

OVERLOOKED FINANCIAL ISSUES

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CHAPTER 8

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1997-2000 Juris Doctorate from Baylor Law School
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2012 - present Partner, Goranson Bain, PLLC
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Collin County Bar Association
Dallas County Bar Association
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HONORS

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Best Lawyers in America - 2013, 2014, 2015, 2016, 2017, and 2018
Best Lawyers in Texas - Wall Street Journal - 2016
Texas Super Lawyers - 2014, 2015, 2016 and 2017
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Interim Associate Judge - Dallas Family Courts - 2011
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President - Collin County Bar Association 2017

AUTHOR AND LECTURER

How to Take and Use a Deposition in a Family Law Case - Advanced Family Law 2017
Course Director - Advanced Family Law 101 2017
TAFLS Trial Academy - Charleston, SC - 2017
Characterization of Separate and Community Property - Estate Planning
 Council of North Texas - 2017
When to Consult a Family Law Attorney - Dallas Bench Bar 2016
Characterization of Property/Marital Agreements - Collin County Estate Planning Section 2016
Judges' Tech Tips - Advanced Family Law 2015
Collaborative Myths - Collin County Bench Bar - 2015
Top Evidentiary Mistakes Made by Attorneys - Advanced Family Law - 2014
Professionalism - Baylor Law School - January 2014
Top Evidentiary and Discovery Mistakes Made by Attorneys- Advanced Family Law - 2013
To Catch an Alcoholic-A Soberlink Case Study -Collin and Denton County Bench Bar - 2013
Using your Ipad effectively in the Courtroom - Plano Bar Association - 2012
Evidence and Trial Procedure - Frisco Bar Association - Speaker - 2012
Texas Annotated Family Code - LexisNexis - Editor - 2010

Getting Your Case From 0 to 60 - Collaborative Conference - Speaker - 2010
General Practice Institute - Family Law Update - Speaker - 2008
Estate Planning Council of North Texas - Estate Planning and Divorce -2008
Texas Practice Guide - Family Law - Editor - 2005

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BAR MEMBERSHIPS:

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EDUCATION:

Regent University School of Law
Juris Doctor

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- Federalist Society
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B.B.A. in Finance and B.A. in Political Science

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Honors:

- National Society of Collegiate Scholars
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Activities:

- Phi Gamma Delta President, Scholarship Chair, and House Manager
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- International Fraternity Council Representative

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- Goranson Bain, P.L.L.C., Plano, Texas, December 2017 - Present
- Cordell & Cordell, P.C., Dallas, Texas, August 2016 – December 2017
- Skibell, Bohach, & Archer, P.C., Dallas, Texas, October 2015-August 2016
- Warren & Migliaccio, L.L.P., Richardson, Texas, July 2012-October 2015
- Robinius, Sutton, Harper, L.L.P., Garland, Texas, June 2012-August 2012
- The Foust Firm, Bedford, Texas, May 2012-June 2012
- Level 2 Review, Richardson, Texas, January 2012-May 2012
- Israel International Law Program, Summer 2010
- Judge Mike Anderson, 262nd Criminal Court of Harris County Texas, Summer 2010
- Strasbourg International Law & Human Rights Program, Summer 2009
- Office of Congressman Ted Poe, Washington D.C., Summer 2006.

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS:

State Bar of Texas, Family Law Section

District of Columbia Bar

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Texas Young Lawyers Association

Dallas Bar Association, Family Law Section

Dallas Association of Young Lawyers

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AWARDS:

2017 - 10 Best Attorney's for Client Satisfaction by the American Institute of Family Law Attorney's

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SOCIAL SECURITY 1

III. TRS & OTHER RETIREMENT 2

IV. TAXES 2

V. 1031 EXCHANGES 3

VI. CREDIT CARDS 4

VII. CONCLUSION 5

APPENDICES 7

Overlooked Financial Issues

I. INTRODUCTION

Have you ever stumbled upon issues dealing with Social Security, Taxes or something that we, as family law attorneys (rather than CPA's) are not experts on, but that are relevant to a divorce action? While many of these items are covered by federal law or are outside our area of expertise, having a working knowledge of these subjects will help the prudent practitioner ensure our clients have the tools they need to make important decisions. This article gives a basic overview of these often overlooked issues, and can offer some assistance when preparing for mediation or trial.

II. SOCIAL SECURITY¹

While Social Security is governed by Federal Statute, it often finds its way into divorces. This is an important factor to consider if either spouse is nearing retirement age. Please note that the SSDA website provides much more detail on amounts of earnings, how to apply for benefits, etcetera - <https://www.ssa.gov/>.

- A. General Rule: If a spouse is age 62, unmarried, and divorced from someone entitled to Social Security retirement or disability benefits, they may be eligible to receive benefits based on the earning spouses' income. In the event of divorce, if a marriage lasted 10 years or longer, the non-earning spouse can receive benefits on their ex-spouse's record if:

1. The non-earning spouse is unmarried;
2. The non-earning spouse is age 62 or older;
3. The earning ex-spouse is entitled to Social Security retirement or disability benefits; and
4. Any benefit that the non-earning spouse is entitled to receive based on their own work record must be *lower* than the benefit they would receive from their ex-spouse's record. Simply put, the non-earning spouse collects whichever benefit is higher. They cannot collect both.

Note: it does not matter if the earning ex-spouse has remarried.

- B. How Much Money will they Receive?

The benefit a divorced spouse receives is equal to one-half of the earning ex-spouse's full retirement amount (or disability benefit) if they start receiving benefits at full retirement age. The benefits do not include any delayed retirement credits the ex-spouse may receive.

- C. How Can I Help my Clients?

If either your client or your client's spouse is nearing retirement age, Social Security is something to consider in the property division aspect of a divorce. Call the SSDA to see if either client is eligible and when such benefits can be expected, or request a Social Security Statement through discovery to confirm future payments. Further, when requesting or defending against a spousal maintenance claim, remember to consider social security payments.

¹ The authors would like to thank Craig W. Mills – EdwardJones, Financial Advisor, 17304 Preston Road, Suite 12601, Dallas, Texas 75252, Phone: 972-733-1037, Fax: 888-451-2504, Email: Craig.mills@edwardjones.com for his assistance in contributing to this portion of this article.

III. TRS² & Other Retirement

TRS stands for “Teacher Retirement System of Texas”. It provides retirement benefits for those employed by the state public schools, colleges, and universities. TRS is a pension, but members make contributions by income deduction, and therefore the amount of contributions made have little to do with the actual present value of the plan benefits, making them difficult to value.

The form of payment will be the same as the participant elects (usually monthly annuity payments). Remember that TRS does not pay the alternate payee until the participant *actually* retires. As such, an alternate payee is generally not able to “cash-out” their awarded portion at the time of divorce. Bear this in mind when dealing with proposed property division. However, there is an exception to this rule. This applies only if the TRS member is 62 or older, and is otherwise eligible to retire without reduction for early age. If the alternate payee makes a written request for an early distribution, the *member’s* benefit will be permanently reduced. Therefore, if an alternate payee requests an early distribution, this will affect whether or not the member should consider retiring at a given time.

While on the one hand, the TRS has the downside of not paying anything until the earner reaches retirement age, the long-term payouts may be far greater than when compared against a 401k, for example.

PRACTICE TIP – in negotiating a property division with a TRS account – do not attempt to award an alternate payee a lumpsum dollar amount. Use percentages only. TRS provides a model QDRO available online at https://www.trs.texas.gov/Pages/active_member_qdro.aspx. For any QDRO entered by a court on or after January 1, 2015, parties are required to use the TRS model order. Proposed QDROs should be sent to: Legal Services, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698, 512-542-6400, 800-223-8778, www.trs.state.tx.us.

ADDITIONAL PRACTICE TIP – Avoid using blanket language like “Any and All” retirement benefits in a divorce proceeding, or you will award undisclosed assets.

IV. TAXES

A. Basis

“Basis” is necessary to determine the amount of taxes owed on assets awarded in a divorce. Keep in mind, a divorce does not adjust the basis of an asset.

PRACTICE TIP – When dividing investment accounts, make sure to account for tax consequences (see T.F.C. §7.008).

B. Tax Loss Carryforward

Capital Loss Carry Forwards- “Carryforward” is a tax policy that allows an investor to use “realized” capital losses to offset the taxation of capital gains in the future. For individuals, losses from the sale or exchanges of capital assets are allowed only to the extent of gains from such sales or exchanges plus up to \$3,000 of ordinary income (\$1,500 if the return is married, filing separate). Any capital loss that could not be deducted in one year may be carried over for an unlimited time until fully used up. If separate returns are filed after a net loss was reported on a joint return, the carryover is allocated to each taxpayer based on their individual net long-term and short-term capital losses for the preceding taxable year. If incurred in a community activity, the losses are split equally on separate returns. Therefore, each spouse may carry forward his or her half of the loss to post-divorce income.

² The authors would like to thank Phillip D. Phillips, Law Office of Phillip D. Phillips, 101 Summit, Suite 700, Fort Worth, Texas 76102, Telephone 817-984-7585, Fax 817-984-7589, Email: Phil@PhillipsTexasLaw.com for his assistance in contributing to this portion of this article.

EXAMPLE: Following a divorce, Husband sells stock at a loss, taking a \$50,000 hit. He can deduct a maximum of \$3,000 of such a loss that year if he does not have any gains. However, in subsequent years, he can continue to deduct that loss, (“carrying it forward”) up to \$3,000 per year, until the entire \$50,000 is fully accounted for.

Suspended Loss Carryforwards for S Corporations-In a Subchapter S corporation, the taxable income or loss is passed-through to the shareholders. Losses which exceed the shareholder’s basis in stock and debt in the corporation are suspended and carried forward to the succeeding tax years. When the stock in such a corporation is owned as community property and transferred or divided incident to divorce, the suspended loss carryforwards associated with the stock are transferred along with the stock on a pro rata basis based on the number of shares owned by each spouse during the tax year. In a division of stock which was equally owned by the parties during marriage, each spouse will receive one-half of the suspended loss carryforward. However, if the stock is awarded entirely to one spouse, the other spouse’s share of the suspended loss carryforward is not transferred to the other spouse. The party receiving the stock will only have the benefit of their 1/2 share of the carryforward; the other half will be lost. It is not added to the basis in the stock, as the loss was disallowed in the year in which it occurred and carried forward. The spouse receives the transferor’s basis in the stock per Section 1041, which does not include the loss carryforward associated with the transferee’s stock.

PRACTICE TIP- You can find the allowable capital loss on Schedule D, Form 1040, Lines 13 and 14 on a tax return (see appendix for sample copy).

ADDITIONAL PRACTICE TIP – Make sure to review previous tax returns to allocate benefits that can be taken in future years.

V. 1031 EXCHANGES

A 1031 exchange allows the titleholder to defer the federal and state capital gain and recaptured depreciation tax when “like-kind” property of equal or greater value is replaced within 180 calendar days post-closing on the old property. Per Internal Revenue Code Section 1031, a properly structured 1031 exchange allows an investor to sell a property, to reinvest the proceeds in a new property and to defer all capital gain taxes. “No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment, if such property is exchanged solely for property of like-kind which is to be held either for productive use in a trade or business or for investment.”

EXAMPLE: Husband and Wife divorce with Wife receiving the parties’ seaside rental property as part of the settlement. Wife wants to sell the rental property and replace with another property that she can monitor. Wife can sell the seaside rental and purchase a local rental and avoid the tax.

PRACTICE TIP – It is always wise to encourage your clients to consult a CPA, tax attorney, or other tax professional. They may be able to identify property that can qualify for a 1031 exchange. Have this professional either present or “on-call” during a mediation.

ADDITIONAL PRACTICE TIP – Unless you are also a CPA or tax attorney, make it clear to your clients that you do not give tax advice. Consider including a provision reflecting the same in your Final Decree to protect yourself from any blowback that might come after the case concludes.

A 1031 exchange is reported on tax return for the year in which your 1031 exchange *began*. So, for example, if Husband sells his relinquished property in 2016 and acquired the replacement property in 2017, the 1031 exchange would be reported on the *2016 tax return*. The recognized gain is located on line item 23 on the IRS 8824 form and would also be reported on the schedule D of the 1040 if above zero.

VI. CREDIT CARDS**A. Prepaid Balance Cards**

Prepared balance credit cards operate just like a gift card. The owner deposits money onto the card, and as purchases are made the available balance is reduced. Dealing with these types of Credit Cards in a divorce is much simpler than a credit card. You can assign a prepaid card to a particular party just like you would a bank account. Once the balance is gone, the card can simply be closed.

PRACTICE TIP – Make sure you ask for cards of this type in your discovery requests, and ensure both parties account for it in their Inventory and Appraisements.

B. Prepaying a Credit Card

Prepaying a credit card can be a creative way for a party in a divorce to hide cash. One party may prepay on the card, then can legitimately represent on the Inventory and Appraisal that they have little cash, but no debt. Then, could say they “graciously” agree to assume responsibility for the entire card in a mediation/trial – walking away with a sum of cash with dubious intentions. Of course, at this point, the card itself becomes an asset to be divided rather than a liability.

PRACTICE TIP – Make sure you request verification of account balances and statements to avoid this very situation. Also, consider running a credit report for both parties in a divorce action to uncover any hidden transactions.

There are less nefarious reasons for prepaying on a credit card. It can be a useful tool for trying to establish a higher credit limit or building credit for a soon to be ex-spouse during a divorce. It can also serve as a means to keep the other spouse from incurring significant debt. In such a scenario, the credit card company will first use the funds to pay any open debt. Then, if there is money left over, they carry it as a credit towards future charges, similar to a gift card. After a certain period of time if the prepaid balance remains (typically around 90 days) the credit card company will issue a check for the prepaid funds. The card can also be closed to speed up the issuance of the check, something to bear in mind when negotiating a settlement for a client that needs cash.

C. Failure to Pay

The assignment of credit card debts in a divorce decree has little to no effect on the creditor’s ability to collect it. Even if a credit card debt is assigned one spouse in a divorce decree, if the debt is one for which the other spouse is otherwise liable, the creditor can seek payment from the other. Additionally, the spouse that was not ordered to pay may suffer damage to their credit as a result. The practitioner has 3 main options in this scenario.

Option #1: Award to Spouse in their Name - When negotiating a settlement, it is always easiest to stipulate that that the party whose name is on the credit card pays (they should also get any rewards benefit that accompanies it).

Option #2: Pay off Joint Debt - Ideally, the attorney can divide the assets to pay the joint debts of each party, avoiding this scenario entirely. Of course, this is not always possible.

Option #3: Injunction – In the decree or MSA, specifically spell out that any joint credit/charge cards need to either be closed, refinanced in one spouse’s sole name, returned, or destroyed, and enjoin the other spouse from incurring charges associated with that credit card.

PRACTICE TIP- In drafting a divorce decree where the parties have joint credit cards, and one spouse is going to pay off a certain card, clearly spell out the methods for payment, the amount, the dates due, and to where the payment will be sent. At the very least this permits the innocent party to properly use the decree in future litigation to enforce.

VII. CONCLUSION

Issues like taxes, credit cards, and Social Security, are important topics that should not be glossed over – lest we do a severe disservice to our clients. While expertise is not required, not knowing some basic information could lead to some potential pitfalls for our clients (and malpractice for us!). Having some knowledge of these items will make sure our client's needs are met. At the very least, you should be able to identify these types of issues and plan ahead, and bring in any other experts that are needed to help resolve the issues. Please see the checklist in the appendix which may prove helpful.

Appendices:

1. Mediation Checklist;
2. Schedule D, Form 1040 Federal Tax Return Highlighted Tax Loss Carryforward;
3. TRS Model Domestic Relations Order for Active Members; and
4. TRS Model Domestic Relations Order for Retirees.

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Div. Grounds: Irreconcilable Difference or _____

Conservatorship: JMC / SMC & PC

Primary Parent: Client / Opp Party / Split or _____

Division of Rights and Duties: Exclusive, Joint,
Independent or _____

Geo Restrict: Yes / No . If Yes, Contiguous Counties /
County of Divorce only / Other: _____

Possession Order: SPO / Expanded SPO or _____

Random UA / Hair follicle? Yes / No _____

Child Support: Client pays / receives / neither
Amount: Guideline / (Other) _____

Health Insurance Available thru: Client / Opp Party
Carrier: _____

Split Uninsured meds: 50/50 / (Other) _____

Assets:

Real Property to: Client / Opp Party

a. Sell / Refi / Award or _____

b. Temp Use: Client / Opp / Share _____

c. Terms of Sale: 50/50 with _____ remaining
until closing; or _____

d. Mortgage & utilities: Client / OP / Split or _____

Other Real Property: _____

Personalty: To person in possession / See Client list or

Auto to C: _____

Note to: _____

Auto to OP: _____

Note to: _____

Other Autos: _____

Note(s) to: _____

Joint Bank Accounts: _____

C's Accounts: _____

OP's Accounts: _____

C's 401k / Pension: _____

OP's 401k / Pension: _____

Stocks / Options: _____

Other: _____

Life Insurance: _____

Sep. Prop. Claimed : _____

Liability Division:

Joint Credit Cards: _____

C's Credit Cards: _____

OP's Credit Cards: _____

Other Liabilities _____

Reimbursement: _____

Spousal Support / Alimony: None / Client receives /
pays: \$ _____

Frequency: Mo. / Semi / Bi / Weekly

Beginning Date: _____

Duration: _____

Permanent Injunction:

Against Overnight Guests of Opposite Sex? Yes / No

Against use of alcohol or controlled substance? Yes / No

Use of Credit Cards?

Other: _____

Tax Exemption for Child: To Client / Opp Party or

Taxes: No Stated Method / General Rule/ or _____

Name Change: Yes / No

Restore name to: _____

Fees & Costs: To party incurring same / Other _____

NOTES:

**SCHEDULE D
(Form 1040)**

Capital Gains and Losses

OMB No. 1545-0074

2017
Attachment
Sequence No. **12**

Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040 or Form 1040NR.
▶ Go to www.irs.gov/ScheduleD for instructions and the latest information.
▶ Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

Name(s) shown on return

Your social security number

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked				
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824				4
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				5
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your Capital Loss Carryover Worksheet in the instructions				6 ()
7 Net short-term capital gain or (loss) . Combine lines 1a through 6 in column (h). If you have any long-term capital gains or losses, go to Part II below. Otherwise, go to Part III on the back				7

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with Box D checked				
9 Totals for all transactions reported on Form(s) 8949 with Box E checked				
10 Totals for all transactions reported on Form(s) 8949 with Box F checked				
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824				11
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				12
13 Capital gain distributions. See the instructions				13
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your Capital Loss Carryover Worksheet in the instructions				14 ()
15 Net long-term capital gain or (loss) . Combine lines 8a through 14 in column (h). Then go to Part III on the back				15

For Paperwork Reduction Act Notice, see your tax return instructions.

Cat. No. 11338H

Schedule D (Form 1040) 2017

NO.

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DOMESTIC RELATIONS ORDER DIVIDING RETIREMENT PLAN BENEFITS

This Order is intended to meet the requirements for a "qualified domestic relations order" relating to the Teacher Retirement System of Texas, hereinafter called the "Plan," "TRS," or "System," as set forth in Chapter 804, Title 8, Texas Government Code, and in applicable TRS rules, 34 TAC §§47.1 - 47.17. This Order is an integral part of the Decree of Divorce entered in this cause. In compliance with those requirements, the following is specified:

1. This Order assigns a portion of the benefits or amounts payable under the Plan to Alternate Payee in recognition of his/her marital rights in Participant's benefits or amounts payable under the Plan.

2. Participant in the Plan is _____

(INSERT NAME OF PARTICIPANT), whose last known mailing address is

(INSERT PARTICIPANT'S ADDRESS) and whose Social Security number is excluded from this order to protect the Participant from identity theft. Participant is authorized to use an alternate method acceptable to TRS to verify the number.

3. Alternate Payee is _____

(INSERT NAME OF ALTERNATE PAYEE), whose last known mailing address is

(INSERT ALTERNATE PAYEE'S ADDRESS) and whose Social Security number is excluded from this order to protect Alternate Payee from identity theft. Alternate Payee is authorized to use an alternate method acceptable to TRS to verify the number.

4. Participant and Alternate Payee were married on

_____ **(INSERT DATE OF MARRIAGE)**. The court

orders that for purposes of this order, the end date for the division of property is

_____ **(INSERT END DATE OF DIVISION)**.

5. As part of a just and right division of the estate of the parties, Alternate Payee is awarded and shall receive from the Plan a portion of any of the following distributions paid by the Plan:

- distributions of service or disability retirement benefits (whether payable to Participant or a beneficiary);

- death or survivor benefits; and
- a distribution of the total accumulated contributions credited to Participant by the Plan.

For purpose of this order, the following **definitions** apply:

- **service or disability retirement benefits** include monthly retirement annuity payments payable to a retiree, continuing optional annuity payments paid to a beneficiary, distributions under the Deferred Retirement Option Plan (DROP), distributions of the Partial Lump Sum Option (PLSO), and supplemental payments;
- **death or survivor benefits** include a distribution of any monthly annuity payments paid as a death benefit to a beneficiary, a distribution of a lump sum benefit, any monthly benefits paid to a surviving spouse, dependent parent of the decedent, or minor children of the decedent, and a distribution of an amount equal to the remaining balance of Participant's accumulated contributions paid as a death benefit;
- **accumulated contributions** include member contributions made on behalf of the Participant plus all accumulated interest and has the meaning provided in § 821.001(1), Texas Government Code, or its successor statute; and

The portion awarded to Alternate Payee is payable if, as, and when such distributions are made as provided by the Plan's governing laws and rules based on Participant's membership in, credit with, or contributions to the Plan. The portion of the distribution of benefits or total accumulated contributions that is

awarded and that is to be paid to Alternate Payee shall be determined as follows:

Select ONE of the following options by marking the applicable box (do not omit the unselected option):

OPTION 1

Multiply the distribution by a percentage derived from the following formula:

$$CP \text{ awarded} \times \frac{\text{standard annuity based on salary and service during marriage}}{\text{standard annuity based on salary and service at time of distribution}}$$

The community property (CP in the equation above) awarded is the Alternate Payee's interest in the community property as determined by the court and may be expressed as a fraction, a percentage or a decimal. The Alternate Payee's interest in the community property is _____ **(INSERT**

INTEREST AWARDED BY THE COURT).

The **numerator** of the fraction establishing the community's interest in Participant's total benefit is the amount of a standard service retirement annuity unreduced for early retirement calculated under the retirement law and rules in effect on the end date of division but using only service and salary credit that TRS determines has been acquired by Participant between the date of the parties' marriage and the end date of division and maintained with the System as of the end date of division, even if Participant has not yet reached normal retirement age, the service credit is less than the minimum required to be eligible to receive a service retirement annuity, and the average salary must be calculated with fewer salary years than specified by applicable laws and rules.

The **denominator** of the fraction is:

- for distributions made after the retirement of Participant, the amount of a standard service retirement annuity unreduced for early retirement calculated under the laws and rules in effect at the time of Participant's latest effective date of retirement and based on Participant's membership in, credit with, or contributions to the System as of Participant's latest effective date of retirement; and
- for distributions made prior to the retirement of the Participant, the amount of a standard service retirement annuity, unreduced for early retirement, which would have been used to calculate the service retirement benefit payable if Participant had retired at the end of the month in which the distribution is authorized to be made. For the purpose of determining the amount of a normal age standard service retirement annuity which would have been used to calculate the benefit payable if Participant had retired, the Plan may calculate the annuity by using the service credit acquired and maintained by Participant, even if it is less than the minimum required to be eligible to receive a service retirement annuity, and by using an average salary, even if it must be calculated with fewer salary years than specified by applicable laws and rules. The term "standard service retirement annuity" as used in this Order is defined by § 824.203, Texas Government Code, or its successor statute.

OPTION 2

Multiply the distribution by _____ % **(INSERT PERCENT AWARDED BY THE COURT. AWARD MUST BE LESS THAN ONE HUNDRED PERCENT (100%))**. The percent awarded is a percent of the **total distribution** payable on behalf of Participant and is **not** limited to a percentage of benefits accrued only during the marriage. If the application of the percent awarded results in a distribution of Participant's separate property to the Alternate Payee, the parties acknowledge the award and agree to the distribution and the Court finds that the award of separate property is necessary for the just and right division of the parties' community property.

Select one or more of the following special instructions if needed by marking the applicable box (do not omit unselected instructions):

 SPECIAL INSTRUCTION 1:

The above language notwithstanding, in no event shall Alternate Payee receive more than a total of \$ _____ **(INSERT TOTAL AMOUNT)** plus interest, calculated from the end date of division to the date distribution to the Alternate Payee begins, as provided in § 825.307(b), Texas Government Code, or its successor statute.

 SPECIAL INSTRUCTION 2:

The above language notwithstanding, in no event shall Alternate Payee receive more than a total of \$ _____ **(INSERT TOTAL AMOUNT)**.

SPECIAL INSTRUCTION 3:

The above language notwithstanding and except as provided in Section 6(g) of this order, in no event shall Alternate Payee receive more than \$ _____ **(INSERT AMOUNT)** per month from any monthly retirement annuity payment.

 SPECIAL INSTRUCTION 4 (only available if selected Option 1):

The above language notwithstanding, in determining the amount of service credit acquired during the marriage, service credit acquired under the terms of the Employee Retirement System of Texas (ERS) but transferred to TRS at the time of distribution shall be credited at the time the service was acquired or earned under ERS rather than the time of the transfer to TRS.

 SPECIAL INSTRUCTION 5 (only available if selected Option 1):

The above language notwithstanding, in determining the amount of service credit acquired during the marriage, _____ **(INSERT TOTAL NUMBER OF YEARS of SERVICE CREDIT TO BE EXCLUDED)** years of service credit purchased during the marriage are excluded from the total years of service credit acquired during the marriage.

 SPECIAL INSTRUCTION 6:

Alternate Payee is awarded and shall receive _____ **(INSERT INTEREST AWARDED BY THE COURT)** of a special refund of deposits or contributions that were made to and maintained with TRS between date of marriage and the end date of division and _____ **(INSERT INTEREST AWARDED BY THE COURT)** of

any interest, if credited, that TRS determines is attributable to these deposits or contributions. The community property interest awarded is the Alternate Payee's interest in the community property as determined by the court and may be expressed as a fraction, a percentage or a decimal. Special refund means a return of deposits or contributions that should not have been made to TRS on behalf of the member or that were based on compensation that cannot be used for calculation of TRS benefits and is refundable under the terms of the Plan.

6. TRS is directed to disburse to Alternate Payee the portion of distributions assigned under Paragraph No. 5 of this Order, if, as, and when such distributions are made as provided by the System's governing laws and rules based on Participant's membership in, credit with, or contributions to the System, subject to the following provisions:
 - (a) This Order shall not be interpreted in any way to require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.
 - (b) This Order shall not be interpreted in any way to require the Plan to provide increased benefits determined on the basis of actuarial value.
 - (c) This Order shall not be interpreted in any way to require the Plan to pay any benefits to an alternate payee named in this Order which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.
 - (d) This Order shall not be interpreted in any way to require the payment of benefits to Alternate Payee before the retirement of Participant, the distribution of a withdrawal of contributions to Participant as authorized by the statutes governing

the Plan, or any other distribution required by law.

(e) If the Plan provides for a reduced benefit upon "early retirement," this Order shall be interpreted to require that, in the event of Participant's retirement before normal retirement age, the benefits payable to Alternate Payee shall be reduced proportionately.

(f) This Order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of Participant's death or to require the selection of a particular benefit payment plan or option. However, notwithstanding the provisions of this Order, if Alternate Payee is designated as a beneficiary for any benefits payable by TRS upon the death of Participant, then Alternate Payee shall receive such payment to which Alternate Payee is entitled by law as beneficiary. If Alternate Payee is a joint beneficiary for a benefit, Alternate Payee shall receive the portion of the total benefit payable to the joint beneficiaries as specified in Paragraph No. 5 above; the portion of the benefit payment received by Alternate Payee as a joint beneficiary of Participant shall be credited toward satisfying the amount of the benefit payable to Alternate Payee as the alternate payee for Participant's interest. Additionally, as specified in Paragraph No. 5 above, Alternate Payee shall receive a portion of any other benefits which are payable to a beneficiary and for which Alternate Payee was not designated as a beneficiary.

(g) In the event that, after distribution of a benefit to Participant or a beneficiary has begun, the amount of the distribution is increased or reduced by law, then the amount payable to Alternate Payee shall be increased or reduced proportionately.

(h) If the Board of Trustees of the Plan has provided by rule that, in lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the Plan may pay an alternate payee an amount that is the actuarial equivalent of such interest in the form of (1) an annuity payable in equal monthly installments for the life of the alternate payee, or (2) a lump sum, then and only in that event Alternate Payee or Participant may request the Plan to make payment in this form, and the Plan is authorized to make payment in this form instead of in the manner otherwise described in this Order. This Order shall not be interpreted in any way to require the Plan to adopt such rules or to require the Plan to grant any request for payment in the form described in this provision. The determination of whether to pay an amount authorized by this provision in lieu of the interest otherwise awarded by this Order shall be at the sole discretion of the Plan.

The above language notwithstanding, Alternate Payee may make an election, if authorized by § 804.005, Texas Government Code, or its successor statute, to receive an amount in lieu of the interest awarded by this Order that is Alternate Payee's portion of the actuarial equivalent of the Participant's accrued benefit, determined as of the date of Alternate Payee's election. When authorized, Alternate Payee may make this election in writing to TRS if Participant has not yet retired but is at least 62 years of age and eligible to retire without reduction for early age. The amount is payable to Alternate Payee in the form authorized by law and as determined by TRS. The benefit payable on behalf of Participant is permanently reduced as required by law and as determined by TRS.

(i) The interest of Alternate Payee is governed by § 804.101, Texas

Government Code or its successor statute.

7. Any amount payable by TRS, other than those payable under Paragraph No. 5 above to Alternate Payee, shall be payable directly to Participant, Participant's beneficiary, or the estate, heirs, or legatees of either, in accordance with the TRS laws and rules. If Participant, Participant's beneficiary, or the estate of either receives any amount of a distribution that has been awarded to Alternate Payee, the recipient is designated a constructive trustee for the amount received and shall immediately transmit such amount to Alternate Payee.
8. If Alternate Payee or the estate, heirs, or legatees of Alternate Payee receive any amount of a distribution that should have been paid to Participant, Participant's beneficiary, or the estate, heirs, or legatees of either, the recipient is designated a constructive trustee for the amount received and shall immediately transmit such amount to Plan Participant or other person to whom the amount should have been paid.
9. If Participant, Alternate Payee, or the estate, heirs, or legatees of either receive any amount of a distribution that should not have been paid by the System, the recipient is designated a constructive trustee for the amount received and shall immediately transmit such amount to the System.
10. Alternate Payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by TRS. The Plan is authorized to issue a Form W-2P, Form 1099-R, or other applicable form on any direct payment made to Alternate Payee. Plan Participant and Alternate Payee

shall allocate Participant's investment in contract in the manner established by the Internal Revenue Code and any applicable regulations.

11. Alternate Payee is ORDERED to provide the Plan prompt written notification of any changes in Alternate Payee's mailing address. TRS shall not be liable for failing to make payments to Alternate Payee if TRS does not have a current mailing address for Alternate Payee at time of payment.
12. Alternate Payee shall furnish a certified copy of this Order to TRS.
13. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If the System determines at any time that changes in the law, the administration of the Plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to Alternate Payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.
14. It is the intent of this Court that this order conform to the model domestic relations order adopted by TRS. Any variance from the model order is inadvertent and shall be construed and administered by TRS in a manner consistent with the model order language.

SIGNED this _____ day of _____, 20_____.

[JUDGE PRESIDING]

NO.

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DOMESTIC RELATIONS ORDER DIVIDING RETIREMENT PLAN BENEFITS

This Order is intended to meet the requirements for a "qualified domestic relations order" relating to the Teacher Retirement System of Texas, hereinafter called the "Plan," "TRS," or "System," as set forth in Chapter 804, Title 8, Texas Government Code, and in applicable TRS rules, 34 TAC §§47.1 - 47.17. This Order is an integral part of the Decree of Divorce entered in this cause. In compliance with those requirements, the following is specified:

1. This Order assigns a portion of the benefits or amounts payable under the Plan to Alternate Payee in recognition of his/her marital rights in Participant's benefits or amounts payable under the Plan.

2. Participant in the Plan is _____

(INSERT NAME OF PARTICIPANT), whose last known mailing address is

(INSERT PARTICIPANT'S ADDRESS) and whose Social Security number is excluded from this order to protect the Participant from identity theft. Participant is authorized to use an alternate method acceptable to TRS to verify the number.

3. Alternate Payee is _____ **INSERT NAME OF ALTERNATE PAYEE**), whose last known mailing address is _____

(INSERT ALTERNATE PAYEE'S ADDRESS) and whose Social Security number is excluded from this order to protect Alternate Payee from identity theft. Alternate Payee is authorized to use an alternate method acceptable to TRS to verify the number.

4. Participant and Alternate Payee were married on _____ **(INSERT DATE OF MARRIAGE)**. The court orders that for purposes of this order, the end date for the division of property is _____ **(INSERT END DATE OF DIVISION)**.

5. As part of a just and right division of the estate of the parties, Alternate Payee is awarded and shall receive from the Plan a portion of any of the following distributions paid by the Plan:

- distributions of service or disability retirement benefits (whether payable to Participant or a beneficiary); and
- survivor benefits paid at the death of a retiree.

For purpose of this order, the following **definitions** apply:

- **service or disability retirement benefits** include monthly retirement annuity payments payable to a retiree, continuing optional annuity payments paid to a beneficiary, distributions under the Deferred Retirement Option Program (DROP), distributions of the Partial Lump Sum Option (PLSO), and supplemental payments;
- **survivor benefits** paid at the death of a retiree are the benefits payable at the death of a retiree and include a lump sum survivor benefit; any monthly benefits paid to a surviving spouse, dependent parent of the decedent, or minor children of the decedent; and a distribution of an amount equal to the remaining balance of Participant's accumulated contributions paid as a death benefit; and
- **accumulated contributions** include member contributions made on behalf of the Participant plus all accumulated interest has the meaning provided in § 821.001(1), Texas Government Code, or its successor statute.

The portion awarded to Alternate Payee is payable if, as, and when such distributions are made as provided by the Plan's governing laws and rules based on Participant's membership in, credit with, or contributions to the Plan.

The portion of the distribution of benefits that is awarded and that is to be paid to Alternate Payee shall be determined as follows:

Select **ONE** of the following options by marking the applicable box (do not omit the unselected option):

OPTION 1

Multiply the distribution by a percentage derived from the following formula:

$$CP \text{ awarded} \times \frac{\text{standard annuity based on salary and service during the marriage}}{\text{standard annuity based on salary and service at time of distribution}}$$

The community property (CP in the equation above) awarded is the Alternate Payee's interest in the community property as determined by the court and may be expressed as a fraction, a percentage or a decimal. The Alternate Payee's interest in the community property is _____ **(INSERT INTEREST AWARDED BY THE COURT)**.

The **numerator** of the fraction establishing the community's interest in Participant's total benefit is the amount of a standard service retirement annuity unreduced for early retirement calculated under the retirement law and rules in effect at the latest effective date of retirement of Participant prior to the end date of division but using only the service and salary credit that TRS determines has been acquired by the Participant between the date of the parties' marriage and the latest effective date of retirement prior to the end date of division and maintained with the System as of the latest effective date of retirement prior to the end date of division, even if the service credit is less than the minimum required to be eligible to receive a service retirement annuity and the average salary must be calculated with fewer salary years than specified by applicable laws and rules.

The **denominator** of the fraction is the amount of a standard service retirement annuity unreduced for early retirement calculated under the laws and rules in effect at the time of Participant's latest effective date of retirement and based on Participant's membership in, credit with, or contributions to the System as of Participant's latest effective date of retirement. The term "standard service retirement annuity" as used in this Order is defined by § 824.203, Texas Government Code, or its successor statute.

OPTION 2

Multiply the distribution by _____% **(INSERT PERCENT AWARDED BY THE COURT. AWARD MUST BE LESS THAN ONE HUNDRED PERCENT (100%))**. The percent awarded is a percent of the **total distribution** payable on behalf of Participant and is **not** limited to a percentage of benefits accrued only during the marriage. If the application of the percent awarded results in a distribution of Participant's separate property to the Alternate Payee, the parties acknowledge the award and agree to the distribution and the Court finds that the award of separate property is necessary for the just and right division of the parties' community property.

Select one or more of the following special instructions if needed by marking the applicable box (do not omit unselected instructions):

SPECIAL INSTRUCTION 1:

The above language notwithstanding, in no event shall Alternate Payee receive more than a total of \$ _____ **(INSERT TOTAL AMOUNT)** plus interest, calculated from the end date of division to the date

distribution to the Alternate Payee begins, as provided in § 825.307(b), Texas Government Code, or its successor statute.

SPECIAL INSTRUCTION 2:

The above language notwithstanding, in no event shall Alternate Payee receive more than a total of \$ _____ **(INSERT TOTAL AMOUNT)**.

SPECIAL INSTRUCTION 3:

The above language notwithstanding and except and as provided in Section 6(g) of this order, in no event shall Alternate Payee receive more than \$ _____ **(INSERT AMOUNT)** per month from any monthly retirement annuity payment.

SPECIAL INSTRUCTION 4 (only available if selected Option 1):

The above language notwithstanding, in determining the amount of service credit acquired during the marriage, service credit acquired under the terms of the Employee Retirement System of Texas (ERS) but transferred to TRS at the time of distribution shall be credited at the time the service was acquired or earned under ERS rather than the time of the transfer to TRS.

SPECIAL INSTRUCTION 5 (only available if selected Option 1):

The above language notwithstanding, in determining the amount of service credit acquired during the marriage, _____ **(INSERT TOTAL NUMBER OF YEARS OF SERVICE CREDIT TO BE EXCLUDED)** years of service credit purchased during the marriage are excluded from the total years

of service credit acquired during the marriage.

SPECIAL INSTRUCTION 6:

It is further ordered pursuant to § 824.1012, Texas Government Code, or its successor statute, that Participant is authorized to change the retirement plan selection made at the time of retirement from a continuing optional retirement annuity providing for the beneficiary to receive at the death of Participant, all or a portion of the monthly retirement annuity, for the remainder of beneficiary's life, to an increased standard annuity retirement plan that will pay Participant a monthly benefit for the remainder of Participant's life only, and in changing the retirement plan to a standard annuity payment plan, Participant is authorized to revoke and the court hereby approves the revocation of Alternate Payee as the beneficiary of the continuing optional retirement annuity. Changes authorized in this order must comply with the TRS plan terms and nothing in this order shall be construed as authorizing an action in violation of the plan terms. In addition, Participant must comply with any requirements of TRS in order to effect the change of the retirement plan and the revocation of Alternate Payee as beneficiary.

SPECIAL INSTRUCTION 7:

It is further ordered pursuant to § 824.1013, Texas Government Code, or its successor statute, that Participant is authorized to change the Alternate Payee as beneficiary of the continuing optional retirement plan selection made at the time of retirement that provides for the Alternate Payee to receive at the death

of Participant all or a portion of the monthly retirement annuity for the remainder of Alternate Payee's life, and to designate another beneficiary to receive the continuing optional retirement annuity at Participant's death. However, beneficiary changes under § 824.1013 are subject to the TRS plan terms, including the restriction on multiple beneficiary changes and the limits on the length of time payments may be due to a new beneficiary. Changes authorized in this order must comply with the TRS plan terms and nothing in this order shall be construed as authorizing an action in violation of the plan terms. In addition, Participant must comply with any requirements of TRS in order to effect the change from Alternate Payee as beneficiary of the continuing optional retirement annuity to a new beneficiary.

6. The Teacher Retirement System of Texas is directed to disburse to Alternate Payee the portion of distributions assigned under Paragraph No. 5 of this Order, if, as, and when such distributions are made as provided by the System's governing laws and rules based on Participant's membership in, credit with, or contributions to the System, subject to the following provisions:
 - (a) This Order shall not be interpreted in any way to require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.
 - (b) This Order shall not be interpreted in any way to require the Plan to provide increased benefits determined on the basis of actuarial value.
 - (c) This Order shall not be interpreted in any way to require the Plan to pay any benefits to an alternate payee named in this Order which are required to be paid

to another alternate payee under another order previously determined to be a qualified domestic relations order.

(d) This Order shall not be interpreted in any way to require the payment of benefits to Alternate Payee before the retirement of Participant, the distribution of a withdrawal of contributions to Participant as authorized by the statutes governing the Plan, or any other distribution required by law.

(e) If the Plan provides for a reduced benefit upon "early retirement," this Order shall be interpreted to require that, in the event of Participant's retirement before normal retirement age, the benefits payable to Alternate Payee shall be reduced proportionately.

(f) This Order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of Participant's death or to require the selection of a particular benefit payment plan or option. However, notwithstanding the provisions of this Order, if Alternate Payee is designated as a beneficiary for any benefits payable by TRS upon the death of Participant, then Alternate Payee shall receive such payment to which Alternate Payee is entitled by law as beneficiary. If Alternate Payee is a joint beneficiary for a benefit, Alternate Payee shall receive the portion of the total benefit payable to the joint beneficiaries as specified in Paragraph No. 5 above; the portion of the benefit payment received by Alternate Payee as a joint beneficiary of Participant shall be credited toward satisfying the amount of the benefit payable to Alternate Payee as the alternate payee for Participant's interest. Additionally, as specified

in Paragraph No. 5 above, Alternate Payee shall receive a portion of any other benefits which are payable to a beneficiary and for which Alternate Payee was not designated as a beneficiary.

(g) In the event that, after distribution of a benefit to Participant or a beneficiary has begun, the amount of the distribution is increased or reduced by law, then the amount payable to Alternate Payee shall be increased or reduced proportionately.

(h) If the Board of Trustees of the Plan has provided by rule that, in lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the Plan may pay an alternate payee an amount that is the actuarial equivalent of such interest in the form of (1) an annuity payable in equal monthly installments for the life of the alternate payee, or (2) a lump sum, then and only in that event Alternate Payee or Participant may request the Plan to make payment in this form, and the Plan is authorized to make payment in this form instead of in the manner otherwise described in this Order. This Order shall not be interpreted in any way to require the Plan to adopt such rules or to require the Plan to grant any request for payment in the form described in this provision. The determination of whether to pay an amount authorized by this provision in lieu of the interest otherwise awarded by this Order shall be at the sole discretion of the Plan.

The above language notwithstanding, Alternate Payee may make an election, if authorized by § 804.005, Texas Government Code, or its successor statute,

to receive an amount in lieu of the interest awarded by this Order that is Alternate Payee's portion of the actuarial equivalent of the Participant's accrued benefit, determined as of the date of Alternate Payee's election. When authorized, Alternate Payee may make this election in writing to TRS if Participant has not yet retired but is at least 62 years of age and eligible to retire without reduction for early age. The amount is payable to Alternate Payee in the form authorized by law and as determined by TRS. The benefit payable on behalf of Participant is reduced as required by law and as determined by TRS.

(i) The interest of Alternate Payee is governed by § 804.101, Texas Government Code, or its successor statute.

7. Any amount payable by TRS, other than those payable under Paragraph No. 5 above to Alternate Payee, shall be payable directly to Participant, Participant's beneficiary, or the estate, heirs, or legatees of either, in accordance with the TRS laws and rules. If Participant, Participant's beneficiary, or the estate of either receives any amount of a distribution that has been awarded to Alternate Payee, the recipient is designated a constructive trustee for the amount received and shall immediately transmit such amount to Alternate Payee.
8. If Alternate Payee or the estate, heirs, or legatees of Alternate Payee receive any amount of a distribution that should have been paid to Participant, Participant's beneficiary, or the estate, heirs, or legatees of either, the recipient is designated a constructive trustee for the amount received and shall

immediately transmit such amount to Plan Participant or other person to whom the amount should have been paid.

9. If Participant, Alternate Payee, or the estate, heirs, or legatees of either receive any amount of a distribution that should not have been paid by the System, the recipient is designated a constructive trustee for the amount received and shall immediately transmit such amount to the System.
10. Alternate Payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by TRS. The Plan is authorized to issue a Form W-2P, Form 1099-R, or other applicable form on any direct payment made to Alternate Payee. Plan Participant and Alternate Payee shall allocate Participant's investment in contract in the manner established by the Internal Revenue Code and any applicable regulations.
11. Alternate Payee is ORDERED to provide the Plan prompt written notification of any changes in Alternate Payee's mailing address. TRS shall not be liable for failing to make payments to Alternate Payee if TRS does not have a current mailing address for Alternate Payee at time of payment.
12. Alternate Payee shall furnish a certified copy of this Order to TRS.
13. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If

the System determines at any time that changes in the law, the administration of the Plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to Alternate Payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

- 14. It is the intent of this Court that this order conform to the model domestic relations order adopted by TRS. Any variance from the model order is inadvertent and shall be construed and administered by TRS in a manner consistent with the model order language.

SIGNED this _____ day of _____, 20_____.

[JUDGE PRESIDING]

