




Marriage Dissolution Guide

Dividing MSRS Benefits

The Law, Language and Calculations





This guide is meant to assist all parties of a marriage dissolution in understanding how a divorce may affect benefits from Minnesota State Retirement System (MSRS). MSRS benefits are governed by federal and state laws, rules, and regulations. The laws governing MSRS benefits may change at any time; if there is a discrepancy between this publication and the actual law, the provisions of the law will govern.

The information provided in this guide is not intended to serve as tax, financial, or legal advice. MSRS staff members are not able to provide legal advice concerning marriage dissolution laws. It is the MSRS participant's responsibility to seek private legal counsel.

Questions about marriage dissolution and the impact on MSRS benefits that are not answered in this guide can be directed to MSRS at **651-296-2761** or **1-800-657-5757**.

Marriage Dissolution – Dividing MSRS Benefits

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Introduction

This guide is designed to provide all parties involved in a marriage dissolution and their legal counsel a better understanding of how plans administered by Minnesota State Retirement System (MSRS) may be divided as settlement of property. This handbook includes a summary of the options available to plan participants, a summary of the effects these options have on division of MSRS benefits, and sample language to be used in a court order.

Specific questions regarding the retirement plans administered by MSRS or information presented in this handbook can be directed to the **MSRS Service Center at 651-296-2761 or 1-800-657-5757.**

Plans administered by MSRS

MSRS administers the following retirement plans that may be included in the division of property upon marriage dissolution. Detailed information with regard to the division of assets for each of these plans is covered in this publication. Please refer to the specific section of this publication to learn how the assets can be divided and for guidance composing court orders.

Pension Plans

MSRS administers numerous retirement plans which provide retirement, survivor and disability benefit coverage for Minnesota state employees as well as employees of the Metropolitan Council and many non-faculty employees at the University of Minnesota and Minnesota State Colleges and Universities (MNSCU). Retirement plans include the General Plan, Correctional Plan, State Patrol Plan, Judges Plan and the Unclassified Plan.



Minnesota Deferred Compensation Plan (MNDCP)

The MNDCP is a voluntary 457(b) retirement savings plan available to all Minnesota public employees including state, city, county and school districts.



Health Care Savings Plan (HCSP)

The HCSP is a tax-free, employer-mandated savings plan to be used post-employment for the reimbursement of out-of-pocket medical expenses. This plan is available to all public employers in the State of Minnesota including state, city, county and school districts.



Contact Us – We're Here To Help

If you have questions about your MSRS account or to schedule an appointment, contact an MSRS Representative.

In Person:

St. Paul Office

60 Empire Drive, Suite 300
St. Paul, MN 55103

Hours: Monday – Friday, 8:00 a.m. - 4:30 p.m.

Duluth Office

Medical Arts Building
324 West Superior Street, Suite 530
Duluth, MN 55802

Hours: Tuesday-Friday, 8:00 a.m. – 4:30 p.m.
Appointments preferred

Detroit Lakes Office

714 Lake Avenue, Suite 102
Detroit Lakes, MN 56501

Hours: Tuesday-Friday, 8:00 a.m. – 4:30 p.m.
Appointments preferred

Mankato Office

Former Bretts Building
11 Civic Center Plaza, Suite 150
Mankato, MN 56001

Hours: Tuesday-Friday, 8:00 a.m. – 4:30 p.m.
Appointments preferred



Phone:

Toll Free: **1-800-657-5757, option 3**

Local: **651-296-2761, option 3**



Email:

info@msrs.us



Online:

www.msrs.state.mn.us



Onsite Visit:

Ask your employer to schedule an onsite visit with an MSRS Representative.

Sources of Benefit Information

Benefit information is available in the following ways:

- Benefit Statements
- Website – **www.msrs.state.mn.us**
- Plan Handbooks & Brochures
- Educational Seminars & Workshops
- Plan Newsletters
- MSRS Retirement Counselors

Laws Governing Marriage Dissolution

Federal QDRO exemption

Because MSRS administers governmental retirement plans, it is exempt from the Qualified Domestic Relations Order (QDRO) law under the 1984 Retirement Equity Act. The 1974 Employee Retirement Income Security Act (ERISA), which includes QDRO law, only relates to private pension plans.

State law requirements

During a marriage dissolution proceeding, the court may determine that retirement benefits accrued during the marriage must be divided between the parties. For the court to have sufficient information regarding the value of the marital assets, MSRS, the administrator of the State of Minnesota pension plans, MNDCP, and HCSP, will provide the participant or others with the value of the account (provided the request meets the criteria in Minn. Stat. §356.49). Please refer to the specific plan information in this publication for more detail. The divorce decree must be filed in a Minnesota district court. A certified divorce decree from another state can be accepted by MSRS as long as it has been filed in a Minnesota district court.

Legal advice limitation

MSRS staff members do not provide legal advice concerning marriage dissolution laws. It is the participant's responsibility to seek private legal counsel. Only a court having proper jurisdiction may provide interpretation of a dissolution decree. We will, however, work with the participant and their legal counsel to develop language for a court order that can be administered by MSRS.

Releasing information/access to data

Minn. Stat. §356.49, requires MSRS to provide information on retirement benefits and the rights of the plan participants (or former participants) to the court and the parties involved in a marriage dissolution action. MSRS may release private or confidential data on individuals to the court, the parties to a marriage dissolution action, their attorneys, and an actuary, under Minn. Stat. §518.582, to the extent necessary to comply with the law. MSRS will release this information only after receiving written authorization from the MSRS participant or a legal petition showing that an action for marriage dissolution has commenced and a copy of the affidavit of service showing that the petition has been served on the responding party.

Glossary of Terms

- **Actuary:** A professional who calculates the present value of an account or benefit.
- **Beneficiary:** The person named by a member/participant to receive the employee contributions and interest remaining in an account upon a member's death. A beneficiary is not a survivor entitled to a monthly benefit.
- **Present Value:** The value of a future pension benefit calculated in today's dollars. MSRS does not provide an actuary to calculate the present value.
- **Certified Decree:** A court-issued Judgment and Decree with a raised court seal.
- **Survivor:** The person named by a member to receive a lifetime monthly benefit after the member's death. A Survivor must be named on the member's benefit application.
- **Domestic Relations Order:** A DRO effectuates the Judgment and Decree and directs how the MSRS accounts and benefits should be divided.
- **Judgment and Decree:** The order from the court dissolving a marriage. The Judgment and Decree may order division of MSRS accounts and benefits and may direct that a DRO be issued.
- **100% Joint and Survivor Option for Alternate Payee:** The Alternate Payee receives a reduced lifetime benefit and bears the cost for this option.
- **Marital Portion:** The number of MSRS-covered years and months while married divided by the **TOTAL** number of MSRS-covered years and months.
- **Single Life Option for Alternate Payee:** The Alternate Payee's monthly benefit ends upon the Participant's death.

FAQS



Q: My spouse and I are getting divorced; what should I do with regard to my MSRS-administered retirement plans?

A: Contact MSRS to determine how MSRS retirement plan(s) are affected by a divorce.

Q: How do I obtain pension plan values and statements?

A: MSRS will provide all interested parties (provided they meet the criteria in Minn. Stat. §356.49) with a projection of the retirement benefit based on earnings and service credit to date as well as the current refund amount. Estimates are not provided for the marriage date. A court-appointed actuary—hired and paid for by the parties of the divorce—may evaluate pension benefits and calculate the “present value” based on the MSRS projection. MSRS does not calculate the present value.

Q: How do I obtain sample language?

A: A sample domestic relations order (DRO) for each plan administered by MSRS is available in this publication. The sample language should be used in conjunction with an attorney’s advice. Nothing contained in the samples provided by MSRS should be construed as tax, financial, or legal advice. The applicable sample provisions and the terms of the order will vary in each case.

- MSRS defined benefit retirement plans - **pg. 15**
- MSRS Unclassified Retirement Plan - **pg. 23**
- MNDCP - **pg. 29**
- HCSP- **pg. 35**

Q: Does MSRS require a domestic relations order (DRO)?

A: The sample language can be incorporated into a Judgment and Decree for marital dissolution, or attached as an appendix. A separate domestic relations order may not be required.

Q: What section of the IRS code covers my plan?

A: The following codes cover each plan:

- MSRS defined benefit retirement plans - IRC 401(a) defined benefit
- Unclassified Retirement Plan - IRC 401(a) defined contribution plan
- MNDCP - IRC 457(b)
- HCSP - IRC 115 Trust approved by private letter ruling

Q: How long does it typically take MSRS to review a draft order?

A: Allow 2-3 weeks for review.

Q: How long does it take to implement a final order?

A: Allow up to 4 weeks for implementation of the final order.

Q: Does MSRS need the entire certified decree?

A: Yes. Upon request, MSRS will return the original decree to the plan participant and retain a copy for our records.

Q: Can MSRS accept an order that has been filed in another state?

A: Yes; however, the order must also be filed in a Minnesota district court. MSRS requires a certified copy of the original out-of-state court order and documentation from a district court that the order was filed in Minnesota.

Q: When can a former spouse (alternate payee) access the funds they were awarded?

A: For an MSRS defined benefit retirement plan, payments from MSRS may be made only when the participant ends public employment, applies for a monthly retirement benefit or refund, and is eligible to receive their benefit.

For the HCSP or MNDCP, the alternate payee has immediate access to the funds in their account after an account has been established for them. Please review the applicable section in this guide for more information about the alternate payee’s rights after the account has been divided.

Q: When can a former spouse (alternate payee) access the funds they were awarded from the MSRS Unclassified Retirement Plan?

A: The alternate payee has immediate access to the funds in their account after an account has been established for them. If the former spouse does not take a refund or rollover by the time the Participant begins collecting a monthly retirement benefit, the alternate payee forfeits the right to a refund or rollover and receives a monthly benefit based on the amount in their account at that time. *Please review pages 19-21 in this handbook for more information.*

MSRS 401(a) Retirement Plans

MSRS administers two different types of 401(a) retirement plans—defined benefit and defined contribution. The type of plan will impact how the assets are divided in a marriage dissolution.

Two Types of 401(a) Retirement Plans

► 1. MSRS defined benefit retirement plans

A defined benefit plan is a traditional pension plan—the monthly benefit is based on years of service, salary and age. MSRS administers multiple defined benefit 401(a) retirement plans which provide retirement, survivor and disability benefit coverage.

MSRS administers the following defined benefit plans:

- General Employees Retirement Plan
- Correctional Employees Retirement Plan
- State Patrol Retirement Plan
- Judges Retirement Plan
- Legislators Plan
- Transportation Department Pilots
- Military Affairs Plan
- Fire Marshals Plan

*More information about marriage dissolution and defined benefit plans, begins on **next page**.*

► 2. MSRS defined contribution retirement plan

MSRS administers the Unclassified Retirement Plan, which is a 401(a) defined contribution plan. The monthly benefit is based on the account balance and the age at which the participant elects to begin collecting benefits.

Under certain conditions, this plan can be converted to the General Employees Retirement Plan (General Plan), which is a defined benefit plan. If the participant is eligible to convert their Unclassified Plan assets to the General Plan, the court order should include language specifying how the benefits should be divided if the participant converts to the General Plan.

*More information about marriage dissolution and the Unclassified Retirement Plan, begins on **page 19**.*

Multiple MSRS 401(a) Plans

- If all accounts are defined benefit plans, only one domestic relations order is required. A separate marital portion will be calculated by MSRS and applied to each plan respectively, unless separate instructions are provided for each plan.
- If the participant has both a defined benefit plan(s) and an Unclassified Retirement Plan, they **must** provide a separate order for the Unclassified Retirement Plan.

NOTE: MNDP and HCSP are not 401(a) plans. A separate order is required for each of these plans.

MSRS Defined Benefit Retirement Plans

During a marriage dissolution proceeding, the court may decide to divide the benefits of the Minnesota State Retirement System 401(a) defined benefit retirement plan between the parties. MSRS administers multiple defined benefit 401(a) plans including the General Employees Retirement Plan, Correctional Retirement Plan, State Patrol Retirement Plan, and Judges Retirement Plan.

MSRS will provide the participant or others (provided they meet the criteria in Minn. Stat. §356.49) with a projection of the retirement benefit based on earnings and service credit to date as well as the current refund amount. A court-appointed actuary—hired and paid for by the parties of a divorce—may evaluate retirement benefits and calculate the present value based on MSRS’ projection. MSRS does not calculate the present value.

If the court determines that there are not enough liquid assets to divide the marital property equitably, it may order that future retirement and disability benefit payments be divided. If the participant is still working at the time of the divorce, the divorce decree may include the formula for determining the percentage of the division.

UNCLASSIFIED RETIREMENT PLAN

MSRS also administers the Unclassified Retirement Plan which is a 401(a) defined contribution plan that can be converted to the General Employees Retirement Plan under certain conditions.

► *For more detail, please see Important plan provision for Unclassified Plan participants, beginning on **page 19**.*

DOMESTIC RELATIONS ORDER

A certified copy of the judgment and decree or domestic relations order (DRO) must be submitted to MSRS.

► *If MSRS is provided with an acceptable judgment and decree, that MSRS can administer, a separate DRO may not be required.*

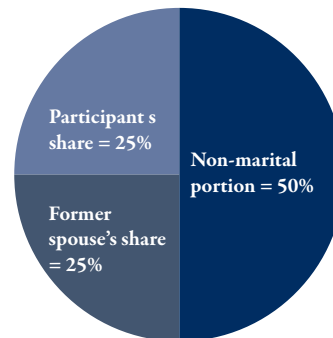
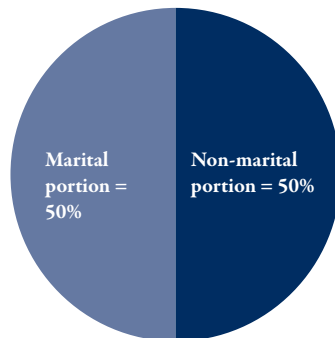
OUT-OF-STATE ORDERS

MSRS requires a certified copy of the original out-of-state court order and documentation from a district court that the order was filed in Minnesota.

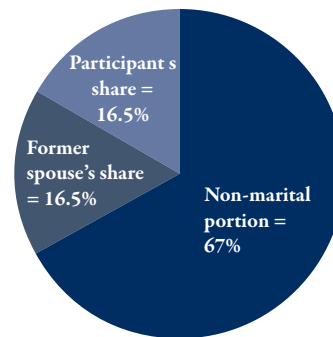
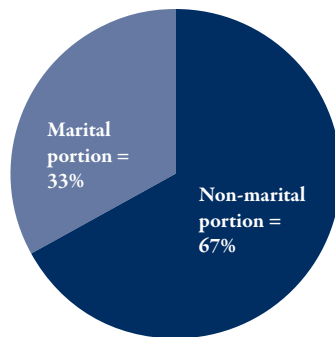
Dividing the MSRS retirement account

The court may use a **marital portion** to divide a future retirement benefit when a dissolution occurs before retirement. The marital portion compares the number of years and months the participant worked to the number of years and months they were married during their MSRS-covered employment. The court may award more or less than one-half of the marital portion to either party. If the participant is already retired, the court may award a percentage or flat dollar amount per month to the former spouse. Below are examples of the division of a retirement benefit using a marital portion.

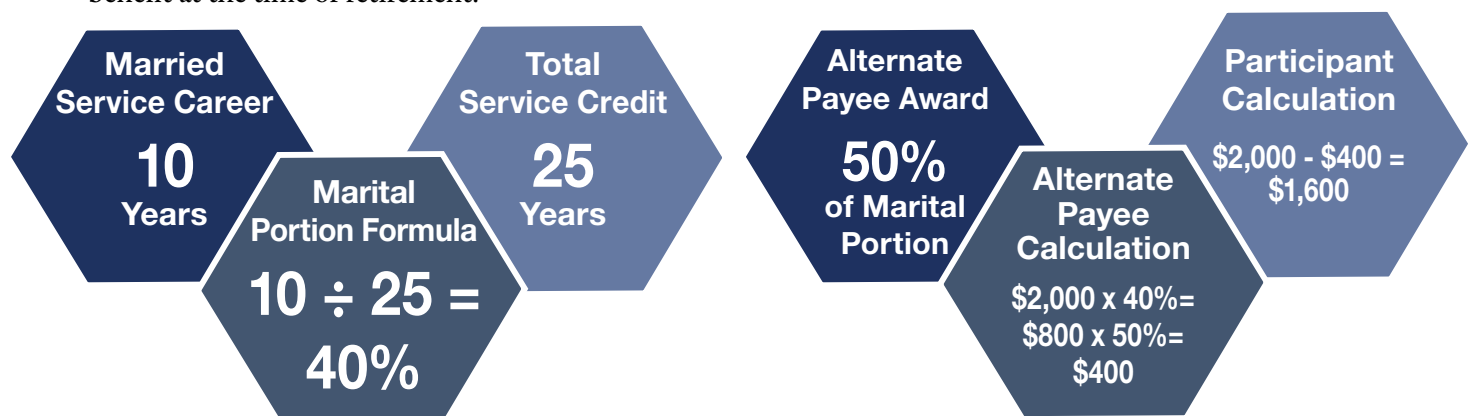
- **Example A** - If the participant worked for 20 years in an MSRS-covered position but was married for only 10 years of that employment, the court may award one-half of the marital portion to the former spouse. The marital portion is 10 years, divided by 20 years, or 1/2 of the retirement benefit. The former spouse would receive 1/4 of the total of all benefit payments.



- **Example B** - If the participant worked for 30 years but was married for only 10 years of that employment, the court may award one-half of the marital portion to the former spouse. The marital portion is 10 years, divided by 30 years, or 1/3 of the benefit for that period. The former spouse would receive 1/6 of the total of all benefit payments.



- **Calculation Example** - The example below shows how the calculation will work for a participant with a \$2,000 benefit at the time of retirement.



Marriage dissolutions prior to August 1, 1987

MSRS has no authority to make payment directly to a former spouse based on a court order filed prior to August 1, 1987, unless the order is amended after that date. State law permitting the division of public retirement plan benefits as a settlement of property in a marriage dissolution was enacted on August 1, 1987. Under this law, MSRS may pay retirement benefits directly to the former spouse of an MSRS participant if the court so orders. Before enactment of the law, payments could only be made to the MSRS participant. That individual, in turn, was expected to pay the former spouse based on provisions in the court order.

Designating a beneficiary

Upon divorce, MSRS is required by Minn. Stat. §524.2-804 to remove a beneficiary designation naming a former spouse. The participant's other beneficiary designations remain valid. To re-designate a former spouse or name new beneficiaries after a divorce, the *Beneficiary Designation* form must be completed and returned to MSRS. Keep in mind, the court may require the participant to reinstate the former spouse as a beneficiary.

Alternate payee's rights

Following the receipt of a final acceptable judgment and decree and/or domestic relations order (DRO), the alternate payee of the MSRS 401(a) defined benefit plan may request benefit estimates.

Marriage dissolutions after participant has retired

When a marriage dissolution occurs after the participant has retired, a percentage or dollar amount of the participant's account balance or monthly benefit can be awarded to the former spouse. The benefit option elected at retirement can be revoked only if the payment will not be split between the parties. Refer to page 13 for more information.

MSRS 401(a) plans are exempt from QDRO and ERISA rules.

Death

Participant predeceases former spouse

If participant dies *before* payout begins

If participant is:	Then:
remarried	the former spouse receives their share of the marital portion of the benefit option (i.e., monthly payment or a refund) selected by the current spouse.
unmarried or not vested	the former spouse will receive a lump sum refund of their share of the marital portion that was awarded.
unmarried but dependent child benefits are payable	the former spouse's portion would apply to each child's benefit as per plan rules.

If participant dies *after* payout begins

If former spouse:	Then:
was awarded or elected the 100% Joint-and-Survivor benefit option on their marital portion	payments continue until former spouse's death.
was not awarded or did not elect the 100% Joint-and-Survivor benefit option	payments end upon the death of the participant. there is no payment to former spouse.

Former spouse predeceases participant

Payout options must be stated in the divorce decree.

If order states the award must be paid:	Then upon the former spouse's death:
to the former spouse or their estate, or if the order does not specify	payments will be made to the former spouse's estate until the participant dies. If the estate is closed, a trust should be created to receive the payments.
to the former spouse and will revert back to the participant upon the former spouse's death	the former spouse's portion will revert back to the participant, which will increase the participant's payments.

Divorce after the Participant is receiving a monthly benefit

If participant elected:	Then:
Single-Life Option	upon participant's death, payments to former spouse end. upon former spouse's death, payments revert back to participant.
Joint-and-Survivor Option	upon participant's death, former spouse's portion is determined by the Joint-and-Survivor option elected by the participant. upon former spouse's death, payments bounce back to participant.
Life Income, 15-Year Certain	upon participant's death, payments end upon death of the participant or 15 years whichever is later.

Divorce Checklist – MSRS Defined Benefit Plans

The following checklist should assist all parties of a marriage dissolution in addressing the MSRS 401(a) defined benefit retirement plan(s) during a divorce proceeding. This checklist may help prevent delays in the request for MSRS to divide the assets. Nothing contained in this checklist should be construed as tax, financial, or legal advice.

- ☐ **Review sample language.** Sample language that MSRS can administer has been included in this guide (see page 15). If MSRS is provided with a judgment and decree that includes acceptable direction for the division of MSRS 401(a) assets, a separate DRO may not be required.
- ☐ **Draft the judgment and decree or the DRO, if any.** To learn what language may be incorporated into the decree or DRO, please refer to the *Sample Domestic Relations Order to Divide a Minnesota State Retirement System 401(a) Plan(s)* on page 15.
- ☐ **Prior to filing with the court, provide MSRS with a draft of the proposed judgment and decree and the DRO, if any.** It is critical that MSRS review the draft prior to filing with the court to ensure that MSRS is able to administer the provisions of the order. If MSRS is unable to administer the DRO as written, it may be necessary to return to court for clarification.
- ☐ **After filing with the court, provide MSRS with a certified copy of the final judgment and decree or the DRO, if any.** The MSRS 401(a) retirement or disability benefit cannot be divided until MSRS has the final court document and the participant applies for retirement or disability benefits.
- ☐ **Provide MSRS with each party's Social Security number and birth record.** This must be separate from the order. These documents must be received by MSRS before payments can begin.

OUT-OF-STATE ORDERS

MSRS requires a certified copy of the original out-of-state court order and documentation from a district court that the order was filed in Minnesota.

Sample Domestic Relations Order to Divide a Minnesota State Retirement System Defined Benefit 401(a) Plan(s)

Below is a sample domestic relations order (DRO) for MSRS 401(a) defined benefit plan(s). This sample should be used in conjunction with an attorney's advice. Nothing contained in this sample shall be construed as tax, financial, or legal advice. The applicable sample provisions and the terms of the order will vary in each case, but the information summarized in each box should be included. Please submit a draft of the DRO to Minnesota State Retirement System (MSRS) for review prior to filing with the court.

The Minnesota state courts generally use a format such as this for a domestic relations order (DRO) issued in addition to the Judgment and Decree.

Introduction (1-2)

This section identifies the date of the hearing or motion for the domestic relations order, the date of the divorce decree, and the basis for the Court's order.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF (County where the order will be filed) [Number] JUDICIAL DISTRICT

In Re the Marriage of

[Name],

Court File No. []
Hon. [Name of Judge]

Petitioner,

DOMESTIC RELATIONS ORDER
MSRS Defined Benefit 401(a) Plan

and

[Name],

Respondent.

1. The above matter came before the undersigned on [date]. Based upon all the files, records and proceedings herein, the Court makes the following Order:
2. The Judgment and Decree ("Decree") of dissolution in this matter was entered on [month, day, year].

3. This Order applies to the Minnesota State Retirement System 401(a) defined benefit plan(s) ("MSRS 401(a)" or "Plan") administered by the Minnesota State Retirement System ("MSRS").
4. [Petitioner or Respondent] (hereinafter "Participant") has an MSRS 401(a) plan(s).
5. The Decree awards a portion of Participant's future benefits paid from an MSRS 401(a) plan(s) to [Petitioner or Respondent] (hereinafter "Alternate Payee" pursuant to a Domestic Relations Order.)
6. The Participant's current address is [] and [his/her] date of birth is [].
7. The Alternate Payee's current address is [] and [his/her] date of birth is [].
8. The parties were married on [date] and have mutually agreed upon [date] as the end date of the marriage for the purpose of calculating the marital portion.
9. The Participant and the Alternate Payee must notify MSRS, 60 Empire Drive, Suite 300, St. Paul, MN 55103-3000, of any change of address.

Identifying information (3-9)

This section identifies which defined benefit plan(s) administered by MSRS are to be divided by the court order. This section also identifies the Participant and the Alternate Payee and requires them to keep a current address on file with MSRS.

Assignment of benefits and account structure (10a)

Participant is not yet receiving a monthly retirement benefit from MSRS.

This section is critical because the terms of the division are detailed. The benefit awarded can be a percentage or a dollar amount.

Section 10: Assignment of benefits and account structure. There are two options:

- **10a: Participant is not yet receiving a monthly retirement benefit from MSRS.**
- **10b: Participant is receiving a monthly retirement benefit from MSRS.**

- 10a. Minn. Stat. §518.58, Subd 3 - There is no liquid or readily liquidated marital property sufficient to offset the value of Participant's MSRS 401(a) benefits, therefore this Order divides the Participant's future MSRS 401(a) benefits. This Order recognizes the Alternate Payee's right to receive a portion of the Participant's MSRS 401(a) plan(s). *[insert option 1 or 2.]*

NOTE: The marital portion is the number of MSRS covered years and months while married divided by the total number of MSRS covered years and months.

Option 1: The Alternate Payee shall receive from MSRS a portion of all future payments from the Participant's MSRS 401(a) account(s). The amount payable to the Alternate Payee shall be [number] percent of the marital portion. The Alternate Payee's benefit shall be calculated using the high-five average monthly salary at the time of the Participant's retirement. If the Alternate Payee predeceases the Participant, payment shall revert to a single life benefit for the Participant. The Alternate Payee shall be named 100% Joint-and-Survivor for only the portion of the MSRS benefit payable to the Alternate Payee.

The Participant is hereby prohibited from applying for a refund of the accumulated contributions unless both parties agree to a refund and provide written agreement with notarized signatures. A refund forfeits the right to a monthly benefit for all parties.

10a. continued on next page

For 10a. Options 1 and 2:

NOTE: By default, the high-five salary that will be used to calculate the Alternate Payee's benefit will be based upon the participants high-five salary at retirement. Alternatively, the high-five salary that could be used to calculate the Alternate Payee's benefit could be based on the marital period provided, if the participant has five or more years of marital service credit and it is stated in the decree.

NOTE: The 100% Joint-and-Survivor option provides a reduced lifetime retirement benefit to the Alternate Payee but does not affect the amount paid to the Participant. Without this option, the Alternate Payee's monthly benefit ends upon the Participant's death. The Participant is free to name another individual as the Joint-and-Survivor for the portion payable to the Participant.

10a continued from previous page:

Option 2: The Alternate Payee or their estate shall receive from MSRS a portion of all future payments from the Participant's MSRS 401(a) account(s). The amount payable to the Alternate Payee shall be [number] percent of the marital portion. The Alternate Payee's benefit shall be calculated using the high-five average monthly salary at the time of the Participant's retirement. The Alternate Payee shall be named 100% Joint-and-Survivor for only the portion of the MSRS benefit payable to the Alternate Payee.

The Participant is hereby prohibited from applying for a refund of the accumulated contributions unless both parties agree to a refund and provide written agreement with notarized signatures. A refund forfeits the right to a monthly benefit for all parties.

Assignment of benefits and account structure (10b)

Participant is receiving a monthly retirement benefit from MSRS.

This section is critical because the terms of the division are detailed. The benefit awarded can be a percentage or a dollar amount.

10b. Minn. Stat. §518.58, Subd 3 - There is no liquid or readily liquidated marital property sufficient to offset the value of Participant's MSRS 401(a) benefits, therefore this Order divides the Participant's future MSRS 401(a) benefits. This Order recognizes the Alternate Payee's right to receive a portion of the Participant's MSRS 401(a) plan(s). *[insert option 1 or 2.]*

Option 1: The Alternate Payee shall receive from MSRS a portion of all future payments from the Participant's MSRS 401(a) account(s). The amount payable to the Alternate Payee shall be \$[number] or [number] percent of the current monthly benefit.

If the Alternate Payee predeceases the Participant, payment shall revert to the Participant. The benefit chosen by the Participant at retirement remains in force. *[insert option a, b, or c.]*

a) If the Participant predeceases the Alternate Payee and the Participant elected the Single-Life option at retirement, payments end upon the Participant's death.

b) If the Participant predeceases the Alternate Payee and the Participant elected the Joint-and-Survivor option at retirement, the Alternate Payee's portion is determined by the Joint-and-Survivor option elected by the Participant.

c) If the Participant predeceases the Alternate Payee and the Participant elected the Life Income-15 Year Certain option at retirement, payments end upon death of the Participant or 15 years, whichever is later.

-OR-

Option 2: The Joint-and-Survivor option elected at retirement is hereby revoked. The former spouse is removed as the survivor. The benefit will convert to a Single-Life benefit for the Participant effective the first possible payment after receipt of the final order at MSRS. There is no benefit payable to the Alternate Payee.

11. This Order is not intended, and shall not be construed in such a manner as to require MSRS to pay more than is payable under the terms and time period of the 401(a) plan(s); to pay any type of benefit not available under 401(a) plan(s); to assign any benefits or payments previously required to be paid to another Alternate Payee; or to require any payment or option inconsistent with any federal or state law, rule, regulation, or judicial decision.

Limitations on order (11)

Ensures that the Order will be administered consistently with federal and state law and the terms of the Plan.

12. The Participant and the Alternate Payee shall be responsible for paying federal and state income tax on their respective payments.

13. In the event that MSRS pays to the Participant or the Alternate Payee any payment or benefit that is assigned to the other party, the party receiving the errant payment shall reimburse the other party within ten days of receipt of the errant payment.

Errant payments (13)

Explains how an errant payment will be handled.

14. The Court retains jurisdiction over this matter to amend this Order and to enter such further orders as are necessary to enforce the assignment of the Participant's MSRS 401(a) Plan(s) to the Alternate Payee as set forth herein.

Court jurisdiction (14)

Explains that the Court retains jurisdiction over the domestic relations order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____

[Name of Judge]

JUDGE OF DISTRICT COURT

Each party's birth record and Social Security number must be provided separate from the order.

MSRS Unclassified Retirement Plan

During a marriage dissolution proceeding, the court may decide to divide the assets of the MSRS Unclassified Retirement Plan, which is a 401(a) defined contribution plan.

MSRS also administers multiple defined benefit 401(a) retirement plans, including the General Employees Retirement Plan. Depending on years of service and date the Unclassified Retirement Plan appointment began, a participant in the Unclassified Retirement Plan may be able to convert to the General Employees Retirement Plan (for more information, see page 20).

MSRS will provide the participant or others (provided they meet the criteria in Minn. Stat. 356.49) with a projection of the retirement benefit and current refund amount. A court-appointed actuary - hired and paid for by the parties of a divorce - may evaluate retirement benefits and calculate the present value based on the MSRS projection. MSRS does not calculate the present value.

If the court determines there are not enough liquid assets to divide the marital property equitably, it may order that future retirement payments be divided. If the participant is still working at the time of the divorce, the divorce decree may include the formula for determining the percentage.

DOMESTIC RELATIONS ORDER	
A certified copy of the judgment and decree or domestic relations order (DRO) must be submitted to MSRS.	<div>▶ <i>If MSRS is provided with an acceptable judgment and decree, that MSRS can administer, a separate DRO may not be required.</i></div>

OUT-OF-STATE ORDERS	
MSRS requires a certified copy of the original out-of-state court order and documentation from a district court that the order was filed in Minnesota.	

Dividing the Unclassified Retirement Plan Account

The court may award either a percentage or dollar amount of the participant's Unclassified Plan account to be transferred and deposited into an Unclassified Plan account for the alternate payee. Investment gains or losses from the date of division to the date of transfer are pro-rated between the participant and the alternate payee. If the order does not specify a division date, or whether investment gains or losses should be included in the calculation of benefits awarded to the alternate payee, the awarded dollar amount will be transferred with no investment gains or losses included.

Designating a beneficiary

Upon divorce, MSRS is required by Minn. Stat. §524.2-804 to remove a beneficiary designation naming a former spouse. The participant's other beneficiary designations remain valid. To re-designate a former spouse or name new beneficiaries after a divorce, the *Beneficiary Designation* form must be completed and returned to MSRS. Keep in mind, the court may require the participant to reinstate the former spouse as a beneficiary.

Alternate Payee's rights

Following the receipt of a final acceptable Judgment and Decree or DRO, a new account will be set up for the alternate payee.

The alternate payee will receive quarterly statements to update them on the status of their Unclassified Retirement Plan. In addition, they have many of the same rights of the account in their name as the participant.

The alternate payee can:

- Modify the account investment allocation
- Request a full withdrawal or roll the account balance to another qualified retirement plan
- Designate a beneficiary

Important! Please review *Important plan provision for Unclassified Plan participants* on page 21 to learn how the participant's right to convert to the General Employees Retirement Plan could impact the alternate payee.

Marriage dissolution after participant has retired

When a marriage dissolution occurs after the participant has retired, a percentage or dollar amount of the participant's account balance or monthly benefit can be awarded to the former spouse. The benefit option elected at retirement can be revoked only if the payment will not be split between the parties.

MSRS 401 (a) PLANS

MSRS 401(a) plans—including the Unclassified Retirement Plan—are exempt from QDRO and ERISA rules.

Converting from Unclassified Plan to General Employees Retirement Plan

Important plan provision for Unclassified Plan participants

Depending on date of hire, some Unclassified Retirement Plan participants are eligible to convert to the General Employees Retirement Plan (General Plan), which is a defined benefit (traditional) pension plan. Under the General Plan the monthly benefit is based on years of service, salary, and age, rather than the balance in the account.

Please Note:

Elected officials including legislators, judges and constitutional officers are not allowed to convert to the General Plan.

First hired to a position covered by the Unclassified Plan before July 1, 2010	First hired to a position covered by the Unclassified Plan on or after July 1, 2010
Participant may convert to the General Plan within the first year covered under the Unclassified Plan -OR- Any time after the participant has ten years of service covered by the General Plan and/or the Unclassified Plan. The conversion must be made within 30 days of terminating State service.	Participant may convert to the General Plan any time in the first seven years of service. If participant terminates before seven years of service is earned, they have 30 days after termination to elect coverage under the General Plan.

If the plan participant converts from the Unclassified Plan to the General Plan:

- all rights to participate in the Unclassified Plan are forfeited by both the participant and the alternate payee.
- the alternate payee's Unclassified Plan account is converted to the participant's General Plan account (assuming the alternate payee has not withdrawn their portion of the Unclassified Retirement funds).
- the alternate payee cannot receive payment from the General Plan account until the participant applies for their monthly retirement benefit.
- once the Unclassified Plan has been converted to the General Plan, the alternate payee no longer has the option to take a lump-sum payment. Instead, the alternate payee will receive a lifetime monthly benefit at the time the participant applies for retirement.

If the alternate payee liquidates their Unclassified Plan account balance prior to the date the plan participant converts to the General Plan:

- the service credit attributed to the value of the amount withdrawn cannot be included in the General Plan benefit calculation, therefore, the participant will receive a lower monthly retirement benefit. The service credit does, however, apply toward vesting credit and Rule of 90.
- the alternate payee forfeits all future rights to a retirement benefit.

Court order should specify terms of Unclassified Retirement Plan The court order must include language specifying how the benefits should be divided if the participant is eligible, or becomes eligible, to convert to the General Plan. Before dividing Unclassified Plan assets, it is important that all parties of a marriage dissolution understand their rights. We recommend that the participant contact MSRS to discuss this provision further.

Divorce Checklist – MSRS Unclassified Retirement Plan

The following checklist should assist all parties of a marriage dissolution in addressing the MSRS Unclassified Plan during a divorce proceeding. This checklist may help prevent delays in the request for MSRS to divide the Unclassified Plan assets. Nothing contained in this checklist should be construed as tax, financial, or legal advice.

- ☐ **Review sample language.** Sample language that MSRS can administer has been included in this guide (see page 23). If MSRS is provided with a judgment and decree that includes acceptable direction for the division of Unclassified Retirement Plan assets, a separate DRO may not be required.
- ☐ **Draft the judgment and decree or the DRO, if any.** To learn what language may be incorporated into the decree or DRO, please refer to the *Sample Domestic Relations Order to Divide a MSRS Unclassified Retirement Plan Account* on page 23 of this handbook.
- ☐ **Prior to filing with the court, provide MSRS with a draft of the proposed judgment and decree and the DRO, if any.** It is critical that MSRS review the draft prior to filing with the court to ensure that MSRS is able to administer the provisions of the order. If MSRS is unable to administer the DRO as written, it may be necessary to return to court for clarification.
- ☐ **After filing with the court, provide MSRS with a certified copy of the final judgment and decree or the DRO, if any.** The MSRS Unclassified Retirement Plan assets cannot be divided until MSRS has the final court document. To learn more, see *Alternate Payee's rights* on page 20.
- ☐ **Provide MSRS with each party's Social Security number and birth record.** This must be separate from the order.

OUT-OF-STATE ORDERS

MSRS requires a certified copy of the original out-of-state court order and documentation from a district court that the order was filed in Minnesota.

Sample Domestic Relations Order to Divide a MSRS Unclassified Retirement Plan Account

Below is a sample domestic relations order (DRO) for MSRS Unclassified Plan accounts. This sample should be used in conjunction with an attorney's advice. Nothing contained in this sample shall be construed as tax, financial, or legal advice. The applicable sample provisions and the terms of the order will vary in each case, but the information summarized in each box should be included. Please submit a draft of the DRO to Minnesota State Retirement System (MSRS) for review prior to filing with the court.

The Minnesota state courts generally use a format such as this for a domestic relations order issued in addition to the Judgment and Decree.

Introduction (1-2)

This section identifies the date of the hearing or motion for the domestic relations order, the date of the divorce decree, and the basis for the Court's order.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF (County where the [Number] JUDICIAL DISTRICT order will be filed)

In Re the Marriage of

[Name],

Court File No. []
Hon. [Name of Judge]

Petitioner,

DOMESTIC RELATIONS ORDER
Unclassified Retirement Plan

and

[Name],

Respondent.

1. The above matter came before the undersigned on [date]. Based upon all the files, records and proceedings herein, the Court makes the following Order:
2. The Judgment and Decree ("Decree") of dissolution in this matter was entered on [month, day, year].

3. This Order applies to the Minnesota State Retirement System Unclassified Retirement Plan ("Unclassified Plan") or corresponding General Employees Retirement Plan ("General Plan"), if elected, administered by the Minnesota State Retirement System ("MSRS").
4. [Petitioner or Respondent] (hereinafter "Participant") has an Unclassified Plan account.
5. The Decree requires a transfer of a portion of the Participant's Unclassified Plan account to [Petitioner or Respondent] (hereinafter "Alternate Payee") pursuant to a Domestic Relations Order.
6. The Participant's current address is [] and [his/her] date of birth is [].
7. The Alternate Payee's current address is [] and [his/her] date of birth is [].
8. The parties were married on [date] and have mutually agreed upon [date] as the end date of the marriage for the purpose of calculating the marital portion.
9. The Participant and the Alternate Payee must notify MSRS, 60 Empire Drive, Suite 300, St. Paul, MN 55103-3000, of any change of address.

Identifying information (3-9)

This section identifies which account administered by MSRS is to be divided by the court order. If there are multiple MSRS plans to be divided, separate language is required for each plan. This section also identifies the Participant and the Alternate Payee and requires them to keep a current address on file with MSRS.

NOTE: Due to recordkeeper changes, MSRS only has access to quarter-end balances for the MNDCP, Unclassified Plan and HCSP accounts prior to July 1, 2009. The order must specify a quarter-end division date after June 30, 1999, because MSRS cannot determine investment gains or losses before that date.

10. Minn. Stat. §518.58, Subd 3 - There is no liquid or readily liquidated marital property sufficient to offset the value of the Participant's Unclassified Plan benefits. This Order recognizes the Alternate Payee's right to receive a portion of the Participant's Unclassified Plan and assigns to the Alternate Payee an amount equal to **[insert option 1 or 2.]**

Option 1: [number] percent of the value of the Unclassified Plan account as of [date] shall be transferred and deposited into the Alternate Payee's account. The total account balance shall not include any contributions to the Plan that occur after the date of division. Any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the Participant and the Alternate Payee.

-OR-

Option 2: \$ [dollar amount] of the value of the Unclassified Plan account as of [date] shall be transferred and deposited into the Alternate Payee's account. The total account balance shall not include any contributions to the Plan that occur after the date of division. Any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the Participant and the Alternate Payee

-OR-

Option 3: \$ [dollar amount] of the Participant's total Unclassified Plan account balance. The total account balance includes all money types and shall not include any contributions, gains or losses to the Plan that occur.

Assignment of benefits and account structure (10)

This section is critical because the terms of the division are detailed. The benefit awarded can be a percentage or a dollar amount. If the award specifies a division date, any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the two parties. If no division date is specified, the awarded dollar amount will be transferred with no investment gains or losses.

NOTE: If the participant has other MSRS retirement plan, the order must address division of those accounts separately.

Each party's birth record and Social Security number must be provided separate from the order.

Converting to the General Employees Retirement Plan (11)

This section explains how the benefit is impacted if the Participant invests in the Unclassified Retirement Plan to the General Employees Retirement Plan.

NOTE: This option is only available within the first seven years of State service (if first hired on or after July 1, 2010) or after ten years of State service (if first hired before July 1, 2010).

NOTE: Even if the participant is not currently eligible to convert to the General Plan, the language in sections 11 and 12 must be included in case the participant later becomes eligible to convert to the General Plan.

Assignment of benefits and account structure if Participant converts to the General Plan (12)

This section explains the terms of the division if the Participant invests in the Unclassified Plan to the General Employees Retirement Plan. The benefit awarded can be a percentage or a dollar amount.

NOTE: By default, the high-five salary that will be used to calculate the Alternate Payee's benefit will be based upon the participants high-five salary at retirement. Alternatively, the high-five salary that could be used to calculate the Alternate Payee's benefit could be based on the marital period, if the participant has five or more years of service credit and it is stated in the decree.

11. Under the terms of the Unclassified Plan, the Participant may have the option to convert to the General Plan.

Upon the Participant's termination from state employment, if the Participant does not choose General Plan coverage, the Participant and the Alternate Payee shall have all the rights and options available from MSRS as provided in Minn. Stat. §352D.05, including but limited to, a lifetime benefit or refund of the account balance.

Should the Participant elect General Plan coverage, all rights to participate in the Unclassified Plan shall be forfeited by both parties and the separate account established for the Alternate Payee shall be merged with Participant's account.

Once the Unclassified Plan has been converted to the General Plan, the alternate payee no longer has the option to take a lump-sum payment. Instead they will receive a lifetime monthly benefit at the time the participant applies for retirement.

Should the Alternate Payee liquidate their Unclassified Plan account balance prior to the date the Participant converts to the General Plan, the service credit attributed to the value of the amount withdrawn will be forfeited. Therefore, the Participant will receive a lower monthly retirement benefit. The Alternate Payee forfeits all future rights to a retirement benefit.

12. Minn. Stat. §518.58, Subd 3 - There is no liquid or readily liquidated marital property sufficient to offset the value of the Participant's General Plan benefits, therefore this order divides the Participant's future General Plan benefits. [insert option 1 or 2.]

Option 1: The Alternate Payee shall receive from MSRS a portion of all future payments from the Participant's retirement account(s). The amount payable to the Alternate Payee shall be [number] percent of the marital portion. The Alternate Payee's benefit shall be calculated using the high-five average monthly salary at the time of the Participant's retirement. If the Alternate Payee predeceases the Participant, payment shall revert to a Single-Life benefit for the Participant. The Alternate Payee shall be named 100% Joint-and-Survivor for only the portion of the MSRS benefit payable to the Alternate Payee.

-OR-

Option 2: The Alternate Payee or their estate shall receive from MSRS a portion of all future payments from the Participant's retirement account(s). The amount payable to the Alternate Payee shall be [number] percent of the marital portion. The Alternate Payee's benefit shall be calculated using the high-five average monthly salary at the time of the Participant's retirement. The Alternate Payee shall be named 100% Joint-and-Survivor for only the portion of the MSRS benefit payable to the Alternate Payee.

13. The Participant is hereby prohibited from applying for a refund of the accumulated MSRS contributions unless both parties agree to a refund and provide written agreement with notarized signatures. A refund forfeits the right to a monthly benefit for all parties.

14. This Order is not intended, and shall not be construed in such a manner as to require MSRS to pay more than is payable under the terms and time period of the 401(a) plan; to pay any type of benefit not available under 401(a) plan; to assign any benefits or payments previously required to be paid to another Alternate Payee; or to require any payment or option inconsistent with any federal or state law, rule, regulation, or judicial decision.

15. The Participant and the Alternate Payee shall be responsible for paying federal and state income tax on their respective payments.

16. In the event that MSRS pays to the Participant or the Alternate Payee any payment or benefit that is assigned to the other party, the party receiving the errant payment shall reimburse the other party within ten days of receipt of the errant payment.

17. The Court retains jurisdiction over this matter to amend this Order and to enter such further orders as are necessary to enforce the assignment of the Participant's MSRS Unclassified Retirement Plan to the Alternate Payee as set forth herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____

[Name of Judge]

JUDGE OF DISTRICT COURT

NOTE: The 100% Joint-and-Survivor option provides a reduced lifetime retirement benefit to the Alternate Payee but does not affect the amount paid to the Participant. Without this option, the Alternate Payee's monthly benefit ends upon the Participant's death. The Participant is free to name another individual as the Joint-and-Survivor for the portion payable to the Participant.

Limitations on order (14)

Ensures that the Order will be administered consistently with federal and state law and the terms of the Plan.

Errant payments (16)

Explains how an errant payment will be handled.

Court jurisdiction (17)

Explains that the Court retains jurisdiction over the domestic relations order.

Minnesota Deferred Compensation Plan (MNDCP)

During a marriage dissolution proceeding, the court may decide to divide the assets of the Minnesota Deferred Compensation Plan (MNDCP) account between the parties. Minnesota State Retirement System (MSRS) will provide the value of the MNDCP account to the court, the parties to a marriage dissolution, their attorneys, and an appointed actuary, upon receipt of a written request pursuant to Minn. Stat. §356.49.

A certified copy of the judgment and decree or domestic relations order (DRO) must be submitted to MSRS. If MSRS is provided with an acceptable judgment and decree, a separate DRO may not be required.

Designating a beneficiary

Upon divorce, MSRS is required by Minn. Stat. §524.2-804 to remove a beneficiary designation naming a former spouse and by the MNDCP Plan document to remove other beneficiaries. To re-designate a former spouse or other beneficiary(ies) after a divorce, the *Beneficiary Designation* form must be completed and returned to MSRS. Keep in mind, the court may require the participant to reinstate the former spouse as a beneficiary.

Transferring MNDCP assets to the Alternate Payee

If the court order is acceptable, a portion of the MNDCP account will be transferred to a new account established solely for the Alternate Payee (former spouse). The MNDCP account can be split after the participant has received withdrawals from the account.

A new account will be created even if the alternate payee already has an MNDCP account. Upon receipt by MSRS of an acceptable order, the Alternate Payee's account will be established within four weeks.

The amount transferred to the alternate payee's account is determined by:

- instructions in the divorce decree or DRO;
- the effective date of the division; and
- investment gains or losses in the account since the effective date of the division. Investment gains or losses from the date of division to the date of transfer shall be pro-rated between the participant and alternate payee.

Alternate Payee's rights

Following the division of the MNDCP plan assets, the alternate payee can:

- modify the account investment allocation.
- designate a beneficiary.
- request withdrawals of the assets transferred to an account in their name. Please note: If the alternate payee is currently employed by a Minnesota public employer and has their own MNDCP account, until they terminate employment, they can only access the account balance attributed to the marriage dissolution.

Divorce Checklist - MNDCP

The following checklist should assist all parties of a marriage dissolution in addressing the MNDCP account during a divorce proceeding. This checklist may help prevent delays in the request for MSRS to divide the MNDCP assets. Nothing contained in this checklist should be construed as tax, financial, or legal advice.

- ☐ **Review sample language.** Sample language that MSRS administers is included in this publication (see page 29). If MSRS is provided with a judgment and decree that includes acceptable direction for the division of MNDCP assets, a separate DRO may not be required.
- ☐ **Draft the judgment and decree or the DRO, if any.** To learn what language may be incorporated into the decree or DRO, please refer to the *Sample Domestic Relations Order to Divide a Minnesota Deferred Compensation Account* on page 29 of this handbook.
- ☐ **Prior to filing with the court, provide MSRS with a draft of the proposed judgment and decree and the DRO, if any.** It is critical that MSRS review the draft prior to filing with the court to ensure that MSRS is able to administer the provisions of the order. If MSRS is unable to administer the DRO as written, it may be necessary to return to court for clarification.
- ☐ **After filing with the court, provide MSRS with a certified copy of the final judgment and decree or the DRO, if any.** The MNDCP assets cannot be divided until MSRS has the final court document. To learn more, see *Transferring MNDCP assets to the Alternate Payee* on page 27.
- ☐ **Provide MSRS with each party's Social Security number.** This must be separate from the order.
- ☐ **Complete a *Beneficiary Designation* form if your former spouse was one of your beneficiaries.**

OUT-OF-STATE ORDERS

MSRS requires a certified copy of the original out-of-state court order and documentation from a district court that the order was filed in Minnesota.

Sample Domestic Relations Order to Divide a Minnesota Deferred Compensation Plan Account

Below is a sample domestic relations order (DRO) for Minnesota Deferred Compensation Plan (MNDCP) accounts. This sample should be used in conjunction with an attorney's advice. Nothing contained in this sample shall be construed as tax, financial, or legal advice. The applicable sample provisions and the terms of the order will vary in each case, but the information summarized in each box should be included. Please submit a draft of the DRO to Minnesota State Retirement System (MSRS) for review prior to filing with the court.

The Minnesota state courts generally use a format such as this for a domestic relations order issued in addition to the Judgment and Decree.

Introduction (1-2)

This section identifies the date of the hearing or motion for the domestic relations order, the date of the divorce decree, and the basis for the Court's order.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF (County where the order will be filed) [Number] JUDICIAL DISTRICT

In Re the Marriage of

[Name],

Court File No. []
Hon. [Name of Judge]

Petitioner,

DOMESTIC RELATIONS ORDER
Minnesota Deferred Compensation Plan (MNDCP)

and

[Name],

Respondent.

1. The above matter came before the undersigned on [date]. Based upon all the files, records and proceedings herein, the Court makes the following Order:
2. The Judgment and Decree ("Decree") of dissolution in this matter was entered on [month, day, year].

3. This Order applies to the Minnesota Deferred Compensation Plan (“MND CP” or “Plan”) administered by the Minnesota State Retirement System (“MSRS”) pursuant to Minn. Stat. §352.96. The Plan is a defined contribution plan within the meaning of the Internal Revenue Code, 457(b).
4. [Petitioner or Respondent] (hereinafter “Participant”) has an MND CP account.
5. The Decree requires a transfer of a portion of the Participant’s MND CP account to [Petitioner or Respondent] (hereinafter “Alternate Payee”) pursuant to a Domestic Relations Order.
6. The Participant’s current address is [] and [his/her] date of birth is [].
7. The Alternate Payee’s current address is [] and [his/her] date of birth is [].
8. The Participant and the Alternate Payee must notify MSRS, 60 Empire Drive, Suite 300, St. Paul, MN 55103-3000, of any change of address.

Identifying information (3-8)

This section identifies which MSRS account is to be divided by the court order. If there are multiple MSRS plans to be divided, separate language is required for each plan. This section also identifies the Participant and the Alternate Payee and requires them to keep a current address on file with MSRS.

9. This Order assigns to the Alternate Payee an amount equal to [insert option 1, 2, or 3.]

Option 1: [number] percent of the Participant’s total MND CP account balance as of [date], which is the date of division. The total MND CP account balance includes all money types (pre-tax, Roth, and rollover) and shall not include any contributions to the Plan that occur after the date of division. Any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the Participant and the Alternate Payee.

-OR-

Option 2: \$ [dollar amount] of the Participant’s total MND CP account balance as of [date], which is the date of division. The total MND CP account balance includes all money types (pre-tax, Roth, and rollover) and shall not include any contributions to the Plan that occur after the date of division. Any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the Participant and the Alternate Payee.

-OR-

Option 3: \$ [dollar amount] of the Participant’s total MND CP account balance. The total MND CP account balance includes all money types (pre-tax, Roth, and rollover) and shall not include any contributions, gains or losses to the Plan that occur.

10. A separate MND CP account in the name of the Alternate Payee shall be established by MSRS. The amount or percentage specified in paragraph 9 shall be transferred and deposited into the Alternate Payee’s account using the same investment option percentages as the Participant’s account. If the MND CP funds are in the self-directed brokerage account (SDBA) and are subject to the division, the Participant will liquidate the SDBA funds required to satisfy the division and transfer the liquidated funds to the core MND CP funds.

Assignment of benefits and account structure (9-10)

This section is critical because the terms of the division are detailed. The benefit awarded can be a percentage or a dollar amount. If the award specifies a division date, any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the two parties. If no division date is specified, the awarded dollar amount will be transferred with no investment gains or losses.

NOTE: Due to recordkeeper changes, MSRS only has access to quarter-end balances for the MND CP, Unclassified Plan and HCSP accounts prior to July 1, 2009. The order must specify a quarter-end division date after June 30, 1999, because MSRS cannot determine investment gains or losses before that date.

Each party’s birth record and Social Security number must be provided separate from the order.

Alternate Payee (11-13)

Explains the Alternate Payee's rights and responsibilities.

11. The Alternate Payee shall have control over the investment allocation of their MNDCP account, once established.
12. The Alternate Payee may elect any option available under the MNDCP for withdrawal or transfer of funds in their MNDCP account, once established.
13. The Alternate Payee shall be responsible for any applicable taxes on distributions from the Alternate Payee's MNDCP account.

Beneficiary designation, benefits after death (14-16)

Inform the Participant and the Alternate Payee that they are able to name the beneficiary of their respective accounts, unless the court specifies otherwise. Also specifies what occurs upon the death of the Participant and Alternate Payee.

14. The Alternate Payee may designate a beneficiary of their MNDCP account in accordance with the terms of the Plan.
15. In the event of the Alternate Payee's death prior to receiving the full amount assigned under the Order, the remaining amount shall be paid to the Alternate Payee's beneficiary(ies) as designated to MSRS, or, in the absence of a beneficiary designation, in accordance with the terms of the Plan.
16. Should the Participant predecease the Alternate Payee, the Participant's death shall in no way affect the Alternate Payee's right to the portion of the MNDCP account as ordered herein.

Limitations on order (17)

Ensures that the Order will be administered consistently with federal and state law and the terms of the Plan.

17. This Order is not intended, and shall not be construed in such a manner as to require the Plan to provide any type or form of benefits or any option not otherwise provided under the Plan; to pay more than the amount payable under the terms of the Plan; to assign any benefits or payments previously required to be paid to another alternate payee; or to require any payment or option inconsistent with any federal or state law, rule, regulation, or judicial decision.

Errant payments (18)

Explains how an errant payment will be handled.

18. In the event that the Plan pays to one party any payment or benefit that is assigned to the other party, the party receiving the errant payment shall reimburse the other party within ten days of receipt of the errant payment.

NOTE: If the participant has other MSRS retirement plan, the order must address division of those accounts separately.

19. The Court retains jurisdiction over this matter to amend this Order and to enter such further orders as are necessary to enforce the assignment of the Participant's MNDCP account to the Alternate Payee as set forth herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____

[Name of Judge]

JUDGE OF DISTRICT COURT

Court jurisdiction (19)

Explains that the Court retains jurisdiction over the domestic relations order.

Health Care Savings Plan (HCSP)

During a marriage dissolution proceeding, the court may decide to divide the assets of the Health Care Savings Plan (HCSP) account between the parties. Minnesota State Retirement System (MSRS) will provide the value of the HCSP account to the court, the parties to a marriage dissolution, their attorneys, and an appointed actuary upon receipt of a written request pursuant to Minn. Stat. §356.49.

A certified copy of the judgment and decree or domestic relations order (DRO) must be submitted to MSRS. If MSRS is provided with an acceptable judgment and decree, a separate DRO may not be required.

Transferring HCSP assets to the Alternate Payee

If the court order is acceptable, a portion of the HCSP account will be transferred to a new account established solely for the Alternate Payee (former spouse). The HCSP account can be split after the participant has received reimbursements from the account.

A new account will be created for the alternate payee. Upon receipt by MSRS of an acceptable order, the alternate payee's account will be established within four weeks. If the Alternate Payee already has an existing HCSP account, their portion of the split will be transferred to the existing account.

The amount transferred to the Alternate Payee's account is determined by:

- instructions in the divorce decree or DRO;
- the effective date of the division; and
- investment gains or losses in the account since the effective date of the division. Investment gains or losses from the date of division to the date of transfer shall be pro-rated between the participant and alternate payee.

Alternate Payee's rights

Following the division of the HCSP assets, the alternate payee can:

- modify the account investment allocation.
- designate a beneficiary (for more details, see the next section, *Assignment of account balance upon death*).
- request reimbursements of eligible medical expenses incurred since the date of division specified in the order.

Assignment of account balance upon death

Following the death of an HCSP participant or alternate payee, the account is assigned:

- To the surviving spouse, to be used for tax-free reimbursement of health care-related expenses.
- If no spouse, then to the participant or alternate payee's legal tax dependents to be used for tax-free reimbursement of health care-related expenses.
- If no spouse or legal tax dependents, then to the designated beneficiaries. Reimbursements to a designated beneficiary are subject to federal and state income tax.
- If no spouse, legal tax dependents, or designated beneficiary, then the personal representative of the estate must identify individual(s) who will receive the account balance in the form of reimbursements. The estate must be probated and individual(s) designated as the owner of the account.

Divorce Checklist - HCSP

The following checklist should assist all parties of a marriage dissolution in addressing the HCSP account during a divorce proceeding. This checklist may help prevent delays in the request for MSRS to divide the HCSP assets. Nothing contained in this checklist should be construed as tax, financial, or legal advice.

- ☐ **Review sample language.** Sample language that MSRS can administer is included in this publication (see page 35). If MSRS is provided with a judgment and decree that includes acceptable direction for the division of HCSP assets, a separate DRO may not be required.
- ☐ **Draft the judgment and decree or the DRO, if any.** To learn what language may be incorporated into the decree or DRO, please refer to the *Sample Domestic Relations Order to Divide a Health Care Savings Plan Account* on page 35 of this handbook.
- ☐ **Prior to filing with the court, provide MSRS with a draft of the proposed judgment and decree and the DRO, if any.** It is critical that MSRS review the draft prior to filing with the court to ensure that MSRS is able to administer the provisions of the order. If MSRS is unable to administer the DRO as written, it may be necessary to return to court for clarification.
- ☐ **After filing with the court, provide MSRS with a certified copy of the final judgment and decree or the DRO, if any.** The HCSP assets cannot be divided until MSRS has the final court document. To learn more, see *Transferring HCSP assets to the Alternate Payee* on page 33.
- ☐ **Provide MSRS with each party's Social Security number.** This must be separate from the order.
- ☐ **Complete a *Beneficiary Designation* form if your former spouse was one of your beneficiaries.**

Sample Domestic Relations Order to Divide a Health Care Savings Plan Account

Below is a sample domestic relations order (DRO) for Health Care Savings Plan (HCSP) accounts. This sample should be used in conjunction with an attorney's advice. Nothing contained in this sample shall be construed as tax, financial, or legal advice. The applicable sample provisions and the terms of the order will vary in each case, but the information summarized in each box should be included. Please submit a draft of the DRO to Minnesota State Retirement System (MSRS) for review prior to filing with the court.

The Minnesota state courts generally use a format such as this for a domestic relations order issued in addition to the Judgment and Decree.

Introduction (1-2)

This section identifies the date of the hearing or motion for the domestic relations order, the date of the divorce decree, and the basis for the Court's order.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF (County where the order will be filed) [Number] JUDICIAL DISTRICT

In Re the Marriage of

[Name],

Court File No. []
Hon. [Name of Judge]

Petitioner,

DOMESTIC RELATIONS ORDER
Health Care Savings Plan (HCSP)

and

[Name],

Respondent.

1. The above matter came before the undersigned on [date]. Based upon all the files, records and proceedings herein, the Court makes the following Order:
2. The Judgment and Decree ("Decree") of dissolution in this matter was entered on [month, day, year].

3. This Order applies to the Health Care Savings Plan (“HCSP” or “Plan”) administered by the Minnesota State Retirement System (“MSRS”).
4. [Petitioner or Respondent] (hereinafter “Participant”) has an HCSP account.
5. The Decree requires a transfer of a portion of the Participant’s HCSP account to [Petitioner or Respondent] (hereinafter “Alternate Payee”) pursuant to a Domestic Relations Order.
6. The Participant’s current address is [] and [his/her] date of birth is [].
7. The Alternate Payee’s current address is [] and [his/her] date of birth is [].
8. The Participant and the Alternate Payee must notify MSRS, 60 Empire Drive, Suite 300, St. Paul, MN 55103-3000, of any change of address.

Identifying information (3-8)

This section identifies which MSRS account is to be divided by the court order. If there are multiple MSRS plans to be divided, separate language is required for each plan. This section also identifies the Participant and the Alternate Payee and requires them to keep a current address on file with MSRS.

9. This Order assigns to the Alternate Payee an amount equal to **[insert option 1, 2, or 3.]**

Option 1: [number] percent of the Participant’s total HCSP account balance as of [date], which is the date of division. The total HCSP account balance shall not include any contributions to the Plan that occur after the date of division. Any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the Participant and the Alternate Payee.

-OR-

Option 2: \$ [dollar amount] of the Participant’s total HCSP account balance as of [date], which is the date of division. The total HCSP account balance shall not include any contributions to the Plan that occur after the date of division. Any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the Participant and the Alternate Payee.

-OR-

Option 3: \$ [dollar amount] of Participant’s total HCSP account balance. The total HCSP account balance shall not include any contributions, gains or losses to the Plan.

10. A separate HCSP account in the name of the Alternate Payee shall be established by MSRS. The amount or percentage specified in paragraph 9 shall be transferred and deposited into the Alternate Payee’s account using the same investment option percentages as the Participant’s account.

Assignment of benefits and account structure (9-10)

This section is critical because the terms of the division are detailed. The benefit awarded can be a percentage or a dollar amount. If the award specifies a division date, any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the two parties. If no division date is specified, the awarded dollar amount will be transferred with no investment gains or losses.

NOTE: Due to recordkeeper changes, MSRS only has access to quarter-end balances for the MNDP, Unclassified Plan and HCSP accounts prior to July 1, 2009. The order must specify a quarter-end division date after June 30, 1999, because MSRS cannot determine investment gains or losses before that date.

Each party’s birth record and Social Security number must be provided separate from the order.

11. The Alternate Payee shall have control over the investment allocation of their HCSP account, once established.

Beneficiary designation (12)

Informs the Participant and the Alternate Payee that they are able to name the beneficiary of their respective accounts.

12. The Participant and Alternate Payee may designate a beneficiary of their respective HCSP accounts, but a current spouse or legal tax dependent will supersede a designated beneficiary.

Benefits after death (13-15)

Specifies what occurs upon the death of the Participant or Alternate Payee.

13. If the heir(s) of the Participant or Alternate Payee is a spouse or a legal dependent, the account balance is used for tax-free reimbursement of eligible medical expenses. If there is no spouse or legal dependent(s), the account is transferred to the designated beneficiary to be used for reimbursement of eligible medical expenses. Reimbursements to a designated beneficiary are taxed as ordinary income. The Alternate Payee or his/her heir(s) may receive reimbursement of eligible healthcare expenses once the final domestic relations order has been accepted by MSRS.
14. In the event of the Alternate Payee's death prior to receiving the full amount assigned under this Order, the remaining amount shall be paid to the Alternate Payee's beneficiary(ies) as designated to MSRS, or, in the absence of a beneficiary designation, in accordance with the terms of the Plan.
15. Should the Participant predecease the Alternate Payee, the Participant's death shall in no way affect the Alternate Payee's right to the portion of the HCSP account as ordered herein.

Limitations on order (16)

Ensures that the Order will be administered consistently with federal and state law and the terms of the Plan.

16. This Order is not intended, and shall not be construed in such a manner as to require the Plan to provide any type or form of benefits or any option not otherwise provided under the Plan; to pay more than the amount payable under the terms of the Plan; to assign any benefits or payments previously required to be paid to another alternate payee; or to require any payment or option inconsistent with any federal or state law, rule, regulation, or judicial decision.

Errant payments (17)

Explains how an errant payment will be handled.

17. In the event that the Plan pays to one party any payment or benefit that is assigned to the other party, the party receiving the errant payment shall reimburse the other party within ten days of receipt of the errant payment.

18. The Court retains jurisdiction over this matter to amend this Order and to enter such further orders as are necessary to enforce the assignment of the Participant's HCSP account to the Alternate Payee as set forth herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____

[Name of Judge]

JUDGE OF DISTRICT COURT

Court jurisdiction (18)

Explains that the Court retains jurisdiction over the domestic relations order.



Contact Us!



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