

QUALIFIED DOMESTIC RELATIONS ORDERS

The Retirement Equity Act of 1984 established a specific set of rules under which pension benefits can be paid to an "alternate payee" (a former spouse for dependent child) under a state court domestic relations order.

The rules are rather complex. For the plan to pay benefits to an alternate payee, the court order must be a "Qualified Domestic Relations Order" as defined in the federal statute. A QDRO must identify the plan to which it applies. It must state the name and last known mailing address of the alternate payee(s). It must specify either the amount of benefit to be paid or the manner in which that amount is to be determined. It must state the number of payments or the time period covered. The order must not require the plan to pay more benefits than the total to which the employee is entitled. It must not require payments to begin before the employee would be entitled to receive a pension. It must not require any form of payment (e.g., lump sum, periodic payments) not otherwise available under the plan. It must not allow the alternate payee to elect a Joint and Survivor Annuity. It must not be inconsistent with any prior QDRO affecting the employee's benefits.

A QDRO may, but is not required to, provide that payments to the alternate payee will begin as soon as the employee would be entitled to receive a pension, even if the employee chooses to defer his retirement. It may also provide that some or all of any survivor benefit payable to a spouse or other beneficiary will be paid to the alternate payee. If the QDRO does not contain these optional provisions, the alternate payee will not be entitled to receive anything until the employee actually retires and may receive no benefits at all if the employee dies before retirement.

The plan has the authority to determine whether a particular domestic relations order is in fact a QDRO. Parties to dissolution should communicate with the plan before the order is finalized to avoid issuance of a nonqualified order with which the plan cannot comply.

Upon receipt of a court order, the plan administrator will analyze its provisions to determine whether it is qualified and will advise the parties of its decision. If you wish to submit a draft order, the administrator will review it and advise you whether it meets the requirements of a QDRO.

PLEASE BE ADVISED THAT AN EMPLOYEE AND THE EX SPOUSE SHALL PAY ADMINISTRATIVE EXPENSES INCURRED COMPLYING WITH THE TERMS OF THE QDRO FOR PART B IN THE AMOUNT OF \$300 EACH, FOR A TOTAL OF \$600, AS ALLOWED BY THE FEDERAL LAW. THE MONEY WILL BE DEDUCTED AUTOMATICALLY FROM EACH PARTY'S PART B ACCOUNT BALANCE.

REA
RULES FOR PAYING BENEFITS UNDER
A COURT DOMESTIC RELATIONS ORDER
(QDRO)

A QDRO MUST:

1. Identify the plan to which it applies.
2. It must state the name and last known mailing address of the alternate payee(s).
3. It must specify either the amount of benefit to be paid or the manner in which that amount is to be determined.
4. It must state the number of payments or the time period covered.
5. The order must not require the plan to pay more benefits than the total to which the employee is entitled.
6. It must not require payments to begin before the employee would be entitled to receive a pension.
7. It must not require any form of payment (e.g., lump sum, periodic payments) not otherwise available under the plan.
8. It must not allow the alternate payee to elect a Joint and Survivor Annuity.
9. It must not be inconsistent with any prior QDRO affecting the employee's benefits.

A QDRO may, but is not required to:

1. Provide that payments to the alternate payee will begin as soon as the employee would be entitled to receive a pension, even if the employee chooses to defer his retirement.
2. It may also provide that some of all of any survivor benefits payable to a spouse or other beneficiary if the employee should die will be paid to the alternate payee.

If the QDRO does not contain these optional provisions, the alternate payee will not be entitled to receive anything until the employee actually retires and may receive no benefits at all if the employee dies before retirement.

IBEW LOCAL 332 PENSION PLAN, PARTS A AND B

c/o United Administrative Services

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Rules And Procedures for Administering Qualified Domestic Relations Orders (QDRO's)

Federal law provides specific rules under which pension benefits can be paid to an "alternate payee" (a former spouse or dependent child) under a state court domestic relations order. The court order must be a Qualified Domestic Relations Order (QDRO) which meets certain requirements. The pension plan has the authority to determine whether a particular domestic relations order is in fact a QDRO.

A. QDRO REQUIREMENTS

1. Required Provisions. For an order to be a QDRO it must clearly specify at least the following information:

- a. Name and last known mailing address of the participant and of each alternate payee covered by the Order;
- b. Correct name of the Plan: "IBEW Local 332 Pension Plan Part A@ and/or AIBEW Local 332 Pension Plan Part B";
- c. Alternate payee's amount or share (i.e. percentage or dollar amount) of the participant's interest in the Plan or a formula for determining such benefit.

2. Prohibited Provisions. The order will fail to be a QDRO if it does any of the following:

- a. Requires the Plan to provide any type or form of benefit, or any payment option, not otherwise provided under the Plan;
- b. Requires the Plan to provide increased benefits;
- c. Requires the payment of benefits to an alternate payee that are required to be paid to another alternate payee under a prior QDRO.

B. ADMINISTRATIVE HOLD ON PARTICIPANT'S BENEFITS

Upon receipt of written notice from a participant, spouse, former spouse or attorney of a dissolution of marriage, or otherwise stating that there is a competing claim on the participant's benefits, the Plan(s) place an administrative hold on the participant's benefits and decline to make any benefit payment without further clarification. If a participant demands payment of his or her benefits because no QDRO is in effect, the Plan(s) normally will allow the proposed alternate payee a reasonable period to seek a court order preventing such distribution. The Trustees and their delegates have absolute discretion to delay paying benefits when either Plan is on notice of a dissolution action or similar proceeding.

It is the responsibility of the parties to keep the Plan(s) informed about the status of their property settlement and to resolve the matter without undue delay. Either Plan may terminate an administrative hold and pay benefits under normal plan rules if the parties fail to submit a final QDRO within a reasonable time.

C. EMPLOYEE/SPOUSE RESPONSIBILITY TO SEND COURT ORDER TO PLAN

Under federal law, a former spouse has no enforceable right to benefits under either of these Plans until the Plan is served with a final order signed or stamped by the judge and filed with the Court Clerk, which meets the requirements described above. The former spouse's interest is not protected merely because the Plan has been joined, or because the Plan has been given notice of the spouse's claim, or because the Plan has approved a draft order.

The Plan has no duty to investigate whether a QDRO exists. As a reminder, the pension application includes questions about marital status and about prior court orders dividing the benefits. If the employee responds that there is no such order, the Plan will not inquire further unless it has received documents indicating that a QDRO exists.

D. PROCEDURE FOR HANDLING COURT ORDERS

1. Review by Administrative Office. The Plan(s) reviews all court-approved marital property settlements and other court orders potentially affecting pension benefits to determine whether they meet the requirements in Section A for acceptance as a QDRO. The Plans professional plan administrator, in consultation with Plan Counsel if appropriate, determines whether an order meets the applicable requirements. This determination may be appealed to the Board of Trustees using the normal plan appeal procedure.

2. Notices to Participant and Alternate Payee. Within a reasonable period after receipt of a domestic relations order creating rights for an alternate payee, the Plan will notify the participant and alternate payee whether the order is a QDRO and, if not, the reason(s) why it fails to qualify.

3. Acceptance of Order as QDRO. If the order is accepted as a QDRO, the alternate payee will be entitled to receive his or her share of the benefit in accordance with normal Plan rules. The Plans cannot pay benefits to an alternate payee until the participant has attained retirement age or otherwise become eligible for a distribution of benefits under Plan rules.

4. Rejection of Order. If either Plan rejects the order, the rejection notice will identify the defect(s) in the order. The participant or alternate payee may correct the defects and submit a

revised order, or may appeal from the rejection decision using the Plan's appeal procedure. Any appeal must be submitted within sixty (60) days after the rejection notice. If the Plan does not receive a timely appeal or a revised court order, the Plan may pay benefits to the participant in accordance with the normal Plan rules, without notice to or consent by the former spouse.

5. Limited Purpose of Plan Review of Order. These Plans do not review marital property settlements to determine whether they are fair or complete, or whether they comply with applicable state law. It is the responsibility of the parties to the divorce action and their attorneys, not the Plans, to ensure that community assets are identified and a fair division is accomplished under state law.

When presented with a final order, the Plan looks only to see whether it contains language about retirement benefits which creates or recognizes the existence of an alternate payee's right to receive benefits payable by that Plan. Where such language is found, the Plan has a legal duty to determine whether or not the order is a QDRO under federal law, and to provide the notices described above.

The Plan has no duty whatsoever with respect to a marital property settlement unless the court order manifests an intent to divide benefits payable by that Plan. If there is no clear statement of such intent, the Plan will assume that the parties chose not to divide the benefits payable by that Plan. In such circumstances the Plan takes no action and sends no notices. Subsequent benefit payments to the participant will be made under the terms of the Plan, without notice to or consent by the former spouse. Examples of orders that will not trigger a notice to the former spouse or other potential alternate payee(s) are:

- a. Orders stating that the participant shall receive his or her entire account under these Plans;
- b. Orders omitting all reference to retirement benefits;
- c. Orders describing the disposition of other pension benefits without mentioning these Plans;
- d. Orders stating that there is no community property to be divided;
- e. Orders dissolving marriage without a formal property settlement.

6. Escrow for Determination Period. During the period while the court order is being reviewed to determine if it is a QDRO, the Plan must segregate the amounts that may be payable to the alternate payee in a separate account or in an escrow account. If the Plan determines that the order is not a QDRO or if eighteen months (18) have expired without a determination whether the order is qualified, benefits may be paid to the participant and his or her beneficiary as provided in the Plan.

7. Trustee Discretion. The Trustees or their delegates have full discretion to determine whether either Plan should comply with a proposed or final order. For old orders entered prior to 1984, the Plan may accept orders that do not technically meet all of the requirements of a QDRO. To save the parties legal fees and costs and to avoid the time involved with obtaining a new order or noticing a court hearing, the Plan may allow the parties to mutually agree on the

interpretation of an order that is ambiguous or uncertain.

The Plans' decision to accept an order as a QDRO is not binding upon the Internal Revenue Service. The IRS may independently determine that an order previously accepted by the Plan is not a QDRO. If this occurs, payments made to an alternate payee pursuant to the order may be ineligible for favorable tax treatment.

8. Policy Prohibiting Plan Signature on Order. QDRO's shall not be signed by any Plan representative. The purpose of this policy is to avoid any suggestion that the Plan has evaluated or endorsed the division of benefits in any manner except the limited review described above.

9. Payments to Alternate Payee. If the participant or alternate payee is entitled to a benefit of \$5,000 or less, such distribution shall be in one lump sum. Payments to an alternate payee will not begin until the participant attains age 55, becomes disabled or dies, whichever occurs first. Payments may begin at that time whether or not the participant elects to begin receiving benefits.

10. Dissolution Revokes Designation of Spouse as Beneficiary. Under these Plans, a dissolution of marriage automatically revokes any prior designation of the former spouse as the participant's beneficiary. If the participant wishes the former spouse to receive survivor benefits, he or she must complete a new beneficiary designation form after the date of the judgment dissolving the marriage.

E. PROCEDURE FOR HANDLING PROPOSED ORDERS OR INQUIRIES

Inquiries concerning the potential interest of a current or former spouse, child or other alternate payee should be made in writing. A participant may ask the Plan for a determination of the participant's interest as of the date of separation or dissolution. Individual benefit information cannot be released to anyone other than the participant without either the participant's written consent or a subpoena.

The Plan administrator or in some cases Plan Counsel will review proposed orders and inform the parties whether a draft order meets the requirements for a QDRO and, if not, how to correct it. Anyone seeking to obtain a QDRO is strongly encouraged to submit the proposed order for review before it is signed by the judge. This will avoid issuance of a non-qualified order with which the Plan(s) cannot comply.

F. SAMPLE QDRO

The following sample QDRO language divides the community property portion of the benefits equally between both spouses. This sample language is provided as a courtesy. Please note that a 50-50 division is not legally required and does not necessarily accomplish the best result for either spouse.

It also should be noted that the formula in paragraph 5 is the standard "Brown" formula developed by the California courts and specifically approved by the California Supreme Court in *Lehman v. Lehman*, 98 Daily Journal D.A.R. 5539 (1998). That formula does not take into account the possibility of different benefit accrual rates in different years. Employees participating in these Plans will often accrue a different benefit amount each year, because of

fluctuating employment in the construction industry and/or changes in the collectively-bargained contribution rate and/or changes in the applicable benefit formula.

Paragraph 5 also provides for calculation of the alternate payee's share under Part A at the time benefit payments begin. This approach does not allocate any share of subsequent, contingent benefit increases to the alternate payee. If the parties wish to treat such contingencies as community property and provide for their division in the order, they may do so.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF _____

In re the Marriage of:)	Case No. _____
_____)	
Petitioner,)	QUALIFIED DOMESTIC
)	RELATIONS ORDER
and)	
_____)	
Respondent.)	
_____)	
IBEW LOCAL 332 PENSION PLAN)	
PART A and IBEW LOCAL 332)	
PENSION PLAN PART B,)	
Claimants.)	
_____)	

Pursuant to the Judgment of Dissolution of Marriage entered herein on _____ and with the agreement of the parties as to the provisions in this Order,

IT IS HEREBY ORDERED as follows:

1. The purpose of this Order is to dispose of the respective interests of _____ (Employee) and _____ (Spouse) in the community property portion of benefits payable to Employee by the IBEW LOCAL 332

PENSION PLAN PART A (Part A) and by the IBEW LOCAL 332 PENSION PLAN PART B (Part B). This Order is intended to be a Qualified Domestic Relations Order within the meaning of the Retirement Equity Act of 1984, as amended.

2. The name, mailing address, phone number, Social Security number and date of birth of each party is:

(1) Employee (Plan Participant):

Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Date of Birth: _____

(2) Spouse (Alternate Payee):

Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Date of Birth: _____

The parties agree to notify the Plans of any change in address, name change and/or the death of the other party.

3. Spouse is acknowledged to have an ownership interest in the benefits payable to Employee by Part A and by Part B equal to one-half the Community Benefit.

4. The Community Benefit is the portion of the benefit payable by each Plan which is attributable to Employee's employment during the marriage. For purposes of calculating the Community Benefit, the period of the marriage is the period from

_____ to _____.

For purposes of this QDRO:

a. If the marriage was on or before the 15th of a month, the parties will be considered married the entire month.

b. If the marriage occurred after the 15th of a month, the parties will not be considered married that month.

(3) If the separation was on or before the 15th of a month, the parties will not be considered married that month.

(4) If the separation occurred after the 15th of a month, the parties will be considered married for the month.

5. The Community Benefit under Part A shall be calculated by multiplying the total benefit payable to Employee by a fraction. The numerator of the fraction is the total years during the marriage for which Employee receives credit under Part A. The denominator is the total years for which Employee receives credit under Part A. This calculation shall be performed as of the date when benefit payments to the Spouse are to begin, in accordance with the terms of the Pension Plan in effect at that time.

6. The Community Benefit under Part B shall consist of all employer contributions earned by the Employee during the marriage, plus net investment earnings credited to Employee's benefit account under the terms of the Plan. Pursuant to this Order, Spouse shall be entitled to receive one-half the Community Benefit, plus a pro rate share of net investment income for the period from the date her share is determined until the date payment is made.

7. Benefits not allocated to Spouse pursuant to this Order

are the separate property of Employee and are subject to Employee's disposition in accordance with the terms of the particular Plan.

8. Spouse's share shall not include amounts paid to Employee on account of disability, except to the extent that such benefits would have been payable to Employee as retirement benefits based on longevity. The Court shall reserve jurisdiction in the event of a dispute as to the characterization of any payment which is based on the disability of Employee.

9. Spouse shall be entitled to receive Spouse's share of the benefits payable by each Plan in any form permitted by that Plan at the time distribution is made, except a joint and survivor annuity.

10. Nothing in this Order shall require either Plan to provide any type or form of benefit or any option not otherwise provided by that Plan, or to pay any amount in excess of the benefits payable to Employee under the terms of the Plan.

11. Spouse shall be entitled to begin receiving payments pursuant to this Order at any time on or after the earliest date on which Employee would be eligible for a distribution under the terms of the Plan, subject to the completion by Spouse of an application for benefits in the form and manner required of all participants in that Plan.

12. In the event of Spouse's death prior to the commencement of benefit payments to Spouse, Employee's benefits under Part A shall be paid as if this order did not exist. Spouse's death shall have no effect on the amount payable to Spouse by Part B.

13. In the event of Employee's death prior to the earlier of (1) Employee's retirement and (2) the commencement of payments by Part A to Spouse pursuant to this order, Spouse shall be entitled to receive one-half the community property portion of the qualified

pre-retirement survivor annuity payable by Part A. To the extent necessary to allow payment of this benefit, Spouse shall be deemed to be the surviving spouse of Employee. Employee's death shall have no effect upon the amount payable to Spouse by Part B.

14. Provided that Part B accepts this Order as a Qualified Domestic Relations Order, Part B shall establish a separate benefit account in the name of Spouse. Spouse's interest in Employee's account shall be transferred to the new account. Following such transfer Spouse shall receive the same reports and statements and shall have the same rights with respect to his or her benefit account as do other participants under the terms of the Part B Plan, except to the extent that such rights are limited by the terms of this Order.

15. Upon establishment of Spouse's separate account as described in paragraph 14, Spouse shall have total control over such account to the extent allowed by the Plan, including the right to designate beneficiaries if allowed by the benefit option selected. Employee will have no interest in Spouse's Account. Similarly, Employee shall have total control over his/her remaining interest in Part B. Spouse will have no interest in such remaining balance, as a future beneficiary before or after Employee's death or otherwise.

16. Remarriage. The remarriage of either party shall not affect the disposition of benefits provided herein.

17. No Prior Order. The parties certify that they are not aware of prior orders which may dispose of benefits hereunder.

18. Amendment. The Court retains jurisdiction over this matter to amend this Order as necessary.

19. Copy of Order to Trust Counsel. Counsel for the

petitioner shall furnish the Plan's legal counsel with a copy of the Order file-endorsed by the Court Clerk approved by the Court, within 30 days of approval of this Order.

Dated: _____, 20__ JUDGE OF THE SUPERIOR COURT

Dated: _____, 20__ Attorney for Participant

Dated: _____, 20__ Attorney for Alternate Payee

Dated: _____, 20__ Participant

Dated: _____, 20__ Alternate Payee