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**Divorce & Your Retirement Benefit**

**Divorce**

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### **A Note About Beneficiary Designations**

In the event of a divorce, you may wish to change your life insurance beneficiary and/or passwords which allow you to make such changes.

You may change your beneficiaries at any time by completing a *Designation/Change of Beneficiaries* form on MOSERS' website.

At all times you should be aware of those who have access to your personal information or passwords, and especially when going through a divorce or other life event. In these cases, it is important to routinely check the accuracy of your information from any institution that administers your retirement, insurance, credit, or any other financial benefits.

*This brochure contains a summary of the provisions of Section 104.312 & 104.1051 of the Revised Statutes of Missouri (RSMo). The contents of this brochure should not be considered legal advice. This information does not amend or overrule any applicable statute or administrative rule. In the event of conflict, the applicable statute or administrative rule will prevail.*

## **DIVORCE AND YOUR PENSION BENEFITS**

As a member of the Missouri State Employees' Retirement System (MOSERS), your pension plan sponsored by your employer, provides a fixed, pre-established benefit for you at the time of your retirement and is considered a defined benefit plan.

A defined benefit (DB) simply means your future pension payments have already been "defined" using a formula which includes your length of service and your final average pay. Your eligibility for retirement is determined by your age and years of service.

If you are vested (eligible for a benefit), your retirement benefit from MOSERS is considered "marital property." If you have been married at any time while an active member of MOSERS and are considering a divorce, your spouse may be legally entitled to receive a portion of your retirement benefit.

This brochure is designed to give the parties involved in a marriage dissolution a better understanding of how MOSERS pension benefits may be divided in a divorce proceeding.

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The contents of this brochure should not be considered legal advice. Please consult your attorney regarding your legal rights during a divorce. For questions regarding your benefits or additional information, please contact a MOSERS benefit counselor at (573) 632-6100 or (800) 827-1063.

### **The Division of Benefits Order Provision**

Section 104.312 and 104.1051 of the Revised Statutes of Missouri (RSMo), permits the division of MOSERS retirement benefits in the event of a divorce. This law allows MOSERS to pay a portion of your pension benefit directly to your ex-spouse at the time you begin receiving payments from MOSERS. Before MOSERS can divide your benefit, a court of competent jurisdiction must issue a Division of Benefits Order (DBO). According to the law, the court may award your ex-spouse **up to 50%** of the benefit accrued during all or part of your marriage.

Please do not provide MOSERS with a "Qualified Domestic Relations Order" (QDRO). MOSERS is exempt from QDROs provided for by the 1984 Retirement Equity Act. For the most part, the 1974 Employee Retirement Income Security Act (ERISA), which was amended to provide for QDROs, only relates to private sector pension plans. Government pension plans like MOSERS are exempt from this provision of federal law.

## Leaving State Employment

- **Refund of Contributions** - Members of the Missouri State Employees' Plan 2011 (MSEP 2011) and the Judicial Plan 2011 contribute 4% of their pay, through payroll deduction, to the MOSERS trust fund. If your retirement benefit is subject to a division of benefit order pursuant to section 104.1051, you will not be eligible to receive a refund of employee contributions.

*If you were first employed in a MOSERS benefit-eligible position on or after January 1, 2011, or elected a buyout and later returned to state employment, you are a member of the MSEP 2011 or Judicial Plan 2011.*

- **Cash Out Option** - Eligible vested members of the MSEP who left state employment between October 1, 1984 and September 1, 2002, have the option of taking the present value of their future retirement benefit in a lump sum rather than a monthly benefit at retirement age pursuant to Section 104.335.6, RSMo. If MOSERS has received a DBO prior to processing the cash out payment, your ex-spouse will receive a portion of the cash out payment accrued during the marriage.

## Already Divorced

Future retirement benefits may have been addressed in your divorce decree. Read through it and see. If you don't have a copy, you may be able to get one from the county where the divorce took place. You may contact a MOSERS benefit counselor to discuss the matter and how it applies in your specific situation.

## **DBO Alternative**

There are two important details to remember when considering whether or not to use a DBO:

- No payment will be issued to your ex-spouse until you begin receiving retirement benefits from MOSERS. The benefit is payable until the death of the member or the ex-spouse, whichever comes first.
- The only way in which MOSERS is legally authorized to divide your benefit is by using a DBO.

However, as an alternative to the DBO, you may choose to divide the present value of your retirement benefit at the time of divorce as a part of the property division. If a present-value calculation is required, we recommend you contact a professional who specializes in this service.

There may be other alternative methods available. Please consult your attorney to decide which method of dividing your benefit is best.

## **Joint & Survivor Divorce Pop-Up Option**

Pursuant to legislation passed in 2020, as of January 1, 2021, if you get divorced after retirement, you may remove your ex-spouse as a survivor beneficiary on your MOSERS pension benefits and receive an adjusted annuity amount.

To do so, you must obtain a divorce decree or amended divorce decree from a court of competent jurisdiction, which states:

- You, the member, retain sole possession of your MOSERS pension benefits (it either does not include any division of benefits order or terminates an existing order) and
- Your ex-spouse is removed as the beneficiary entitled to survivor benefits based on your retirement election of a joint & survivor benefit payment option.

You must provide MOSERS with a certified copy of your divorce decree/ amended divorce decree to adjust your benefits.

## OBTAINING A DBO

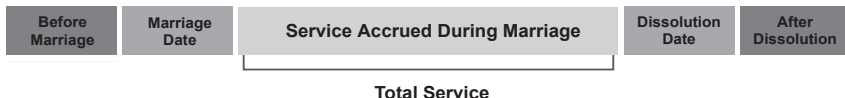
We recommend you follow these steps to obtain an **acceptable** DBO:

- **Step 1** – Discuss divorce proceedings with your attorney. Ask about your rights and options regarding “marital property.”
- **Step 2** – Contact MOSERS
  - Members may call in and request a DBO estimate by speaking with a benefit counselor or complete and submit a *Division of Benefits Order – Request for Estimate* form available on our website.
  - All other parties must complete and submit a *Division of Benefits Order – Request for Estimate* form. This form can be used in lieu of requesting the court to issue a subpoena to MOSERS. For your convenience, a *Division of Benefits Order – Request for Estimate* form is available online at [www.mosers.org](http://www.mosers.org).
- **Step 3** – MOSERS will prepare a DBO estimate and send it to you and/or the requesting party along with a blank DBO representing the court approved format to be used. Whether the blank DBO is completed or an attorney prepares a new DBO using the prepared format, it must be sent back to MOSERS for approval prior to the court date.
  - The DBO estimate will show the amount of benefit accrued during the time of marriage using creditable service, salary, and the benefit calculation formula applicable to the member. Survivor reductions and early retirement deductions will be included for members already retired.
  - The benefit estimate will not show the present value of your retirement benefit. If a present value calculation is required, contact a professional who specializes in this service.
- **Step 4** – Have the approved DBO signed by the appropriate parties, including the judge.
- **Step 5** – Obtain a **certified** copy of the DBO from the circuit clerk and submit it to MOSERS. The DBO will not be processed until the **certified** copy is received at MOSERS’ office. Benefit payments will not be paid retroactively.

## EX-SPOUSE BENEFIT PAYMENTS

### Calculation

With an approved DBO, your ex-spouse may receive up to 50% of the benefit accrued during all or part of your marriage. **The benefit for service accrued before the marriage and after the date specified on the DBO cannot be divided.**



The ex-spouse benefit payment will be calculated based on the formula to which the member belongs on the date of dissolution. If a member is eligible for both the MSEP and MSEP 2000, the ex-spouse benefit payment will be calculated using the MSEP if the member has not retired yet. If the member is retired, the payment will be calculated using the plan chosen at retirement. If retired, COLAs accrued from the date of retirement will be divided accordingly.

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### Example

#### Assumptions

Retirement plan.....MSEP 2011 (general state employee)  
 Date of hire.....October 15, 2012  
 Date of marriage .....December 5, 2012  
 Date of dissolution.....August 20, 2020  
 Average compensation at date of dissolution  
 (based on highest 36 months of salary).....\$3,000  
 DBO awarded ex-spouse .....50% of your benefit

#### Service Accrued During Marriage

|                        |   |                     |   |                                    |
|------------------------|---|---------------------|---|------------------------------------|
| Date of<br>Dissolution | – | Date of<br>Marriage | = | Service Accrued<br>During Marriage |
| 08/20/2020             | – | 12/05/2012          | = | (7 Yrs., 8 Mths., 16 Days)         |

#### Benefit Calculation

|                         |   |                      |   |                          |   |                                  |
|-------------------------|---|----------------------|---|--------------------------|---|----------------------------------|
| Average<br>Compensation | x | Multiplier<br>(1.7%) | x | Yrs./Mths.<br>of Service | = | Benefit Eligible<br>for Division |
| \$3,000.00              | x | .017                 | x | 7.6667                   | = | \$391.00                         |

|                                  |   |                             |   |                      |
|----------------------------------|---|-----------------------------|---|----------------------|
| Benefit Eligible<br>for Division | x | Percent Specified<br>in DBO | = | Ex-Spouse<br>Payment |
| \$391.00                         | x | .50                         | = | \$195.50             |

In addition, the following rules apply to an ex-spouse benefit payment:

- Service purchased during the marriage will also be included in calculating the ex-spouse benefit payment.
- The BackDROP payment (if applicable) is not subject to a DBO. However, if you elect a BackDROP at retirement, the service between the BackDROP date and the annuity starting date (your BackDROP period) **will be included** and considered creditable service when calculating the amount eligible for the DBO. This may result in your ex-spouse receiving a slightly higher monthly payment than your monthly payment if the DBO requires a 50% division and you were married the entire time you worked in a position covered by MOSERS. If you have questions or would like to know what percentage split to use in order to evenly divide your monthly payment, please contact a MOSERS benefit counselor.
- The ex-spouse and member benefit payments will be adjusted proportionately (reduced) if the member:
  - Elects early retirement, or
  - Elects a joint & survivor option at retirement and the ex-spouse is named as the beneficiary.
- The ex-spouse will not be eligible to receive the temporary benefit or any future formula increases.
- The ex-spouse is eligible to receive applicable COLAs.
- Benefit payments under a DBO will not be paid retroactively.

### Receiving Payments

- **Divorce Before Retirement** – Ex-spouse payments will commence when you begin receiving benefits from MOSERS in accordance with the DBO. Upon your death or the death of your ex-spouse, the DBO will automatically terminate.
- **Divorce After Retirement** – The division of your member benefit and payments to your ex-spouse will begin the first of the month following receipt of a certified DBO. Upon the death of either party, the DBO will automatically terminate. If you are predeceased by your ex-spouse, your benefit will increase by the amount otherwise payable to your ex-spouse beginning the first of the month following your ex-spouse's death.
- **Survivor Benefits** – Survivor benefits are paid in accordance with the applicable statutes. Except when utilizing the divorce pop-up option, if you elected a joint & survivor benefit payment option at retirement, survivor benefits will be paid to the spouse named on your *Retirement Election form*, regardless of your marital status.



## SUMMARY

- MOSERS will not automatically divide your retirement benefit in the event of divorce. The only way in which MOSERS is legally authorized to divide your benefit is through receipt of a certified DBO.
- In order to have your benefit divided, you must be vested (eligible for a benefit) on the date specified on the DBO.
- The division amount is negotiable at the time of divorce and can be any amount up to 50% of your benefit accrued during all or part of your marriage.
- A DBO can be obtained and submitted to MOSERS after the divorce. Don't assume the DBO is automatically part of the divorce.
- There may be alternative methods available to divide the value of your retirement benefit. Ask your attorney about your rights and options.
- If you marry and divorce more than once, the court can authorize more than one DBO. Each DBO can divide only the benefit accrued during that marriage.
- The DBO will automatically terminate upon the death of either party.
- Your ex-spouse will **not** be eligible to receive the temporary benefit or any future formula increases.
- The BackDROP payment (if applicable) is not subject to a DBO. However, the service between the BackDROP date and the annuity starting date (your BackDROP period) is considered creditable service and will be included when calculating the amount eligible for a DBO.
- The ex-spouse and member benefit payments will be adjusted proportionately (reduced) if the member:
  - Elects early retirement, or
  - Elects a joint & survivor option at retirement and the ex-spouse is named as the beneficiary.
- Ex-spouse payments are eligible for cost-of-living adjustments (COLAs) based on the plan in which you receive a retirement benefit.
- No payment will be issued to your ex-spouse until you begin receiving retirement benefits from MOSERS.
- Members of MSEP 2011 or Judicial Plan 2011 may not receive a refund of member contributions if their retirement benefits are subject to a DBO.

*Visit MOSERS' website for the most  
current version of this publication.*

**Missouri State Employees' Retirement System**

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*Please contact MOSERS to obtain alternative formats of this publication.*