

The following is provided for helpful informational purposes only and should not be construed or relied on as legal advice provided by the Fund, the Plan or the Board of Trustees.

## **SECTION 2 - INFORMATIONAL SECTION FOR LEGAL COUNSEL, PARTICIPANTS AND ALTERNATE PAYEES**

### **INTRODUCTION**

For many Participants, their retirement plan assets may represent a significant part of the married couple's assets. If a Participant and his/her spouse are separating or divorcing they must divide up their marital property and reach a settlement. When retirement plan assets become part of a separation, divorce or other domestic relation proceeding, a court will order that a percentage of retirement benefits be awarded to an Alternate Payee. Under federal law this order is called a "Qualified Domestic Relations Order" ("QDRO"), which means any judgment, decree, or order (including property settlement agreements) relating to child support, alimony, or marital property rights under a state domestic relations law. The QDRO must create, recognize or assign to an Alternate Payee the right to receive all or a portion of a Participant's benefits under a qualified pension, profit sharing or stock bonus plan. IRC §414(p); ERISA §206(d).

The International Union of Operating Engineers Local 4 and Its Branches Pension Plan ("Plan") may pay benefits directly to an Alternate Payee only in accordance with a domestic relations order (DRO) that has been determined by the Plan to be qualified, a QDRO.

### **LEGAL AUTHORITY**

A retirement plan generally cannot pay retirement benefits to anyone other than a plan participant unless the Participant dies, or unless there is a Qualified Domestic Relations Order. Internal Revenue Code (IRC) §414(p) and §206(d) of ERISA provide the legal authority at the federal level for the assignment of pension benefits to an Alternate Payee under a Qualified Domestic Relations Order. Compliance with a QDRO is not a prohibited assignment or alienation of benefits under ERISA or the Internal Revenue Code.

### **ROLE OF THE PLAN ADMINISTRATOR OF INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 4 AND ITS BRANCHES PENSION PLAN**

The Plan Administrator is responsible for administering the Plan. **The Plan Administrator is the only individual who can approve and qualify a QDRO.** The Plan Administrator is not a mediator in marital property disputes and will not give legal advice regarding domestic relations law and the division of marital property. The Plan Administrator will provide only factual information concerning a Participant's benefits and the terms of the Plan. Although a court will determine how to divide a Participant's retirement benefit, the Plan Administrator is responsible for reviewing a DRO and determining if it is qualified. The Plan Administrator will determine whether a DRO satisfies the requirements of a QDRO according to ERISA, the IRC and the Plan. In doing so, the Plan Administrator may communicate with the Participant, the Alternate Payee or either party's Attorney in this determination process. Because the QDRO is a legal document the Plan Administrator may also request that the Plan's advisors review the DRO.

### **PLAN PROCEDURES REGARDING A DOMESTIC RELATIONS ORDER**

The Plan will comply with the following notice and procedural rules regarding a DRO:

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**I. If Alternate Payee or his/her Attorney contacts Plan Administrator for Plan information by phone or mail without submission of a Domestic Relations Order (*initial contact*)**

Step 1. Provide the following documents to the Requesting Party

QDRO Inquiry Packet which includes the following:

- Summary Plan Description (SPD) (upon request only) May be obtained from the Fund's website at [www.local4funds.org](http://www.local4funds.org)
- Model QDRO
- QDRO Procedures
- Commonly Asked Questions and Answers that address common procedural issues

**II. If Plan Administrator Receives Draft (UNSIGNED) DRO For Review**

Step 1. The following information will be provided to the Participant, Alternate Payee and legal counsel for both parties.

(a) Send Notice A to all parties within 30 days of receipt of draft DRO

(b) QDRO Inquiry Packet which includes the following (if not previously sent)

- Summary Plan Description (SPD) (upon request only)
- Model QDRO
- QDRO Procedures
- Commonly Asked Questions and Answers that address common procedural issues

Step 2. After a DRO is received, a separate file should be set up for the Alternate Payee.

Also, add a notation on the Participant's file along with a copy of the DRO that has been submitted to the Plan.

Step 3. Determine whether or not the DRO would be a qualified order.

The Plan Administrator shall determine whether the DRO would be a qualified if it were a signed order within a reasonable time frame, not to exceed 18 months from the date the DRO is received. Complete the QDRO Requirement Checklist to determine if the DRO is a QDRO. Review benefit calculation language and determine if it is specific. If the Attorney used the model, forward a copy to Fund Counsel and determine whether or not you will forward a copy to the Pension Consultant for review. If the Attorney has drafted their own, forward a copy to both Fund Counsel and the Pension Consultant for review along with a copy of the completed checklist.

Step 4. Segregate Portion of Participant's Benefit Payable to the Alternate Payee.

When a DRO is received, if the Participant is in pay status the portion of the Participant's benefit payable to the Alternate Payee shall be segregated and held in trust until the DRO has been qualified or rejected or until the 18-month determination period has expired.

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Amounts that are not in pay status (for example: if the Participant has not met the eligibility requirements to early retire or will not meet these requirements during the 18-month determination period) are not required to be segregated during the determination period. The Participant may not apply for a pension during this period, regardless, of whether it is a separate or shared interest DRO.

If a determination that an order is a QDRO is made within an 18-month period beginning with the date the first payment is to be made to the Alternate Payee, then all of the payments due the Alternate Payee must be paid retroactively to the first payment.

If a determination is made that an order is not a QDRO, or if the issue cannot be resolved, within the 18-month period, then the benefits revert back to the Participant.

A determination made after the 18-month period that an order is a QDRO can be applied only prospectively to the Alternate Payee.

**Step 5. Notification of Determination**

Once a determination has been made, provide the Participant and the Alternate Payee with Notice B if DRO is qualified, or Notice C, if DRO is not qualified.

**III. If the Plan Administrator Receives a Signed DRO Executed by the Court**

**Step 1.** Forward the following document to the Participant, Alternate Payee and both Attorneys.

Notice A

**Step 2.** Determine if you have previously reviewed a draft of this DRO

- If not previously reviewed, go to Part II.
- If previously reviewed, review the final DRO to verify all requested changes were made. Complete QDRO checklist to determine if DRO is a QDRO and send to Fund Counsel for approval unless previously reviewed and all changes have been made. Also place a copy of the QDRO and completed checklist in the Participant's and Alternate Payee's files.

**Step 3.** Notification of Determination

Once a determination has been made, provide the Participant and the Alternate Payee with Notice B if DRO is qualified, or Notice C, if DRO is not qualified.

**Step 4.** If this is a signed QDRO go to Parts IV and V.

**IV. Benefit Calculations**

**Step 1.** Gather information and send a request for a Benefit Calculation estimate to the Pension Consultant once a Court signed order is received.

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Step 2 Forward Calculations to the Participant and Alternate Payee using Notice D.

**V. Benefit Payment**

Step 1. Once a DRO is determined to be a QDRO forward change of address forms and a copy of the QDRO to the Alternate Payee.

Step 2. When completed forms are returned by the Alternate Payee follow the same administrative process for a Plan Participant.