

**DOMESTIC RELATIONS ORDER GUIDELINES FOR AACO
ACTIVE PARTICIPANTS and RETIREES IN THE**

**EMPLOYEE'S
RETIREMENT PLAN**

**ANNE ARUNDEL COUNTY GOVERNMENT
GENERAL GUIDELINES AND SAMPLE MODEL ORDER TO ASSIST
WHEN CREATING DOMESTIC RELATIONS ORDER**

The purpose of the following information and Model Order is to make it easier for parties in a divorce to ensure that a Domestic Relations Order (DRO), also known as a Qualifying Court Order, will be qualified and accepted for processing by the Anne Arundel County Office of Personnel. **This information and the sample Model Order that follow are provided for informational purposes only and should not be taken as legal advice.** Anne Arundel County does not advise participants, former spouses (“Alternate Payee”), or attorneys how to draft an Order that best suits the wishes and intentions of the parties. That task is for the parties and/or their attorneys involved. **Please note parties are not required to use an attorney when preparing an Order.**

Before drafting an order, attorneys are advised to consult **Article 5** of the Anne Arundel County Code to review the Participants’ specific plan for which the order is being drafted, found online at:

<http://www.amlegal.com/library/md/annearundelco.shtml> , click on **FRAMES**, click on **Article 5 Pensions**, Review **Title 1 General Provisions** (pertains to all plans), then review the Participants’ specific plan, the **“EMPLOYEE’S RETIREMENT PLAN”**, for the order being drafted.

EXEMPTION FROM ERISA: As a government-sponsored plan, the County is exempt from Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”). A DRO that makes general or specific reference to ERISA, or the Internal Revenue Code, or indicates that an order is qualified under ERISA **will not be accepted**. Unlike ERISA plans, in the absence of an appropriate court order, a Participant may take any action with regard to his or her benefits without any notice or consent. Additionally, an Alternate Payee’s rights are entirely derivative of the Participants’ rights. To that end, under Anne Arundel County’s plans, an Alternate Payee may not elect beneficiaries or choose retirement options.

PLAN BENEFIT: A DRO must clearly identify the types of plan benefits that are to be divided by the court to be distributed by a plan. The law, procedures, and Model that follow provides some detail as to what constitutes a “plan benefit,” and are designed to give the most commonly used meaning to words most often encountered in DROs. However, with any number of courts tasked with dividing pension benefits, the procedures and this Model cannot address each type of benefit that may be available to a Participant in a plan. Therefore, as stated above, before drafting an Order, attorneys are advised to consult **Article 5 of the Anne Arundel County Code** to acquaint themselves with the various benefits that are available under the Participants’ specific plan.

BACKGROUND INFORMATION:

It is possible for a former spouse to receive a portion of a Participants' pension by submitting a court ordered Domestic Relations Order to the Office of Personnel. This Order, when approved by the County, would then become a Qualified Domestic Relations Order. Once approved by the County, the Office of Personnel is required to divide the pension of the Anne Arundel County Participant upon retirement as dictated in the Order. An Order should state if Alternate Payee will be entitled to future Cost of Living Adjustments (COLA), future plan increases, or any portion of Post-tax Contributions, if applicable.

ALTERNATE PAYEE BENEFIT END DATE: All benefits payable under a Court Order to an Alternate Payee will **end upon the Death of Participant or Death of Alternate Payee, whichever is first to occur**. If the Participant survives the Alternate Payee, the Alternate Payees' share will revert back to the Participant.

CONTINGENT ANNUITANT PAYMENTS: If a Court Order requires a Participant, **if eligible,** to elect a Contingent Annuitant option and name the Alternate Payee as their Contingent Annuitant, then **upon the Participant Death**, payments to the Alternate Payee under the court order will **end** and payments under the Contingent Annuity Option will **begin** to the named Contingent Annuitant for their lifetime, starting the first of the month, after the month of the Participant death.

When an Order requires the Participant to elect a Contingent Annuity Option, the Order must clearly state **which** Contingent Annuitant Option the Participant is required to take, either the 100%, 80%, 66 2/3% or 50%, and clearly state whether the costs associated with taking the Contingent Annuitant election will be applied to the Participant, to the Alternate Payee or will be shared equally by both parties.

BENEFICIARY: If the parties wish to have the Alternate Payee named as the Participants' beneficiary, this should be clearly stated in the Order. Upon the death of Participant, benefits will be paid in accordance with the Participants' specific Plan Rules.

MARITAL SHARE FORMULA: Under the Office of Personnel procedures, the Alternate Payees' share of a plan benefit may be expressed as **a fixed dollar amount, a fixed percentage, or an amount derived by using the following "Marital Share Fraction" formula that *clearly divides a plan benefit***. The regulations provide criteria for the acceptance of a formula to divide a plan benefit. Typically, parties use the following "Marital Share fraction" formula to divide the plan benefits earned during a marriage:

Total # of months of the marriage during which
Participant accrued credited service in the Plan
_____ = **Marital Share Fraction**

Total # of months of Participants' Credited
Service at retirement

Alternate Payee's share = **Marital Share Fraction (above)** x _____%

This formula is described in the Model as follows:

The Alternate Payee's share of the Participants' allowance is declared to be the marital share fraction multiplied by ____%. The marital share fraction is the following fraction: the numerator is the total number of months of the parties' marriage during which the Participant accumulated credited service in the Anne Arundel County Plan up through and including the date of the Judgment of Divorce, and the denominator is the total number of months of the Participants' credited service in the Anne Arundel County Plan.

*****457 Deferred Compensation Plan - Separate Order required:**

The County also provides Participants with the option to participate in the **457 Deferred Compensation Plan**, which is an optional retirement plan administered through T. Rowe Price. A separate order called a "**Conforming Equitable Distribution Order**" must be submitted if an Alternate Payee is to receive **any portion** of a Participants' 457 Deferred Compensation Plan.

COVER LETTER REQUIRED: A Cover Letter that includes the full names, addresses, dates of birth and social security numbers of all parties involved is required with your Order.

Once your Order and Cover Letter are prepared, please submit to the Office of Personnel for review. Please note for privacy purposes the dates of birth and social security numbers should be provided in the cover letter **only** and **not included anywhere within the Order itself**. Once the proposed Order is reviewed the Office of Personnel will respond in writing to advise if the Order is acceptable as submitted once properly signed by the courts or if not, we will outline the specific changes needed before the Order can be accepted by the County.

IMPORTANT INSTRUCTIONS FOR USING THE FOLLOWING MODEL ORDER

The following Model provides a basic format for use in preparing a DRO for an Anne Arundel County Defined Benefit Plan. Various alternatives for dividing benefits are offered. **THIS MODEL IS NOT INTENDED AS A CHECK-OFF FORM. ANY ALTERNATIVES THAT ARE NOT SELECTED BY THE PARTIES MUST BE REMOVED FROM THE DRO BEFORE SUBMISSION.** To prevent confusion in the administration of a DRO, the County will not accept a DRO that contains options that are not available under the Participants' specific Plan.

MODEL ORDER FOR INFORMATIONAL PURPOSES ONLY

_____ * IN
 THE
 Plaintiff *
 * CIRCUIT COURT
 v. *
 *
 FOR
 *

 Defendant *
 * Case No. _____
 * * * * * * * * * * * * *

DOMESTIC RELATIONS ORDER
(Anne Arundel County Employee’s Retirement Plan)

Upon consideration of the Judgment of Absolute Divorce entered in the above-captioned case, it is this _____ day of _____, _____, found and ordered as follows:

1. This Order relates to the disposition of certain benefits of full name of PARTICIPANT to be provided by the **Employee’s Retirement Plan**, (“the Plan” as used hereinafter).
2. The parties hereto were married on (enter DATE OF MARRIAGE), and this Order is entered incident to a final Judgment of Absolute Divorce entered on (enter DATE OF DIVORCE).
3. The **PARTICIPANT** is identified as follows:

Name:
 Address:
For security, the DOB and SSN provided in separate cover letter only, NOT in order.

4. The **ALTERNATE PAYEE** is identified as follows:

Name:
 Address:
For security, the DOB and SSN provided in separate cover letter only, NOT in order.

5. The **ADMINISTRATOR OF THE PLAN** is identified as follows:

Anne Arundel County, Personnel Officer/Plan Administrator
 2660 Riva Road, 1st Floor

6. To accommodate the marital property distribution between the parties IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. **Determination of Marital Property.** The PARTICIPANTS' interest acquired in the Plan during the marriage is marital property, including, but not limited to, any interest in his/her own contributions and any service or disability retirement benefits under the Plan, is marital property in accordance with Md. Code Ann. Family Law Article, §§ 8-201, et seq.

B. **Alternate Payee Benefit Share.** The ALTERNATE PAYEES' share of the PARTICIPANTS' retirement benefit is declared to be: **(Choose Alternative i., ii. or iii.)**

i. (\$ _____ dollar amount)

ii. (_____ percentage)

iii. (_____ percentage %) multiplied by the "marital share fraction." The "marital share fraction" is the following fraction: the numerator is the total number of months of the parties' marriage during which the PARTICIPANT accumulated credited service in the Plan, up to and including the date of Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANTS' credited service in the Plan.

C. **The ALTERNATE PAYEES'** share as so determined shall be (or shall not be) credited with a pro rata share of any cost of living increases, post-termination or post-retirement benefit increases and any ad hoc increases granted with respect to the PARTICIPANTS' accrued benefit.

D. Refund of Accumulated Contributions; Transfer Refund: If the PARTICIPANT elects to receive any refund of accumulated contributions, a transfer refund, or any other lump sum

distribution of a Plan Benefit not addressed elsewhere herein, the ALTERNATE PAYEES' share is declared to be: **(Choose Alternative i., ii. or iii.)**

i. (\$_____ dollar amount)

ii. (_____ percentage)

iii.(_____ percentage %) multiplied by the "marital share fraction," as defined in paragraph 6.B.

E. Method and timing of payment; restrictions: The Plan is hereby directed to make payments of the ALTERNATE PAYEES' share directly to the ALTERNATE PAYEE, as, if, and when, payments of PARTICIPANTS' Plan Benefit are made to PARTICIPANT, in any form selected by the PARTICIPANT that is permitted by the PARTICIPANT'S plan. The ALTERNATE PAYEES' share when combined with payments to others may not exceed the amount of the PARTICIPANTS' plan benefit. This Order does not require the Plan to provide any type or form of benefits or any option not otherwise provided under the Plan and does not require the payment of benefits to the ALTERNATE PAYEE that are required to be paid to another ALTERNATE PAYEE under another Order previously accepted by the Plan. The parties hereto intend that this Order comply with the applicable provisions of the Anne Arundel County Code and Plan and nothing in this Order shall require Anne Arundel County to pay any benefits not provided

under the Anne Arundel County Code or Plan.

F. Alternate Payee Payment End Date: Payments to ALTERNATE PAYEE will end with the Death of ALTERNATE PAYEE or Death of PARTICIPANT, whichever is the first to occur. If the PARTICIPANT survives the ALTERNATE PAYEE, the ALTERNATE PAYEES' share will revert back to PARTICIPANT.

G. Transfers: If the PARTICIPANT transfers from the PARTICIPANTS' plan to any other retirement or pension system ("transferee system") that is administered by Anne Arundel County and that gives credit for service under the PARTICIPANTS' plan, then this Order shall apply to any benefits provided by such transferee plan to the extent that such benefits are payable under the terms of the transferee system. Anne Arundel County is not liable to make further payments to the ALTERNATE PAYEE if the PARTICIPANT transfers to another retirement or pension system that is not administered by the County.

H. Obligations of ALTERNATE PAYEE: It is the obligation of the ALTERNATE PAYEE to promptly: (a) provide the Plan Administrator with a certified copy of this Order, and modifications or amendments hereto; (b) notify the Plan Administrator in writing of any change of name or address; and (c) comply with all reasonable requests from the Plan Administrator for information and documentation necessary for processing payment of all or any portion of a PARTICIPANTS' plan benefit to the ALTERNATE PAYEE.

I. Obligations of Participant – not obligations of Anne Arundel County: It is the obligation of the PARTICIPANT to promptly: (a) notify the Plan Administrator in writing of any change of name or address; and (b) comply with all reasonable requests from the Plan Administrator for information

and documentation necessary for processing payment of all or any portion of a PARTICIPANTS' plan benefit to the ALTERNATE PAYEE. Additionally, the PARTICIPANT is responsible for completing and submitting any applications or forms required by the Plan Administrator to effectuate any provision of this Order, including, but not limited to, any form required by the Plan Administrator to designate the ALTERNATE PAYEE as beneficiary. If the PARTICIPANT takes any action in contravention of any provision of this Order, including, but not

limited to, this Paragraph 6, the PARTICIPANT shall bear the sole and exclusive liability for such action, and not the County.

J. Tax consequences of payments: All payments to the ALTERNATE PAYEE by the County shall be includable in the taxable income of and taxable to the ALTERNATE PAYEE. After-tax contributions shall be allocated to the parties in the same proportion as the total amount of the ALTERNATE PAYEES' share is to the PARTICIPANTS' total plan benefit.

K. No requirement to retire: No provision of this Order shall be construed to require the PARTICIPANT to retire at any particular age or length of service.

7. This Court retains jurisdiction to amend this Order for the purpose of its acceptance and/or administration by the Plan Administrator or any transferee retirement system or to effectuate the terms of the parties' Settlement Agreement and/or Judgment of Divorce.

Judge
Circuit Court for _____

Consented as to form:

PARTICIPANT

ALTERNATE PAYEE

Attorney for Participant
(Address and telephone)

Attorney for Alternate Payee
(Address and telephone)

**When your Order is ready, does it clearly answer all of the following?
Does your Cover Letter contain all required information?**

Y	N	1.	Is Order properly titled, "Domestic Relations Order" or "Qualifying Court Order" (Cannot accept if wording is "Equitable....")
Y	N	2	Is Order through a state court relating to a domestic relations matter?
Y	N	3.	Is the order signed by the judge of the State court?
Y	N	4.	Does the Order identify by name the AACO Participant whose benefit will be divided?
Y	N	5.	Does the Order identify by name the Participant's correct AACO Plan this order will be applied to?
Y	N	6.	Does the Order identify by name the Alternate Payee(s) to whom benefits will be paid to?
Y	N	7.	Is the Alternate Payee named in Order a spouse (former or present), a child, or a dependent of the Participant?
Y	N	8.	Does the Order give the full names and addresses for both the Participant and Alternate Payee?
Y	N	9.	Does the Order state when benefits to Alternate Payee will begin? NOTE: Benefits from AACO to Alt Payee cannot begin earlier than Participant's earliest date eligible under their specific Plan.
Y	N	10.	Does the Order clearly state when benefits to Alt Payee will end? NOTE: If Order doesn't specify when payments to Alt Payee will end, it will be interpreted to mean payments stop upon death of participant or Alternate Payee, whichever is first to occur. If Participant survives Alternate Payee, the Alt Payee's share will revert back to Participant.
Y	N	11.	Does Order give the amount of Alternate Payee benefits to be paid, either as a dollar amount or as a percentage of the participant's benefit?
Y	N	12.	Is Participant's vested benefit sufficient to cover the amount that is required to be paid by terms of Order?
Y	N	13.	Is the form of payment to Alternate Payee one allowed under the terms of the Participant's Plan?
Y	N	14a.	Does Order require Participant to elect Alternate Payee as Contingent Annuitant? NOTE: Cannot pay Alternate Payee as " Joint & Survivor " and need wording in order changed to " Contingent Annuitant ". Order must clearly state: If at retirement Participant is not married and does not have minor children, Participant must elect Contingent Annuitant option and is required to name Alt Payee as Contingent Annuitant.

Y	N	14b.	If Participant must elect Alt Payee, if eligible, as Contingent Annuitant, does Order clearly state which C.A. percentage required? Is it the 50%, 66 2/3%, 80% or 100% required?
Y	N	14c.	If Alt Payee is named as Contingent Annuitant, who takes the reduction when Cont Ann. Benefit is calculated? Participant only? Alt Payee only? Both share equally in the reduction?
Y	N	15.	Does Order state the Participant must elect Alternate Payee as Beneficiary?
Y	N	16.	Does Order provide Alt Payee with future Cost-of-Living Adjustments?
Y	N	17.	COVER LETTER: Does your Cover Letter include the full names, addresses, SSNs and Dates of Birth for both Participant and Alternate Payee? NOTE: SSN & Dates of Birth in cover letter only, NOT in Order.

COMMENTS: _____
