



Montana Teachers' Retirement System FACT SHEET: Family Law Orders

Following a divorce, a specific court order called a **Family Law Order (FLO)** directs payment of some portion of a TRS participant's benefit or refund of TRS contributions to the participant's ex-spouse as spousal maintenance or distribution of marital property. In a FLO the ex-spouse is referred to as the **alternate payee**.

TRS law governing FLOs

For TRS purposes, FLOs are governed by §19-20-305, MCA, and Rules 2.44.522 and 2.44.523, ARMs. Although similar legal provisions apply to FLOs that distribute benefits from other public retirement systems in Montana,¹ **the guidelines, instructions, and examples in this Fact Sheet pertain only to TRS.**

The property distribution section in a divorce decree or a property settlement agreement is *not* sufficient to constitute a FLO for TRS purposes. Likewise, TRS will not accept a Qualified Domestic Relations Order (QRDO), as there are differences between Montana law and the federal laws² that govern QRDOs.

Required Forms

Effective July 1, 2017, TRS law requires that a FLO be submitted on a form prescribed and provided by TRS.

(This requirement applies to any FLO or amended FLO submitted to TRS for approval *on or after* July 1, 2017.)

The options available under a FLO depend upon the TRS participant's circumstances and the type of distribution to be made to the alternate payee. The forms, described below, are available in fillable PDF format on the TRS website. The completed FLO must be signed by the Judge before being submitted to and approved by TRS.

If the TRS participant IS NOT RETIRED:

No payment is made until the participant either retires or requests a refund (withdrawal) of accumulated TRS contributions. Use either FLO 'A' or FLO 'B' as appropriate:

- FLO 'A' is required when a **monthly benefit** is to be paid for the alternate payee's lifetime. This is known as an *actuarially equivalent benefit*.
- FLO 'B' is required when a **fixed amount** is to be paid to the alternate payee. This amount is payable for a period of time that may not exceed the lifetime of the participant or any surviving Joint Annuitant or Beneficiary of the participant.

If the TRS participant IS RETIRED:

Use the form that corresponds to the retired participant's situation, as described below.

- FLO 'C' is required if the TRS participant selected the Normal Form retirement benefit.
- FLO 'D' is required if the TRS participant selected a Joint and Survivor Annuity option (known as TRS Option A, B, C, D, or E) at retirement and *the Joint Annuitant is the alternate payee*.
- FLO 'E' is required if the TRS participant selected a Joint and Survivor Annuity retirement option (TRS Option A, B, C, D, or E) and *the Joint Annuitant is not the alternate payee*.
- FLO 'F' is required if the TRS participant selected a 10- or 20-Year Period Certain and Life benefit.

Please read **all** information in this Fact Sheet.

¹ For FLO information pertaining to other Montana public pension plans, contact the Montana Public Employees' Retirement Administration (mpera.mt.gov).

² QRDOs are described in federal law [29 USC §1056(d), Section 206(d) of the Employee Retirement Income Security Act (ERISA)].

Frequently Asked Questions

1. **If I already have an approved FLO on file with TRS, do I need to resubmit the FLO on one of the new forms prescribed by TRS?**

No. If you received approval from TRS on a FLO entered on your account prior to July 1, 2017, that approval is still valid. There is no need to submit an updated FLO to TRS.

2. **If the TRS participant is already retired, can a FLO change the benefit election or joint annuitant designation that the participant made at retirement?**

No. The FLO only directs some portion of the participant's monthly benefit to the alternate payee, as follows:

- If the participant elected a Normal Form benefit, the FLO directs the distribution of some portion of participant's monthly benefit to the alternate payee. Monthly payments to the alternate payee terminate upon the death of the participant.
- If the participant elected a Joint and Survivor Annuity option, the FLO directs the distribution of some portion of the participant's (and maybe the joint annuitant's) monthly benefit amount to the alternate payee. Payments to the alternate payee terminate upon the death of the participant (or maybe the joint annuitant) or the alternate payee, whichever occurs later.
- If the participant elected a 10- or 20-Year Period Certain and Life benefit, the FLO directs distribution of some portion of the monthly benefit amount to the alternate payee, terminating upon the death of the participant or the end of the period certain, whichever occurs later.

3. **If the TRS participant is **not** retired, can a FLO either prohibit the participant from withdrawing from TRS or direct the participant to make a specific benefit election at retirement?**

No. A FLO may only specify the terms of distribution of payments that TRS may make to or on behalf of the TRS participant. This includes monthly retirement benefits under the participant's service or disability retirement; death/survivor benefits if the participant dies before retiring; or refund of accumulated contributions if the participant elects to withdraw from TRS in lieu of retirement.

4. **Can a FLO require TRS to pay out a portion of the participant's account balance to the alternate payee before the participant has received any payment from TRS?**

No. TRS may not legally make any distribution to an alternate payee until the participant has terminated all employment in TRS-reportable positions *and*:

- The participant has applied for and received either a monthly retirement benefit or a refund of accumulated contributions, or
- The participant has died and death/survivor benefits or a refund of contributions are payable to the participant's designated beneficiaries.

5. **What types of distributions may a FLO direct to an alternate payee? Do limitations apply?**

There are two basic types of FLO distributions:

- A ***fixed amount distribution*** directs payment of a portion of the TRS participant's monthly benefit (or refunded contributions) to the alternate payee. The distribution may be either a specific dollar amount or a specific percentage of the monthly benefit amount that would otherwise be payable to

the TRS participant or on the participant's behalf. This type of FLO may be entered on the TRS participant's account either before or after the participant has retired.

- An **actuarially equivalent distribution** is a transfer of a specified percentage of the TRS participant's Normal Form benefit, which is then actuarially adjusted to pay a benefit for the lifetime of the alternate payee. There are limitations, as follows:
 - An actuarially equivalent distribution FLO may be entered only on the account of a TRS participant who has not yet retired. Once a TRS participant has retired, the option for this type of FLO terminates, even if the TRS participant subsequently returns to active member status under TRS's working retiree provisions.
 - If the alternate payee dies after receiving any payment under an actuarially equivalent distribution FLO, the alternate payee's portion of the benefit *does not* revert to the TRS participant or to the participant's joint annuitant or beneficiary.

6. Can an alternate payee designate a beneficiary?

The alternate payee may designate a beneficiary *only* if the FLO explicitly authorizes it. In that case, the alternate payee must designate a beneficiary on a form prescribed and provided by TRS and must keep the beneficiary designation up to date. If the alternate payee dies, the following limitations then apply with respect to payment to the alternate payee's designated beneficiary:

- If the FLO provides for an *actuarially equivalent distribution* and any distribution has become payable to the alternate payee, the beneficiary designation is null and void. However, if the alternate payee dies before any distribution has become payable, the beneficiary may not receive a monthly benefit distribution. Instead, the beneficiary receives a refund of the appropriate portion of the TRS participant's accumulated contributions, as if the TRS participant had elected to withdraw from TRS. This refund is not paid to the beneficiary until benefits become payable to or on behalf of the TRS participant (such as upon the participant's retirement).
- If the FLO provides for a *fixed amount distribution* and the alternate payee dies, the designated beneficiary may receive the distribution that otherwise would have been payable to the alternate payee, including a monthly distribution.
- If at the time of the alternate payee's death there is no effective beneficiary on file or the beneficiary is already deceased, the FLO is null and void.

7. When should a FLO be submitted to TRS?

TRS recommends the Court complete and sign a FLO when the divorce decree is issued or as soon as possible thereafter. Submit a certified copy (obtained from the Clerk of Court) to TRS for review and approval.

Timely submission of the FLO will ensure the interests of the alternate payee are best protected, especially if the TRS participant has not yet retired. *Please note:*

- If the participant has retired, there is no option for an actuarially equivalent distribution to the alternate payee.
- If the participant has withdrawn from TRS and received a refund of contributions, no amount is available for distribution to the alternate payee.
- No distributions may be made to the alternate payee for any amounts paid to the participant prior to the effective date of the FLO.

- Other FLOs previously submitted to TRS on the same participant's account may have priority, regardless of the date on which the court issued each FLO.
- A FLO may no longer be valid if submitted to TRS after the death of the TRS participant.

8. When is a FLO effective? Can a FLO require retroactive distributions to the alternate payee?

The effective date of the FLO depends upon the TRS participant's status.

- If entered on the account of TRS participant who has not retired, a FLO is effective when received and approved by TRS. The terms of the FLO take effect when any benefit or refund of contributions becomes payable to or on behalf of the TRS participant (i.e., upon the participant's retirement, withdrawal from TRS, or death). This includes any payment of retroactive benefits made based upon a deferred retirement.
- If entered on the account of a retired participant, a FLO is effective on the first day of the month following TRS's receipt and approval of the FLO. The alternate payee will receive his or her first distribution on the last business day of the month in which the FLO becomes effective. A FLO cannot require TRS to make distributions to the alternate payee for any amounts paid by TRS prior to the effective date of the FLO.

Questions?

TRS strongly recommends that the parties to a FLO each seek the advice of their attorney and/or financial advisor to understand the legal and financial consequences of a FLO. TRS cannot advise a participant or ex-spouse regarding the terms to include in the FLO. However, if after reading the contents of this Fact Sheet you have additional questions about how TRS will *apply* the terms of a FLO, please contact us.

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Please Note: This Fact Sheet is intended to provide a concise, easy-to-understand summary of TRS law and policy. The actual application of TRS law will depend upon the specific circumstances and facts presented. In determining the rights and obligations of any person, TRS law will supersede any contradictory information provided in this Fact Sheet.