



Getting Divorced Before Retirement

You have many financial issues to consider during a divorce, including how it affects your TCDRS benefit. Your benefit is considered community property, which means your former spouse has a joint interest in your retirement account. Every case is different; however, and you have a variety of options in a divorce settlement. TCDRS cannot give you legal advice, but there are specific legal requirements you must follow.

You May Not Have to Split Your Benefit

Although Texas law provides that your ex-spouse has a community property interest in your TCDRS benefit that accrued during the period of marriage, the law does not require you to split your benefit. Your former spouse may waive claim to your benefit in the division of your shared assets and property. For example, your ex-spouse might be awarded the house instead of a portion of your retirement benefit. However, if your ex-spouse is awarded no interest in your TCDRS retirement account, then the divorce decree must explicitly so provide.

If You Decide to Split Your Benefit

If your ex-spouse is awarded a portion of your TCDRS retirement account, then a separate legal order called a [Qualified Domestic Relations Order](#) (QDRO) is required, and must be filed with and approved by TCDRS.

The information below will help you and your attorney complete and file a QDRO with TCDRS.

How TCDRS benefits are calculated

If a member terminates covered employment and applies for a withdrawal of his or her TCDRS account, the member receives only his or her deposits and interest.

If the member meets retirement eligibility requirements and chooses to retire with a monthly lifetime benefit, the member will receive employer provided benefit credits, including employer matching. The accumulated contributions are combined with the employer-provided benefit credits and are then used to fund a lifetime monthly benefit.

QDRO format

Because of the way TCDRS calculates and pays benefits, orders that divide those benefits need to follow a special form. This lets TCDRS know how the benefit is to be divided. Such a division is implemented through a court order known as a “Qualified Domestic Relations Order”.

QDROs can apply to both public and private sector retirement plans. TCDRS is a Public Plan, governed by the provisions of the TCDRS Act. QDROs involving members of TCDRS also are governed by the provisions of Chapter 109 of Title 34 Part V of the Texas Administrative Code and Chapter 804 of the Texas Government Code. Those authorities have specific requirements for QDROs that differ from the requirements for a private sector pension system. TCDRS is not subject to the Employee Retirement Income Security Act (ERISA).

- **Benefits do not have to be divided.** The QDRO informs TCDRS of the parties' (or the court's) decision to divide the retirement benefit and lets the system know who will receive what portion of that benefit. If the parties decide (or the court decides) that the member will retain the entire benefit, no QDRO is necessary. Instead, specific language placed in the divorce decree is sufficient to inform TCDRS of that decision. This may result from a "trade off" between spouses regarding other assets. (For example: "You take the house and I'll keep my retirement benefits.")
- **The QDRO form.** The QDRO form provides TCDRS with the identity and addresses of the "participant" (the TCDRS member) and the "alternate payee" (the person receiving an interest in all, or a portion of, any benefit payable). This information must be provided in order for it to be a qualified order. A QDRO must also tell TCDRS how any benefit payable (either a withdrawal or a lifetime benefit) will be divided. The decision set forth in the QDRO divides any benefit on the basis of the deposits made by the member during the marriage and any interest those deposits earned ("accumulated contributions"). In the event that the alternate payee becomes eligible to retire under the Plan, the Alternate Payee's retirement benefit is based on the accumulated contributions awarded and the associated employer-provided credits.
- **Model TCDRS QDRO.** TCDRS has adopted a model QDRO form and we encourage all parties to use this form. It fulfills the requirements of the state law governing TCDRS, and using it will streamline the review process. The model QDRO is included in this packet and is also available on our website (www.TCDRS.org). QDROs submitted in a format other than the TCDRS model QDRO will be rejected.

As of January 1, 2019, all QDROs must be signed by the participant and the alternate payee or, in the alternative, the QDRO submitted to TCDRS must include proof that the participant and the alternate payee received a copy of the QDRO. A QDRO should be submitted to TCDRS as soon as possible after it is issued by a court.

- **Percentage of benefit awarded to alternate payee.** The QDRO must include a statement awarding a percentage of the member's accumulated contributions to the alternate payee. The following language must be used in a QDRO submitted to TCDRS:

This Order assigns to Alternate Payee _____% of Participant's accumulated contributions that accrued during the period of marriage. The dates of marriage are _____ through _____. Accumulated contributions are the deposits made by the Participant in the Plan and the interest credited to those deposits. The portion of Participant's accumulated contributions awarded to the Alternate Payee will accrue future interest for the benefit of the Alternate Payee. In the event that the Alternate Payee becomes eligible to retire under the Plan as described below, the Alternate Payee's retirement benefit is based on the accumulated contributions and employer-provided credits. Employer-provided credits are the employer matching related to accumulated contributions and any other employer-provided credits associated with the period of marriage.

- **No specific dollar amounts may be awarded.** TCDRS will not accept a QDRO that awards a specific dollar amount. If the divorcing parties have agreed on a specific dollar amount, then they should determine what percentage of the member's accumulated deposits that equals, and include the percentage in the QDRO. Pursuant to state law, the portion of member's accumulated deposits awarded to the alternate payee will accrue interest for the benefit of the alternate payee.
- **Account information.** If the divorcing parties need information about the member's account, including the amount of accumulated deposits accrued during the marriage, they must request the information from TCDRS in writing. If the alternate payee or the alternate payee's attorney provides documentation concerning the divorce or pending divorce, then no subpoena is required in order to receive the member's account information.

- **Post-retirement divorces.** If a member retires and chooses to receive a lifetime benefit (annuity), and then becomes divorced, a different process is followed and [a different QDRO form](#) is required. When the alternate payee is awarded a portion of the retiree's retirement benefit, the retiree's benefit is divided into two lifetime benefits. One benefit is payable to the alternate payee based on the percentage of the actuarial present value of the benefit awarded to the alternate payee under the order, and one benefit is payable to the member based on the remaining actuarial present value of the benefit. Please contact TCDRS for further information.

QDRO processing

Once TCDRS receives information indicating that a divorce is pending (such as receipt of a Petition to Divorce, a Divorce Decree, QDRO, or a letter inclusive of a Cause number), we "flag" the member's account so that payments are not made before the divorce terms are finalized. This flagging is required, since state law views the account as community property. TCDRS cannot rely solely on the member's, attorney's or spouse's representations about the status of the marriage in determining whether or not to flag the account.

- **QDRO review.** After reviewing the QDRO, decree or other relevant document, TCDRS will let the parties know whether that document complies with the rules governing TCDRS, or if an "amended qualified domestic relations order" will be necessary. An amended QDRO supersedes a previous order that is determined not to be a qualified order. Under the rules governing QDROs, TCDRS will notify all parties that they must commence action within 90 days to bring the order into compliance. Unless documentation has been submitted to the system showing that action has been commenced before the end of the 90-day period, the order will not be considered a qualified domestic relations order and TCDRS will pay the participant any sums that have been withheld up to that date, and will thereafter make payment of benefits as if no order had been received.
- **Copy of certified QDRO.** TCDRS requires a certified copy of the QDRO or divorce decree. TCDRS will retain the copy for its own records. A certified QDRO is one that is certified with an original stamp and seal, followed by the signature of the clerk of the court in the county where the divorce was heard. A certified QDRO is not a document bearing only the seal of a notary public.
- **When do payments under the QDRO begin?** For QDROs filed on or after January 1, 2018, a separate account is created for the alternate payee once TCDRS approves a domestic relations order. The alternate payee may commence the benefit awarded to him or her independently of the action taken by the member. The alternate payee may withdraw the benefit awarded under the QDRO any time after the order is approved by TCDRS. Instead of withdrawing the benefit awarded, the alternate payee may be able to commence an annuity based on the benefit awarded under the QDRO when the member:
 1. Is eligible to retire;
 2. Commences a disability retirement;
 3. Dies and was eligible for a survivor death benefit; or
 4. Attains the age at which the member would have been eligible to retire, if the member withdrew his or her account and was vested at the time of withdrawal.

For QDROs filed with TCDRS before January 1, 2018, the payment terms of the prior rules and as stated in the QDRO apply.

- **How does a divorce affect a member's beneficiary designation?** If the member designated the spouse as his or her beneficiary before the divorce, that designation becomes invalid after the divorce is final. A member could choose to keep his or her ex-spouse as beneficiary after the divorce, but the member must file a new beneficiary designation. Regardless of who the member chooses as beneficiary, a new

designation is required to be filed after the divorce is final. However, if a member divorces after the member has commenced his retirement annuity, then the beneficiary designation remains valid unless the entire retirement benefit is awarded to member (retiree) pursuant to the divorce decree and the decree contains clear language revoking the beneficiary designation.

Please contact TCDRS Member Services if you have any questions about TCDRS benefits and divorce.

Definitions

Accumulated Contributions: The deposits made by the member and the interest earned on those deposits.

Alternate Payee: A spouse, former spouse, child or other dependent of a member or retiree.

Community Property: Texas courts have held the portion of a person's retirement benefit that is earned during marriage is "community property" – property that is owned by both spouses, regardless of which of them earned the benefit. Since the portion that is earned during marriage is community property, a divorce decree or other domestic relations order must state whether the benefit is retained by the member or divided between the spouses.

Divorce Decree: A decree of divorce is the document used by a court to officially terminate a marriage and to set out the decisions the parties and/or courts have made. These decisions usually include provisions for the care and support of minor children and the allocation of assets and debts. In general, there is some flexibility in making these decisions. However, these decisions can be meaningless, or even legally unenforceable, if they are not set out correctly.

Employer Provided Benefit Credits: Employer matching related to accumulated contributions and any other employer-provided credits. These credits are only available if a participant or an alternate payee chooses to retire and elects a lifetime benefit.

Participant: A member or former member of TCDRS.

Plan: The retirement plan administered by TCDRS.

Qualified Domestic Relations Order: A domestic relations order issued by a court that creates or recognizes the existence of an alternate payee's right to receive all or a portion of the benefits payable with respect to a participant under the retirement plan.