



# Laborers Pension Trust Fund for Northern California

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## **INFORMATION FOR DRAFTING A QDRO DIVIDING COMMUNITY PROPERTY INTERESTS IN THE LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA**

### **WHEN THE PARTICIPANT HAS RETIRED**

The Pension Plan maintained by the Laborers Pension Trust Fund for Northern California is a defined benefit pension plan. Benefits accrue depending, first, on Benefit Units or employer contributions earned by the participant and when he earned them (which in turn depends primarily on hours of work reported by contributing employers) and, second, on the terms of the Plan at the time benefits become payable. See Sections 3.03.a. and 6.04 of the Pension Plan. Benefits are fully vested in the Plan in one step upon accrual of 10 Years of Credited Service without an intervening Permanent Break in Service. Benefits are not payable to the Participant until he satisfies the Plan's requirements for Retirement and makes suitable application for a pension. Benefits are payable solely in the form of monthly Pension or Death Benefits (unless the Actuarial Present Value of total benefits is \$3,500.00 or less).

The Pension Plan is governed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Retirement Equity Act of 1984 (REA). Section 206(d)(3) of ERISA as amended (United States Code, Title 29, Section 1056(d)(3)) provides that pension plans such as this may not pay benefits to any person other than the participant or his beneficiary except on the basis of a state domestic relations order that satisfies the requirements for a "qualified domestic relations order" (QDRO). Accordingly, if a former spouse of a participant wishes to have her community property share of pension benefits paid directly to her by the Fund when her share becomes payable, she must submit to the Fund a qualified domestic relations order. The requirements for such an order are set forth in subparagraphs (B), (C), and (D) of Section 206(d)(3) of ERISA, Section 1056(d)(3) of Title 29 of the United States Code. For an explanation of those requirements, see Hogoboom & King, California Practice Guide - Family Law, (Rutter, 1994) ¶¶ 8:1170 et seq.

The Pension Plan is a multiemployer plan and has important features distinguishing it from the usual forms of single employer plans. As a result, the sample QDROs published elsewhere and designed to fit single employer plans are largely unsuitable here. In their place we provide the following advice for drafting a QDRO dividing community property interests in the Pension Plan that will fit this Plan. This advice is designed for a QDRO that will be entered by the court after the participant has retired and begun receiving a pension.

- A. Specify the names and last known mailing addresses of the Participant and the Alternate Payee (participant's former spouse).
- B. Identify the Pension Plan as "the Pension Plan maintained by the Laborers Pension Trust Fund for Northern California," and specify that the Fund is to make payments of Alternate Payee's share directly to her.
- C. Adhere closely to the terms of the Plan. The order may not require the Plan to provide any type or form of benefit or option not otherwise provided under the plan.
- D. In defining the community property portion of the participant's accrued benefits in the Plan, take notice that the manner in which benefits are accrued under the Plan does not allow use of the usual "time rule" formula. See Hogoboom & King, California Practice Guide - Family Law, (Rutter, 1994) ¶¶ 8:1117 et seq. Instead, define the Alternate Payee's interest in the Pension Plan simply as "one-half of that portion of the participant's monthly pension benefit that accrued during the period between the date of marriage and the date of separation." Provide the dates of marriage and separation.
- E. In defining how the Alternate Payee's share will be calculated and paid, the following points should be observed:
  1. Since the Participant has already retired and begun receiving a pension from the Plan, the Alternate Payee may receive her share only subject to the terms of the pension awarded to the Participant.
  2. If Participant retired on a Disability Pension, (a) Alternate Payee's community property share will mature and become payable to her no earlier than the first day of the first month after the Participant reaches (or would have reached) earliest retirement age under the Plan for a non-disability pension, and (b) Alternate Payee's one-half community property share, as defined above, will be calculated as if the Participant has retired on that date on the largest non-disability pension for which the Participant would have been eligible.

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3. Since the Participant has already retired and begun receiving a pension, the order must specify the date from which the Fund shall begin paying Alternate Payee her share of that pension. Such date may not be prior to the first day of the first month after receipt of notice of the Alternate Payee's claim of interest and so could have begun withholding on her behalf.
  4. If the Alternate Payee seeks her share of benefits paid to Participant prior to the date specified above, the Fund will honor an agreement by the Participant to make additional withholding from future benefits and payment to Alternate Payee to satisfy the arrearage.
- F. If the Participant's pension provides survivorship or death benefits, the order may provide that "for the purpose of any survivorship or death benefits which may become payable under Participant's pension, Alternate Payee shall be treated as the surviving spouse of Participant to the extent of the community property portion of Participant's pension."
- G. The order should say whether the Alternate Payee shall share post-retirement benefit increases, using one of the following sentences:
1. Alternate Payee shall not share any post-retirement benefit increases or supplements that may have been or may be awarded to the participant; or
  2. Alternate Payee shall share pro rata only in those post-retirement benefit increases or supplements awarded to Participant that are or were calculated on the amount of the Participant's accrued or total monthly benefit", or
  3. Alternate Payee shall share pro rata in all post-retirement benefit increases or supplements awarded to the Participant.
- H. The order should not include any clause that conflicts with the provisions of ERISA, in particular subparagraphs (G) and (H) of section 206(d) (3), 29 U.S.C. § 1056(d)(3), which govern the plan administrator's fiduciary duties in handling QDROs and determining the qualified status of domestic relations orders.
- I. Once the order is determined to be a qualified order, the Alternate Payee's rights with respect to the Fund, e.g., of notice and remedies, will be the same as apply to any beneficiary under the Plan.

We recommend that you submit the proposed order to the Fund for its review before submitting it to the court for entry.

***The Fund will not stipulate to the terms of a QDRO. In accordance with the Retirement Equity Act, the Plan Administrator's designee will acknowledge the receipt of any duly entered domestic relations order and then make a determination whether or not the order is a qualified domestic relations order within the meaning of that Act. He will make the determination in accordance with his fiduciary responsibility under ERISA as amended by REA.***

The Plan Administrator for the Pension Plan is the Board of Trustees of the Pension Fund. The Board of Trustees has delegated to Mr. Edward J. Smith, the Secretary for the Fund, the responsibility to determine the qualified status of domestic relations order received by the Fund. He will make that determination with the advice of the plan's co-legal counsel, consultants, and administrators.

If you have further questions, they should be directed to the Fund office at 220 Campus Lane, Fairfield, CA 94534-1498, Telephone: (707) 864-2800 or Toll Free: 1-(800) 244-4530.



## **Procedures to Determine the Qualified Status of Domestic Relations Orders and to Administer Distributions Under Such Orders**

Pursuant to Section 206 (d) of ERISA as amended by the Retirement Equity Act of 1984, the Board of Trustees of the Laborers Pension Trust Fund for Northern California has adopted the following procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders:

1. In accordance with Section 1(c) of Article IV of the Trust Agreement, the Secretary of the Board of Trustees is designated to carry out the responsibilities of the Plan administrator specified in ERISA Section 206 (d) as amended.
2. Upon receipt of a domestic relations order, the Secretary shall promptly notify the Participant, the Alternate Payee named in the order and any other Alternate Payee of the receipt by the Plan of the order and the Plan's procedures for determining the qualified status of domestic relations orders. Such notice shall be sent by certified mail, return receipt requested, to each such person at the address included in the order, or if such no address is included, at any address the Secretary has reason to know independently of the order.
3. If the order is not based upon a stipulation, property settlement agreement or other evidence of concurrence in the order by the Participant, or an attorney on the Participant's behalf, a copy of the order shall be attached to the notice and the notice shall:
  - .. (a) Request the Participant or other Alternate Payee, if any, to advise the Secretary in writing within 60 days after receipt of the notice whether or not he or she disputes the qualified status of the order;
  - .. (b) Notify the Participant or other Alternate Payee, if any, that unless the Secretary is advised within such period that he or she disputes the qualified status of the order, and of specific reasons for such dispute, such status will be deemed admitted.
4. The notice to the Alternate Payee named in the order shall advise her or him that she or he may designate in writing a representative for receipt of notices that are sent to such Alternate Payee with respect to the order.
5. In any case covered by paragraphs 2 and 3, the Secretary may dispense with the procedures provided in those paragraphs if he is furnished with a statement signed by the Participant under penalty of perjury under the laws of the State of California certifying that the Participant has received a copy of the domestic relations order, that he has read and understands the provisions of the order relating to the Pension Plan maintained by the Fund and that he does not dispute the qualified status of the order under ERISA Section 206 (d) as amended. The Secretary may also accept the certificate of the Participant as supplying for the purposes of the order the address of the Participant and the Alternate Payee named in the order, if one or both of such addresses are omitted from the order, and in such circumstances the similarly executed certificate of such Alternate Payee as supplying the address of the Alternate Payee for the purposes of the order.
6. The Secretary shall promptly send copies of such notice or such statement, as the case may be, the order and any correspondence in connection therewith, a statement of the Accumulated Credited Service and Benefit Units of the Participant and any other documents bearing on the qualified status of the order to co-legal counsel for the Fund for review and opinion as to such qualified status.

7. After receipt of the order, the Secretary shall segregate in a separate account or in an escrow account any amount thereafter coming due which would have been payable to the Alternate Payee named in the order during the period of such segregation if the order had been determined to be a qualified domestic relations order. The segregated amount shall bear interest to the extent and at the rate provided under the rules and regulations applicable to the account.
8. After receiving the opinion of co-legal counsel and considering any responses of the Participant or other Alternate Payee to a notice given pursuant to paragraphs 2 and 3 above, the Secretary shall determine whether or not the order is a qualified domestic relations order as defined in ERISA Section 206 (d) as amended.
9. If the order is determined to be a qualified order, and if the Participant has furnished a statement pursuant to paragraph 5 or the Participant and any other Alternate Payee have advised the Secretary in writing that qualified status is not disputed, or have failed to respond to a notice given pursuant to paragraph 2 within the time limit specified in paragraph 3, the Secretary shall pay the segregated amounts (plus any interest thereon) to the person or persons entitled thereto.
10. If the order is determined to be a qualified order, and if the Secretary has been advised in writing within the time limit specified in paragraph 3 that the Participant or other Alternate Payee disputes such qualified status, the Secretary shall notify the person claiming that the order is not qualified of his determination and of the specific reasons therefor, and shall advise such person of his right to petition the Board for a review of such determination pursuant to Section 9.04 of the Pension Plan within 60 days after receipt of such notice. The Secretary shall continue to segregate the amounts designated in said order as payable to the Alternate Payee pending the resolution of the issue as to whether the order is a qualified order, or the expiration of 18 months from the receipt of the order by the Plan, whichever first occurs.
11. If the order is determined not to be a qualified order, the Secretary shall promptly notify the Participant, the Alternate Payee named in the order and any other Alternate Payee of such determination. The notice shall set forth in a manner calculated to be understood by the recipient (a) the specific reason or reasons for the determination; (b) specific reference to pertinent provisions of the law or of the Plan on which the determination is based; and (c) a description of any additional material, information or action necessary to enable the Alternate Payee named in the order to perfect the qualified status of the order and any explanation of why such material, information or action is necessary, and shall advise that if the Alternate Payee named in the order does not furnish the material or information or take the action necessary to perfect the order within 60 days after receipt of the notice, or within such reasonable period thereafter as the Secretary may allow, the Secretary shall pay the segregated amount (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.
12. After expiration of the period of time allowed for perfection of the order, or after expiration of 18 months from the receipt of the order by the Plan, whichever first occurs, the Secretary shall pay the segregated amount (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no such order.
13. Any payment made pursuant to these procedures shall be without prejudice to the right of the Secretary or the Board to segregate or withhold payments coming due subsequent to such payment if such action is determined by the Secretary or the Board to be necessary to protect the interests of the Fund.
14. The Secretary shall treat a domestic relations order entered before January 1, 1985 as a qualified domestic relations order if the Plan was paying benefits pursuant to such order on that date. After following the procedures specified above, the Secretary may treat any other domestic relations order entered prior to January 1, 1985 as a qualified domestic relations order even if such order does not meet the requirements of ERISA Section 206 (d) as amended.
15. The objective of these procedures is to minimize the costs and delay involved in implementing the provisions of Section 206 (d), consistent with the requirements of Part 4 of ERISA, and the Secretary and co-legal counsel are authorized to supplement or modify the procedures to accomplish this objective.