CHAPTER 18

Qualified Domestic Relations Orders

Editor’s Note

2008 Act No. 311, Section 55, provides as follows:

“Upon the effective date of this act, Regulations 19‑900 through 19‑997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code.”

**SECTION 9‑18‑10.** Definitions.

 As used in this chapter:

 (1) “Administrator” means the director of the retirement systems.

 (2) “Alternate payee” means a spouse or former spouse of a member or retired member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a retirement system with respect to such member or retired member.

 (3) “Board” means the Board of Directors of the South Carolina Public Employee Benefit Authority.

 (4) “Death benefit” means any benefit payable upon the death of a member under Sections 9‑1‑1650, 9‑1‑1660, 9‑8‑110(1), (3), or (4), 9‑9‑100(1), (2), or (3), 9‑11‑110, or 9‑11‑130. The term ‘death benefit’ does not include any optional form death benefit or any benefit payable under life insurance maintained by a retirement system, by this State or any of its agencies, or by a political subdivision of this State.

 (5) “Disability benefit” means any benefit payable to a member or retired member on account of his disability under Sections 9‑1‑1540, 9‑8‑60, 9‑9‑65, or 9‑11‑80.

 (6) “Domestic relations order” means any judgement, decree, or order, including approval of a property settlement agreement, which relates to the provision of alimony payments or marital property rights to a spouse or former spouse of a member or retired member, and is made pursuant to a domestic relations law, including a law of this State or of another state.

 (7) “Member” means any person included in the membership of the retirement system.

 (8) “Optional form death benefit” means any periodic benefit payable upon the death of a member or retired member on account of the member’s selection of an optional form of allowance under Sections 9‑1‑1620, 9‑8‑70, 9‑9‑70, or 9‑11‑150.

 (9) “Qualified domestic relations order” means a domestic relations order which creates or recognizes the existence of an alternate payee’s right, or assigns to an alternate payee the right, to receive all or a portion of a benefit payable with respect to a member or retired member under a retirement system, which directs that retirement system to disburse benefits to the alternate payee, and which meets the requirements of this chapter.

 (10) “Retirement benefit” means any benefit payable to a retired member and which is based on the member’s age, service, pay, or accumulated contributions. “Retirement benefit” does not include any optional form death benefit.

 (11) “Retirement System” or “system” means the South Carolina Retirement System, Retirement System for Judges and Solicitors of the State of South Carolina, Retirement System for Members of the General Assembly of the State of South Carolina, or South Carolina Police Officers Retirement System.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995); 2012 Act No. 278, Pt IV, Subpt 2, Section 58, eff July 1, 2012.

Effect of Amendment

The 2012 amendment substituted “Board of Directors of the South Carolina Public Employee Benefit Authority” for “State Budget and Control Board” in item (3).

CROSS REFERENCES

Exceptions from exemptions under the South Carolina Retirement System, see Section 9‑1‑1680.

Exceptions from exemptions under the South Carolina Retirement System, see Section 9‑8‑190.

Exceptions from exemptions under the South Carolina Retirement System, see Section 9‑11‑270.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 25, Public Employment Wages and Benefits.

**SECTION 9‑18‑20.** Payment of benefits by retirement system pursuant to qualified domestic relations order; requirements for qualified domestic relations order; grounds upon which system may reject order.

 (A) Sections 9‑1‑1680, 9‑8‑190, 9‑9‑180, or 9‑11‑270 apply to the creation, assignment, recognition, or enforcement of a right to any benefit payable under a retirement system with respect to a member or retired member pursuant to a domestic relations order unless the order is determined to be a qualified domestic relations order. A qualified domestic relations order may order that all or any part of any (1) retirement benefit, (2) withdrawal or refund of contributions, (3) disability benefit, or (4) death benefit that becomes payable under the retirement system on account of the member or retired member, instead be paid by the system to the alternate payee. No other benefits provided under the retirement system may be paid to an alternate payee. A domestic relations order constitutes a qualified domestic relations order if it orders the payment of only those types of benefits described in clauses (1) through (4) of this subsection and meets the requirements set forth in subsection (B).

 (B) A domestic relations order is a qualified domestic relations order only if the order:

 (1) clearly specifies the retirement system to which it applies;

 (2) clearly specifies the name, social security number, and last known mailing address of the member or retired member and the name, social security number, and mailing address of the alternate payee covered by the order, and states the date of marriage;

 (3) clearly specifies the types of benefits described in subsection (A) to which the order applies;

 (4) clearly specifies the amount or percentage of each benefit to be paid by the retirement system to the alternate payee or the manner in which the amount or percentage is to be determined;

 (5) clearly specifies the number of payments or the period to which the order applies;

 (6) clearly specifies whether the alternate payee is to share proportionately in benefit increases due to cost‑of‑living adjustments;

 (7) does not require the retirement system to pay any benefit at a time or in an amount that would not otherwise have been payable at the time or in such an amount;

 (8) does not require the retirement system to provide any benefit or option not otherwise provided under the provisions of law governing the system;

 (9) does not require the retirement system to provide the alternate payee optional payment forms;

 (10) does not require the retirement system to provide increased benefits determined on the basis of actuarial value;

 (11) does not require the payment of benefits to the alternate payee which is required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

 (12) does not require the payment of benefits to the alternate payee before the retirement of a member, the distribution of a withdrawal of contributions to a member, or other distribution to a member, retired member, or beneficiary;

 (13) does not require that the alternate payee be provided the right to designate a beneficiary to receive benefits after the alternate payee’s death;

 (14) does not require that a member, retired member, or beneficiary elect a particular optional payment form or make any other election, except for the designation of the alternate payee as a recipient of death benefits; and

 (15) does not require a member to terminate employment, to withdraw contributions, or to apply for retirement.

 (C) The retirement system may reject a domestic relations order as a qualified domestic relations order if the order:

 (1) does not provide for a proportional reduction of the amount awarded to the alternate payee if payment of benefits commences before the member attains normal retirement age;

 (2) does not provide clearly for each possible benefit distribution permitted under the provisions of the retirement system;

 (3) requires any action on the part of the retirement system that is contrary to any provision of law;

 (4) makes the award of an interest contingent on any condition other than those conditions resulting in the liability of the retirement system for payments under its provisions;

 (5) awards any future benefit increases that are provided or required by law, other than ordinary cost‑of‑living adjustments; or

 (6) does not provide for a proportional reduction of the amount awarded to the alternate payee if benefits available to the member or retired member are reduced by law.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).

CROSS REFERENCES

As to administration of a domestic relations order accepted by the retirement system before July 1, 1995, see Section 9‑18‑100.

NOTES OF DECISIONS

In general 1

Assignability 2

1. In general

Qualified Domestic Relations Orders (QDRO) statutory scheme, which provided the exclusive mechanism for the assignment and transfer of South Carolina Retirement System (SCRS) benefits in divorce actions, was remedial in nature and, thus, applied retrospectively to domestic relations order entered prior to QDRO scheme’s enactment. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Divorce 510(3)

2. Assignability

Anti‑alienation requirement of the South Carolina Retirement System (SCRS), which provided that the right of a person to an annuity or a retirement allowance was unassignable except as authorized by statute, applied to domestic relations order that was not qualified pursuant to the Qualified Domestic Relations Orders (QDRO) statutory scheme. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Public Employment 406

Domestic relations order’s irrevocable designation of university professor’s former wife as beneficiary of professor’s pre‑retirement death benefits under the South Carolina Retirement System (SCRS) was akin to an assignment of those benefits and, thus, was void under the SCRS’s anti‑alienation provision, where domestic relations order was not qualified under the Qualified Domestic Relations Orders (QDRO) statutory scheme. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Education 1143(3); Public Employment 398

Former wife of professor was required to follow administrative procedure for determining whether domestic relations order, under which professor designated former wife as beneficiary of his pre‑retirement death benefits under the South Carolina Retirement System (SCRS), was a qualified domestic relations order (QDRO) that entitled her to professor’s pre‑retirement death benefits from the SCRS. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Education 1143(5); Public Employment 398

Absent a determination by the retirement system administrator or designee for South Carolina Retirement System (SCRS) that an order is a qualified domestic relations order, the rights of a member to his benefits cannot be assigned or transferred. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Public Employment 406

The South Carolina Retirement System’s (SCRS) anti‑alienation provision precluded imposition of a constructive trust on pre‑retirement death benefits paid to professor’s widow, as professor’s designated beneficiary, though professor designated his former wife as beneficiary of his pre‑retirement death benefits under the SCRS in earlier domestic relations order, where domestic relations order was not qualified under the Qualified Domestic Relations Orders (QDRO) statutory scheme, which provided the exclusive mechanism for the assignment and transfer of SCRS benefits in divorce actions. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Trusts 103(3)

**SECTION 9‑18‑30.** Determination of whether domestic relations order is qualified domestic relations order; procedure; payment of benefits upon order; exclusion of retirement system from liability for making payments of benefits; liability of individual for costs and attorney’s fees.

 (A) The administrator of the retirement system or his designee has exclusive authority to determine whether or not a domestic relations order is a qualified domestic relations order. For purposes of this chapter only, the administrator of the retirement system or his designee is considered a single hearing officer within the meaning of Section 1‑23‑600(B) and, as such, appeals from their determination are to the Administrative Law Court under its applicable procedures.

 (B) The administrator of the retirement system or his designee upon receipt of a certified copy of a domestic relations order, shall determine whether the order is a qualified domestic relations order and shall notify the member or retired member and the alternate payee of the determination. If the order is determined to be a qualified domestic relations order, the retirement system shall pay benefits in accordance with the order. If the order is determined not to be a qualified domestic relations order, the member or retired member or alternate payee named in the order may appeal the administrator’s determination in the manner specified in subsection (A) of this section and may petition the court which issued the order to amend the order so that it will be qualified. The court which issued the order or which would otherwise have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

 (C) During any period in which the issue of whether or not a domestic relations order is a qualified domestic relations order is being determined by the administrator, his designee, a court of competent jurisdiction, or the retirement system, the retirement system shall separately account for the amounts which would have been payable to the alternate payee during the period if the order had been determined to be a qualified domestic relations order. These separately accounted amounts are “segregated amounts” for purposes of this section.

 (D) If a domestic relations order is determined to be a qualified domestic relations order, then the retirement system shall pay the segregated amounts without interest to the person or persons entitled thereto and shall thereafter pay benefits pursuant to the order.

 (E) If a domestic relations order is determined not to be a qualified domestic relations order or if within eighteen months of the date a domestic relations order is received by the retirement system the issue as to whether the order is a qualified domestic relations order is not resolved, then the retirement system shall pay the segregated amounts without interest to the person or persons who would have been entitled to the amounts if there had been no order. This subsection must not be construed to limit or otherwise affect any liability, responsibility, or duty of a party with respect to any other party to the action out of which the order arose.

 (F) Any determination that an order is a qualified domestic relations order which is made after the close of the eighteen‑month period must be applied prospectively only.

 (G) The retirement systems, the board, and officers and employees of each retirement system are not liable to any person for making payments of any benefits in accordance with a qualified domestic relations order in a cause in which a member or a retired member was a party or for making payments in accordance with subsections (D) and (E) of this section.

 (H) A court does not have jurisdiction over a retirement system with respect to a divorce or other domestic relations action in which an alternate payee’s right to receive all or a portion of the benefits payable to a member or retired member under the retirement system is created or established. A party to such an action who attempts to make the retirement system a party to the action contrary to the provision of this subsection is liable to the retirement system for its costs and attorney’s fees.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).

Code Commissioner’s Note

Pursuant to the directive in 2004 Act No. 202, Section 3, at the direction of the Code Commissioner, reference to “Administrative Law Judge Division” was changed to “Administrative Law Court”.

NOTES OF DECISIONS

Jurisdiction 1

1. Jurisdiction

South Carolina Retirement System (SCRS) has exclusive jurisdiction to determine the effect of a domestic relations order which purports to assign retirement benefits to an alternate payee. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Public Employment 483

Former wife of professor was required to follow administrative procedure for determining whether domestic relations order, under which professor designated former wife as beneficiary of his pre‑retirement death benefits under the South Carolina Retirement System (SCRS), was a qualified domestic relations order (QDRO) that entitled her to professor’s pre‑retirement death benefits from the SCRS. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Education 1143(5); Public Employment 398

Former wife’s belief that the South Carolina Retirement System (SCRS) would reject her claim that domestic relations order, under which professor designated former wife as beneficiary of his pre‑retirement death benefits under the SCRS, was a qualified domestic relations order (QDRO) did not establish futility as basis for excusing her exhaustion of administrative remedies, in absence of definitive statement by system administrator that domestic relations order would not be qualified. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Education 1143(5); Public Employment 398

Failure of former wife of professor to exhaust administrative remedies for determining whether domestic relations order, under which professor designated former wife as beneficiary of his pre‑retirement death benefits under the South Carolina Retirement System (SCRS), was a qualified domestic relations order (QDRO) precluded her from bringing action for declaratory judgment that she was entitled to payment of those benefits from the SCRS. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Education 1143(5); Public Employment 398

The South Carolina Retirement System’s (SCRS) anti‑alienation provision precluded imposition of a constructive trust on pre‑retirement death benefits paid to professor’s widow, as professor’s designated beneficiary, though professor designated his former wife as beneficiary of his pre‑retirement death benefits under the SCRS in earlier domestic relations order, where domestic relations order was not qualified under the Qualified Domestic Relations Orders (QDRO) statutory scheme, which provided the exclusive mechanism for the assignment and transfer of SCRS benefits in divorce actions. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Trusts 103(3)

Former wife of university professor did not waive her right to be heard on the merits of her claim that she was entitled to payment of pre‑retirement death benefits from the South Carolina Retirement System (SCRS) based on professor’s designation of her as beneficiary in domestic relations order, even though SCRS accepted professor’s subsequent change of beneficiary designation, former wife conceded that domestic relations order did not meet statutory criteria for qualification as a qualified domestic relations order (QDRO), and former wife did not follow administrative procedure for determining whether domestic relations order was qualified. Smith v. South Carolina Retirement System (S.C.App. 1999) 336 S.C. 505, 520 S.E.2d 339, rehearing denied, certiorari denied. Education 1143(5); Public Employment 398

**SECTION 9‑18‑40.** Authorization of board to prescribe rules and promulgate regulations.

 The board, as the governing body of the retirement system, may prescribe rules and promulgate regulations as it considers necessary to implement the provisions of this chapter.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).

**SECTION 9‑18‑50.** Death of alternate payee; effect.

 The death of the alternate payee terminates any interest the alternate payee has in any retirement system and which is on account of a qualified domestic relations order. Upon proof of death of the alternate payee, the member, retired member, or beneficiary is entitled to receive the full amount of benefits payable in the future to the member, retired member, or beneficiary without reduction for the amount previously paid to the alternate payee.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).

**SECTION 9‑18‑60.** Maintenance by alternate payee of current residence address on file with retirement system; payment of benefits by system when alternate payee cannot be located.

 (A) An alternate payee is responsible for maintaining a current residence address on file with the retirement system. The retirement system has no duty to locate any alternate payee other than by sending written notice to the last known address on file with the system.

 (B) If the retirement system cannot locate an alternate payee when a benefit becomes payable, the retirement system shall hold the amount payable to the alternate payee and make payment without interest to the alternate payee if the payee is located within the following one hundred eighty days. If the alternate payee is not located within one hundred eighty days from the date the benefit became payable, the retirement system shall pay the amount held to the person who would have received the payment but for the qualified domestic relations order. If the alternate payee is subsequently located, the retirement system shall pay subsequent benefits in accordance with the qualified domestic relations order but the alternate payee’s interest in any amount already paid is extinguished.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).

**SECTION 9‑18‑70.** Right of retirement system to recoup mistaken payment.

 If the retirement system determines that it has mistakenly paid amounts to an alternate payee or other person, it may recoup the mistaken payment by deducting the amount from future payments to be made to the alternate payee or the other person.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).

**SECTION 9‑18‑80.** Termination of membership in retirement system; effect on qualified domestic relations order.

 If a member terminates membership in a retirement system by withdrawal of contributions, the retirement system shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a qualified domestic relations order. Any qualified domestic relations order previously accepted with respect to the member’s benefits under that system is thereafter void. If the former member later resumes membership in the retirement system, no portion of any benefits subsequently payable on account of the member must be paid to the alternate payee, even if those benefits result in part from reinstatement of service credit initially credited during the marriage, unless the retirement system receives a qualified domestic relations order specifically requiring it to make the payments to the alternate payee.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).

**SECTION 9‑18‑90.** Reinstatement of service credit; deposit of entire amount withdrawn or refunded required.

 A member who is reinstating service credit under a retirement system by depositing amounts previously withdrawn or refunded shall deposit the entire amount withdrawn or refunded, regardless of whether a portion or all of the amount was paid to an alternate payee.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).

**SECTION 9‑18‑100.** Administration of domestic relations order accepted by retirement system prior to effective date of chapter.

 A domestic relations order accepted by the retirement system before July 1, 1995, must be administered by the retirement system in accordance with the provisions of the order and must not be rereviewed by the system for compliance with Section 9‑18‑20 unless the system is requested to do so by the court having jurisdiction over the matter. The retirement system, however, in its sole discretion, may require that any amendment of an accepted order that is received after June 30, 1995 meet the requirements of Section 9‑18‑20. For purposes of this section, an order is an “accepted order” only if the retirement system provided before July 1, 1995, written notice of its acceptance of the order to the member or retired member, and the alternate payee.

HISTORY: 1995 Act No. 38, Section 1, eff July 1, 1995 (became law without the Governor’s signature on April 27, 1995).