

COMMONWEALTH OF MASSACHUSETTS

_____, SS

PROBATE & FAMILY
COURT DEPARTMENT
DOCKET NO. _____

PLAINTIFF

v.

QUALIFIED DOMESTIC RELATIONS ORDER

DEFENDANT

MASSACHUSETTS LABORERS' PENSION FUND

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

- As a part of the final Judgment in this matter, this Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employer (or union) sponsored defined benefit plan which is qualified under Section 401(a) of the Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act of 1974 ("ERISA"). It is intended that this Order constitute a Qualified Domestic Relations Order ("QDRO") under Section 414 (p) of the Code, Section 206(d)(3) of ERISA and Chapter 208, Section 34 of the Massachusetts General Laws.
- Participant Information:** The name, last known address, social security number, and date of birth of the "Participant" are:

Name: _____

Address: _____

Social Security Number: _____

Date of Birth: _____

The Participant is a Member of the New England Laborers' Local # _____ and is a Participant in the Massachusetts Laborers' Pension Fund. The Participant *[is]/or[is not]* fully vested in the benefits accrued by him under the Plan as of the date of this instrument. No payments will be made pursuant to this Order to either party prior to the date upon which the Participant achieves vested status.

3. **Alternate Payee Information:** The name, last known address, social security number, and date of birth of the “Alternate Payee” are:

Name: _____

Address: _____

Social Security Number: _____

Date of Birth: _____

The Alternate Payee is the former spouse of the Participant.

The Alternate Payee shall have the duty to notify the Plan Administrator in writing of any change in her mailing address subsequent to the entry of this Order.

4. **Marriage Date:** The Alternate Payee and the Participant were married on:

_____ (date), at _____ (location).

5. **Identification of Plan:** This Order applies to benefits under the Massachusetts Laborers’ Pension Fund (“Plan”).

Any changes in Plan Administrator, Plan Sponsor, or name of the Plan shall not affect the Alternative Payee’s rights as stipulated under this Order.

The Plan is a defined benefit plan to which are credited employer contributions, periodically paid under the terms of collective bargaining agreements. Under the Plan, monthly pensions for retiring vested participants are calculated from pension credit rates published in the Plan which are a function of working contribution rates, years of pension credit, and specific credit rate levels based on total hours worked during defined calendar periods.

6. **Plan Administrator:** For purposes of this Order, “Plan Administrator” shall mean:

Board of Trustees
Massachusetts Laborers’ Pension Fund
Attention: Barry McAnarney, Executive Director
14 New England Executive Park
Burlington, MA 01803

7. **Pursuant to State Domestic Relations Law:** This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the Commonwealth of Massachusetts, specifically, to Chapter 208, Section 34 of the Massachusetts General Laws.

8. **For Provision of Marital Property Rights:** This Order relates to the provision of marital property rights and/or spousal support to the Alternate Payee as a result of Judgment of Divorce Nisi between the Participant and the Alternate Payee, dated _____ (Absolute _____).

9. **Providing for Payments to the Alternate Payee:** The Alternate Payee is entitled to a portion of the Participant's Accrued Benefit under this Plan as set forth below. The Plan Administrator is hereby directed to pay the Alternate Payee's share directly to the Alternate Payee. This Order applies from the date of Judgment of Divorce Nisi between the Participant and the Alternate Payee, dated _____ (Absolute _____), until such time as all benefits due the Alternate Payee have been distributed.

10. **Amount of the Alternate Payee's Benefit:**

(For splitting the Actuarial present value)

This Order assigns to the Alternate Payee: an amount equal to the actuarial equivalent of _____% *(insert percentage or dollar amount)* of the Participant's Accrued Benefit under the Plan as accrued through _____, *(insert date of parties' divorce or date reached by Agreement of the parties)*.

(Note to drafter: Choose one option only to split the actuarial present value as drafted above or to split the monthly check as drafted below).

(For splitting the check)

Upon receipt of a certified copy of this instrument or the one which the Participant attains earliest retirement age, whichever occurs later, the Administrator of the Plan shall divide each monthly payment based on pension credits earned through _____ *(date)* otherwise payable to the Participant into _____ *(describe percentage or dollar amount)* payable to the Alternate Payee.

11. **Form of Payment to the Alternate Payee:**

(Note to drafter: Add the following only if in Section 10, the option of splitting the Actuarial Payee Present Value is chosen).

The Alternate Payee may elect to receive her benefits in any one of the allowable benefit options permitted under the terms and provisions of the Plan other than a Qualified Joint and Survivor Annuity with any subsequent spouse as the beneficiary. The form of benefit elected by the Alternate Payee is to be based on the life expectancy of such Alternate Payee. Any actuarial reduction which might be necessary to convert the Alternate Payee's benefits to be based on the Alternate Payee's lifetime, should be applied to the Alternate Payee's benefits.

(Note to drafter: If in Section 10 the option splitting the check is chosen, the Alternate Payee may not elect a Form of Payment. The Alternate Payee's payment is based on the Form of Payment that the participant has elected).

12. **Commencement Date of Payment to Alternate Payee:** Payment of benefits to the Alternate Payee under the Plan shall be made at such time as the Alternate Payee shall elect (but no earlier than the Participant's earliest retirement age) so long as such time of election is permitted under the terms of the Plan and the required forms requesting such distribution have been completed and submitted to the Plan Administrator.

13. **Death of Alternate Payee:**

Note to drafter: If the option "splitting the check" is chosen insert the following:

"If the Alternate Payee predeceases the Participant, the Alternate Payee's portion will revert back to the Participant".

Note to drafter: If the option "splitting the Actuarial present value" is chosen insert the following:

"If the Alternate Payee predeceases the Participant prior to the commencement of benefit, the Alternate Payee's portion will revert back to the Participant. If the Alternate Payee dies after the commencement of benefit, continuation of the Alternate Payee's benefit will be determined based on the Form of Payment the Alternate Payee elected at the time benefits commenced".

14. **Treatment of Alternate Payee as the Pre-retirement Surviving Spouse under Section 417 of the Code.**

Note to drafter: Treatment of an Alternate Payee as the Pre-retirement Surviving Spouse is not a mandatory provision of a QDRO. A QDRO may provide for treatment of a former spouse of a Participant as the Participant's spouse with respect to all or a portion of the spousal survivor benefits that must be provided under federal law. It should be noted that benefits awarded to the Alternate Payee under a QDRO will not be available to a subsequent spouse or beneficiary. As follows, are three options for treatment of the former spouse of a participant as the participant's spouse.

Option 1. Alternate Payee Treated as Spouse for all Spousal Survivor Benefits

"The Alternate Payee shall be treated as the Participant's spouse under the Plan for purposes of §§ 401(a)(11) and 417 of the Code".

Explanation: Option 1 applies if the Alternate Payee is treated as the Participant's spouse for all of the spousal survivor benefits payable with respect to the Participant's benefits under the Plan.

Option 2. Alternate Payee Treated as Spouse for a Portion of the Spousal Survivor Benefits

"The Alternate Payee shall be treated as the Participant's spouse under the Plan for purposes of §§ 401(a)(11) and 417 of the Code with respect to the amount assigned in Paragraph 10 of this Order".

Explanation: Option 2 applies if the Alternate Payee is treated as the Participant's spouse for a portion of the spousal survivor benefits payable with respect to the Participant's benefits under the Plan.

Option 3. Alternate Payee not Treated as Spouse

"The Alternate Payee shall not be treated as the Participant's spouse under the Plan".

For purposes of determining the eligibility for such surviving spouse benefits, the Alternate Payee and the Participant have satisfied the one (1) year marriage requirement as required under the provisions of the Plan.

Explanation: Option 3 applies if the Alternate Payee is not treated as the Participant's spouse for any of the spousal survivor benefits payable with respect to the Participant's benefits under the Plan.

Note to drafter: If the option "splitting the check" is chosen, the Alternate Payee's benefit would stop upon the death of the Participant. Continuation of the Participant's benefits would only be provided based on the Form of Payment elected by the Participant and to the designated beneficiary at the time of the participant's retirement.

15. **Limitations:** This Order is not intended, and shall not be construed in such a manner as to require the Plan:
 - (a) to pay any type or form of benefit, or any option not otherwise provided for under the Plan;
 - (b) to provide increased benefits (determined on the basis of actuarial value); or
 - (c) to pay any benefits to the Alternate Payee which are required to be paid to another alternate payee under another Order previously determined to be a Qualified Domestic Relations Order.

16. **Continued Qualified Status of Order:** It is the intention of the parties that this QDRO continue to qualify as a QDRO under Section 414(p) of the Internal Revenue Code, as it may be amended from time to time, and that the Plan Administrator shall reserve the right to reconfirm the qualified status of the QDRO at the time the benefits become payable.

17. **Tax Treatment of Distributions Made Under this Order:** The Alternate Payee shall include the taxable portion of all of her retirement benefits if, as and when received, in her gross taxable income. For purposes of Sections 72 and 402(a)(1) of the Internal Revenue Code, the Alternate Payee shall be treated as a distributee of any distribution or payment made to said Alternate Payee under this Order. Said retirement benefits when paid, shall not be taxable income or a deduction on the Participant's tax returns.

18. **Constructive Receipt:** In the event that the Plan Administrator inadvertently pays to the Participant any benefits that are assigned to the Alternate Payee pursuant to the terms of this Order, the Participant shall immediately reimburse the Alternate Payee to the extent that he has received such benefit payments, and shall forthwith pay such amounts so received directly to the Alternate Payee within ten (10) days of receipt.

19. **Continued Jurisdiction:** The Court retains jurisdiction over this matter to amend this Order to establish or maintain its status as a Qualified Domestic Relations Order. In the event this Order is held not to be a Qualified Domestic Relations Order within the meaning of Section 414(p) of the Internal Revenue Code and ERISA Section 206(d), the parties hereby agree to submit to and request this Probate Court or a Court of competent jurisdiction, to make it a Qualified Domestic Relations Order in such manner that will reflect the parties' intent as herein expressed and thereafter to enter an order modifying the Qualified Domestic Relations Order entered by the Court, said Modification Order to be entered nunc pro tunc, if appropriate.

20. **Plan Termination:** In the event of a Plan termination, the Alternate Payee shall be entitled to receive her portion of the Participant benefits as stipulated herein in accordance with the Plan's termination provisions for participants and beneficiaries.

21. From the date of this Order and thereafter, the Participant shall have no further right or interest in the portion of the Participant's accrued benefit under the Plan which is assigned to the Alternate Payee pursuant to Paragraph 10, above. Except as otherwise provided in Paragraph 14 of this Order, the Alternate Payee shall have no further right or interest in the portion of the Participant's accrued benefit under the Plan which is not assigned pursuant to paragraph 10 above. Except as otherwise provided in Paragraph 14 of this Order, nothing in this Order shall restrict the Participant's ability to obtain a distribution under the Plan or designated beneficiary under the Plan, with respect to the Participant's remaining accrued benefit determined after assignment to the Alternate Payee.

SO ORDERED

Dated: _____

 Justice, Probate and Family Court Department
 _____ Division