



## Domestic Relations Orders and the Annuity Plan

### OVERVIEW

Generally, retirement plan members (Member) are not permitted to assign or divide their retirement benefits to a third party. However, there is an exception when a Member goes through a dissolution of marriage (e.g., divorce). The benefits under the Annuity Plan for the United Church of Christ (Annuity Plan) are affected during this process.

This document is provided to Annuity Plan Members to assist them through the transition process during a dissolution of marriage. Retirement benefits may be divided only pursuant to a Domestic Relations Order (DRO) that conforms to the rules of the Annuity Plan and is qualified by the Pension Boards. An approved DRO allows payments to be made from a qualified retirement plan to an alternate payee in conjunction with a dissolution of marriage or other domestic relations proceeding and becomes a "Qualified" Domestic Relations Order (QDRO) upon approval by the Pension Boards.

### WHAT IS A DRO?

A DRO is a document prepared for filing with the court having jurisdiction over the divorce or dissolution proceeding that provides for the equitable distribution of benefits between the parties. It may be in the form of a judgment, decree, order, or marital property settlement issued under the state's domestic relations law where the proceeding is filed (including community property law).

### RESPONDING TO DRO INQUIRIES

The Annuity Plan is a "church plan" as defined by Section 414(e) of the Internal Revenue Code (IRC) and Section 3(33) of the Employee Retirement Income Security Act of 1974 (ERISA). Church plans are unique in that they are generally exempt from the requirements of ERISA, COBRA, and the requirements under IRC Section 414(p) relating to "Qualified Domestic Relations Orders" which are applicable to most commercial benefits plans. Please note that the Pension Boards is not required to follow a filed DRO if it does not comply with the Annuity Plan; therefore, it is very important to send a draft of the DRO to the Pension Boards for review PRIOR to having it filed with the court. The following procedures are used by the Pension Boards to review DROs.

The Annuity Plan defines a Spouse as "the person to whom the Member is married at the relevant time by a religious or civil ceremony effective under the laws of the state in which the marriage was contracted, including, a person legally separated but not under a decree of absolute divorce." On inquiry by a Member or prospective alternate payee (or their designated representatives) for relevant information regarding a domestic relations proceeding, the Pension Boards will:

- Confirm that the Member has benefits payable under the Annuity Plan.
- Provide the Member or the alternate payee with a copy of the model form DRO document and any Annuity Plan information relevant to drafting a DRO.
- Place a hold on the Member's account, pending resolution of the division of retirement benefits.

### CONFIDENTIALITY

The Pension Boards' confidentiality policies restrict its ability to disclose personal information of its Members to third parties. Generally, no information about a Member's benefits is released to anyone other than the Member without the Member's express written consent. An alternate payee will need to obtain a written, notarized consent from the Member to obtain information regarding the Member, such as account balance, last known address, or other confidential information.

### PLACING A HOLD ON THE MEMBER'S ACCOUNT

If the Pension Boards determines the order is valid, it will administer the DRO in accordance with its terms. If the Pension Boards determines the order not to be valid, the parties will be provided 18 months to obtain an amended order to qualify as a valid DRO, during which time a hold is placed on the Member's account. If the Pension Boards does not receive a valid DRO within the 18-month period, it will release the hold and the Member will have access to the account. A hold is only justified if the Pension Boards receives a notice from the Member, the alternate payee, or their designated representatives that:

- A QDRO is being sought.
- A DRO is imminent.
- The Member's interest in the Annuity Plan will be the source of payment under the DRO (if determined to be qualified by the Pension Boards).

In addition, a hold is placed on the Member's account if the Pension Boards receives the following from a Member or prospective alternate payee (or their designated representatives):

- A divorce decree filed with the court providing for the assignment of a portion of the Member's benefit to the alternate payee.
- A marital property settlement approved by the court providing for the assignment of a portion of the Member's benefit to the alternate payee.
- An order from a designated state child support agency providing for the assignment of a portion of the Member's benefit to the alternate payee.

- A court order directing the plan to prohibit the payment of benefits to the Member pending further order from the court.

A hold may also be justified if the Pension Boards receives reasonably sufficient information from either party or their designated representatives to establish that a domestic relations proceeding is being initiated and that the parties intend to prepare a DRO relating to the Member's benefits under the Annuity Plan. The hold will become effective as soon as administratively feasible after the Pension Boards receives notice, and has one of the following consequences:

- **Defined contribution plans.** When a hold is placed on a Member's account under a defined contribution plan (such as the Annuity Plan), the Pension Boards does not allow the Member to take a withdrawal or distribution from the Annuity Plan to the extent that such withdrawal or distribution may involve benefits in dispute under a pending DRO.
- **After entering pay status (receiving annuity payments).** When a hold is placed on a Member's account after the Member enters pay status (i.e., annuitizes), the Pension Boards restricts the Member from taking retirement benefits payable under the Annuity Plan until the resolution of the division of retirement benefits is complete.

#### REMOVING A HOLD ON THE PARTICIPANT'S ACCOUNT

As stated above, the Pension Boards will release the hold if it does not receive a DRO within the 18-month time frame and will notify each party that the hold on the Member's account will be released. If the hold is released due to inactivity, a QDRO may be pursued later.

The Pension Boards will release an administrative hold on receipt and review of any of the following:

- A court-certified copy of a court order (including a dissolution of marriage, final decree of divorce, or a property settlement agreement incorporated into such order) that clearly states that the alternate payee has waived spousal rights to benefits, and includes all other information required in a QDRO to the extent applicable (including, without limitation, enough information to determine the split of the benefits, whether earnings are included, and the duration of the payments to the alternate payee).
- An executed and notarized waiver of benefits from the alternate payee.
- A complete original or court-certified copy of a court order lifting any restriction pertaining to the division of benefits.
- A complete original or court-certified copy of an executed DRO that is determined to be qualified by the Pension Boards.

#### RECEIVING A DRO

Removal of the hold does not imply that the alternate payee is waiving their right to any portion of the Member's retirement benefits.

When the Pension Boards receives the DRO, it will:

- Make an initial determination as to whether the person named in the DRO is a Member of the Annuity Plan. If the person is not a Member, the Pension Boards will notify the party submitting the DRO that the person named in the DRO is not an Annuity Plan Member and that the DRO will not be reviewed.
- Make certain that the individual who is to receive all or a portion of the Member's benefits (the alternate payee) is clearly identified.
- Determine if the DRO is a draft or an order that has been filed with the court.
- Confirm or place a hold on the Member's account (if not already done).

#### NOTICE TO PARTIES

If the person named in the DRO is a Member of the Annuity Plan, the Pension Boards will notify both parties that it has received the DRO. The notice will include a copy of these procedures and a model DRO for the plan, if available, and will be sent to the parties at the respective addresses set forth in the DRO. If no address is listed for either party, the Pension Boards will send the notice to the last known address for the Member and the alternate payee (if the alternate payee's address is on file). The alternate payee may designate a representative for receiving notices by notifying the Pension Boards in writing of their designated representative's name and contact information. If the DRO is received from an attorney representing either party, copies of the notices will be sent to such attorney.

#### DETERMINING QUALIFIED STATUS OF AN EXECUTED DRO

If the DRO is a draft, the Pension Boards will review it to confirm that it is qualified under the terms of the Annuity Plan before it is executed and filed with the court. The Pension Boards will notify the parties if the draft DRO is approved or, if it is not qualified, with an explanation of the revisions needed to qualify the DRO. The Pension Boards may only act upon a qualified DRO that has been filed with the court. The Pension Boards will record the date on which the DRO was received and within ninety (90) days determine if the DRO is qualified.

#### QUALIFICATION REQUIREMENTS

The Pension Boards must determine whether the DRO satisfies the following requirements:

- The DRO must be an executed order, which requires that it is:
  - a judgment, decree, or order (including the approval of a property settlement agreement) issued under a state's domestic relations law;
  - an order issued by a state agency, typically a court, with authority to issue such judgments, decrees, or orders under a state's domestic relations law (including a community property law); and
  - related to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Member.

- The DRO must contain the following information:
  - the full legal name of the plan (The Annuity Plan for the United Church of Christ);
  - the Member's full name and last known mailing address (Social Security number and date of birth are optional);
  - each alternate payee's and, if applicable, each contingent alternate payee's full name and last known mailing address (Social Security number and date of birth are optional);
  - each alternate payee's and, if applicable, contingent alternate payee's status as a spouse, former spouse, child, or other dependent of the Member;
  - the actual amount or percentage of the Member's benefits to be paid to the alternate payee(s). (Please note that the Pension Boards is not required to distribute funds in violation of its plan document, which prohibits lump sum payments. The alternate payee will be paid in accordance with the Annuity Plan);
  - the number of payments or period of time to which the DRO applies; and
  - a statement in the DRO requiring the Pension Boards to pay the alternate payee.

Once the form of DRO has been approved by the Pension Boards, it is filed with the court for approval by the Member or alternate payee, or their respective legal counsel. Once the DRO is approved by the court, copies of the approved DRO and the divorce or dissolution decree must be submitted to the Pension Boards for final approval. After it is determined that the DRO complies with the requirements of the Annuity Plan, the Pension Boards will administer the benefits in accordance with the DRO.

#### **INFORMATION SPECIFIC TO DROS OCCURRING AFTER MEMBER ENTERS PAY STATUS (I.E., ANNUITIZES)**

After a Member enters pay status (i.e., annuitizes), the Pension Boards will determine if the following additional items have been included in the DRO, if necessary and appropriate under the terms of the Annuity Plan:

- Under the shared payment approach, benefit payments from the Annuity Plan are split between the Member and the alternate payee. The alternate payee receives payments only when the Member receives payments.
- The number of payments to be paid to the alternate payee or the dates when payments for the alternate payee(s) will begin and end (duration of payments to the alternate payee(s)).
- A statement that the benefits payable to the alternate payee will be paid in the form available to the Member, except in the form of a qualified joint and survivor annuity with the alternate payee's subsequent spouse as a survivor.
- Any other instructions necessary for the Pension Boards to correctly administer the QDRO.
- A statement that the alternate payee may not designate a beneficiary (unless otherwise provided under the Annuity Plan).

#### **SEPARATE INTERESTS AFTER ENTERING PAY STATUS NOT ALLOWED**

A DRO shall not provide for separate interests after a Member enters pay status (i.e., annuitizes) since this is not allowed under the Annuity Plan. An alternate payee may only receive a shared payment if the Member has already entered pay status.

#### **ORDERS PROVIDING FOR SHARED PAYMENTS AFTER MEMBER ENTERS PAY STATUS (I.E., ANNUITIZES)**

A DRO shall only provide for shared payments after a Member enters pay status (i.e., annuitizes), which requires the following additional information be included in the DRO:

- A requirement that the shared payments to the alternate payee stop no later than the Member's death (or never start if the Member dies before entering pay status).
- Instructions as to whether the alternate payee is to be treated as the Member's spouse upon the Member's death (regardless of whether the Member remarries) for all or part of the Member's monthly benefit under a qualified survivor annuity and/or a qualified joint and survivor annuity.
- Instructions on the disposition of the Member's benefit when the alternate payee predeceases the Member, subject to the Annuity Plan and Member's chosen annuity restrictions, if any (e.g., single life annuity, joint and survivor annuity, etc.).

#### **INFORMATION SPECIFIC TO DEFINED CONTRIBUTION PLANS**

For a defined contribution plan, the following additional items must be included in the DRO:

- how investment gains and losses should be credited; and
- the method for allocating the alternate payee's benefits from among the Member's various investments under the plan (if applicable).

#### **AFTER DRO STATUS DETERMINATION**

The Pension Boards will not deem a DRO qualified if it requires the Annuity Plan to:

- Pay Annuity Plan benefits in a lump sum settlement or cash out of the account.
- Pay benefits that have a value in excess of the value of benefits to which the Member is entitled from the Annuity Plan.
- Pay any type or form of benefit, or provide any option, that the Annuity Plan would not otherwise provide to the Member and alternate payee. (NOTE: the Annuity Plan does not allow for lump sum settlements or cash-out of Annuity Plan benefits.)
- Pay benefits to an alternate payee that are required to be paid to another alternate payee under a previous QDRO.
- Pay benefits to an alternate payee in an amount or form that is not permitted under applicable law or the Internal Revenue Code.
- Pay benefits to an alternate payee in the form of a qualified joint and survivor annuity for the lives of the alternate payee and their subsequent spouse.

- Pay benefits as a separate interest to the alternate payee if the Member is already receiving benefit payments.
- Change the benefit form if the Member is already receiving benefit payments, unless the Annuity Plan specifically permits such changes.

After reviewing the DRO, the Pension Boards will notify the Member and the alternate payee whether the DRO is qualified. The notification must be sent to the Member and the alternate payee at the addresses specified in the DRO. If the DRO does not specify an address, the notification must be sent to the last known address of the Member and alternate payee.

#### **QUALIFICATION OF A DRO**

If the DRO is qualified, a notification will be sent out setting forth the interpretation of the QDRO regarding amount, time, and form of distribution. Any amounts that were payable to the alternate payee that accrued and were separately accounted for during the Annuity Plan determination period will be paid to the alternate payee as soon as practicable. All other amounts must be paid in accordance with the QDRO and the Annuity Plan.

Annuity Plan assets derived from multiple sources (e.g., employee elective deferrals, employee after-tax contributions, and employer contributions) are distributed to the alternate payee on a pro rata basis from all sources, unless the DRO states otherwise.

#### **DRO THAT IS NOT QUALIFIED**

If the DRO is determined not to be qualified, the Pension / Boards will send a notice to each of the Member and alternate payee which will include the following information:

- The specific reason(s) the DRO is not qualified.
- The specific reference to pertinent provisions of the Annuity Plan or DRO on which the denial is based.
- An explanation of any time limits on the parties' rights.
- A description of any additional material that is necessary for the DRO to become a QDRO and an explanation of why such material is needed.

If the Pension Boards decides that a DRO is qualified, the Member or prospective alternate payee (or their designated representatives) may appeal the Pension Boards' determination. An appeal must be submitted in writing and mailed to the Pension Boards within thirty (30) days of receiving the Pension Boards' determination. The appeal must set forth the reasons for disagreement with the Pension Boards' determination and include any relevant documents.

#### **DRO THAT IS NOT AMENDED OR NOT DETERMINED**

Parties that do not appeal the Pension Boards' determination may execute a waiver of appeal to expedite the QDRO administration process. Where a DRO does not qualify and it has not been amended within eighteen (18) months after its receipt by the Pension Boards, the Pension Boards may distribute the separately accounted benefits to the person(s) who would have received them had the DRO never been received by the Pension Boards.

#### **ADMINISTRATIVE ACTIONS**

If the Pension Boards is, in good faith, unable to determine whether the DRO is qualified within eighteen (18) months of receiving the DRO, the hold on the Member's account will be released and it may distribute the separately accounted benefits to the person(s) who would have received them had the DRO never been received (the Member would be entitled to the funds if no QDRO is filed with the court).

#### **AMENDMENT TO PROCEDURES**

The Pension Boards must ensure that any DRO received is reviewed within ninety (90) days and recorded when the following key events occurred:

- Relevant documents were provided to the party drafting the DRO.
- Hold placed on the Member's account/benefit.
- Acknowledgment letter sent to the Member and alternate payee.
- Letter approving/rejecting a draft DRO sent.
- Letter approving/rejecting an executed DRO sent.
- Expiration of appeal period.
- Account segregation (if permitted under the Annuity Plan).

These Procedures for Identifying a QDRO may be modified or amended by the Pension Boards at any time.

#### **NO LEGAL ADVICE**

These procedures are provided by the Pension Boards for the convenience of its members and should not be construed as legal advice. Members and alternate payees should consult with their attorneys early in the process of a dissolution of marriage to assist them in understanding how the Annuity Plan works upon such an event. General information about the Annuity Plan's benefits is available on the Pension Boards website ([www.pbucc.org](http://www.pbucc.org)).

This booklet summarizes certain benefits available under the Annuity Plan and if there are any inconsistencies between this document and the Annuity Plan, the Annuity Plan will govern. The Annuity Plan document is available on the Pension Boards website.

#### **IMPARTIALITY OF THE PENSION BOARDS**

The Pension Boards is impartial regarding matters relating to divorce or dissolution of marriage, including property settlement between the affected parties. The Pension Boards cannot and will not provide legal advice to individual Annuity Plan members or alternate payees regarding their divorce or dissolution proceeding or property settlement. The division of a Member's pension should be negotiated between the parties during the divorce or dissolution proceeding.

#### **FEE FOR REVIEW OF DRO AND ADMINISTRATION OF QDRO**

The Pension Boards charges a fee of \$350 for the review of the DRO and administration once the DRO is qualified. The fee is split evenly between the Member and the alternate payee and is deducted from amounts payable to each party to the QDRO.