FIRE & POLICE PENSION ASSOCIATION of COLORADO

FPPA
Domestic Relations Orders (DRO) Questions & Answers

For members of FPPA Administered Pension Plans

For your convenience, FPPA has compiled a listing of the most frequently requested information. We hope this information answers many of your questions and assists you in completing the DRO process. Answers are based on use the approved forms as of January 1, 2017. Some situations may be different for prior forms.

For forms and plan brochures visit www.FPPAco.org.

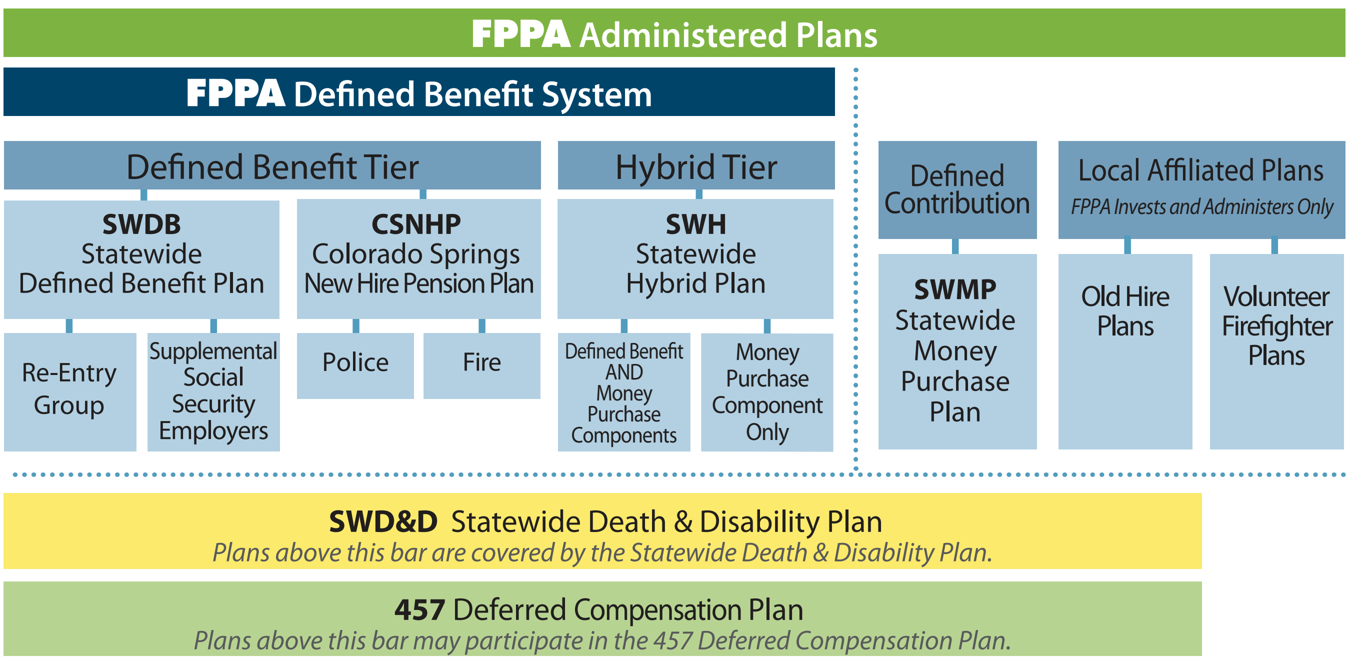
Overview

A public employee's retirement benefit constitutes marital property that must be taken into account when property is divided in a marital dissolution in Colorado. Colorado law permits a domestic relations order (DRO) to be used to divide a retirement benefit of a member of a pension plan administered by FPPA, if both parties to the dissolution can agree to a DRO. Any DRO must comply with all of Colorado's requirements for a DRO and must comply with all of the requirements of the public employee's plan.

FPPA Administered Plans

FPPA administers defined benefit and defined contribution plans, a death and disability plan and a 457 deferred compensation plan. It is important to understand how a particular member's plan provides benefits and how those provisions impact the timing and nature of any payment pursuant to the DRO.

DRO's for the Local Affiliated Plans must be approved by the Local Pension Board.



Why is a Defined Benefit Plan?

A Defined benefit plan is the traditional retirement plan that pays a monthly retirement benefit based on age and total years of service.

What is the Separate Retirement Account (SRA) or the Re-Entry Separate Retirement Account?

The SRA is part of the Statewide Defined Benefit Plan and the CSNHPP. An SRA is established for each member and is made up of excess employer contributions. This account accrues earnings at the same rate as FPPA's Members' Benefit Fund and is payable to any member who is approved for a retirement benefit and has separated service. This account is in addition to the normal, early, vested or deferred retirement pension. It is also payable upon an award of benefits from the Statewide Death and Disability Plan.

What is the Deferred Retirement Option Plan (DROP)?

The DROP is a component of the Statewide Defined Benefit Plan, the CSNHPP and the SWH. The DROP is available to members who wish to work beyond the requirements for normal retirement. This is funded by the member's retirement benefit and pension contribution. The DROP account accrues earnings at the same rate as the Police Officer & Firefighter Members Benefit Investment Fund unless self-directed through FPPA's recordkeeper, Fidelity Investments. The balance in the DROP is available to the member when he/she separates service from the department. This account is in addition to the normal retirement and SRA for those who elect to participate. (Some "old hire" plans also offer the DROP. Percent of pension contributions may vary.)

What is a 457 Deferred Compensation Plan?

An eligible 457(b) plan is a deferred compensation plan that is maintained by an eligible employer - a state or local government or a non-church, non-governmental tax-exempt organization - that meets statutory requirements of IRS Code Section 457. Any individual who performs services for the employer who has adopted a 457 Deferred Compensation Plan may defer compensation and participate under the plan. Contributions are voluntary. Some employers make matching contributions to encourage employees to participate and save more of their money for retirement.

NOTE: Some departments may have 457(b) plans which are not administered by FPPA. The FPPA forms are only designed to affect 457(b) plans administered by FPPA.

What is the Statewide Death and Disability Plan?

This plan covers all full-time firefighter and police officer employees in participating fire or police departments in Colorado for death or disability coverage. It provides 24-hour coverage, both on and off duty. Generally the benefits are available for covered members who are not eligible for normal retirement unless the department has withdrawn from the Statewide Death and Disability Plan. On-duty disability benefits are free from state and federal income tax.

General Questions

How do I get information regarding the benefits payable under each of these plans?

Please carefully read the plan brochure describing the benefits of the plan. It should answer most of your benefit questions. If you still need assistance, review the list below to see what information FPPA staff can provide to you:

- FPPA staff can provide benefit information for members of the FPPA Statewide Plans and the Statewide Death and Disability Plan. Contact FPPA's Retirement Coordinator.
- For benefit information for "old hire" plans, local defined contribution plans, volunteer firefighter plan or any other type of local governmental pension plan, you should directly contact the local pension authority for information regarding benefits under the pertinent plan. FPPA does not provide this benefit information.
- For benefit information on non-affiliated 457 deferred compensation plans, you should directly contact the local plan authority for the information regarding benefits under the pertinent plan.

Is a DRO appropriate for everyone?

No. A DRO is not required to be implemented in every dissolution that involves a public employee. The parties should evaluate whether a DRO is appropriate based upon the client's own particular facts and circumstances of the marriage. If the public employee's retirement benefits constitute a substantial portion of the marital property, a DRO may be appropriate.

Alternatively, if such retirement benefit constitutes merely one of many different marital properties, the public employee may keep all of the pension asset while the former spouse receives a different asset of comparable value. Death of either the member or the alternate payee (former spouse) prior to retirement may result in the alternate payee receiving no benefit based on the designation as an alternate payee in a DRO. Before deciding whether a DRO is appropriate, understanding the type of plan and the plan's specifics are advised.

How can I make sure the DRO I submit is valid?

To be valid, a DRO must satisfy all laws, rules and procedures applicable to the plan. FPPA approved forms provide for types of payment permissible under the pertinent plan.

The DRO cannot require payment of any benefit, benefit amount, or distribution option not otherwise permitted by the plan.

The DRO cannot require FPPA to pay any amount already required to be paid to another alternate payee or already subject to a child support assignment or a federal tax lien.

A court may later modify the DRO, if the parties have agreed in writing to the modification.

How much time do I have to file a DRO and Agreement with FPPA after my divorce?

To be effective, the written agreement which is the subject of a DRO must be filed with FPPA within ninety (90) days after entry of the decree and permanent orders regarding property distribution in the domestic relations proceeding. This is a statutory requirement. See Section 14-10-113 (6)(c)(I) C.R.S., as amended.

When does the DRO become effective?

A certified copy of the Order and DRO Agreement must be received by FPPA at least 30 days prior to the first date that a payment is required.

Can FPPA help me fill out the DRO Agreement and determine the method of division?

FPPA cannot provide legal, tax, or other advice to the parties or their attorneys. Furthermore, the parties are responsible for assuring consistency between the DRO and any previous court order(s).

FPPA staff members do not hold the qualifications necessary to advise you on how to calculate the division of benefits or testify as expert witnesses regarding such actuarial valuations of benefits. Parties may need to hire an actuary or other professional to determine how to allocate benefits.

How and when do I submit my DRO and Agreement?

A DRO for a FPPA-administered plan (Statewide Defined Benefit Plan, SWH CSNHPP, the Statewide Money Purchase Plan, FPPA's 457 Deferred Compensation Plan, or the Death & Disability Plan) must be completed on the FPPA approved form. The parties' written agreement on such form should be submitted for FPPA's review to determine whether FPPA can comply, before court approval of the DRO is sought. Submit the proposed DRO to FPPA's Legal Department.

A DRO for members of a locally administered plan (Old Hire Plans, Exempt & Withdrawn Money Purchase Plans, Volunteer Firefighter Pension Plans, and 457 Deferred Compensation Plans other than FPPA's plan) must be completed on a form received from your local pension authority. Please contact the department for the appropriate form. The parties' written agreement on such form should be submitted to your local pension authority for approval. FPPA cannot decide for the local plan whether to honor a domestic relations order. FPPA will take direction from the local plan as to how benefits are paid.

Under the law, both parties to the dissolution enter a written agreement that must be approved by the court as a DRO. If the parties cannot reach a written agreement, the court cannot order a DRO.

What is the difference between a DRO and a QDRO?

The pension plans administered by FPPA are "governmental plans" and are specifically exempt from the provisions of the Employee Retirement Income Security Act (ERISA) governing qualified domestic relations orders (QDROs). ERISA's QDRO provisions do not apply here. A DRO for FPPA-administered plans is governed by Colorado law. Section 14-10-113 (6), C.R.S., as amended.

Will I be eligible for a Social Security Benefit?

Police officers and firefighters in the State of Colorado who meet the definition of member and are covered under an FPPA-administered plan are exempt from Social Security coverage. They will not receive a Social Security benefit based on this service. They may be eligible for a Social Security pension from "outside" employment. However, they will likely receive a significant reduction from the Social Security benefit for that employment. Note: different rules apply for members in the FPPA Social Security Supplemental Plan.

Answers to Commonly Asked Benefit Payment Questions

A DRO can direct payment only to an "alternate payee" who is the participant's former spouse.

If a DRO is used and is valid and enforceable, FPPA will pay the former spouse directly. The plan will deduct the amount for the former spouse before it pays the FPPA member.

How is the defined benefit portion paid to the alternate payee?

When a member becomes divorced while an active member of a police or fire department (Pre-Retirement) and enters into a Domestic Relations Order to divide a benefit in the Statewide Defined Benefit Plan or the Statewide Hybrid Plan, the alternate payee will receive a severed benefit. At the time the member commences receiving a defined benefit, the alternate payees portion of the defined benefit will be severed from the member's benefit and will be adjusted based on actuarial factors such as the alternate payee's life expectancy and will be paid over the lifetime of the alternate payee. The alternate payee's portion will terminate upon the death of the alternate payee and will not revert to the member or member's survivor. No payment is made to any beneficiary, heir, or estate of the alternate payee.

When a member becomes divorced after retirement or after entering DROP (Post-Retirement) and enters into a Domestic Relations Order to divide a benefit in the Statewide Defined Benefit Plan or the Statewide Hybrid Plan, the alternate payee will receive a portion of the member's benefit for the remainder of the member's lifetime. If payment to a retiree of an FPPA-administered plan ceases for any reason, payment to the alternate payee also stops. If the alternate payee dies, the alternate payee's portion will revert to the member.

What is paid to the alternate payee?

Under a defined benefit plan:

The member's selection of a monthly benefit or a refund (assuming the plan permits a refund) controls what the alternate payee receives. Payment to the alternate payee shall be in the same manner selected by the member, i.e. as a refund in a lump sum amount or as a monthly payment.

The parties may specify payment to an alternate payee by selecting any one of the methods for dividing the pension provided on the approved forms. Annual cost of living increases, if awarded under the pension plan, after the payment starts will be applied to both the member's and the alternate payee's portion of the benefit.

All payments to the alternate payee, like payments to the member, reduce the member contribution account. Consequently, this reduces the amount that may later be paid as a single payment or refunded, if such a payment were to be made in the future.

When does the alternate payee begin to receive payments?

Under a defined benefit plan:

Payment to an alternative payee will be made when payments commence to the member after separation from service. They cannot begin earlier. Benefits are based on salary, years of service, and age at retirement. The actual amount of the benefit is not determinable prior to retirement. The plan makes monthly payments upon retirement of the member, although under some circumstances a single lump sum payment may be made.

Under a defined contribution plan or a 457 deferred compensation plan:

Payment to an alternate payee will be made in a lump sum within ninety (90) to one hundred twenty (120) days after FPPA's receipt of a valid court order and application for payment. The alternate payee may roll-over said lump sum into a non-FPPA sponsored eligible plan.

What happens when the alternate payee dies?

The pension benefit payments to the alternate payee under a defined benefit plan stop. No pension benefit payment is made to any beneficiary, heir, or estate of an alternate payee.

What happens when the member with a defined benefit dies?

Under a DRO filed Pre-retirement:

If the member dies prior to eligibility for retirement and while actively employed as a firefighter or police officer, the provisions of Section 31-31-801, et seq., C.R.S., as amended, apply. Under this law, survivor benefits are paid to the current spouse and/or dependent children in amounts as specified by statute in lieu of pension benefits. The alternate payee would not be eligible for any payment.

If the member dies after retirement, the alternate payee continues to receive the severed benefit for the alternate payee's lifetime.

Under a DRO filed Post-Retirement:

The alternate payees benefit terminates upon the member's death. Note: if the alternate payee remained the designated beneficiary after the divorce, a benefit may be payable.

Is the alternate payee's distribution taxable?

FPPA will report payments to alternate payees to the Internal Revenue Service as taxable income. The amount paid to the alternate payee will be reported in the name of the alternate payee, not the member. If after-tax contributions were made to the plan, cost-recovery of them is prorated between the alternate payee and the member. Each individual should seek his or her own advice on the tax consequences.

Please complete the following items before you submit your Domestic Relations Order For The Division Of Pension Benefits to FPPA

- The Agreement for Division of Pension Benefits and the Order, in the approved forms, without modification, must be used to complete the DRO. Do not change or modify the form in any way. Complete all applicable blanks on the form.
- The signatures of the member and alternate payee must be acknowledged by a notary public (notarized). Court personnel will not generally provide this notarization.
- Before you file documents with the court, please submit the completed DRO form and draft order to FPPA for review to determine whether FPPA can comply with the order as drafted.
- Ensure that FPPA receives a certified copy of the DRO and Agreement within 90 days of the date of the Order and that the judge and all parties have signed it.
- Receipt of the certified DRO is not the "request" for payment. Each party to the DRO must "apply" to FPPA before any payment can commence. The alternate payee is responsible for providing a current address and informing FPPA that payment to the alternate payee should commence.

Submit drafts of the documents and the completed Domestic Relations Order For The Division Of Pension Benefits to the following:

Fire & Police Pension Association of Colorado
Attn: DRO Processing
5290 DTC Parkway, Suite 100
Greenwood Village, CO 80111-2721

Phone (303) 770-3772 in the Denver Metro area or
Toll Free (800) 332-3772 nationwide.

Fax (303) 771-7622

Complete information on the DRO process is also available for viewing and downloading from www.FPPAco.org.

This plain language document is intended for informational purposes only.
Official interpretations are based upon the statutes, and rules and regulations which govern this plan.

FPPA
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