

**POMPANO BEACH
GENERAL EMPLOYEES'
RETIREMENT SYSTEM EDUCATION
WORKSHOP
LEGAL ISSUES TO CONSIDER:
Divorce – Before and After Retirement**

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Florida Law – HB 401, Ch. 732

- ▶ Florida law now provides that when an individual dies after dissolution or annulment of a marriage, a beneficiary designation which designates the former spouse as a beneficiary becomes void and the former spouse is deemed to have predeceased the decedent absent certain exceptions.

Effect of Divorce on Beneficiary Designation

- ▶ This means that if your former spouse was your designated beneficiary, the designation you made will become null and void upon divorce except in certain circumstances, such as:
 - If the governing instrument is signed by the decedent, or on behalf of the decedent, *after* the order of dissolution or order declaring the marriage invalid and such governing instrument expressly provides that the interest will be payable to the designated former spouse regardless of dissolution or invalidity of the decedent's marriage;
 - If a court order or decree required the decedent to maintain the asset for benefit of the former spouse or children of the marriage;
 - If the decedent remarried the person whose interest would otherwise have been revoked under this section and the decedent and that person were married to one another at the time of the decedent's death.

Your Designated Beneficiary Form

- ▶ The Pompano GERS DB Form asks for your relationship to the Beneficiary. This means that under Florida law the Executive Director of the Plan will have to look to your death certificate to determine who should be paid, which is as follows:
 - If the governing instrument (i.e. the beneficiary designation form) specifies the beneficiary to be the spouse of the decedent, the pension plan (“payor”) must first look to the death certificate. If the death certificate provides that the decedent was married to the named beneficiary at the time of death, the payor may pay out the benefits to the named beneficiary.
 - If the death certificate provides that the decedent was not married, or was married to another individual other than the person specified on the account as the spouse, the payor may pay the interest out to the contingent/secondary beneficiary under the governing instrument.
 - Therefore, it is important to list contingent beneficiaries on your DB form.

Did You Know?

- ▶ That your pension benefit can not be used for equitable distribution of marital assets nor can it be assigned.
 - ▶ Your City code has a particular provision (§34.030) regarding pension benefits being non-assignable nor subject to garnishment for debt or for other legal process.
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What about child support or alimony?

- ▶ Pursuant to Florida law your pension benefit can be used to pay for court ordered alimony or child support pursuant to an Income Deduction Order (IDO) n/k/a Income Withholding Order (IWO).
- ▶ However, it is important to note that because the Pompano GERS is a governmental plan (not subject to ERISA), it is not required to honor Qualified Domestic Relations Orders (QDRO).

QDRO vs. IDO

- ▶ A "qualified domestic relation order" (QDRO) is a domestic relations order that creates or recognizes the existence of an alternate payee's right to receive, or assigns to an alternate payee the right to receive, all or a portion of the benefits payable with respect to a participant under a retirement plan, and that includes certain information and meets certain other requirements. *They are not applicable to your Plan.*
- ▶ **Income deduction orders.** Issued in conjunction with an Order establishing, enforcing or modifying an obligation for alimony and/or child support.
 - Upon the entry of an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support the court will enter a separate order for income deduction. Copies of the orders shall be served on the obligee and obligor. If the order establishing, enforcing, or modifying the obligation directs that payments be made through the depository, the court shall provide to the depository a copy of the order establishing, enforcing, or modifying the obligation. If the obligee is a recipient of Title IV-D services, the court shall furnish to the Title IV-D agency a copy of the income deduction order and the order establishing, enforcing, or modifying the obligation.

How does my ex-spouse receive money from my retirement benefit?

- ▶ The Pompano GERS is not able to establish and maintain a separate account for your ex-spouse and pay to him/her an amount from your DROP account that is awarded by the Court for equitable distribution nor can it set up a separate account solely in your ex-spouse's name and pay your retirement benefit directly to that account absent an IDO.
- ▶ However, you as a member are able to set up a joint account in your name and your ex-spouse's name and direct the Pompano GERS to pay all or a portion of your retirement benefit to that account each month for whatever purpose you desire.
- ▶ As discussed, your ex-spouse or dependent(s) may receive money for court awarded alimony or child support via an Income Deduction Order, which the Pompano GERS is required to honor and abide by.