

HOUSTON POLICE OFFICERS' PENSION SYSTEM

QUALIFIED DOMESTIC RELATIONS ORDER POLICY

SECTION 1800

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1800 Introduction

1800.01 The Board of Trustees ("Board") of the Houston Police Officers' Pension System ("HPOPS" or the "Plan") on May 14, 1998 adopted Subchapters A and C of Chapter 804 of the Government Code.

1800.02 State Law – Pursuant to Section 804.003 of the Government Code and anti-alienation provisions such as those contained in Article 6243g-4 of the Revised Civil Statutes of Texas (Article 6243g-4), the Plan administered by the HPOPS Board prohibits the creation, assignment, recognition, or enforcement of a right to any benefit payable with respect to a member or retiree of a public retirement system pursuant to a domestic relations order (DRO) unless the DRO is determined to be a qualified domestic relations order (QDRO). The administrative head of HPOPS (or designee) has exclusive authority to determine whether any DRO submitted to HPOPS is a QDRO, and such a determination may be appealed only to the HPOPS Board.

1800.03 A court does not have jurisdiction over a public retirement system that has adopted Subchapters A and C of Chapter 804 of the Government Code with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a HPOPS member or retiree under the System is created or established. A party to such an action who attempts to make HPOPS a party to the action contrary to the provisions of Section 804.003 of the Government Code shall be liable to HPOPS for its costs and attorney's fees. [Government Code §804.003(c)]

1801 Purpose

1801.01 The HPOPS Board now adopts this policy and procedure for determining the qualified status of DRO's and administering distributions thereunder. This policy may change from time to time as case law and legislation develops.

1802 Definitions

1802.01 Domestic Relations Order (DRO): means any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a Member or Retired Member of HPOPS, and made pursuant to a domestic relations law (including the community property law of the State of Texas or of another state).

1802.02 Qualified Domestic Relations Order (QDRO): means a DRO which creates or recognizes the existence of the rights of an Alternate Payee, or assigns to an Alternate Payee the right to receive all or a portion of the

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benefits payable to a Member/Retired Member of HPOPS, and which has been determined by the Executive Director (or designee) of HPOPS to be a QDRO.

1802.03 Member/Retired Member: as defined by Article 6243g-4.

1802.04 Alternate Payee: means any spouse, former spouse, child, or other dependent of a Member/Retired Member of HPOPS who is recognized by a QDRO as having a right to receive all or a portion of the benefits payable with respect to such Member/Retired Member.

1802.05 Retirement: means the member must actually terminate employment with the City of Houston Police Department and begin receiving their monthly annuity payment or refund of contributions.

1803 Requirements for a QDRO

1803.01 A QDRO Must Clearly Specify The Following Facts:

- A. The: (A) name and last known mailing address of: (i) the member or retiree; and (ii) each alternate payee covered by the order; and (B) social security number, or an express authorization for the parties to use an alternate method acceptable to the public retirement system to verify the social security number, of the member or retiree and each alternate payee covered by the order. [Government Code §804.003(f)(1)]
- B. The dollar amount or a clear percentage of the Member's benefits to be paid by HPOPS to each Alternate Payee covered by the DRO, or the manner in which such amount or percentage is to be determined (for example, clearly state any formula used and the exact percentage of the amount of Member's benefits awarded to each Alternate Payee). [Government Code §804.003(f)(2)]
- C. The number of payments or the period to which such order applies. [Government Code §804.003(f)(3)]
- D. The plan to which the DRO applies (however a DRO will not be rejected merely because it fails to specify whether the benefits will be paid under Article 6243g-4). [Government Code §804.003(f)(4)]
- E. That the DRO does not require HPOPS to provide any type or form of benefit or any option not otherwise provided under the plan. [Government Code §804.003(f)(5)]
- F. That the DRO does not require HPOPS to provide increased benefits determined on the basis of actuarial value. [Government Code §804.003(f)(6)]

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- G. The DRO does not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a QDRO. [Government Code §804.003(f)(7)]
- H. The DRO does not require the payment of benefits to an alternate payee before the retirement of a member, the distribution of a withdrawal of contributions to a member, or other distribution to a member required by law. [Government Code §804.003(f)(8)]
- I. That the amount awarded to the Alternate Payee shall be reduced proportionately if the benefits of the Member are reduced due to a law change. [Government Code §804.003(g)(8)]. For example, in the event that the total accrued benefit from the Plan (both the Member's and the Alternate Payee's interests combined) is limited and/or reduced as a result of a benefit limitation under Section 415 of the Internal Revenue Code, as amended from time to time, then the respective Plan interests of the Member and the Alternate Payee shall be reduced proportionately in order to satisfy the Section 415(b) limitation.

1803.02 A DRO Will Not Be A QDRO If It:

- A. Attempts to award any future benefit increases that may be provided or required by the legislature, earned by the performance of services after the date of the DRO, or attributable to promotions or pay increases after the date of the DRO. [Government Code §804.003(g)(7)]
 - 1. The annual cost of living adjustment (COLA) as provided by Article 6243g-4 Sec. 12(c) are considered to be future benefit increases provided or required by the legislature.
 - 2. DROP Credits or Member's monthly deposits into their DROP accounts are considered benefits earned by continued performance of their services and not eligible to be awarded in a DRO.
- B. Attempts to designate or treat the former spouse (or some other person) as an eligible survivor for purposes of entitlement to survivor benefits or otherwise requires payments to any Alternate Payee after the death of the Member. [Government Code §804.003(g)(2)]
- C. Requires the selection of a particular benefit payment plan or option. [Government Code §804.003(g)(3)]
- D. Requires the payments awarded to an Alternate Payee to continue after the Alternate Payee's or member's death. [Government Code §804.101]

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- E. Requires any action on the part of HPOPS contrary to its governing statutes or the Plan, other than payment of the benefit awarded to Alternate Payee in a QDRO. [Government Code §804.003(g)(5)]
- F. Eliminates or modifies conditions of eligibility for benefits on any basis other than those conditions resulting in the liability of HPOPS for payments under the applicable Plan provisions, including DROP and/or PROP. [Government Code §804.003(g)(6)]
- G. Does not conform to a model order adopted by the retirement system. [Government Code §804.003(g)(9)]

1804 Procedures

1804.01 HPOPS Will Provide Information:

- A. To the extent consistent with efficient administration and current law, the Executive Director (or designee) will provide information to persons who expect to be parties to a DRO involving benefits under HPOPS.
- B. *Disclosure of Benefit Information.* HPOPS will require the member to sign a “release of information” form, to be supplied by HPOPS, or in a form in similar nature, that is signed and dated by the member. These “release of information” forms will only be recognized by HPOPS for up to one year from the date the member signed the form or the date the member revokes the form in writing, whichever is earlier. The member will be copied with all information released.
- C. *DROP Benefit.* HPOPS is but one retirement plan with two parts. Section 14(a) of Article 6243g-4 provides: “In this section “DROP” benefit means the total amount credited to a member’s notional DROP account, payable as described by this section, plus a monthly retirement benefit.” A member who was employed before October 9, 2004, may, at and after 20 years of service elect to participate in DROP. A member employed on or after October 9, 2004, is not eligible to participate in DROP.
- D. HPOPS will, if requested, provide the Member, and other parties that have been authorized to receive the information, with a computation of the Member’s accrued benefit or Member contributions on the dates specified in the written request.
- E. Persons who expect to be parties of a DRO are required to obtain documents that will assist them in drafting a DRO. HPOPS will make available to the public, through the HPOPS Web site, a copy of the following documents adopted by HPOPS for use by any party involved in a DRO.

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1. HPOPS current QDRO Policy
2. HPOPS current model QDRO(s)
3. HPOPS current QDRO checklist (used to see if a DRO will be "Qualified")

1804.02 Upon receipt of a DRO signed by a court of competent jurisdiction, the Executive Director (or designee) will promptly notify the Member and their designated representative and each Alternate Payee and their designated representative of the receipt of such DRO.

1804.03 The Executive Director (or designee) will complete a HPOPS QDRO Checklist and render an opinion in writing as to whether the DRO is or is not a QDRO. If the Executive Director deems it desirable, they may send the QDRO Checklist and the DRO to outside legal counsel to render an opinion. This action must be completed and notice provided in accordance with paragraph 1804.05 below, no later than ninety (90) days after receipt of the DRO.

1804.04 The Executive Director (or designee) shall have no duty to determine whether any DRO in fact complies with any particular aspect of State domestic relations law (including community property law).

1804.05 The Executive Director (or designee) will notify the Member/Retired Member and the Alternate Payee(s) of the determination of whether the DRO is a QDRO by furnishing the Member and Alternate Payee(s) (or designated representatives) with a copy of the notice.

A. If it is determined that a DRO is a QDRO, such order will be obeyed. The terms and directions as to payment and entitlement contained in the order will be confirmed to the Member and Alternate Payee(s) (or designated representative).

B. If the determination is made that the DRO is not "qualified" the notice will include an explanation of the defect(s) and a request that each party instruct their legal counsel to have the order amended so that it will be a QDRO.

1804.06 The DRO cannot require the election of a particular benefit payment plan or option.

1804.07 While the issue of whether a signed DRO is a QDRO is pending, the Executive Director or designee shall, for a period not to exceed 18 months from the date of the receipt of the signed DRO, separately account for any amounts which would have been payable to or credited to a DROP account

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of an Alternate Payee if the order had been determined to be a QDRO. Such amounts shall not be paid to the Member during the 18-month period.

- 1804.08** If prior to the end of the 18-month period described in 1804.07, above, the DRO (or modification thereof) is determined to be a QDRO, the Executive Director (or designee) shall, in accordance with the terms of the QDRO, and depending on the member's status, either pay the separately accounted for amounts to the alternate payee(s), or make a record of and account for the amounts that will be due to the alternate payee(s) upon the member's retirement.
- 1804.09** If within the 18-month period described in 1804.07, above, it is determined that the DRO is not a QDRO, the Executive Director (or designee) shall, pay or restore the separately accounted for amounts/benefits to the person or persons who would have been entitled to such amounts/benefits as if there had been no DRO and thereafter may treat the DRO as having not been received.
- 1804.10** Any determination that a DRO is a QDRO made after the 18-month period will be applied prospectively only.
- 1804.11** The effective date of a QDRO is not the date of divorce or any date agreed to by the parties to the divorce or child support agreement. The effective date is generally the date that HPOPS receives a DRO, signed by a court of competent jurisdiction.
- 1804.12** If the Alternate Payee is awarded a portion of the member's DROP account pursuant to a QDRO, no monies will actually be segregated for the Alternate Payee. The amount due to the Alternate Payee will simply be maintained in a notional bookkeeping account on their behalf and will begin accumulating interest at the DROP interest rate on the date specified in the QDRO or QDRO effective date, as defined in this policy.
- 1804.13** If any party attempts to make HPOPS a party to or a defendant in any case involving a DRO, the party is liable to HPOPS for its costs and attorney fees. To enforce this provision, Executive Director may instruct legal counsel to:
- A. File an appropriate pleading,
 - B. Send copies of these procedures to the counsel for the other parties;
 - C. Attempt to assist the parties so that any order entered in a DRO case which affects the System is a QDRO; and
 - D. Apply, as provided in Government Code §804.003(c) to recover legal expenses from the party that filed the action.

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1804.14 From time to time, various parties may provide HPOPS with a copy of an order directing an employer to withhold earnings for child support from a Member's pay and/or pension ("Child Support Orders"). HPOPS has been advised by its legal counsel that such a Child Support Order could not be considered a QDRO unless it clearly complies with the provisions of this policy. In the event HPOPS receives a Child Support Order that does not identify HPOPS as the payee, such order will be denied as not being a QDRO. In addition, HPOPS will deliver a notice to the appropriate office of the Attorney General's Child Support Division or other source of the Order indicating why the Child Support Order is not a QDRO.

1804.15 Alternate Payees will be treated the same as beneficiaries for notice and reporting requirements.

1804.16 Alternate Payees who are spouses or former spouses will receive Form 1099R or such other tax forms designated by the Internal Revenue Service from time to time. Payments to other Alternate Payees will be reported as income on the Member's Form 1099R.

1804.17 It is the responsibility of the Alternate Payee to keep a current mailing address on file with the System at all times.

1804.18 In the event that, after payment under a QDRO, a member's benefit is no longer enough to cover the deductions from their monthly benefit, all deductions will be stopped until such time that the benefit is large enough to resume the deductions. The member and affected insurance providers will be notified of this and required to make alternate payment arrangements.

1804.19 Upon the death of the Member or Alternate Payee, the terms of the QDRO with such Alternate Payee shall cease, and the member or survivor (as defined in Article 6243g-4) shall receive future benefit payments as if the QDRO never existed.

1805 Responsibility To Recover Costs

1805.01 Prior to July 1, 2010, an administrative fee of \$5.00 shall be deducted from each payment made to any person other than a Retired Member pursuant to a QDRO. This administrative fee starting July 1, 2010 shall be \$0.00.

1806 Appeal Procedure

1806.01 In accordance with Section 804.003 of the Title 8, Subtitle A of the Texas Government Code, an appeal of a finding that a DRO is not a QDRO, must be in writing and addressed to the Chairman of the Board of Trustees of HPOPS. The appeal must:

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- A. Identify the portions of the decision of the Executive Director or his designee which are to be reviewed, and
- B. Provide the Chairman with any documents or other information the appellant deems appropriate.

1806.02 In preparing their appeal, the appellant has the right to read any pertinent documents pertaining to the handling of the determination and to obtain copies of those documents upon payment of reasonable charges assessed by the Executive Director, or his designee.

1806.03 Within 30 calendar days of receiving a notice of a determination that a DRO is not a QDRO, the appellant may request the Board of Trustees to review the decision of the Executive Director or his designee. A request will not be considered timely filed unless it is delivered to the Chairman of the Board of Trustees of HPOPS by no later than the close of business on the 30th calendar day following the date of delivery of determination that a DRO is not a QDRO.

1806.04 The Board of Trustees of HPOPS will make a decision on the review of the decision of the Executive Director or his designee that a DRO is not a QDRO, at a meeting no later than:

- A. its next regularly scheduled monthly meeting, if the review is received at least 15 calendar days prior to such meeting; or
- B. the second regularly scheduled monthly meeting following the date of receipt of the appeal if there is less than 15 calendar days between receipt of the appeal and the date of the next regularly scheduled monthly meeting.

1806.05 The Chairman of the Board of Trustees of HPOPS will send notice of the Board's decision to the appellant within 10 calendar days of the date of such action. As provided in Sections 6(b) and (f) of Article 6243g-4, the decision of the Board will be final as to all parties, and cannot be appealed to any court.