

## Synopsis of laws governing division of LASERS benefits

The Louisiana State Employees' Retirement System ("LASERS") is a defined benefit system and not a defined contribution system, so the system pays retirement benefits based upon a formula and not merely upon employee and employer contributions plus the earnings made thereon. This is significantly different from what you would ordinarily find in a 401k or 457 plan. Consequently, the future benefits that will be payable to a LASERS retiree have no direct relationship to the contributions that are paid into the System. The benefit payable to a vested member is established at La. R.S. 11:444, and this benefit will be paid to the member during his lifetime. The member may elect a joint and survivor annuity option, which would provide a benefit to his designated beneficiary upon his death<sup>1</sup>. These benefits will be payable to either the member or the beneficiary for their life even after the member has exhausted his employee or employer contributions.

LASERS is a governmental pension plan, therefore the provisions of ERISA and the Internal Revenue Code concerning Qualified Domestic Relations Orders ("QDRO") do not apply<sup>2</sup>. Instead, a division of benefits paid by the system is governed by Louisiana community property law and by La. R.S. 11:291 and 441 *et seq.* Payments cannot be made by LASERS until the member dies, retires or terminates employment and requests a refund of his or her contributions<sup>3</sup>.

It is helpful to understand that LASERS provides three types of benefits:

1. Retirement—income deferred until a member is vested, terminates state employment and begins receiving benefits;
2. Disability—income paid to approved applicants; and
3. Survivor—benefits paid to qualified survivors of employees who die prior to retiring.

Retirement and survivor<sup>4</sup> benefits may be divided with a former spouse in accordance with a community property settlement. Under *Bordes v. Bordes*, 98-1004, 730 So.2d 443 (La. 4/13/99), disability benefits are the member's separate property and may not be divided until the member reaches the age where they would be eligible for normal (regular) retirement.

Since there is no direct relationship between the employee or employer contributions that are paid into the system and the retirement benefits eventually paid, the community property interest of the former spouse of an active member in LASERS is not easily subject to a present value calculation, Such calculations are best made by a qualified actuary.

While the Federal QDRO provisions do not apply to LASERS, state law does require LASERS to have a certified copy of a legally correct and acceptable court order before it can divide retirement benefits, survivor benefits or a refund of accumulated employee contributions<sup>5</sup>. Judgments or orders dividing benefits as part of a community property settlement or judgment of partition are deemed

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<sup>1</sup> See La. R.S. 11:446.

<sup>2</sup> See 26 USCA § 401(a)(13)(30), 411(e)(1)(A), 414(d) and (p)(9); 29 USCA § 1002(32), 1003(b)(1) and 1056(d)(3).

<sup>3</sup> See also *Sims v. Sims*, 358 So.2d 919 (La. 1978), at pages 923-924; *Hare v. Hodgins*, 586 So.2d 118 (La. 1991), at the bottom of page 126.

<sup>4</sup> *LASERS v. McWilliams*, 2006-2191, 996 So.2d 1036, (La. 12/2/08)

<sup>5</sup> See La. R.S. 11:291; *LASERS v. McWilliams*, *supra*.

interlocutory until approved as acceptable by LASERS<sup>6</sup>. LASERS will also need a copy of the ex-spouse's social security card to ensure proper reporting to the IRS. If LASERS does not receive a certified copy of such an order, then when a refund or benefits become payable, the entire amount will be paid directly to the member, the member's named beneficiary or the member's survivor(s)<sup>7</sup>. Payment so made will absolve LASERS of any responsibility to account to the ex-spouse, and the recipient(s) will be solely responsible for any accounting that may be due<sup>8</sup>.

I have also included a sample domestic relations order, which you may review. Your order should include paragraphs I through VIII, including an appropriate alternative clause from III. If the member has already retired without taking DROP or IBO, then paragraph IV may be omitted. Please keep in mind that the sample order does not cover every possibility in partitioning a member's interest in the system, but should give you some idea as to the type of orders we do accept. Any modification(s) should conform to this model.

The opinion expressed herein represents an informal staff opinion. As such, it is not binding on LASERS. It does, however, reflect the staff's current position regarding these matters.

I hope the above information is helpful. If I may be of any further assistance, please feel free to contact me.

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<sup>6</sup> See La. R.S. 9:2801(B).

<sup>7</sup> See LSA- R.S. 11:291(E) and 441 *et seq.*

<sup>8</sup> See *Succession of Tucker*, 445 So.2d 510 (La. App. 3rd Cir. 1984), writ denied 447 So.2d 1077 (La. 1984); *Tucker v. District Attorney's Retirement System*, 445 So.2d 514 (La. App. 3rd Cir. 1984), writs denied 447 So.2d 1080, 1081 (La. 1984). See also, LSA-R.S. 23:638.

**SAMPLE DOMESTIC RELATIONS ORDER**

I.

IT IS ORDERED, ADJUDGED AND DECREED that this Court finds the parties in the above captioned matter were married to each other on (1), \_\_\_\_\_, and were subsequently divorced; that a community property regime existed during the marriage of the aforesaid parties, which regime was terminated effective (2), 2\_\_\_\_\_; and that this Court has jurisdiction of this action and these parties and is the proper Court to render this Order.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court finds that, during the existence of the aforesaid marriage, (3), whose social security number<sup>9</sup> is XXX-XX- (4), and whose mailing address is (5), was a member of Louisiana State Employees' Retirement System ("LASERS"), thereby establishing a community property interest in funds or benefits that may become payable by LASERS as a result of that membership.

III.

**Alternative Clause 1:**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (6), whose social security

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<sup>9</sup> LASERS suggests that all but the final four digits of the parties' social security numbers be redacted and supplied to the system in a separate letter or document; however, failure to provide these numbers could delay or prevent the completion of the DRO approval process.

number<sup>10</sup> is XXX-XX- (7), and whose mailing address is (8), shall receive (9) % of any funds or benefits that may become payable by LASERS to (3).

**Alternative Clause 2:**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (6), whose social security number is (7), and whose mailing address is (8), shall receive a percentage of any funds or benefits that may become payable by LASERS to (3), this percentage to be calculated as follows:

One-half (1/2) of a fraction, the numerator of which is the number of years of service credit earned or purchased by (3) during the existence of the aforesaid community property regime, to-wit, from (1) until (2), and the denominator of which is the total number of years of service credit (3) has with LASERS as of the date funds or benefits become payable by LASERS.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (6), shall also receive the same percentage as set forth in the preceding section on any funds deposited in (3) DROP or IBO Account and shall be payable to (6) upon the retirement or termination of employment of (3).

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (6), shall also receive the same percentage as set forth in the preceding section on any benefit that becomes due and

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<sup>10</sup> LASERS suggests that all but the final four digits of the parties' social security numbers be redacted and supplied to the system in a separate letter or document; however, failure to provide these numbers could delay or prevent the completion of the DRO approval process.

owing to any survivor or beneficiary of \_\_\_\_ (3) \_\_\_\_, upon his or her death.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LASERS divide any funds or benefits that may become payable by it to \_\_\_\_ (3) \_\_\_\_, and that LASERS pay the aforesaid percentage of such funds or benefits directly to \_\_\_\_ (6) \_\_\_\_ at his or her above address, or such other address as \_\_\_\_ (6) \_\_\_\_ may advise LASERS in writing in accordance with the following paragraph.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that \_\_\_\_ (6) \_\_\_\_ shall provide LASERS with a certified copy of this Order within thirty (30) days after it is signed by the undersigned Judge, and that \_\_\_\_ (6) \_\_\_\_ shall inform LASERS in writing of all future changes of mailing address within thirty (30) days after such change of address becomes effective.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, if \_\_\_\_ (6) \_\_\_\_ predeceases \_\_\_\_ (3) \_\_\_\_, all funds or benefits shall revert to \_\_\_\_ (3) \_\_\_\_, his or her survivor(s) or his or her beneficiary(ies)<sup>11</sup>.

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<sup>11</sup> This paragraph tracks the language of La. R.S. 11:291(F).

**FOOTNOTES:**

- (1) Date of Marriage
- (2) Date community property regime terminated
- (3) Name of LASERS member
- (4) Social Security Number of LASERS member
- (5) Current mailing address of LASERS member
- (6) Name of former spouse of LASERS member
- (7) Social Security Number of former spouse of LASERS member
- (8) Current mailing address of former spouse of LASERS member
- (9) Community interest of former spouse in LASERS member's retirement, expressed as a percentage