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SAMPLE DOMESTIC RELATIONS ORDER

THE ATTACHED SAMPLE DOMESTIC RELATIONS ORDER IS PROVIDED TO MEMBERS AND BENEFICIARIES OF THE MIDDLESEX COUNTY RETIREMENT SYSTEM SOLELY AS A REFERENCE TO ASSIST IN DEVELOPING AN APPROPRIATE DIVISION OF RETIREMENT BENEFITS UPON DIVORCE.

NOTWITHSTANDING THE INFORMATION CONTAINED HEREIN, NOTHING IN A DOMESTIC RELATIONS ORDER CAN CONFLICT WITH THE STATUTORY PROVISIONS OF THE MASSACHUSETTS PUBLIC EMPLOYEE RETIREMENT PLAN AS SET FORTH IN MASSACHUSETTS GENERAL LAWS, CHAPTER 32.

THIS DOCUMENT IS NOT INTENDED TO CONSTITUTE, NOR TO BE A SUBSTITUTE FOR, COMPETENT LEGAL ADVICE. YOU ARE URGED TO CONSULT WITH AN ATTORNEY TO DETERMINE YOUR LEGAL RIGHTS UPON DIVORCE.

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

[County] Division Docket No. [00000]

John T. Bickerson,
Plaintiff

v.

Mary T. Bickerson,
Defendant

DOMESTIC RELATIONS ORDER

As a part of the final Judgment in this matter, pursuant to M.G.L. Chapter 208, Section 34, governing the division of marital property between spouses and former spouses in divorce actions, and the decision of the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989), it is hereby ordered as follows:

This opening paragraph, which refers to the applicable case law and statute, should not be altered or amended.

1. DEFINITIONS

For the purposes of this Order, the following terms are defined:

a. "Retirement Plan" shall refer to the Middlesex County Retirement System (M. G. L. c. 32 and c. 34B, s. 19);

b. "Plan Administrator" shall refer to the Middlesex County Retirement Board, 25 Linnell Circle, P.O. Box 160, Billerica, MA, 01865;

c. "Participant" shall refer to [John T. Bickerson, 1 Litigation Drive, Boston, Massachusetts 02111; Social Security Number 000-00-0000; date of birth January 1, 1900];

The Participant is the plan participant whose retirement benefit is the subject of the Order.

d. "Alternate Payee" shall refer to [Mary T. Bickerson, 1 Litigation Drive, Boston, Massachusetts 01111; Social Security number 000-00-0000; date of birth January 1, 1900 ;

The Alternate Payee is the spouse of plan participant who will be receiving a share of the retirement benefit.

e. "Alternate Payee's Benefit" shall refer to the separate benefit to be established and administered for the Alternate Payee pursuant to paragraph 3 or paragraph 8 of this Order.

2. ALLOCATION AND OPTION SELECTION OF PARTICIPANT'S RETIREMENT BENEFIT

The Plan Administrator is advised that the Alternate Payee and the Participant have agreed on allocating the retirement benefit of the Participant under the Retirement Plan which had accrued as of [agreed upon date]. Such benefit shall be reduced to reflect the election of Option C [or Option B in the event of remarriage of the Alternate Payee if prior to the Participant's actual retirement] pursuant to paragraph 7.

If the Participant and Alternate Payee have agreed on an option choice, it should be stated in this paragraph, along with a date on which to base the division of the benefit. See Appendix D for an explanation of the three available retirement allowance options and how to estimate the amount payable under each one. All three options are available. The option choice, if designated, must remain consistent throughout the Order.

If the Order requires that the Participant select Option C, the parties may agree to select an alternative option in the case of remarriage of the Alternate Payee. If the divorce decree awards the Alternate Payee a percentage of the retirement through a particular date, the date should be entered in this paragraph and remain consistent throughout the Order.

3. ALTERNATE PAYEE'S RIGHT TO BENEFITS

The Alternate Payee is awarded all right, title and interest in and to the Alternate Payee's Benefit as defined in paragraph 5 of this Order, commencing at the Participant's actual retirement date and continuing while both parties are alive. This is an assignment of the Participant's interest pursuant to M.G.L. c. 32, §19.

This paragraph addresses the rights that will be conferred on the Alternate Payee and when those rights will become effective. This paragraph is written in conformance with M.G.L. c. 32 and should not be altered or amended.

4. PAYMENT OF BENEFITS BY PLAN ADMINISTRATOR

The Middlesex County Retirement Board shall pay directly to the Alternate Payee the Alternate Payee's Benefit, awarded by this Order, commencing concurrently with the Participant's benefit and continuing until the first death of either the Participant or the Alternate Payee.

As does the prior paragraph, this paragraph addresses the rights that will be conferred on the Alternate Payee and when those rights will become effective. This paragraph is written in conformance with M.G.L. c. 32 and should not be altered or amended.

5. DETERMINATION OF ALTERNATE PAYEE'S BENEFIT

The Alternate Payee's Benefit shall be equal to [XX]% of the marital portion of the Participant's benefit commencing at the time of the Participant's actual retirement. The marital portion of the Participant's benefit is the benefit which the Participant would have received at [his/her] actual retirement date in the absence of this Order, determined using [his/her] highest consecutive three-year average salary at [his/her] actual retirement date and using the benefit percentage specified in the Retirement Plan for the age at which the Participant actually retires and commences receiving [his/her] benefit, but using only [his/her] credited service under the Retirement Plan through [agreed upon date]. Such benefit shall be reduced to reflect the election of Option C pursuant to paragraph 7.

This paragraph allows the parties to designate the percentage to be received by the Alternate Payee as of a specific date. This date should be the same as stated in paragraph 2 and remain consistent throughout the Order. The example here uses a common formula to determine the marital portion to be awarded to the Alternate Payee. The parties can establish their own formula or, if the Participant is retired, a specific dollar amount to be awarded at the time of divorce can be stated. If you plan on deviating from the sample formula an attorney should be consulted to ensure that the particular formula can be implemented under the law.

If the parties have agreed, or the court has ordered that the benefit be split as of a particular date (usually the date of separation or divorce), this date should be used in relation to any mention of creditable service. Again, this is merely an option - the parties are free to develop any apportionment of the benefit that is consistent with the divorce decree as long as it does not violate the terms of the Retirement Plan. You should also restate the option choice if it has been agreed upon.

If at retirement the Participant has failed to select the specific court-ordered option, the retirement will not be processed.

6. DETERMINATION OF ALTERNATE PAYEE'S BENEFIT IN EVENT OF PARTICIPANT'S DISABILITY RETIREMENT

In the event that the Participant receives a disability benefit from the Middlesex County Retirement Board, due to either accidental or ordinary disability, the Alternate Payee's Benefit

shall be equal to [XX]% of the marital portion of the Participant's disability benefit commencing at the time of the Participant's disability retirement. For purposes of ordinary or accidental disability, the marital portion shall mean a fraction, the numerator of which is the Participant's number of years and months of credited service through [agreed upon date], and the denominator of which shall be the Participant's total number of years and months of service through the date of [his/her] disability. However, for purposes of determining the portion of the accidental disability benefit payable to the Alternate Payee, such fraction shall be applied only to the amount of disability benefit which would have been payable for ordinary disability rather than the actual amount payable for accidental disability; the Participant shall retain 100% of the excess of the amount of the accidental disability benefit over the amount of the benefit which would have been payable for ordinary disability.

Retirement benefits awarded for accidental and ordinary disability are calculated under statutes (M.G.L. c. 32, ss. 6 and 7) which differ from regular retirement calculations. Because a Participant may retire under a disability allowance, it is necessary to offer an alternative formula to that presented in paragraph 5.

This paragraph allows the parties to designate how the benefit would be apportioned in the event that the Participant is retired on the basis of either accidental or ordinary disability. This paragraph is not mandatory, but is helpful in avoiding future complications should the Participant retire for disability. Otherwise, the parties will be required to seek clarification from the court regarding the division of benefits.

The formula offered in this sample is a common one, defining the marital portion and awarding a percentage of that portion to the Alternate Payee. Again, this is merely an option - the parties are free to develop any apportionment of the benefit that is consistent with the divorce decree as long as it does not violate the terms of the Retirement Plan.

7. PARTICIPANT'S INTENT TO DESIGNATE THE ALTERNATE PAYEE AS HIS OR HER BENEFICIARY OF RETIREE SURVIVOR BENEFITS

The Participant hereby elects to receive [his/her] retirement benefit under Option C of the Retirement Plan, provided that the Alternate Payee is living and has not remarried at the time of [his/her] retirement. The Participant hereby designates the Alternate Payee as the beneficiary for the death benefit under Option C of the Retirement Plan, provided that the Alternate Payee is living and has not remarried at the time of [his/her] retirement. The Participant is further required to designate the Alternate Payee as the beneficiary on the prescribed form issued by the Middlesex County Retirement Board. In the alternative, in the event the Alternate Payee has become ineligible to receive the Option C survivor benefit by virtue of remarriage prior to the Participant's retirement, the Participant hereby agrees to elect to receive [his/her] retirement benefit under Option B and then designate the Alternate Payee as the beneficiary for the

Participant's available Option B death benefit. The designation of the Alternate Payee as the beneficiary shall be continued and maintained in full force and effect during [his/her] lifetime.

Here, the Participant states the intent to elect the previously agreed upon option. Option C is used in this sample because it is frequently selected; Option C is the only option that provides a survivor (or continuation) benefit for the ex-spouse, provided that the ex-spouse has not remarried at the time of the Participant's actual retirement.

Please note that, by choosing Option C, the Participant will receive a benefit that is generally 8-13% less than an Option A or an Option B benefit. Option C should be reviewed in conjunction with the benefits and limitations of Options A and B. The options and potential death benefits are described in M.G.L. c. 32, §12.

If the Alternate Payee is to be named as the beneficiary under any option, the order should compel the Participant to designate the Alternate Payee as such on a form prescribed by the Board. Naming the Alternate Payee as beneficiary in the Order does not meet the statutory requirement for designating a beneficiary.

8. ALLOCATION OF PARTICIPANT'S ANNUITY SAVINGS ACCOUNT REFUND, IF ANY

In the event the Participant elects to receive a return of [his/her] accumulated contributions and interest prior to [his/her] retirement or death, the Alternate Payee's benefit shall equal [XX]% of the Participant's balance which had accrued as of [agreed upon date], commencing at the time the distribution is made to the Participant.

This paragraph allows the parties to award a portion of the member's annuity savings account to the Alternate Payee in the event that the Participant does not retire and is eligible to receive a return of his or her accumulated contributions and interest. While this paragraph is not mandatory, it does protect the interests of the Alternate Payee.

If and when the Participant either applies for retirement benefits or requests a refund of his or her annuity savings account balance, the Middlesex County Retirement Board will attempt to notify the Alternate Payee of the Participant's action. Accordingly, it is extremely important that the Alternate Payee keep the Middlesex County Retirement Board informed of his or her current address.

9. PARTICIPANT'S INTENT TO DESIGNATE THE ALTERNATE PAYEE AS HIS OR HER BENEFICIARY OF ACTIVE SURVIVOR BENEFITS

In the event that the Participant should die prior to retiring and receiving [his/her] retirement benefit, the Participant hereby agrees to designate the Alternate Payee as the beneficiary for a death benefit pursuant to M.G.L. Chapter 32, Section 12(2)(d), provided that the Alternate Payee is living and has not remarried at the time of the Participant's death. Such death benefit is to be payable to the Alternate Payee. The Participant and Alternate Payee acknowledge that if the Participant remarries, the surviving spouse may have a statutory right to elect a member-survivor allowance that will supersede the Alternate Payee's rights under this paragraph.

In the alternative, in the event the Alternate Payee becomes ineligible to receive the death benefit provided in Section 12(2)(d) by virtue of [his/her] remarriage, the Alternate Payee shall receive [XX]% of the Participant's contributions through [agreed upon date] together with the interest credited on such contributions through the date of the Participant's death. The Participant is further required to designate the Alternate Payee as the beneficiary on the prescribed form issued by the Middlesex County Retirement Board. The designation of the Alternate Payee as the beneficiary shall be continued and maintained in full force and effect during [his/her] lifetime, or until the commencement of benefit payments to both the Participant and the Alternate Payee upon the retirement of the Participant.

This paragraph allows the Participant to make provisions for the Alternate Payee in the event the Participant dies prior to retirement. The Alternate Payee is only eligible for the survivor (or continuation) benefit if he or she has not remarried at the time of the Participant's death. This benefit is described in M.G.L. c. 32, §12(2)(d).

The continuing survivor benefit cannot be apportioned between the Alternate Payee and another beneficiary. The parties are also allowed to designate the Alternate Payee as the lump-sum beneficiary pursuant to M.G.L. c. 32, §11(2)(c) in the event the Alternate Payee has remarried.

IMPORTANT: In Massachusetts, if the member dies and is survived by a spouse (who meets the statutory requirements of M.G.L. c. 32, §12 (2)(d)) or dependent children, the surviving spouse and children have a superior right to the member's retirement plan benefits. Notwithstanding that the order and the Participant designate the Alternate Payee as the 12(2)(d) or 11(2)(c) beneficiary, if the Participant has remarried and the current spouse meets the statutory requirements of section 12(2)(d), the current spouse will have the statutory right to elect to receive this benefit.

Designation of the Alternate Payee as the 12(2)(d) member-

survivor beneficiary or the 11(2)(c) lump-sum beneficiary will onlybe effective if the Participant has not remarried at the time of the Participant's death.

Again, if the Alternate Payee is to be named as the beneficiary under any option, the order should compel the Participant to designate the Alternate Payee as such on a form prescribed by the Board. Naming the Alternate Payee as beneficiary in the Order does not meet the statutory requirement for designating a beneficiary.

10. ACTIONS NOT REQUIRED OF PLAN ADMINISTRATOR

Nothing in this Order shall be construed to require the Retirement Plan or Plan Administrator:

a. to provide to the Alternate Payee any type or form of benefit or any option not otherwise provided under the Retirement Plan;

b. to provide to the Alternate Payee increased benefits (determined on the basis of actuarial equivalence stated in the Retirement Plan); 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 Domestic Relations Order sanctioned by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989).

11. ALTERNATE PAYEE'S RIGHT TO COST OF LIVING ADJUSTMENTS, IF ANY

The Alternate Payee shall be entitled to receive a pro rata share of any subsequent cost-of-living increases which may be granted on benefits which are in pay status.

If the parties select Option C and the benefit is divided according to a percentage allotted to each person, this paragraph spells out how any future cost of living adjustments will be passed on to the parties. In the event that a specific dollar amount is specified as the Alternate Payee's Benefit, then that amount cannot be changed to include cost of living adjustments.

12. ALTERNATE PAYEE'S TAX LIABILITY

The Alternate Payee shall include all of the taxable portion of [his/her] Alternate Payee Benefit, if and when received, in [his/her] gross taxable income. For purposes of sections 72 and 402(a)(9) of the Internal Revenue Code, the Alternate Payee shall be treated as the distributee of any distribution or payment made to said Alternate Payee under this Order. Said Alternate Payee's Benefit when paid, shall not be declared as taxable income or claimed as a deduction on the Participant's tax return.

This paragraph identifies the parties' tax benefits and obligations.

13. CONSTRUCTIVE RECEIPT

In the event that the Plan Administrator inadvertently pays to either party sums that are assigned to the other party pursuant to this Order, the party receiving the payment in error shall within thirty (30) days of receipt reimburse the other party to the extent of such payments. In no event shall the Plan Administrator be liable for payment to either party of any sum paid to the other party.

14. INTENT OF DOMESTIC RELATIONS ORDER

It is intended that this Order qualify as a Domestic Relations Order sanctioned by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989), and the provisions of this Order shall be interpreted and complied with in a manner consistent therewith.

15. JURISDICTION AND MODIFICATION

The Court retains jurisdiction over this matter to amend this Order to establish or maintain its status as a Domestic Relations Order sanctioned by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989), and pursuant to M.G.L. Chapter 208, Section 34, and in light of any subsequent legislation or appellate court ruling. In the event this Order is held not to be a Domestic Relations Order sanctioned by the Supreme Judicial Court, the parties hereby agree to submit to and request the Probate Court to make it a Domestic Relations Order sanctioned by the Supreme Judicial Court, in such a manner that will reflect the parties' intent as herein expressed and thereafter to enter an Order modifying the Domestic Relations Order entered by the Court, said modification Order to be entered nunc pro tunc if appropriate.

SO ORDERED

Dated_____

_____
Justice,
Probate and Family Court Department
[County] Division