percentage of the Participant’s monthly retirement benefit when the Participant retires or terminates employment. If the Participant selects a lump-sum rollover/refund, the payment to the Alternate Payee is determined by applying the specified Percentage to the Participant’s lump-sum rollover/refund amount, as that amount is determined under C.R.S. § 24-51-405.

If the Participant selects a monthly retirement benefit, the payment to the Alternate Payee is determined by applying the specified Percentage to the amount of the Participant’s monthly retirement benefit, including all annual increases pursuant to C.R.S. §§ 24-51-1001 *et seq.* This method is illustrated on the next page:

Alternate Payee percentage	×	Benefit at retirement	=	Alternate Payee's payment
50%	×	\$2,500	=	\$1,250/month

b. FIXED DOLLAR AMOUNTS METHOD

Under the Fixed Dollar Amounts Method, the parties must agree to the Fixed Dollar Amount that the Alternate Payee will receive depending on whether the Participant selects a lump-sum rollover/refund or a monthly retirement benefit. There are two amounts that must be written in the Agreement: a Lump-Sum Dollar Amount and a Monthly Dollar Amount.

If the Participant selects a lump-sum rollover/refund, the payment to the Alternate Payee will be the amount specified in the “Lump-Sum Dollar Amount” in the Agreement.

If the Participant selects a monthly retirement benefit, the initial payment to the Alternate Payee will be the amount specified in the “Monthly Dollar Amount” in the Agreement. Thereafter, this Monthly Dollar Amount will be increased to include all subsequent annual increases pursuant to C.R.S. §§ 24-51-1001 *et seq.*

When the parties designate only one of the Fixed Dollar Amounts, and the Participant does not select that particular type of payment, the Alternate Payee will not receive any payment pursuant to the DRO, unless the DRO is properly modified. For example, if the parties only designate the Lump-Sum Dollar Amount of the Fixed Dollar Amounts, and no Monthly Dollar Amount is designated, and the Participant selects a monthly benefit at retirement, the Alternate Payee will not receive any monthly payment, unless the DRO is properly modified to add a Monthly Dollar Amount.

In completing the Fixed Dollar Amount section, it is frequently necessary to obtain specific account information regarding the member’s current DB plan account balance and a summary of estimated monthly retirement benefits under the various benefit options. Because all Colorado PERA account information is confidential pursuant to C.R.S. § 24-51-213, an *Authorization to Release Financial Information in a Divorce Matter* may be needed. This form is available from Colorado PERA.

c. TIME RULE FORMULA METHOD

Under the Time Rule Formula Method, the parties must agree to use a formula based upon the months of service credit acquired during the marriage compared to the total months of service credit earned by the Participant at retirement or at the time of a lump-sum rollover/refund. This formula is determined by dividing the number of months of service credit acquired during the marriage by the total number of months of service credit earned at the time of the Participant’s retirement or at the time of a lump-sum rollover/refund, with that quotient multiplied by an Alternate Payee Percentage to which the parties have agreed. At the date of retirement, the resulting Percentage will be further multiplied by the amount of the Participant’s benefit to determine the Alternate Payee’s payment.

If the parties agree to use this formula, the parties must write in the Agreement the months of service credit acquired during the marriage and the agreed-upon Alternate Payee Percentage. The months of service credit acquired during the marriage cannot exceed the Participant’s total accrued months of service credit as of the date of the decree.

Colorado PERA will determine the total number of months of service credit in accordance with applicable State law only at the time of retirement or termination of employment. The result of the division above cannot create a quotient greater than 1.0; if the result would be greater than 1.0, Colorado PERA will reduce the result of this division to 1.0 before proceeding with the remainder of the determination.

i. Time Rule Formula Method—Lump-Sum Rollover/Refund

If the Participant selects a lump-sum rollover/refund as determined by C.R.S §§ 24-51-405, 24-51-407, and 24-51-408(1), the Time Rule Formula Method will be applied to the Participant’s gross lump-sum rollover/refund amount. Assuming the agreed upon Alternate Payee percentage is 50 percent, the Alternate Payee would receive \$36,250 when the Participant terminates employment, assuming the Participant’s lump-sum rollover/refund is \$145,000. This method is illustrated on the next page:

Months of service credit acquired during marriage	×	Agreed upon Alternate Payee percentage	×	Participant's account balance plus matching amounts, if any, at time of payment of lump-sum rollover/refund	=	Alternate Payee's payment
<u>Months of service credit at retirement or rollover/refund</u>						
120 ÷ 240	×	50%	×	\$145,000	=	\$36,250

ii. Time Rule Formula Method—Monthly Retirement Benefit

If the Participant selects a monthly retirement benefit, the Time Rule Formula Method will be applied to the benefit amount received by the Participant based on the Option elected by the Participant at the time of retirement. If the parties select this formula method, and agree that the Alternate Payee's percentage is 50 percent, the Alternate Payee will receive \$625 per month when the Participant retires. This method is illustrated below:

Months of service credit acquired during marriage	×	Agreed upon Alternate Payee percentage	×	Participant's benefit at retirement	=	Alternate Payee's payment
<u>Months of service credit at retirement or rollover/refund</u>						
120 ÷ 240	×	50%	×	\$2,500	=	\$625/month

d. DATE OF DECREE FORMULA METHOD

Under the Date of Decree Formula Method, the parties must agree to use a formula that applies the Time Rule Formula Method to the amount of the Participant's Option 1 benefit or lump-sum rollover/refund as of the date of the decree were the Participant then eligible to retire.

i. Date of Decree Formula Method—Lump-Sum Rollover/Refund

If the Participant selects a lump-sum rollover/refund as determined by C.R.S. §§ 24-51-405, 24-51-407, and 24-51-408(1), the Date of Decree Formula Method is determined by dividing the number of months of service credit acquired by the Participant under the Plan during the marriage by the number of months of service credit in the Plan as determined by Colorado PERA as of the date of the decree, which quotient is then multiplied by the agreed-upon Alternate Payee Percentage. The resulting Alternate Payee Percentage is then multiplied by the gross amount of the lump-sum rollover/refund determined using C.R.S. §§ 24-51-405, 24-51-407, and 24-51-408(1) as of the date of the decree, as if the Participant were eligible for retirement as of the date of the decree (whether or not the Participant actually is eligible for retirement on that date). The resulting amount will be the one-time payment to the Alternate Payee if the Participant later receives a lump-sum rollover/refund.

Assuming the agreed upon Alternate Payee percentage is 50 percent, the Alternate Payee would receive \$7,500 when the Participant retires or terminates employment, assuming the Participant's lump-sum rollover/refund as of the date of decree would have been \$15,000. This method is illustrated below:

Months of service credit acquired during marriage	×	Agreed upon Alternate Payee percentage	×	Participant's lump-sum refund amount including 100% match as of the date of decree	=	Alternate Payee's payment
<u>Months of service credit as of date of decree</u>						
120 ÷ 120	×	50%	×	\$15,000	=	\$7,500

ii. Date of Decree Formula Method—Monthly Retirement Benefit

If the Participant selects a lifetime monthly benefit at retirement, the Date of Decree Formula Method is determined by dividing the number of months of service credit acquired by the Participant under the Plan during the marriage by the number of months of service credit in the Plan as determined by Colorado PERA as of the date of the decree, which quotient is then multiplied by the agreed-upon Alternate Payee Percentage. The resulting Percentage is multiplied by the monthly Option 1 benefit amount determined using C.R.S. § 24-51-603 based on actual salary and service credit as of the date of the decree, as if the Participant were eligible for retirement as of the date of decree (whether or not the Participant actually is eligible for retirement on that date). The resulting amount will be the monthly payment to the Alternate Payee.

If the agreed upon Alternate Payee percentage is 50 percent, the Alternate Payee would receive \$416 per month when the Participant retires. This method is illustrated below:

Months of service credit acquired during marriage	×	Agreed upon Alternate Payee percentage	×	Participant's monthly Option 1 benefits as of date of decree as if Participant were eligible for retirement	=	Alternate Payee's payment
Months of service credit as of date of decree						
120 ÷ 120	×	50%	×	\$833	=	\$416/month

Colorado PERA will determine the total number of months of service credit in accordance with applicable state law. The result of the division above cannot create a quotient greater than 1.0; if the result would be greater than 1.0, Colorado PERA will reduce the result of this division to 1.0 before proceeding with the remainder of the determination.

e. OTHER METHOD OR FORMULA

Under this method, the parties agree to use their own specific method or formula to divide the monthly retirement benefit. C.R.S. § 14-10-113(6) authorizes the parties to select any method or formula agreed upon by the parties that specifies a Dollar Amount or Percentage to the Alternate Payee. This formula must result in either a Percentage or two Fixed Dollar Amounts being selected. If a Percentage is selected, this Percentage will be applied to the Participant's monthly retirement benefit to determine the amount of the Alternate Payee's payment.

If the parties select two Fixed Dollar Amounts, one Fixed Dollar Amount will apply if the Participant selects a lump-sum rollover/refund, and the other Fixed Dollar Amount will apply if the Participant selects a lifetime monthly retirement benefit. The appropriate fixed dollar amount will be applied to the Participant's benefit to ascertain the amount payable to the Alternate Payee.

If the parties use their own specific method or formula, they must sufficiently define each item contained in the formula so that each item in the formula is determinable by Colorado PERA either at the present time or at some future date, but in no event, later than either when the Participant retires or does a rollover/refund of the DB plan account. If this method is used, the parties must attach a detailed description of the method to the Agreement. It is recommended that the parties contact Colorado PERA to obtain specific instructions if this method or formula is being considered.

(2) Alternate Retirement Age

The Agreement provides for an Alternate Retirement Age as an exception to the requirement that the Alternate Payee must wait until the Participant retires, reaches age 65, or terminates employment to receive payment under a DRO for payments under the Colorado PERA DB Plan. If the parties agree that when the Participant reaches a specified age higher than 65 and no payment is being made to the Participant by the Plan, then the Alternate Payee may begin to receive a monthly payment (but not a lump-sum rollover/refund) in accordance with existing Colorado PERA policy.

If the selected method of division of future payments results in a specified percentage, then the payment, after the designated Alternate Retirement Age is reached, will be determined by applying the applicable Percentage of the Participant's monthly retirement benefit amount, calculated under C.R.S. § 24-51-603, as if the Participant had retired as of the Alternate Retirement Age. If the selected method of division of

future payments results in a fixed monthly dollar amount, the payment, after the designated Alternate Retirement Age is reached, will not exceed the Participant's monthly retirement benefit amount, calculated under C.R.S. § 24-51-603, as if the Participant had retired as of the Alternate Retirement Age.

After the payment to the Alternate Payee begins, the payment paid to the Alternate Payee will be increased to include all subsequent annual increases pursuant to C.R.S. §§ 24-51-1001 *et seq.* The payments to the Alternate Payee will be deducted from the Participant's member DB plan account.

If the Participant later retires and receives a monthly retirement benefit, the monthly payment to the Alternate Payee will not be adjusted to reflect the Participant's actual benefit as of the Participant's subsequent retirement date (based on the Participant's actual age, service credit, and salary at retirement). Further, the monthly amount paid to the Alternate Payee will not exceed the monthly amount payable to the Participant in the absence of the DRO Agreement. The Participant's monthly retirement benefit will be reduced actuarially to reflect the payments to the Alternate Payee that began while the Participant was not being paid.

If the Participant never receives a monthly retirement benefit and selects a lump-sum rollover/refund, the monthly payment to the Alternate Payee will cease. The total gross lump-sum rollover/refund amount will be calculated based upon statutes in effect at that time. The Alternate Payee's portion of the total gross lump-sum rollover/refund amount will be calculated using the "Method of Division of Future Monthly Retirement Benefit" stipulated in Subsection 1 of Section 3 of the *Agreement for Domestic Relations Order*. The total sum of monthly payments already made to the Alternate Payee will be deducted from the Alternate Payee's portion of the lump-sum rollover/refund. If the total sum of such payments does not exceed the Alternate Payee's portion of the lump-sum rollover/refund, the Alternate Payee will receive the difference. If the sum of payments already made to the Alternate Payee exceeds the Alternate Payee's portion of the lump-sum rollover/refund, no further payment will be made to the Alternate Payee. In such case, the amount in excess will be subtracted from the Participant's portion of the lump-sum rollover/refund. If the sum of payments made to the Alternate Payee exceeds the total gross lump-sum rollover/refund amount, no lump-sum rollover/refund will be made to the Participant.

These provisions relating to the Alternate Retirement Age will apply to a Participant who has never received a lump-sum rollover/refund or monthly retirement benefit from the DB plan. They also apply to a Participant who begins receiving a monthly retirement benefit, subsequently stops receiving such benefit for some reason other than death, and does not restart the benefit prior to the designated Alternative Retirement Age.

Section 4—Payment to the Alternate Payee of a Retiree Under the DPS Benefit Structure

This section establishes how Colorado PERA will calculate the gross monthly payment to an Alternate Payee of a current Colorado PERA retiree under the DPS benefit structure in the Colorado PERA DB Plan. If the parties do not desire the Agreement to cover payment to an Alternate Payee of a current retiree under the DPS benefit structure, skip Section 4. Please note that this section applies to the Colorado PERA DB Plan.

Section 4 of the Agreement to be completed for a retiree under the DPS benefit structure. There are two selections to be made in this part. The first is the method of division of the monthly retirement benefit and the second is the cobeneficiary (co-annuitant) designation.

(1) Method of Division of Monthly Retirement Benefit

Under Subsection 1 of Section 4 regarding the method of division of the monthly retirement benefit for retirees under the DPS benefit structure, the parties must select one of the following methods: (a) Percentage of Monthly Dollar Amount or (b) Fixed Monthly Dollar Amount.

If the Percentage Method is chosen, check the box and write in the appropriate Percentage. Under this method, the amount paid to the Alternate Payee is determined by applying the specified Percentage to the amount of the Participant's monthly retirement benefit, including all subsequent annual increases pursuant to C.R.S. §§ 24-51-1001 *et seq.* and C.R.S. §§ 24-51-1701 *et seq.*

If the parties choose the Fixed Monthly Dollar Amount Method, check the box and write in the dollar amount in the appropriate blank. The initial payment to the Alternate Payee will be the amount specified in the "Monthly Dollar Amount" in the Agreement. Thereafter, this Monthly Dollar Amount

will be increased to include all subsequent annual increases pursuant to C.R.S §§ 24-51-1001 *et seq.* and C.R.S. §§ 24-51-1701 *et seq.*

(2) Deleting the Cobeneficiary

If the Participant is retired under Option P2 or P3 and has named the Alternate Payee as the cobeneficiary, the parties can indicate whether the retiree under the DPS benefit structure is allowed to delete the cobeneficiary by selecting “Yes” in Subsection 2 of Section 4. If deletion of the cobeneficiary is allowed, the benefits of the retiree under the DPS benefit structure will thereafter be payable under Option A, upon completion of all required information by the Participant. If the Participant named the Alternate Payee as the cobeneficiary at the time of retirement, but the Participant is not allowed to delete the cobeneficiary, or if the Alternate Payee was not named as the cobeneficiary of the Participant at retirement, check the “Not Applicable” box. Please note that retirees under the DPS benefit structure may only be allowed to delete, but not change, their cobeneficiary in a dissolution of marriage action.

If the Participant is retired under Option A or B or D, the cobeneficiary designation is not applicable and the “Not Applicable” box should be checked.

If the Participant is retired under Option C or E, the Participant is not allowed to delete the cobeneficiary selection, and the “Not Applicable” box should be checked.

In the event that the Participant’s monthly retirement benefit later terminates for a reason other than death and the Participant has not yet reached the age specified in Subsection 2 of Section 5 pertaining to the Default Retirement Age, then payment to the Alternate Payee also will terminate until the specified age is reached, or if earlier, when the Participant again receives a monthly retirement benefit. See C.R.S. §§ 24-51-1101 *et seq.*

Section 5—Payment to the Alternate Payee of a Member Under the DPS Benefit Structure

This section establishes how Colorado PERA will calculate the future gross lump-sum rollover/refund or monthly payment to an Alternate Payee of a current Colorado PERA member under the DPS benefit structure in the Colorado PERA DB Plan. If the parties do not desire the Agreement to cover payment to an Alternate Payee of a current member under the DPS benefit structure, skip Section 5. Please note that this section applies to the Colorado PERA DB Plan.

If the Participant is presently a member, as opposed to a being a retiree, under the DPS benefit structure, the parties should complete Section 5. Under Section 5, there are two elections for the parties to make: the Method of Division of Future Monthly Retirement Benefit and the Alternate Retirement Age.

(1) Method of Division of Future Monthly Retirement Benefit

Pursuant to C.R.S. § 14-10-113(6), there are five different methods for division of future payments under the DPS benefit structure from the Colorado PERA DB Plan. The parties can only select one method which must be indicated in the Agreement. These methods are described as follows:

a. PERCENTAGE METHOD

Under the Percentage Method, the parties must agree on payment to the Alternate Payee of a Percentage of the Participant’s benefit when the Participant retires or terminates employment. If the Participant selects a lump-sum rollover/refund, the payment to the Alternate Payee is determined by applying the specified Percentage to the Participant’s lump-sum rollover/refund amount, as that amount is determined under C.R.S. § 24-51-1711.

If the Participant selects a monthly retirement benefit, the payment to the Alternate Payee is determined by applying the specified Percentage to the amount of the Participant’s monthly retirement benefit, including all annual increases pursuant to C.R.S. §§ 24-51-1701 *et seq.* This method is illustrated below:

Alternate Payee percentage	×	Benefit at retirement	=	Alternate Payee’s payment
50%	×	\$2,500	=	\$1,250/month

b. FIXED DOLLAR AMOUNTS METHOD

Under the Fixed Dollar Amounts Method, the parties must agree to the Fixed Dollar Amount that the Alternate Payee will receive depending on whether the Participant selects a lump-sum rollover/refund or a monthly retirement benefit. There are two amounts that must be written in the Agreement: a Lump-Sum Dollar Amount and a Monthly Dollar Amount.

If the Participant selects a lump-sum rollover/refund, the payment to the Alternate Payee will be the amount specified in the “Lump-Sum Dollar Amount” in the Agreement.

If the Participant selects a monthly retirement benefit, the initial payment to the Alternate Payee will be the amount specified in the “Monthly Dollar Amount” in the Agreement. Thereafter, this Monthly Dollar Amount will be increased to include all subsequent annual increases pursuant to C.R.S. §§ 24-51-1001 *et seq.* and C.R.S. §§ 24-51-1701 *et seq.*

When the parties designate only one of the Fixed Dollar Amounts, and the Participant does not select that particular type of payment, the Alternate Payee will not receive any payment pursuant to the DRO, unless the DRO is properly modified. For example, if the parties only designate the Lump-Sum Dollar Amount of the Fixed Dollar Amounts, and no Monthly Dollar Amount is designated, and the Participant selects a monthly benefit at retirement, the Alternate Payee will not receive any monthly payment, unless the DRO is properly modified to add a Monthly Dollar Amount.

In completing the Fixed Dollar Amount section, it is frequently necessary to obtain specific account information regarding the member’s current account balance and a summary of estimated monthly retirement benefits under the various benefit options. Because all Colorado PERA account information is confidential pursuant to C.R.S. § 24-51-213, an *Authorization to Release Financial Information in a Divorce Matter* may be needed. This form is available from Colorado PERA.

c. TIME RULE FORMULA METHOD

Under the Time Rule Formula Method, the parties must agree to use a formula based upon the months of service credit acquired during the marriage compared to the total months of service credit earned by the Participant at retirement or at the time of payment of a lump-sum rollover/refund. This formula is determined by dividing the number of months of service credit acquired during the marriage by the total number of months of service credit earned at the time of the Participant’s retirement or at the time of payment of a lump-sum rollover/refund, with that quotient multiplied by an Alternate Payee Percentage to which the parties have agreed. At the date of retirement, the resulting Percentage will be further multiplied by the amount of the Participant’s benefit to determine the Alternate Payee’s payment.

If the parties agree to use this formula, the parties must in the Agreement the months of service credit acquired during the marriage and the agreed-upon Alternate Payee Percentage. The months of service credit acquired during the marriage cannot exceed the Participant’s total accrued months of service credit as of the date of the decree.

Colorado PERA will determine the total number of months of service credit in accordance with applicable State law only at the time of retirement or termination of employment. The result of the division above cannot create a quotient greater than 1.0; if the result would be greater than 1.0, Colorado PERA will reduce the result of this division to 1.0 before proceeding with the remainder of the determination.

i. Time Rule Formula Method—Lump-Sum Rollover/Refund

If the Participant selects a lump-sum rollover/refund as determined by C.R.S. §§ 24-51-1701 *et seq.*, the Time Rule Formula Method will be applied to the Participant’s gross lump-sum rollover/refund amount. Assuming the agreed upon Alternate Payee percentage is 50 percent, the Alternate Payee would receive \$36,250 when the Participant terminates employment, assuming the Participant’s lump-sum rollover/refund is \$145,000. This method is illustrated below:

Months of service credit acquired during marriage	×	Agreed upon Alternate Payee percentage	×	Participant’s account balance plus matching amounts, if any, at time of payment of lump-sum rollover/refund	=	Alternate Payee’s payment
Months of service credit at retirement or rollover/refund						
120 ÷ 240	×	50%	×	\$145,000	=	\$36,250

ii. Time Rule Formula Method—Monthly Retirement Benefit

If the Participant selects a monthly retirement benefit, the Time Rule Formula Method will be applied to the benefit amount received by the Participant based on the Option elected by the Participant at the time of retirement. If the parties select this formula method, and agree that the Alternate Payee’s percentage is 50 percent, the Alternate Payee will receive \$625 per month when the Participant retires. This method is illustrated below:

Months of service credit acquired during marriage	×	Agreed upon Alternate Payee percentage	×	Participant's benefit at retirement	=	Alternate Payee's payment
Months of service credit at retirement or rollover/refund						
120 ÷ 240	×	50%	×	\$2,500	=	\$625/month

d. DATE OF DECREE FORMULA METHOD

Under the Date of Decree Formula Method, the parties must agree to use a formula that applies the Time Rule Formula Method to the amount of the Participant’s Option A benefit or lump-sum rollover/refund as of the date of the decree were the Participant then eligible to retire.

i. Date of Decree Formula Method—Lump-Sum Rollover/Refund

If the Participant selects a lump-sum rollover/refund as determined by C.R.S. §§ 24-51-1701 *et seq.* the Date of Decree Formula Method is determined by dividing the number of months of service credit acquired by the Participant under the Plan during the marriage by the number of months of service credit in the Plan as determined by Colorado PERA as of the date of the decree, which quotient is then multiplied by the agreed-upon Alternate Payee Percentage. The resulting Alternate Payee Percentage is then multiplied by the gross amount of the lump-sum rollover/refund determined using C.R.S. §§ 24-51-1701 *et seq.* as of the date of the decree, as if the Participant were eligible for retirement as of the date of the decree (whether or not the Participant actually is eligible for retirement on that date). The resulting amount will be the one-time payment to the Alternate Payee if the Participant later receives a lump-sum rollover/refund.

Assuming the agreed upon Alternate Payee percentage is 50 percent, the Alternate Payee would receive \$7500 when the Participant retires or terminates employment, assuming the Participant’s lump-sum rollover/refund as of the date of decree would have been \$15,000. This method is illustrated below:

Months of service credit acquired during marriage	×	Agreed upon Alternate Payee percentage	×	Participant's lump-sum refund amount including 100% match as of the date of decree	=	Alternate Payee's payment
Months of service credit as of date of decree						
120 ÷ 120	×	50%	×	\$15,000	=	\$7,500

ii. Date of Decree Formula Method—Monthly Retirement Benefit

If the Participant selects a lifetime monthly benefit at retirement, the Date of Decree Formula Method is determined by dividing the number of months of service credit by the Participant under the Plan during the marriage by the number of months of service credit in the Plan as determined by Colorado PERA as of the date of the decree, which quotient is then multiplied by the agreed-upon Alternate Payee Percentage. The resulting Percentage is multiplied by the monthly Option A benefit amount determined using C.R.S. § 24-51-1715 based on actual salary and service credit as of the date of the decree, as if the Participant were eligible for retirement as of the date of decree (whether or not the Participant actually is eligible for retirement on that date). The resulting amount will be the monthly payment to the Alternate Payee.

If the agreed upon Alternate Payee percentage is 50 percent, the Alternate Payee would receive \$416 per month when the Participant retires. This method is illustrated on the next page:

Months of service credit acquired during marriage	×	Agreed upon Alternate Payee percentage	×	Participant's monthly Option A benefits as of date of decree as if Participant were eligible for retirement	=	Alternate Payee's payment
<hr/> Months of service credit as of date of decree						
120 ÷ 120	×	50%	×	\$833	=	\$416/month

PERA will determine the total number of months of service credit in accordance with applicable state law. The result of the division above cannot create a quotient greater than 1.0; if the result would be greater than 1.0, Colorado PERA will reduce the result of this division to 1.0 before proceeding with the remainder of the determination.

e. OTHER METHOD OR FORMULA

Under this method, the parties agree to use their own specific method or formula to divide the benefit. C.R.S. § 14-10-113(6) authorizes the parties to select any method or formula agreed upon by the parties that specifies a Dollar Amount or Percentage to the Alternate Payee. This formula must result in either a Percentage or two Fixed Dollar Amounts being selected. If a Percentage is selected, this Percentage will be applied to the Participant's monthly retirement benefit to determine the amount of the Alternate Payee's payment.

If the parties select two Fixed Dollar Amounts, one Fixed Dollar Amount will apply if the Participant selects a lump-sum rollover/refund, and the other Fixed Dollar Amount will apply if the Participant selects a lifetime monthly retirement benefit. The appropriate fixed dollar amount will be applied to the Participant's monthly retirement benefit to ascertain the amount payable to the Alternate Payee.

If the parties use their own specific method or formula, they must sufficiently define each item contained in the formula so that each item in the formula is determinable by Colorado PERA either at the present time or at some future date, but in no event, later than either when the Participant retires or does a rollover/refund of the DB plan account. If this method is used, the parties must attach a detailed description of the method to the Agreement. It is recommended that the parties contact Colorado PERA to obtain specific instructions if this method or formula is being considered.

(2) Alternate Retirement Age

The Agreement provides for an Alternate Retirement Age as an exception to the requirement that the Alternate Payee must wait until the Participant retires, reaches age 65, or terminates employment to receive payment under a DRO for payments under the Colorado DB Plan. If the parties agree that when the Participant reaches a specified age higher than 65 and no payment is being made to the Participant by the Plan, then the Alternate Payee may begin to receive a monthly payment (but not a lump-sum rollover/refund) in accordance with existing Colorado PERA policy.

If the selected method of division of future Colorado PERA payments results in a specified percentage, then the payment, after the designated Alternate Retirement Age is reached, will be determined by applying the applicable Percentage of the Participant's monthly retirement benefit amount, calculated under C.R.S. § 24-51-1715, as if the Participant had retired as of the Alternate Retirement Age. If the selected method of division of future payments results in a fixed monthly dollar amount, the payment, after the designated Alternate Retirement Age is reached, will not exceed the Participant's monthly retirement benefit amount, calculated under C.R.S. § 24-51-1715, as if the Participant had retired as of the Alternate Retirement Age.

After the payment to the Alternate Payee begins, the payment paid to the Alternate Payee will be increased to include all subsequent annual increases pursuant to C.R.S. §§ 24-51-1001 *et seq.* and C.R.S. §§ 24-51-1701 *et seq.* The payments to the Alternate Payee will be deducted from the Participant's DB plan account.

If the Participant later retires and receives a monthly retirement benefit, the monthly payment to the Alternate Payee will not be adjusted to reflect the Participant's actual benefit as of the Participant's subsequent retirement date (based on the Participant's actual age, service credit, and salary at retirement). Further, the monthly amount paid to the Alternate Payee will not exceed the monthly retirement benefit amount payable to the Participant in the absence of the DRO Agreement. The Participant's monthly

retirement benefit will be reduced actuarially to reflect the payments to the Alternate Payee that began while the Participant was not being paid.

If the Participant never receives a monthly retirement benefit and selects a lump-sum rollover/refund, the monthly payment to the Alternate Payee will cease. The total gross lump-sum rollover/refund amount will be calculated based upon statutes in effect at that time. The Alternate Payee's portion of the total gross lump-sum rollover/refund amount will be calculated using the "Method of Division of Future Monthly Retirement Benefit" stipulated in Subsection 1 of Section 5 of the *Agreement for Domestic Relations Order*. The total sum of monthly payments already made to the Alternate Payee will be deducted from the Alternate Payee's portion of the lump-sum rollover/refund. If the total sum of such payments does not exceed the Alternate Payee's portion of the lump-sum rollover/refund, the Alternate Payee will receive the difference. If the sum of payments already made to the Alternate Payee exceeds the Alternate Payee's portion of the lump-sum rollover/refund, no further payment will be made to the Alternate Payee. In such case, the amount in excess will be subtracted from the Participant's portion of the lump-sum rollover/refund. If the sum of payments made to the Alternate Payee exceeds the total gross lump-sum rollover/refund amount, no lump-sum rollover/refund will be made to the Participant.

These provisions relating to the Alternate Retirement Age will apply to a Participant who has never received a lump-sum rollover/refund or monthly retirement benefit from the DB plan. They also apply to a Participant who begins receiving a monthly retirement benefit, subsequently stops receiving such benefit for some reason other than death, and does not restart the benefit prior to the designated Alternative Retirement Age.

Section 6, 7, and 8—Payment to the Alternate Payee Under the PERAPlus 401(k), PERAPlus 457, and/or DC Plans

These Sections establish how the Alternate Payee is to be paid from the PERAPlus 401(k) Plan, PERAPlus 457 Plan, and/or PERA DC Plan. The PERAPlus 401(k) Plan and PERAPlus 457 Plan are defined contribution plans with separate accounts for each participant who voluntarily elects to participate in the Plan. The Participant's account balance is increased by contributions and earnings on investments and decreased by withdrawals, losses on investments, and the Participant's share of the Plan's expenses.

In the Agreement, the parties must indicate whether the Alternate Payee is to receive a specified Percentage or a Fixed Dollar Amount from the PERAPlus 401(k) Plan, the PERAPlus 457 Plan, and/or the PERA DC Plan.

If the Percentage Method is selected, the parties should provide a date to value these Plan accounts for distribution purposes. The valuation date provided cannot be later than the actual date the distribution is made to the Alternate Payee. The distribution will be made when all required forms are completed and received by Colorado PERA. If the parties do not designate a date, Colorado PERA will use the date of Colorado PERA's receipt of the certified DRO Agreement and Order.

Payment under the PERAPlus 401(k) Plan, the PERAPlus 457 Plan, and/or the PERA DC Plan pursuant to a DRO cannot exceed the balance of the Participant's account in the Plan, reduced by any outstanding loan(s) to the Participant. If the DRO is a valid DRO recognizable by Colorado PERA, distribution of the Alternate Payee's amount will be paid to the Alternate Payee within 120 days after receipt of certified copies of the DRO Agreement and Order, and regular copies of the divorce decree have been submitted to Colorado PERA, provided all required forms and other required information are also timely received by Colorado PERA from the Alternate Payee. The amount paid to the Alternate Payee will reduce the Participant's account balance. The payment to the Alternate Payee will be allocated to the investment funds in the Participant's account and also will be allocated to the tax-deferred and after-tax portions of the Participant's account on a pro rata basis as provided in the Plan documents.

If the Participant dies before all of these requirements are satisfied, no payment will be made to the Alternate Payee based on that designation in the DRO. Under such circumstances, the beneficiary of the Participant's PERAPlus 401(k) Plan, PERAPlus 457 Plan, and/or the PERA DC Plan, account will be paid the Participant's entire account.

Instructions to Complete a DRO Order

The parties must complete the Order by completing the caption, including the Court, County, State, Court Address, Case Name, Case Number, the District Court division or Courtroom number, the type of Order to be entered, and the names of the parties. In addition, in the body of the Order, the parties must designate the appropriate blanks indicating whether the Order is for a DRO or a modification of a prior

DRO. If the parties do not want to state their Social Security numbers on these forms, the parties may inform Colorado PERA of their Social Security numbers in a separate writing.

The Order must be signed and dated by the judge and the Order with attached Agreement must be filed with and entered by the Court upon or before entry of the decree or within 90 days after entry of the decree and permanent orders. A certified copy of the Order and attached Agreement will be received by Colorado PERA, along with a copy of the decree, within 90 days of the date of the entry of the Order and Agreement, but must be received at least 30 days before Colorado PERA will make its first payment pursuant to the DRO.

If the parties are modifying a prior DRO, certified copies of the Order and attached Agreement must be submitted to Colorado PERA at least 30 days before Colorado PERA will make its first payment pursuant to the Modified DRO, along with a copy of the executed stipulation or motion for modification.

A valid DRO does not entitle the Alternate Payee to immediate payment from the Colorado PERA DB Plan unless as otherwise noted in this booklet. No payment will be made to the Alternate Payee until an amount is payable to the Colorado PERA Participant. This may occur years after entry of the divorce decree, if ever. Moreover, being named an Alternate Payee may not result in any payment if the death of the Participant occurs prior to any payment to the Alternate Payee.

A Participant cannot receive a monthly retirement benefit or lump-sum rollover/refund from the Colorado PERA DB Plan until he or she terminates employment or retires. The benefit selection by the Participant determines the type of payment the Alternate Payee receives. For example, if the Participant selects a lifetime monthly retirement benefit, the payment to the Alternate Payee is also a monthly payment. If the Participant selects a lump-sum rollover/refund, the Alternate Payee also will receive a lump-sum rollover/refund.

With either a lump-sum rollover/refund or monthly payment, the amount paid to the Alternate Payee cannot exceed the amount that otherwise would be paid to the Participant. The law does not permit any early or partial payment from the Colorado PERA DB Plan under a DRO when the Participant has not received a lump-sum rollover/refund or a monthly retirement benefit unless the Participant has reached age 65 (or the designated Alternate Retirement Age).

Without a valid DRO for Colorado PERA's DB Plan, under no circumstances will Colorado PERA make any payment directly to the Alternate Payee. However, where there is an invalid DRO, the court may require the Participant to pay the former spouse a specified amount, but Colorado PERA will not be involved in those payments.

Modification of a Prior DRO

An existing DRO may be modified only by written agreement of the parties to the DRO and approval by the Court. The standardized forms provided by Colorado PERA must be used by the parties to modify a DRO. The Colorado PERA forms contain specific blanks which must be checked to indicate that the existing DRO is being modified. Appropriate sections of the Agreement must be completed to provide information concerning the modified DRO. The parties and/or their attorney must draft their own motion to the Court, setting forth the reasons for the modification, but must use the Colorado PERA Agreement and Order forms. Certified copies of the Order with attached Agreement will be submitted to and received by Colorado PERA at least 30 days before Colorado PERA will make its first payment pursuant to the modified DRO. If there is no existing valid DRO applicable to the Plan the parties wish to modify, then no modification is permitted under State law.

Taxes

Colorado PERA must report payments of retirement benefits to the Internal Revenue Service ("IRS"). The amount paid to the Alternate Payee is reported to the IRS as the Alternate Payee's income, not the Participant's income. The cost recovery of after-tax contributions, if any, is pro-rated between the Alternate Payee and the Participant. Each individual should consult with his or her own tax adviser about the tax consequences of entering into a DRO.

Frequently Asked Questions About Divorce and Colorado PERA Benefits

Q. *What is a domestic relations order?*

A. A domestic relations order—commonly called a DRO—is a court order that approves an agreement between the parties to a divorce concerning the division of public employee retirement benefits. A valid DRO consists of the Agreement for a DRO and the Order approving the Agreement.

Q. *Do I need to have a DRO as part of my divorce?*

A. No, you do not. Depending on the individual facts and circumstances of your particular case, you may not need to divide your benefits—you must discuss whether a DRO is necessary or appropriate in your case with your attorney.

Q. *Can Colorado PERA determine the present value of my future retirement benefits?*

A. No, Colorado PERA can only provide information regarding current account balance and/or retirement estimates. The parties are responsible for engaging the appropriate professional to perform a present value calculation if a present value calculation is desired by the parties.

Q. *Can Colorado PERA provide legal advice to either party regarding a DRO?*

A. No.

Q. *Can anyone other than a Colorado PERA member require Colorado PERA to disclose information contained in the member's file?*

A. Colorado PERA member records are confidential pursuant to C.R.S. § 24-51-213. Colorado PERA will not disclose to any other party financial information in a Participant's file unless Colorado PERA has a properly signed Release by the Participant. An *Authorization to Release Financial Information in a Divorce Matter* form is provided by Colorado PERA.

Q. *What will happen to my Colorado PERA records if they are subpoenaed?*

A. If the Participant refuses to sign an *Authorization to Release Financial Information in a Divorce Matter*, Colorado PERA generally files a motion to quash the subpoena, provides the records to the court under seal for *in camera* review, and asks the court to make a determination regarding release of the records.

Q. *Can a representative of Colorado PERA be called upon to testify in court?*

A. It is Colorado PERA's policy not to appear and testify in court because there is no relevant information that Colorado PERA can offer in divorce cases, other than that Colorado PERA operates its benefit plans in accordance with State law. In addition, most subpoenas seek testimony from Colorado PERA regarding financial matters required by statute to be kept confidential. If Colorado PERA employees were required to testify whenever they were subpoenaed, there would be a significant expenditure and waste of Colorado PERA trust funds. However, Colorado PERA is more than willing to provide appropriate records and information to the parties and their respective attorneys if the proper *Authorization to Release Financial Information in a Divorce Matter* is provided.

Q. *Do I have to obtain preapproval of our proposed DRO Agreement?*

A. Because most DRO forms that Colorado PERA receives are not properly completed, Colorado PERA recommends that the parties forward to Colorado PERA a copy of the completed DRO Agreement and Order at least two weeks prior to the anticipated entry of the DRO.

Q. *What are the DRO submission requirements?*

A. The parties will submit the parties' signed and notarized DRO Agreement to Colorado PERA within 90 days after entry of the decree and the permanent orders regarding property distribution in a proceeding for dissolution of marriage, legal separation, or invalidity of marriage. For the DRO Agreement to be valid with respect to Colorado PERA, the Agreement and Order will be entered by the court upon or before entry of the decree of dissolution, or within 90 days after entry of the decree and permanent orders. Certified copies of the Agreement and Order, along with a copy of the decree, will be received by Colorado PERA within 90 days after entry of the Agreement and Order, but must be received by Colorado PERA at least 30 days before Colorado PERA will make its first payment pursuant to the DRO.

Q. *How can I modify my DRO?*

A. An existing DRO may be modified only by written agreement of the parties to the DRO and approval by the court. The standardized forms provided by Colorado PERA must be used by the parties to modify a DRO. Certified copies of the Agreement and Order of Modification will be submitted to and received by Colorado PERA at least 30 days before Colorado PERA will make its first payment pursuant to the modified DRO. If there is no existing valid DRO, then no modification is permitted under state law.

Q. *Can I make any changes to the Colorado PERA DRO forms?*

A. No. Under State law, Colorado PERA DRO forms must be used without any change, alteration, or amendments to the preprinted text. Do not retype any Colorado PERA form.

Q. *If Colorado PERA determines my DRO Agreement is invalid, what can I do?*

A. If the parties submitted the DRO Agreement to Colorado PERA for preapproval prior to entry of the decree of dissolution, they only need to make the required changes. Where preapproval by Colorado PERA was not obtained and the DRO has been signed by the court, the parties must return to court for a new DRO to correct the error in the DRO if the error is correctable. Where the parties cannot correct the error, the DRO is not valid and enforceable with respect to Colorado PERA, and Colorado PERA will not recognize the DRO as being valid with respect to Colorado PERA. Therefore, Colorado PERA strongly recommends that the parties submit their DRO to Colorado PERA for preapproval.

Q. *What courses of action are available where the DRO is not valid with respect to Colorado PERA and the error in the DRO is not correctable?*

A. There are two alternatives available to the parties. The first alternative, which was used extensively prior to adoption of DROs in 1997, is for the court to order the Participant to pay the Alternate Payee a specified amount. This order is binding on the parties. Colorado PERA will not be a party to that order and would pay benefits according to the Colorado PERA statutes.

Another alternative is to vacate the decree and enter a new decree. However, in a situation like this, Colorado PERA will only recognize a vacation of the decree, not modification of the decree, and not the entry of a nunc pro tunc order. If the parties use this alternative, please forward a copy of the pleadings to Colorado PERA for review prior to being submitted to the court.

Q. *Can I obtain a valid DRO recognizable by Colorado PERA through an out-of-state divorce?*

A. Yes, provided all Colorado requirements for a valid DRO are met.

Q. *As a retiree, how do I change my cobeneficiary in a divorce?*

A. For participants under the PERA benefit structure, pursuant to C.R.S. § 24-51-802, in a divorce proceeding, the court can order or allow a retiree to remove or change his or her Option 2 or 3 cobeneficiary. It is important that the court order contain language that specifically states that the retiree is ordered or allowed to change or remove the cobeneficiary named at retirement. Upon the court's entry of such an order, copies of the Order and the decree of dissolution of marriage, should be sent to Colorado PERA. For participants under the DPS benefit structure, pursuant to C.R.S. § 24-51-1716, in a divorce proceeding, the court can only allow or order a retiree to remove, but not change, his or her Option P2 or P3 cobeneficiary pursuant to a dissolution of marriage.

Q. *Can I use an alternative formula or method to divide my retirement benefit in a DRO?*

A. Yes. Although the parties may use an established formula provided by statute, the parties are free to develop their own formula or method to determine how the retirement benefits are to be divided. The formula, including each item, must be defined sufficiently so that Colorado PERA can determine the applicable number either at the present time or at some point in time, but no later than when the Participant retires or does a rollover/refund of the DB plan account.

Q. *As an Alternate Payee, what must I do to receive payment pursuant to a valid DRO?*

A. No payment will be made by Colorado PERA to the Alternate Payee until all of the necessary forms have been completed and received by Colorado PERA and all other statutory, regulatory, and rule requirements for payment are satisfied. Colorado PERA will contact the Alternate Payee when the payment is triggered and provide the necessary forms. Colorado PERA urges Alternate Payees to regularly update Colorado PERA with addresses and phone numbers for such contact.

This booklet provides information about the division of Colorado PERA benefits in conjunction with a divorce. Your rights, benefits, and obligations as a Colorado PERA member are governed by Title 24, Article 51, Colorado Revised Statutes, and the Rules of the Colorado Public Employees' Retirement Association, which take precedence over any interpretations in this booklet.

Colorado Public Employees' Retirement Association

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