The Benefits Impact of Divorce, Disability, and Death

2018 Annual Delegates Meeting
Session Agenda

- Divorce and Domestic Relations Orders (DRO)
- Disability Benefits
- Death Benefits
Divorce and DROs
DRO

A DRO is a judgment, order or decree of a court made pursuant to the New York State Domestic Relations Law setting forth how a participant’s benefits are to be equitably distributed between the participant and the participant’s alternate payee.
Statistics

- The average divorce rate in America is between 40-50%.
- Of the 150,000+ participants and beneficiaries currently on NYSTRS payroll receiving benefits, about 2,300 are alternate payees.
- 13 members on payroll have more than one DRO.
NYSTRS is exempt from the Employee Retirement Income Security Act (ERISA), which is a federal law that sets minimum standards for most voluntarily established private industry pension and health plans and provides protection for individuals in these plans.
Our Legal Department’s Role in the Process

- Provide attorneys and participants with general information about NYSTRS benefits and DROs.
- Review draft DROs and Final Orders.
- Comply with the order(s).
What a DRO Can Do

- Equitably distribute pension benefits, which are marital property (whether a service or disability retirement).
- Provide for the alternate payee to receive a share of any Cost-of-Living Adjustments that become payable.
- Require the election of a specific benefit payment at retirement, naming the alternate payee as the beneficiary.
- Specify how the cost of any required option is divided.
What a DRO Can Do

- Require the alternate payee be named as a beneficiary for any pre- and/or post-retirement death benefit.

- Prohibit the participant from taking any future loans.

- Require that the alternate payee receive a share of contributions when refunded upon termination of membership.
What a DRO Cannot Do

- Require a distribution of a retirement benefit to the alternate payee before the participant is in pay status.

- Require payments greater than otherwise payable.

- Require NYSTRS to effect a change in a participant’s retirement option once his or her retirement has become final (i.e., 30 days after retirement date).

- Provide for the equitable share of the pension the alternate payee receives to serve as an alimony or child support payment ordered by the Court.
Chapter 173 of the Laws of 2008

- Provides that a divorce, annulment or judicial separation of marriage **REVOKES** a participant’s prior designation of a former spouse as beneficiary of certain death benefits and retirement options.

- Treats a former spouse as having predeceased the member; all other beneficiary designations remain in force.

- If the marriage ended after 7/1/08, it revokes the former spouse’s right to act as representative, executor, guardian, attorney in-fact or any other fiduciary role.
Chapter 173 of the Laws of 2008 Does Not Apply To…

- Designations that are irrevocable by law, such as the beneficiary designation of a survivor retirement option or pop-up survivor retirement option.

- Designations that are required under a DRO on file with NYSTRS.
Majauskas Formula

The alternate payee receives an amount equal to \( \frac{1}{2} \) the service accrued during the marital period, divided by the total service used in the benefit calculation, multiplied by the maximum annual benefit.

\[
\frac{1}{2} \times \frac{\text{service accrued during marital period}}{\text{total service used in calculation}} \times \text{maximum annual benefit}
\]
Majauskas Formula Example
Tier 4; 30 years of service credit (20 years accrued during the marital period); 2% per year; $70,000 FAS

Maximum Benefit
30 x .02 = 60% x $70,000 = $42,000

Alternate Payee’s Portion
1/2 x \( \frac{20 \text{ years}}{30 \text{ years}} \) x $42,000 = $14,000

Participant’s Portion
$42,000 - $14,000 = $28,000
Important Additional Points

- All payments to an alternate payee cease upon the death of the alternate payee.

- If a participant returns to teaching and suspends the retirement allowance, the payment to the alternate payee ceases for the period of re-employment.

- Generally, we will honor a DRO from another state.

- Participants may use alternative ways to achieve equitable distribution of benefits, other than the Majauskas formula. (May need to hire an actuary.)
NYSTRS Is Here to Help

- Participants and/or attorneys may contact us for assistance at (800) 348-7298, Ext. 6200.
- Refer to our publication *Domestic Relations Orders and a Participant’s Retirement Benefit – A Guide to DROs and NYSTRS Benefits* on our website at nystrs.org: Home>Library>Publications>Legal
Print NYSTRS legal forms. Contact our Legal Department at (800) 348-7296, Ext. 6200 or legal@nystrs.org for assistance with these forms. For additional information, see Legal Publications.

To ensure the confidentiality of your membership information and to protect your privacy, we do not send personal information via email. Likewise, we suggest you refrain from providing personal information (e.g., your Social Security number or EmpID) when emailing NYSTRS.

Trust Certification (LEG-1)
Use this Certification of Trust for beneficiary designations.

Trust Certification (LEG-2)
Use this Certification for a direct deposit to a Trust.

Special Durable Power of Attorney Form
Use this special POA to name an agent to act on your behalf with respect to your retirement benefit transactions at NYSTRS (this POA does not grant authority for any other legal transactions). Please also see our publication Fact Sheet Regarding Chapter 644 of the Laws of 2008 in relation to the statutory short form power of attorney.

Domestic Relations Order Form
Use our convenient online form to draft a Domestic Relations Order (DRO). Please also see our publication Domestic Relations Orders and a Participant’s Retirement Benefit – A Guide to DROs and NYSTRS Benefits.

Consent for New York Jurisdiction and Release
Draft a Domestic Relations Order – Overview

Divorce and a Participant’s Benefits

New York courts have determined that a NYSTRS Participant’s benefits are marital assets subject to equitable distribution under the Domestic Relations Law upon the Participant’s divorce to the extent those benefits were acquired during the marriage. Accordingly, when a NYSTRS Participant divorces, a court may determine that the Participant’s spouse is entitled to share in the Participant’s benefits upon the dissolution of marriage. Payment to the former spouse, however, is effectuated only upon the retirement of the Participant, or when he/she is in pay status.

NYSTRS encourages individuals to read our publication *Domestic Relations Orders and a Participant’s Retirement Benefit – A Guide to DROs and NYSTRS Benefits* which provides important information to consider when determining the division of NYSTRS benefits.

Any division of NYSTRS benefits pursuant to the Domestic Relations Law must be provided for in a Domestic Relations Order (DRO) and approved (“So Ordered”) by a Court of competent jurisdiction. To assist individuals in drafting a DRO, we offer this convenient form.

Please submit a draft of the DRO to NYSTRS’ Legal Department for review prior to its submission to the Court.
Draft a Domestic Relations Order (DRO)

TYPE OF DOCUMENT

Is this a new DRO or are you changing the terms of an existing DRO that has already been signed by a judge?

- New Domestic Relations Order
- Amended Domestic Relations Order

If amending a DRO previously filed with NYSTRS, please complete the information below.

Date the original DRO was granted

Name of the Granting Judge

Court of Jurisdiction

PARTICIPANT (MEMBER) INFORMATION

First Name
Middle Initial
Last Name
Suffix (E.g., Jr., Sr., I, II, or III)
Date of Birth
Social Security Number

Tier of Membership (See chart)

Employment Status:
- Active
- Retired

If Participant is currently retired from NYSTRS, please enter the retirement date below.

Date of Retirement

Month
Day
Year
The Domestic Relations Order (DRO) you drafted is found on the next page. As a reminder:

- You may save this PDF to your computer.
- Please remember to write in the parties' Social Security numbers after you print the DRO.
- The final pages in this PDF include the selection sheet, which is a summary of the information you entered when drafting this DRO.
- Submit the completed draft DRO to NYSTRS via mail, email or fax, prior to its submission to the Court.

NYSTRS
Attn: Legal Dept.
10 Corporate Woods Drive
Albany, NY 12211
Fax: (518) 447-2679
Email: legal@nystrs.org

Questions about divorce matters and this DRO form may be directed to NYSTRS' Legal Dept. at (800) 348-7298, Ext. 6200 or (518) 447-2900, Ext. 6200.
At a Matrimonial Special Term of the Supreme Court Part ____, held in and for the County of __________ at __________, __________, New York on the ____ day of __________, 20____

PRESENT: HON. ______________________, Judge Presiding

STATE OF NEW YORK; County of __________

John Q. Participant,

Plaintiff.

Mary Q. Participant,

Defendant.

DOMESTIC RELATIONS ORDER
INDEX NO. __________
CAL NO. __________

The Court hereby finds the following:

1. The parties hereto were formerly spouses.
2. This order is made pursuant to the Judgment of Divorce granted on the 1st day of December, 2010.
3. The parties hereto were married on the 1st day of October, 1990 and the commencement date of the divorce action was the 1st day of October, 2010.
4. John Q. Participant is hereafter referred to as PARTICIPANT in the New York State Teachers’ Retirement System.
5. Mary Q. Participant is hereafter referred to as ALTERNATE PAYEE in the New York State Teachers’ Retirement System.
Disability Benefits
If you are forced to stop working because of a serious illness or injury, have been diagnosed with a life-threatening medical condition, or are having surgery or treatment for a medical condition…

CALL NYSTRS!

(800) 348-7298, Ext. 6010
to speak to our Disability Unit
Disability Retirement Eligibility

Tier 1
- Minimum 10 years of NYS Service.
- Totally and permanently incapacitated from further teaching.
- Member ceased teaching due to the disability.

Tier 2
- Same as Tier 1, except five of the 10 years must be rendered after last joining NYSTERS.
Disability Retirement Eligibility

Tier 3

- Member must have five years of NYS service.*
- Member must be eligible for Primary Social Security Disability benefits.
- Member may also be eligible under Tier 4.

* Service requirement is waived if the disability occurred as a result of an on-the-job accident.
Disability Retirement Eligibility

Tiers 4-6

- Member must have 10 years of NYS service.*
- Totally and permanently incapacitated from the performance of all gainful employment.
- Must file within 12 months from leaving payroll or from termination of medical leave, as outlined in the collective bargaining agreement.

* Service requirement is waived if the disability occurred as a result of an on-the-job accident.
Filing Your Application

If you are critically ill, you should file for retirement immediately!

- Disability Retirement cannot begin until an application is on file with the System. If sent by Certified or Registered Mail through the U.S. Post Office, we deem it received on the postmark date.

- Member can remain on payroll while the application is being processed.
Stay on Payroll After Filing for Disability Retirement

If you pass away before your effective date of retirement, retirement benefits will be paid if:

- You filed and qualified for a disability retirement; and
- You selected the Largest Non-Declining Lump Sum Option under Tiers 2-6 or the Declining Reserve Option for Tier 1; and
- The illness specified on the application is related to the cause of death.
Disability Retirement Processing

- Once all medical documentation is received, the application is forwarded to our Medical Board for review.

- Approval is not automatic. The Medical Board can: assign to another doctor; ask for additional medical documentation; approve the application; or deny the application.

- We request salary and service information from your employer to calculate your benefit.
Disability Retirement Calculation

- A disability pension is usually one-third of your FAS.
- It could be more or less depending on your age, service credit, and eligibility for service retirement.*

*It may be in a member’s best interest to file for service retirement (if eligible) right away depending on the situation.
Should I File for Disability Retirement?

Tier 1

At this point a Service Retirement benefit is higher for almost all Tier 1 members.
Should I File for Disability Retirement?

**Tiers 2-6**

Example: Age 50; 24 years of service; Salary = $70,000

If I die before filing, beneficiary(ies) receives:
- In-Service Death Benefit = $210,000
- + Member Contributions = $25,000
  - Total = $235,000

If I die after filing, beneficiary(ies) receives:
- Non-Declining Lump Sum = $200,000
- + ½ of In-Service Death Benefit = $105,000
  - Total = $305,000
Working While On Disability

Tiers 1-2
- Limited earnings are allowed.*

Tiers 3-6
- Any employment may jeopardize your disability benefit.*

All Tiers
- If Medical Board determines you are no longer disabled, it may discontinue benefit.

*You must file an annual report of all earnings. Please contact NYSTRS for further information BEFORE you work.
To File “For Protection Only”

- Submit an Application for Disability Retirement (RET 54.1) and write "For Protection Only" across the top front cover.
- **DO NOT** fill in the date of retirement.
- Indicate your illness on page 2 of the Application for Disability Retirement. (To be eligible, you must pass away as a result of the illness listed on the application.)
- Tier 1 members must choose the Declining Reserve Option.
- Tiers 2-6 members must choose the Largest Non-Declining Lump Sum Option.
To File “For Protection Only”

- You must submit the Medical Information Summary (RET-54.1B).
- You do not need to complete the Direct Deposit Authorization (GRE-50), the Federal Withholding Election and Certificate (FIN-149), or the Medical Reports (RET-54.3) at this time.
- Your application must be notarized. (Note: Please be aware that if this application is submitted to the System at a future date, it is imperative that the notarization was valid on the date the document was signed.)
- The application must be on file prior to your date of death. (If NYSTRS receives a document by Certified or Registered mail, we deem it filed on the postmark date. Otherwise, it is deemed filed on the date we receive it.)
For More Information

See our publication *If You Are No Longer Able To Work*, which is a summary of NYSTRS benefits that may be available to members who must stop working due to serious illness or injury.

Call the Disability Unit at (800) 348-7298, Ext. 6010
Power of Attorney Documents

- You name an agent to act on your behalf.
- If the POA is non-durable, it would terminate when you become incapacitated. If the POA is durable, it would not be affected by any subsequent incapacity.
- Statutory short form does not revoke previous POAs unless specifically stated.
- Third parties not notified of a revocation can act in good-faith that the POA is still valid.
- POA coverage ends upon the death of a member.
More on Power of Attorneys

The System does have a New York Public Employee Retirement System Special Durable Power of Attorney document on our website at nystrs.org/main/library/POA.pdf

By executing this special durable power of attorney:

- You name an agent to act on your behalf, with or without your consent, with respect to your retirement benefit transactions at NYSTRS.
- The agent can act even if you become legally incapacitated.

Because it is a powerful document, we strongly urge you to consult with an attorney before you execute it.
Chapter 644 of the Laws of 2008

Since 9/1/09 members wishing to have a Power of Attorney (POA) on file with the System giving someone authority regarding their current/future benefits must:

- Complete and submit a New York Public Employee Retirement System Special Durable Power of Attorney; or

- Complete and submit a short form power of attorney* or a short form power of attorney and a Statutory Major Gift Rider (SMGR). If submitting both forms, they must be executed simultaneously.

*A short form POA properly executed prior to 9/1/09 remains valid and will be honored by the System.
Death Benefits
Tier 1 Death Benefit

Eligibility

- Three or more months of service, and
- Either
  - Receiving salary; or
  - Off payroll no more than 12 months and not otherwise employed; or
  - Off payroll more than 12 months due to a disability and remained disabled until death
Tier 1 Death Benefit

Calculation

- **Paragraph 1** - In-Service Death Benefit is one-twelfth your final salary for each year of service to a maximum of three times your earnings.

**Benefit ceases at retirement.**
Tier 1 Death Gamble

Eligibility
Generally, age 55 or older, in-service with at least 20 years of total service.

Calculation
Based on service, age and Final Average Salary.

Note: The System will pay the higher of the two benefits: either Paragraph 1 or the Death Gamble.

Benefit ceases at retirement.
Tiers 2-6 Death Benefit

Eligibility

- One or more years of service, and
- Either
  - Receiving salary; or
  - Off payroll no more than 12 months and not otherwise employed; or
  - Off payroll due to an approved medical leave of absence and not otherwise employed.
Tiers 2-6

Paragraph 2 Calculation

- 1 year of service  = 1 x final salary
- 2 years of service  = 2 x final salary
- 3 or more years  = 3 x final salary

Maximum salary currently usable is $180,922

Benefits may continue after retirement.
Tiers 2-6

Post-Retirement Death Benefit

Upon your death in retirement, your beneficiary(ies) receives a one-time, lump sum percentage of what your in-service death benefit was at the time you retired.

- 1st year after retirement – 50%
- 2nd year after retirement – 25%
- 3rd year after retirement – generally 10%*

*If you retire after 59, it would be 10% of the in-service death benefit in effect at age 60.
Vested Death Benefit
(All Tiers)

- Requires 10 years of service credit.
- Benefit is 50% of the in-service death benefit that would have been payable if death occurred on the last day of active service.

Benefit ceases at retirement.
Tiers 3-6

Accidental Death Benefit

❖ This benefit may apply if you die as the result of an accident sustained in the performance of your duties, not caused by your own willful negligence.

❖ Your eligible beneficiary(ies) will receive an annual benefit equal to 50% of your last year of salary in lieu of an in-service death benefit.
Tiers 3-6
Accidental Death Benefit

- Surviving spouse until remarriage.
- Children until age 25.
- Dependent parents.
- Dependents under your last income tax return until age 21.
Accelerated Death Benefit (All Tiers)

- Must have a medical condition requiring extraordinary care or treatment, or terminal illness with a life expectancy of no more than 12 months.
- Must apply for, and be approved for, a disability retirement within 12 months of ceasing work.
- Member receives a lump-sum death benefit payment while living, equal to their in-service death benefit.
- Payment is in lieu of a monthly benefit and any type of death benefit payment to a beneficiary.
Who Will Receive Your Death Benefit?

As life’s events occur (i.e., marriage, death, divorce, or birth of a child), remember to check your beneficiary(ies) (e.g., on your Benefit Profile or in your MyNYSTRS account).

- Is the beneficiary on file the person you think it is?
- Are you thinking about naming a minor?
- Have you divorced but you still want that ex-spouse to receive any pre- or post-retirement death benefit?
  - If marriage ended after 7/1/08, Chapter 173 revoked the spouse’s right to act as representative, executor, guardian, attorney in-fact or any other fiduciary role.
  - You will need to file a new Designation of Beneficiary form with NYSTRS, available on our website.
Active Member Forms

Print NYSTERS forms. Call our Hotline at (800) 782-0289 to request forms be mailed to you.

Membership Application (NET-2)

Member Name/Address Change (GRE-50) | Or update your address online in MyNYSTERS.

Designation of Beneficiary For In-Service or Post-Retirement Paragraph 2 Death Benefit (NET-11.4)

Loan Application (LDN-26) | Or apply online in MyNYSTERS.
Refer to our video Loan Truths... And Consequences and our loan taxability tutorial for important information.

Election to Reinstatement (RIS-1)
Be advised the election is irrevocable once filed so we encourage you to discuss your options by calling us at (800) 348-7298, Ext. 6250. Please note: If your membership in another NYS retirement system is still active, you can transfer it to NYSTERS. You may initiate the transfer by contacting the other system.
Active Member Forms

Print NYSTRS forms. Call our Hotline at (800) 782-0289 to request forms be mailed to you.

**Membership Application** (NET-2)
**Member Name/Address Change** (GRE-50) | Or update your address online in MyNYSTRS.
**Designation of Beneficiary For In-Service or Post-Retirement Paragraph 2 Death Benefit** (NET-11.4)
**Loan Application** (LDN-26) | Or apply online in MyNYSTRS.
Refer to our video **Loan Truths... And Consequences** and our loan taxability **tutorial** for important information.
**Election to Reinstate** (RIS-1)
Be advised the election is irrevocable once filed so we encourage you to discuss your options by calling us at (800) 348-7298, Ext. 6250. Please note: If your membership in another NYS retirement system is still active, you can transfer it to NYSTRS. You may initiate the transfer by contacting the other system.
When Death Occurs

Someone needs to notify us.

Call NYSTRS at

❖ (800) 348-7298, Ext. 6110

What must be provided:

❖ Member’s name
❖ Member’s EmplID or Social Security Number
❖ Member’s date of death
❖ Name and address for next of kin
When a Loved One Passes

A Checklist for Reporting the Death of a Retiree

Use this checklist to ensure you make the proper notifications regarding your loved one's death. Failure to notify all parties could delay payment of benefits.

☐ **Notify NYSTRS (A.K.A., the Retirement System)**

Call (800) 348-7298, Ext. 6140 to report the death of a retiree, or write using the address at the bottom of this checklist. This will ensure the retiree's beneficiary(ies) will receive promised benefits, if payable, in a timely manner. It will be necessary to provide NYSTRS with an original or certified copy of the death certificate.

☐ **Notify the Former Employer**

This is important because, in most cases, health insurance is provided through the school district from which the member retired.

☐ **Notify NYSUT (A.K.A., the Teachers’ Union)**

Do this to collect on any life insurance policies the retiree may have purchased through New York State United Teachers (NYSUT). Call (800) 626-8101.

What about the Social Security Administration (SSA)?

Typically the funeral director will report the death to SSA. However, next of kin should confirm notification occurred. If it did not, it is the family’s responsibility to do so.
Need Benefit Information?

Call NYSTRS at

(800) 348-7298, Ext. 6250