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# PERA Benefits and Divorce

Effective January

Colorado  
Public  
Employees'  
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The Participant or Alternate Payee in any amount form payment shall be made to the Alternate Payee unless order and determined that it complies with the statutes DROs.

Under both the PERA and DPS benefit structures the payment to the Alternate Payee shall be in the same form lump Sum Dollar Amount or Monthly Dollar Amount as selected by the Participant. Except as provided by the Alternate Retirement Age exception as provided herein and for the PERA DC Plan the PERA Plan and the PERA k Plan the Alternate Payee must wait until the Participant retires or terminates employment and requests a refund to receive payment under the Agreement. Within days of applying for a benefit the Participant shall notify the Alternate Payee in writing of such application at the Alternate Payee's last known address.

## Requirements to Create a Valid DRO

For the parties to enter into a valid DRO that PERA will recognize the following requirements must be met

- Both parties to the action must agree to use the DRO and agree to all of its terms and conditions. If the parties cannot reach a written agreement the court cannot order a DRO.
- The parties must use the Agreement and Order forms provided by PERA without retyping changing or altering the forms and all of the appropriate blanks in the forms must be completed.
- The parties must voluntarily sign the Agreement and the signatures of the parties on the Agreement must be dated and notarized before it is submitted to the Court. The signed Agreement must be submitted to PERA within days after entry of the decree and permanent orders.
- The proposed Agreement and Order may be submitted to PERA for review at least two weeks prior to submission to the Court.
- Upon preapproval of the proposed Agreement and Order PERA will send a letter to the parties or their attorneys indicating its approval.
- Once the Agreement and Order have been preapproved by PERA they should then be submitted to the Court for approval and the Court must execute and enter the form Order which must have the fully executed Agreement attached.
- The Order with attached Agreement must be approved and entered by the Court either upon the entry of the decree and permanent orders or within days thereafter.
- Certified copies of the Order with attached Agreement shall be submitted to PERA within days after entry of the Order and Agreement but must be received by PERA at least days before PERA shall make its first payment pursuant to the DRO.
- Upon receipt by PERA of certified copies of the Order with attached Agreement and any other required documents PERA will make its determination on whether the DRO is valid with respect to PERA and will send a letter to the parties or their attorneys indicating its determination.
- Forms and other information required to implement the DRO will be sent to the Participant and or Alternate Payee prior to the commencement of payment of any benefits or refund under the DRO.
- PERA must receive all required forms and information from the Participant and or the Alternate Payee prior to the payment of any benefits pursuant to the DRO.
- No payment shall be made to the Alternate Payee unless and until PERA has reviewed the Agreement and Order and determined that they comply with the applicable statutes rules and procedures governing the PERA Plan and DROs including these instructions.
- Benefit payments shall be made in accordance with applicable statutes rules and procedures.

**COMPLETE THIS PAGE IF YOU ARE DIVIDING A DEFINED BENEFIT ACCOUNT UNDER THE PERA BENEFIT STRUCTURE.**

- If you are currently collecting a monthly benefit, complete Section 2.
- If you are not yet collecting a benefit, complete Section 3.

**2. RETIREE UNDER THE PERA BENEFIT STRUCTURE**

(1) Method of Division of Monthly Benefit  
[check only one and fill in blank]

Percentage of Monthly Dollar Amount  
    41 %

Fixed Monthly Dollar Amount  
    \$ \_\_\_\_\_

(2) Changing or Deleting Cobeneficiary  
[check only one]

Yes       Not Applicable

If the Alternate Payee was named as the Participant's cobeneficiary at the time of retirement, the Participant is allowed to change or delete the cobeneficiary.

(if the answer is "Yes," PERA must be provided with the required information to change the cobeneficiary)

**3. MEMBER UNDER THE PERA BENEFIT STRUCTURE**

(1) Method of Division of Future Benefit  
[check only one and fill in blank(s)]

Percentage: \_\_\_\_\_ %

Fixed Dollar Amounts  
(complete both blanks below)  
Lump-Sum Dollar Amount: \$ \_\_\_\_\_  
Monthly Dollar Amount: \$ \_\_\_\_\_

Time Rule Formula  
(complete both blanks below)  
Months of service credit acquired during marriage \_\_\_\_\_  
Agreed upon percentage \_\_\_\_\_ %

Date of Decree Formula  
(complete both blanks below)  
Months of service credit acquired during marriage \_\_\_\_\_  
Agreed upon percentage \_\_\_\_\_ %

Other Method or Formula  
Attach Description of Alternative Method or Formula

(2) Alternate Retirement Age

When the Participant reaches age 65, or the age of \_\_\_\_\_ (must be a whole number higher than 65) and no payment is being made to the Participant by the PERA Plan, then the Alternate Payee may begin to receive a monthly payment from the PERA Defined Benefit Plan, even though no payment is being made to the Participant by PERA. Upon retirement, the Participant's monthly benefit will be reduced actuarially to reflect these payments to the Alternate Payee.

# Changing Your Beneficiary or Benefit Option

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Revised July 2010

If you elected an Option 1 benefit and were not married at the time of retirement and you later marry, you may name your new spouse as your cobeneficiary and select an Option 2 or 3 retirement benefit.

If you elect an Option 2 or 3 at retirement with your spouse as cobeneficiary and your spouse dies, upon remarriage you may name your new spouse as cobeneficiary and select Option 2 or 3.

If you elect an Option 2 or 3 at retirement with your spouse as cobeneficiary and you later divorce, you may change your cobeneficiary, provided a change of cobeneficiary is ordered or allowed by a district court with jurisdiction over the divorce action.

If you elect an Option 2 or 3 at retirement with your spouse as cobeneficiary and you later divorce, you may revert to Option 1 under the following conditions:

- You retired on or after July 1, 1988;
- You divorced on or after July 1, 2003; and
- You were ordered or allowed by a district court with jurisdiction over the divorce action to remove your former spouse as cobeneficiary.

If you are eligible to name a new spouse as your cobeneficiary (see "Marriage" and "Divorce" sections above), here is some additional information.

Selecting an Option 2 or 3 benefit and naming your new spouse as cobeneficiary will allow you to offer some financial protection to your new spouse, since it will provide a lifetime monthly benefit to that person after your death. Also, naming your spouse as your cobeneficiary will allow him or her to receive the premium subsidy for PERACare (PERA's Health Care Program) after your death. (If your spouse will not receive a benefit after your death, he or she may continue coverage in PERACare if already enrolled, but will not be eligible to receive the subsidy.)



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**Survivors Pension** – Your annual income and net worth fall below certain thresholds and you served at least one day during wartime or served as an officer on active duty (in contrast to a Veterans Pension, which provides payments during your lifetime, a Survivors Pension only provides payment to your spouse or former spouse after your death)

## DOD and VA Pension Benefits for Remarried Former Military Spouses

### 1. Legacy High-3 (High-36) Pension

As a general rule, High-36 pension payments to former military spouses terminate if the former spouse remarries. Note that this is different from the rule for payments under the Survivor Benefit Program (SBP), as the [DOD](#) explains:

*"Your surviving spouse may remarry after age 55 and continue to receive SBP payments for life. If your surviving spouse remarries before age 55, SBP payments will stop, but may be resumed if the marriage later ends due to death or divorce."*

However, if your ex-wife's second (or subsequent) marriage ends by annulment, divorce, or the death of her new spouse, then her eligibility to receive pension payments may resume

### 2. Veterans Pension

The rules for former military spouses retaining Veterans Pension benefits after remarriage are not straightforward. In order to determine whether your ex-wife will be entitled to continue to receive benefits if she remarries, you will need to discuss your personal circumstances with an attorney. Factors that may be relevant include you and your former spouse's age, income levels, and access to other government benefits.

### 3. Survivors Pension

As a general rule, a former military spouse who remarries is not eligible for Survivors Pension benefits from the VA. [The VA's website states](#):

*"The Survivors Pension benefit, which may also be referred to as Death Pension, is a tax-free monetary benefit payable to a low-income, un-remarried surviving spouse and/or unmarried child(ren) of a deceased Veteran with wartime service."*

Similarly, FAQs provided by the [VA Office of Survivors Assistance](#) state that, "the law generally requires a surviving spouse's entitlement to be terminated if the surviving spouse remarries, regardless of age, even if that remarriage is terminated by death or divorce." A former military spouse can only reestablish eligibility for Survivors Pension payments if his or her subsequent marriage is terminated by annulment or declared void (or if it was terminated by death or divorce between 1971 and 1990).

## Dealing with Military Pensions and Other Military-Specific Issues during the Divorce Process

While many aspects of dealing with military pensions, benefits, and other military-specific issues during the divorce process are governed by federal law, officers, enlisted service members, and veterans still have many important steps to take in order to protect their legal rights. If you are preparing to go through a [military divorce in Tennessee](#), you should speak with an attorney to develop a plan for addressing issues including:

- Child custody and child support
- Division of your shared assets
- Military pay and alimony
- Issues specific to officers and enlisted service members who are on active duty or deployment

How can I help you?

At Batson Nolan PLC, we are proud to serve military service members and veterans, and our attorneys bring decades of combined experience to helping our military clients protect their assets, income, and relationships with their children during the divorce process. For legal advice that is custom-tailored to your individual career



## CHANGES TO PERA RULES

At the September 11, 2020, Board meeting, Colorado PERA's Board of Trustees held a rules hearing to discuss changes to its rules, which govern much of PERA's day-to-day operations. These changes involve removing criteria for determining whether certain payments are considered PERA-includable salary. The changes will be effective January 1, 2021. A summary of the changes to PERA Rules is available at [www.copera.org/RulesChanges](http://www.copera.org/RulesChanges). Remember that the Colorado Legislature sets benefits and PERA can execute rules to implement those benefits.

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