

**LABORERS NATIONAL PENSION FUND**  
**QUALIFIED DOMESTIC RELATION ORDERS (QDRO) PROCEDURES**

Effective April 1, 2006

**Section 1: Introduction**

The Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code generally prohibit the Laborers National Pension Fund (LNPF) from complying with State laws, including State court orders, that purport to divide, transfer, assign, attach, garnish or otherwise alienate any part of the pension to which a participant in the LNPF is or may become entitled. This general anti-alienation rule is intended to ensure that a participant's pension is actually available to provide financial support during a participant's retirement years.

An exception to this general rule, ERISA and the Code require the LNPF to comply with a Qualified Domestic Relations Order (QDRO) that assigns some or all of a participant's pension to a spouse, former spouse, child or other dependent to satisfy family support (temporary or permanent) or marital property obligations under State domestic relations law.

This document contains:

- \* a description of the requirements for QDRO recognition;
- \* a discussion of special issues regarding the contents of a QDRO;
- \* the LNPF's procedures for review of orders and implementation of QDROs;
- \* information about the LNPF and its benefit plan;
- \* miscellaneous information concerning QDROs and the LNPF; and
- \* two sample QDRO forms.

NOTE: It is neither necessary nor permissible to join the LNPF as a party to any State court or agency proceeding to gain the LNPF's compliance with a QDRO. By virtue of ERISA's preemption of State law, the LNPF will not respond to any State court or agency summons or order purporting to compel the LNPF to become party to any proceeding.

If any Participant, Alternate Payee, or attorney representing a Participant or Alternate Payee has any questions about these procedures, he or she should contact the LNPF's Fund Administrator.

**Section 2: Definitions**

“Alternate Payee” means a spouse, former spouse, child or other dependent of the Participant to whom a QDRO assigns, or grants recognition of, a right to receive all or a portion of the benefits payable to the Participant.

“Code” means provisions of the Internal Revenue Code relating to qualified pension plans, 29 U.S.C. §401, *et seq.*

“ERISA” means the Employee Retirement Income Security Act.

“Fund Administrator” means the Fund Administrator of the LNPF, an employee of the LNPF, who is located at the LNPF’s office at 14140 Midway Road, Dallas, Texas 75244. The mailing address is Post Office Box 803415, Dallas, Texas 75380-3415. The telephone number is 972-233-4458. The e-mail address is info@lnpf.org.

“LNPF” means the Laborers National Pension Fund.

“Participant” means a participant under the LNPF who is receiving a pension from the LNPF or who is entitled to receive a pension from the LNPF in the future. A

“Participant-Pensioner” is a Participant who is receiving pension benefit payments from the LNPF.

“Order” means an order issued by a State court or other competent State authority that purports to assign all or a part of a Participant’s pension to another person.

**Section 3: Requirements for QRDO Recognition**

In accordance with ERISA Section 206(d)(3), 29 U.S.C. §1056(d)(3), and Code Section 414(p)(1), 26 U.S.C. §414(p)(1), an Order must comply with the following requirements before the LNPF can recognize the Order as a QDRO and implement the Order.

**(a) Required Contents of Order**

- (1) Domestic Relations Order: The Order must be a judgment, decree or order (including approval of a property settlement) that:(i) relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of the Participant, and (ii) is made pursuant to a State domestic relations law (including a community property law).

A property settlement agreement signed by the parties is not a domestic relations order unless and until it is formally approved and adopted as an order by a court or other competent State authority.

- (2) Assign Interest To Alternate Payee: The Order must create, recognize or assign to or for an Alternate Payee a right to receive all or a portion of the benefits payable to the Participant.
- (3) Identify The LNPF: The Order must clearly identify the “Laborers National Pension Fund” as the plan to which the Order applies.

A single Order may include provisions relating to the LNPF and other pension plans, but the Order must clearly indicate which provisions apply to the Participant’s pension under the LNPF.

- (4) Identify The Participant: The Order must contain the name, mailing address, and date of birth of the Participant. The Order must also contain, or be accompanied by a writing, that sets forth the Participant’s Social Security Number.
- (5) Identify The Alternate Payee: The Order must contain the name, last known mailing address, and date of birth of the Alternate Payee. The Order must also contain, or be accompanied by a writing, that sets forth the Alternate Payee’s Social Security Number.

If an Order applies to more than one Alternate Payee, this information must be provided for each Alternate Payee.

If the Alternate Payee is a minor or is legally incompetent, the guardian or similar legal representative to whom payments would be made on behalf of the Alternate Payee must be identified.

See Section 8 regarding the need to notify the Fund Administrator of address changes.

- (6) Specify The Alternate Payee’s Interest In The Pension: The Order must clearly (a) specify the amount or percentage of the Participant’s pension to be paid by the LNPF to the Alternate Payee, or (b) specify the manner in which the amount or percentage is to be determined.
- (7) Specify Duration of Alternate Payee’s Interest: The Order must clearly specify the number of benefit payments or the time period to which the order applies. (See discussion of a Shared Benefit versus a Separate Interest division of pension benefits, below.)

**(b) Prohibited Contents of Order**

An Order will not constitute a QDRO if it contains provisions that would require the

LNPF to provide:

- (1) any form of benefit or option not otherwise provided under the LNPF's rules to a similarly situated Participant;
- (2) benefits in excess of the benefits to which the Participant is entitled under the LNPF's rules, determined on the basis of actuarial value;
- (3) benefits to an Alternate Payee that are to be paid to another Alternate Payee under an order previously determined by the LNPF to be a QDRO;
- (4) the Alternate Payee with a joint and survivor form of pension with respect to the Alternate Payee and his or her subsequent spouse; or
- (5) a Separate Interest to the Alternate Payee if the Participant is already receiving his or her pension. [See Section 4(a), below.]

**(c) Submission To The LNPF**

A copy of the Order, signed and certified by the court or other competent State authority, must be submitted to the LNPF a reasonable period in advance of the effective date of any division of the Participant's pension. The LNPF cannot be bound to orders of which it is unaware, and cannot implement orders with regard to benefits that were paid prior to receipt of the Order.

The LNPF needs time to review the order to determine whether it qualifies as a QDRO and to determine whether any interim action is required during the review period (such as withholding all or a portion of the Participant's benefit payments). Review of the order may also require input from the LNPF's attorneys and actuaries. [See Sections 5 and 6, below.]

**Section 4: Special Issues Regarding Order Contents**

(a) **Shared Benefit versus Separate Interest QDRO:** There are generally two different approaches to dividing a defined benefit pension like the pension provided by the LNPF: a "Shared Benefit" division and a "Separate Interest" division. However, if the Participant is already receiving pension benefits from the LNPF at the time that the Order is issued, only the Shared Benefit approach can be recognized by the LNPF as a QDRO; it will not recognize a Separate Benefit approach.

- (1) A "**Shared Benefit**" division means that the Participant-Pensioner's actual monthly pension benefit payments are split by the LNPF between the Participant-Pensioner and the Alternate Payee. The portion of the

monthly benefit that is assigned by the QDRO to the Alternate Payee is paid directly by the LNPF to the Alternate Payee at the same time as the Participant-Pensioner's remaining portion is sent to him by the LNPF.

The Alternate Payee will not receive any payments unless and until the Participant receives benefit payments or unless the Participant is already in pay status (a Participant-Pensioner).

The Alternate Payee's monthly benefits will cease if the Participant-Pensioner's monthly benefits cease (e.g. suspension for post-retirement employment). If the QDRO assigns to the Alternate Payee a share of the Participant-Pensioner's monthly benefits for the Participant-Pensioner's life, the Alternate Payee will cease receiving a share of the Participant-Pensioner's benefit upon the Participant-Pensioner's death, except to the extent that the Alternate Payee is designated by the QDRO as a spouse for purposes of post-retirement surviving spouse benefits.

If the Participant dies before his or her pension begins, no benefits will be payable to the Alternate Payee except to the extent that the Alternate Payee is designated by the QDRO as a spouse for purposes of a pre-retirement surviving spouse benefits.

It is particularly important that a Shared Benefit QDRO clearly state: (i) the amount or percentage of each of the Participant-Pensioner's benefit payments that is assigned to the Alternate Payee; (ii) the number of monthly benefit payments that are to be so divided or the time period during which the monthly benefit payments are to be so divided; and (iii) when the division is to begin and end.

For example, a QDRO may provide that the Alternate Payee is to receive 50% of the Participant-Pensioner's monthly benefits for 36 months or is to receive 30% of 12 monthly benefits payable to the Participant-Pensioner. The time period may also be the life of the Participant, the life of the Alternate Payee, until the Alternate Payee (former spouse) remarries, or until the Alternate Payee (child) attains the age of majority.

Under a Shared Benefit approach that assigns an Alternate Payee a percentage share of each monthly benefit payment, the Alternate Payee automatically shares in any early retirement subsidy or increase in benefits payable to the Participant.

In the case of a QDRO that provides for the termination of benefit payments to an Alternate Payee as of the occurrence of a specified event (e.g. remarriage, attaining majority age), the Alternate Payee and / or the

Participant must give to the Fund Administrator a written notice reasonably in advance of the occurrence of the event. The Fund Administrator will not be responsible for stopping payments until it receives reasonable notice of the event. The Fund Administrator may require satisfactory proof from the Participant and / or Alternate Payee of the event.

- (2) A “**Separate Interest**” division means that the Participant’s earned pension is divided into two separate portions with the intent of giving the Alternate Payee one portion as his or her own pension separate and apart from the Participant’s remaining portion. This is a common approach in divorce or legal separation situations when the Participant is not yet receiving benefit payments.

It is particularly important that a Separate Interest QDRO clearly specify: (i) the amount or percentage of the Participant’s pension that is being assigned to the Alternate Payee; or (ii) clearly specify the manner in which that amount or percentage is to be determined.

For example, a QDRO may provide that the Alternate Payee is assigned as his or her Separate Interest 50% of the benefit accrued by the Participant during the period of is or her marriage to the Alternate Payee (with the period of marriage specified).

The Alternate Payee’s separate pension amount may be actuarially adjusted by the LNPF to reflect, for example, differences in the ages of the Participant and the Alternate Payee and differences in date on which benefits commence. Such an actuarial adjustment is needed so that the actuarial value of the Alternate Payee’s pension when added to actuarial value of the Participant’s remaining pension does not exceed the value of pension accrued by the Participant.

The Alternate Payee may elect to begin receiving his or her pension at a different time than the Participant elects to begin receiving his or her pension. Particularly, the Alternate Payee may elect to receive his or her pension benefits before the Participant begins to receive his or her pension benefits under certain circumstances. [See Section 4(b)].

The Alternate Payee’s separate pension is not affected by the death of the Participant or by the cessation of the Participant-Pensioner’s benefits (e.g. suspension for post-retirement employment).

Under a Separate Interest division, the Alternate Payee may elect to receive his or her separate pension in any form available to a Participant under the LNPF, except for a joint and survivor annuity regarding the

Alternate Payee and a subsequent spouse.

Once a QDRO vests in the Alternate Payee a Separate Interest pension, the Participant is divested of the Alternate Payee's portion of his or her pension assigned to the Alternate Payee. If the Alternate Payee thereafter dies before commencing to receive benefits, the Alternate Payee's interest is extinguished, unless the QDRO provides for a contingent Alternate Payee or provides for reversion of the Alternate Payee's separate interest to the Participant. This risk may also be minimized by providing that the division is not effective until the Alternate Payee elects to begin receiving benefits.

**(b) Early Payments To Alternate Payee (Separate Interest)**

- (1) Under a Separate Interest QDRO, the Alternate Payee is entitled to begin receiving his or her separate pension from the LNPF once the Participant attains, or would have attained, the "Earliest Retirement Age", even if the Participant does not retire and begin to receive benefits. The Alternate Payee cannot receive benefits before the Participant attains the earliest retirement age.
- (2) The "Earliest Retirement Age" means the earlier of two dates: the date on which the Participant is first entitled to begin receiving benefits under the LNPF's rules (after separating from employment covered by the LNPF); or the date on which the Participant would be first entitled to begin receiving benefits under the LNPF's rules if the Participant then separated from employment covered by the LNPF. The LNPF's Early Retirement Age is age 55.
- (3) If the QDRO so provides and the Alternate Payee elects to begin receiving his or her benefits before the Participant actually retires and begins to receive benefits, the Alternate Payee's benefits will be calculated as if the Participant had retired on the date that the Alternate Payee's benefits are to begin, but based only on the present value of the benefits actually accrued by the Participant and without taking into account any early retirement subsidy provided under the LNPF's rules.

If the Participant later retires and receives subsidized early retirement benefits, the Alternate Payee's benefits will not be adjusted unless the QDRO so requires.

**(c) Former Spouse As Surviving Spouse**

- (1) Overview

Pensions to married Participants are normally payable in the form of a Husband and Wife Pension: a qualified joint and survivor annuity that pays a reduced monthly benefit to the Participant-Pensioner and, upon his or her death, pays a monthly benefit to the surviving spouse that is half of the monthly amount paid to the Participant-Pensioner. The LNPF provides other forms of pension that provide a higher surviving spouse benefit (75% and 100% Survivor Pensions).

If a Participant is unmarried at the time that he or she retires, his or her pension is normally payable in the form of a single life annuity (for the Participant's life only). A former spouse, from whom the Participant-Pensioner was divorced prior to retirement, is generally not entitled to surviving spouse benefits.

If a married Participant whose accrued benefit is vested dies before his or her pension payments become effective (annuity starting date), the LNPF provides, in accordance with ERISA and the Code, a Widow / Widower's Pension (qualified pre-retirement survivor annuity). A former spouse is generally not entitled to surviving spouse benefits.

However, ERISA and the Code provide an exception. They permit a QDRO to provide that a former spouse who is the Alternate Payee to be treated as a surviving spouse for purposes of the pre-retirement survivor annuity (Widow / Widower Pension) and qualified joint and survivor annuity (Husband and Wife Pension), provided that the Alternate Payee and Participant were married for at least one year.

If the QDRO does not expressly provide that the former spouse Alternate Payee is to be treated as a surviving spouse, the Alternate Payee cannot be treated by the LNPF as a surviving spouse of the Participant.

(2) Divorce Before Retirement

A QDRO may provide that a former spouse who is the Alternate Payee is to be treated as the Participant's surviving spouse for purposes of the Husband and Wife Pension and the Widow / Widower's Pension.

This entitles the Alternate Payee to exercise spousal consent rights: the Participant will be required to take his pension in the form of a Husband and Wife Pension (with the Alternate Payee as the protected spouse) unless the Alternate Payee consents to the Participant taking his or her pension in another form offered by the LNPF.

The QDRO may also provide that the Alternate Payee is to be considered the surviving spouse with regard to all or to a portion of the Participant's pension. For example, the QDRO could provide that the Alternate Payee's potential surviving spouse rights apply only with regard to that portion of the Participant's pension that was earned during their marriage. If the Participant is subsequently married, his or her subsequent spouse may have spousal rights regarding the remaining portion of the Participant's pension. If the QDRO requires that the Alternate Payee be treated as the Participant's spouse with regard to his or her entire pension, a subsequent spouse cannot be treated as the Participant's surviving spouse.

(3) Divorce After Retirement

If a Participant-Pensioner, who is receiving his or her pension in the form of a Husband and Wife Pension, divorces from his or her spouse, the divorced spouse will automatically continue to be regarded as the Participant-Pensioner's spouse for purposes of the pension. The divorced spouse will be entitled to surviving spouse benefits if the Participant-Pensioner dies. The QDRO need not provide that the divorced spouse is to be treated as the surviving spouse.

However, a QDRO may provide that the Alternate Payee divorced spouse relinquishes his or her right to be treated as the spouse for purposes of all surviving spouse benefits under the Fund. If the QDRO so provides, the Fund will "pop-up" the Participant-Pensioner's benefit amount to the level he or she would receive but for the surviving spouse protection.

(4) Effect On Death Benefit

If the QDRO requires that the Alternate Payee former spouse be treated as a spouse for purposes of pre-retirement and / or post-retirement surviving spouse benefits, the Participant will be considered married and no Death Benefit for unmarried Participants under the LNPF's rules will be payable in the event of the Participant's death.

(5) Effect On Separate Interest Division

If the Alternate Payee former spouse is assigned a separate interest by the QDRO and is also granted by the QDRO spouse status for purposes of all pre-retirement surviving spouse benefits, the Alternate Payee would receive his or her own pension, plus, in the event that the Participant predeceases the Alternate Payee and before receiving a pension, surviving spouse benefits based on the Participant's pension entitlement.

If the Alternate Payee former spouse is assigned a separate interest by the QDRO and is also granted by the QDRO spouse status for purposes of all post-retirement surviving spouse benefits, the Participant would be required to take his or her pension in the form of a Husband and Wife Pension (qualified joint and survivor annuity) with the Alternate Payee as the protected spouse, unless the Alternate Payee consented to the Participant taking his or her pension in another available form. If the Participant receives such a Husband and Wife Pension, and he or she predeceases the Alternate Payee, the Alternate Payee will receive the surviving spouse benefits in addition to his or her separate pension.

As noted above, the QDRO may provide that the Alternate Payee is to be considered the surviving spouse with regard to all or only to a portion of the Participant's pension.

#### **Section 5: Submission Of Draft Orders For Preliminary Review**

The LNPF encourages Participants, Alternate Payees and their attorneys to submit to the Fund Administrator a draft Order for review before the Order is submitted to a court for adoption or approval. The Fund Administrator will preliminarily review the draft Order and notify the Participant, Alternate Payee and / or their attorneys whether the Order would qualify as a QDRO if issued by the court. Any needed revisions to an Order are easier to make before the Order is presented to a court.

#### **Section 6: Procedures For Review Of Orders And Implementation Of QDROs**

- (a) Submit Order: The Alternate Payee or Participant must send to the Fund Administrator a copy of the Order that is certified by the clerk of the issuing court (or comparable official of the issuing State authority).

Under ERISA and the Code, the Fund (not the State court or agency issuing the Order) is authorized to determine whether an Order qualifies as a QDRO.

- (b) Fund Administrator's Acknowledgment: Upon receipt of a certified copy of the Order, the Fund Administrator will promptly send to the Participant and to each Alternate Payee named in the Order a written notice that the Order was received. The notice will be accompanied by a copy of these QDRO Procedures. All notices will be sent by first class mail, postage prepaid, to the addresses listed in the Order, unless the Participant and / or Alternate Payee(s) expressly direct that their notices be sent to authorized representatives (e.g. their lawyers).
- (c) Determination If QDRO: The Fund Administrator will determine within a reasonable period of time whether the Order qualifies as a QDRO based on these QDRO Procedures and applicable law. The Fund Administrator may

obtain input from the LNPF's legal counsel and actuary in making the determination. This determination process often requires calculation by the LNPF's actuary of the Alternate Payee's interest under the Order.

- (d) Additional Information: The Fund Administrator may request additional information from the Alternate Payee or Participant, or their authorized representatives, for purposes of the determination. The Fund Administrator may condition the payment of benefits to an Alternate Payee or Participant on compliance with the Fund Administrator's request for information or other assistance needed to review an Order or implement a QDRO.
- (e) Preliminary Determination: If the Fund Administrator determines that the Order would qualify as a QDRO but for a defect that may be easily corrected by the court or State agency, the Fund Administrator may notify the Alternate Payee and Participant, or their authorized representatives, of the need for correction without making a final, adverse determination. The Fund Administrator may require that the corrected Order be submitted to the Fund Administrator within a certain period of time to avoid issuance of a final, adverse determination.
- (f) Positive Determination: If the Fund Administrator determines that the Order qualifies as a QDRO, a written notice of the determination will be sent by the Fund Administrator to the Participant and the Alternate Payee(s). The notice will describe how the LNPF will implement and apply the QDRO.
  - (1) The Fund Administrator may require that the Participant and Alternate Payee(s) submit a written statement of agreement with the notice's description of how the QDRO will be implemented and applied. Such a statement of agreement will help to prevent later misunderstandings.
  - (2) If either the Participant or the Alternate Payee (or either's authorized representative) disagrees with the Fund Administrator's description of how the QDRO will be implemented and applied, he or she should immediately notify the Fund Administrator in writing. The Fund Administrator will make every effort to resolve any disagreement.
  - (3) The Alternate Payee may be required to submit to the Fund Administrator the information that is normally required of a Participant applying for benefits (e.g. benefit application package). Accordingly, payments to the Alternate Payee may not commence immediately or automatically.
- (g) Adverse Determination: If the Fund Administrator finally determines that the Order does not qualify as a QDRO, a written notice of the determination will be sent by the Fund Administrator to the Participant and the Alternate Payee(s). The notice will set forth the reasons for the determination and changes to the

Order that would be needed to qualify it as a QDRO.

- (1) The Participant or Alternate Payee may appeal the Fund Administrator's adverse determination to the LNPF's Board of Trustees in accordance with the LNPF's claims and appeals procedure. An appeal must be submitted in writing to the Board of Trustees in care of the Fund Administrator. The appeal must be received within 60 days following receipt of the Fund Administrator's determination. The appeal must set forth the reasons for disagreement with the Fund Administrator's determination and be accompanied by any relevant documentation.
  - (2) Usually, defects in an Order can be corrected and a new Order obtained by the Participant and Alternate Payee for re-submission to the Fund Administrator.
- (h) Withholding Of Benefit Payments: While the Fund Administrator is reviewing an Order to determine if it qualifies as a QDRO, the Fund Administrator will not pay to the Participant that portion of his or her pension that would be payable to the Alternate Payee during the review period if the Order is ultimately determined to be a QDRO. However, this hold will remain in effect for no longer than 18 months from the first date on which the Order would require payment to the Alternate Payee following receipt of the Order by the LNPF.
- (1) For example: The Participant-Pensioner is receiving \$500 per month benefit payments. A Shared Benefit Order assigns to the Alternate Payee 50% of the Participant-Pensioner's monthly benefit effective March 1<sup>st</sup>. The LNPF receives the Order on February 2<sup>nd</sup>. If a determination that the Order is a QDRO has not been made before the March 1<sup>st</sup> benefit is payable to the Participant-Pensioner, the Fund Administrator will withhold \$250 from the March 1<sup>st</sup> benefit payment to the Participant-Pensioner (and from each monthly benefit thereafter during the determination period, up to the maximum 18 months).
  - (2) If the Order is determined by the Fund Administrator to qualify as a QDRO within the 18-month period, the terms of the QDRO will be implemented. If benefits have been withheld from the Participant for payment to the Alternate Payee, those benefits will be paid in accordance with the QDRO.
  - (3) If the Order is finally determined to not qualify as a QDRO, or if the determination of QDRO status is not made within the 18-month period, the Fund Administrator will distribute any withheld benefits to the Participant as if there is no Order. If the Order is subsequently determined to be a QDRO, the QDRO will be applied prospectively only.

- (4) If the Participant's pension is not yet payable when an Order is submitted to the LNPF (as is most often the situation), this withholding of benefit payments provision is irrelevant. It would only become relevant if the Participant applies for his or her pension and the effective date of the pension falls during the determination period.

**Section 7: Additional Information About The LNPF**

- (a) The LNPF is a mutliemployer, defined benefit pension plan. Benefits are normally paid in the form of a qualified joint and survivor annuity for married Participants and a single life annuity for single Participants. That is, a specified benefit is payable monthly for the life of the Participant-Pensioner and, in the case of a joint and survivor annuity, for the life of the Participant-Pensioner and his or her surviving spouse. The amount of a monthly benefit is based on the Participant's pension credit earned for covered employment and the rates at which his or her employers contributed to the LNPF.

Participants do not have individual accounts. Rather, all benefits are paid from the LNPF's pooled trust.

- (b) Vesting in an accrued benefit requires five years of future service credit. However, various forms of pension benefit (*e.g.* Early Retirement Pension) require 10 years or more of service.

The LNPF's normal retirement age is age 62. The earliest retirement age is 55.

The LNPF provides subsidized early retirement and disability pension benefits to Participants who qualify and actually retire with such a pension. "Subsidized" means that these pensions have greater actuarial value than a pension paid at normal retirement age. Subsidized benefits are not payable to an Alternate Payee before the Participant begins to receive such benefits, and are payable to an Alternate Payee after the Participant begins to receive such benefits only to the extent expressly required by the QDRO.

The LNPF does not provide automatic post-retirement increases in pension benefits (*e.g.* COLA). Post-retirement increases are discretionary with the LNPF's Board of Trustees and are not common.

A Participant may earn a higher pension by earning additional future service credit or by earning future service credit at a higher contribution rate, subject to limitations and conditions imposed by the LNPF's rules. The benefit value of service credit already earned may be increased at the discretion of the Board of Trustees, but such an increase is highly unlikely. The value of credit earned in the future may be lower or higher, at the discretion of the Board of Trustees.

To the extent that a Participant has been granted past service credit for employment with an employer before the employer began contributing to the Fund, the Fund's rules provide that such credit will be cancelled in the event that the employer withdraws from the Fund, absent complete funding of that credit by the employer's contributions. Loss of past service credit would result in a reduction in the amount of pension that an affected Participant would receive upon retirement.

- (c) Benefits are not automatically payable to Participants or Alternate Payees. All claimants for benefits are required to apply for benefits in such manner as the Fund Administrator and the LNPF's rules may require. Monthly benefits are payable on the first day of the month for which they are due. Monthly benefit checks are typically mailed some days in advance.
- (d) Upon written request by a prospective Alternate Payee of an identified Participant, the Fund Administrator will provide the prospective Alternate Payee with a copy of the Participant's benefit statement as well as copies of the LNPF's rules and summary plan description booklets; provided that the Alternate Payee submits to the Fund Administrator information sufficient to reasonably establish that the disclosure request is being made in connection with a domestic relations proceeding that may result in the issuance of a QDRO.
- (e) Additional information about the LNPF can be found in the LNPF's Plan Rules and Summary Plan Description booklets. Copies of these booklets may be obtained from the Fund Administrator.

**Section 8: Miscellaneous**

- (a) The Participant and every Alternate Payee must provide to the Fund Administrator written notice of a change in address. Unless and until the Fund Administrator receives such a change notice, the Fund Administrator may continue to send all correspondence and notices to the addresses set forth in the QDRO.
- (b) Benefit payments to Participant-Pensioners and Alternate Payees are subject to federal and state income taxes and tax withholding to the extent required by law. A well-drafted QDRO expressly addresses the extent to which an Alternate Payee and Participant will have tax liability for benefits paid by the LNPF to them in accordance with the QDRO. The Internal Revenue Service has a publication on the taxation of pension income (Publication 575).
- (c) A QDRO may provide for multiple Alternate Payees. A QDRO may provide for an Alternate Payee in the event that the primary Alternate Payee dies. Note,

however, that the QDRO may not provide for the payment of benefits after an Alternate Payee's death if such a benefit is not available under the LNPF's rules.

- (1) Example: A Shared Benefit QDRO may provide that in the event of the Alternate Payee's death prior to the death of the Participant, the portion of the Participant's benefit that was payable to the Alternate Payee will be payable to another Alternate Payee.
  - (2) Example: A Separate Interest QDRO may not provide that single life annuity benefits being paid for the Alternate Payee's lifetime will be payable to another Alternate payee upon the first Alternate Payee's death.
- (d) The LNPF cannot recognize an Order as a QDRO to the extent that it requires payments to an Alternate Payee for months before the LNPF received the Order, or that it does not give the LNPF a reasonable opportunity to review and withhold benefits.

The LNPF cannot recognize an Order as a QDRO to the extent that it would require a change in the form of pension that a Participant is receiving. For example, if a Participant-Pensioner is already receiving his pension in the form of a single life annuity, an Order cannot qualify as a QDRO to the extent that it purports to require the Participant-Pensioner to take a Husband and Wife Pension.

- (e) If the LNPF mistakenly pays benefits to the Participant that are owed to the Alternate Payee, or to an Alternate Payee that are owed to the Participant, the person who receives the mistaken payment shall be considered unjustly enriched and liable to the person who was entitled to the payment and to the LNPF for restitution.
- (f) A QDRO may provide for the payment of benefits to a person who has legal responsibility for an Alternate Payee who is a minor or incompetent (e.g. guardian, *loco parentis*, trustee).
- (g) The LNPF is not required to inquire into whether the State court or agency that issues an Order had jurisdiction to issue the Order, whether proper procedure was followed in obtaining the Order, whether the State law was correctly applied, or whether the Alternate Payee identified in the Order is in fact a spouse, former spouse, child or other dependent of the Participant under State law. The LNPF is not responsible for the substantive terms of an Order or their "fairness" to one party or the other, provided that the Order meets the legal qualifications of a QDRO.
- (h) These Procedures may be amended from time-to-time by the Board of Trustees.

The authority to interpret these Procedures and to decide all issues relating to them is vested solely in the Board of Trustees.

**Section 9: Sample QDROs**

Following are two sample QDRO forms: a sample Shared Benefit QDRO and a sample Separate Interest QDRO. Both sample forms relate to a divorce situation between a Participant and his or her spouse (Alternate Payee).

These samples are provided to assist the parties and their attorneys in drafting an Order that is intended to be a QDRO. Use of these samples is not required by the LNPF; they are intended only to be illustrative. Various bar associations and other governmental and non-governmental organizations have promulgated sample QDRO forms as well.

These sample QDRO forms reflect certain choices that may or may not be appropriate for the circumstances of a particular Participant and Alternate Payee. Preparation of an Order that is intended as a QDRO requires careful consideration by the affected Participant and Alternate Payee, and by their attorneys or professional advisors, of their particular circumstances and of the range of choices available for dividing the Participant's pension.

**Sample QDRO Form #1:  
Separate Interest Approach  
(Participant Not In Pay Status)**

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**[CASE CAPTION]**

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**QUALIFIED DOMESTIC RELATIONS ORDER**

This Order is intended to be a Qualified Domestic Relations Order (“QDRO”) as that term is defined in Section 206(d) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §1056(d), and Section 414(p) of the Internal Revenue Code (“Code”), 26 U.S.C. §414(p).

In accordance with [*insert citation(s) to applicable State domestic relations law(s)*], this Order is entered in connection with (check the appropriate box):

- the dissolution of the parties’ marriage and division of marital property; or
- the determination of marital property rights not involving dissolution of the parties’ marriage; or
- award of child support; or
- award of spousal support between current or former spouses in matrimonial action.

The purpose of this Order is to divide the pension benefits that [*insert name of the Participant*] is entitled to receive from the below-named employee pension plan, and to assign a portion of those benefits to [*insert name of the Alternate Payee*].

**Section 1: Identification of the Pension Plan**

This Order applies to the Laborers National Pension Fund (hereinafter the “Fund”), whose mailing address is Post Office Box 803415, Dallas, Texas 75380-3415, whose telephone number is 972-233-4458, and whose facsimile number is 972-233-3026.

**Section 2: Identification of the Participant**

[Insert the name of the Participant] is hereinafter referred to as the "Participant." The Participant's mailing address is [insert address]. The Participant's date of birth is [insert date of birth]. The Participant's Social Security Number shall be provided to the Fund along with a certified copy of this Order.

**Section 3: Identification of the Alternate Payee**

[Insert name of the Alternate Payee] is hereinafter referred to as the "Alternate Payee." The Alternate Payee's mailing address is [insert address]. The Alternate Payee's date of birth is [insert date of birth]. The Alternate Payee's Social Security Number shall be provided to the Fund along with a certified copy of this Order.

**Section 4: Benefit Interest Assigned to Alternate Payee (Separate Interest)**

The Alternate Payee is hereby assigned and granted as her separate interest the actuarial equivalent of [insert percent (\_\_\_%)] of the value of the pension benefit accrued by the Participant during the parties' marital period. The marital period began on [insert date] and ended on [insert date].

This division shall be effective immediately. Accordingly, the Participant is hereby divested of all interest in that portion of his accrued benefit assigned to the Alternate Payee. The remainder of the Participant's accrued benefit shall remain his separate interest.

**Section 5: Commencement and Termination of Benefit Payments to Alternate Payee**

(a) The Alternate Payee shall be entitled to elect to commence receiving her benefits from the Fund effective with the month following the month during which the Participant attains the earliest retirement age at which he could commence receiving benefits (regardless of whether the Participant commences to receive his benefits), or at such later date as she may elect, subject the Fund's rules and requirements.

(b) The Alternate Payee shall be entitled to receive her interest in any form of benefit that is available under the terms of the Plan to the Participant, except for the form of a joint and survivor annuity for the lives of the Alternate Payee and her subsequent spouse.

(c) Notwithstanding anything to the contrary herein, the Fund shall not be required to commence benefit payments to the Alternate Payee earlier than the first month after the Fund is served with a copy of this Order.

(d) The Fund shall cease making the benefit payments to the Alternate Payee in accordance with the form of benefit that she elects. For example, if she elects to receive a single life annuity form of benefit, benefit payments will continue for her life and cease upon her death.

**Section 6: Death of the Participant**

The death of the Participant shall not affect the Alternate Payee's separate interest.

**Section 7: Death of Alternate Payee**

If the Alternate Payee dies before beginning to receive benefit payments from the Fund, the Alternate Payee's interest shall revert to the Participant. If the Alternate Payee dies after the commencement of benefit payments to her, the form of pension elected by the Alternate Payee and the Fund's rules will determine whether any benefits will be payable to any person after her death.

**Section 8: Alternate Payee not Treated as a Surviving Spouse**

The Alternate Payee shall not be treated as the Participant's spouse for purposes of Sections 401(a)(11) and 417 of the Code (relating to qualified pre-retirement survivor annuity and qualified joint and survivor annuity benefits) or for any other surviving spouse benefits or rights provided by the Fund.

**Section 9: Subsidies and Benefit Increases**

(a) It is understood that if the Alternate Payee begins to receive her pension benefits before the Participant begins to receive his pension benefits, she will not be entitled to share in any subsidized benefit provided by the Fund to the Participant once his benefits commence (e.g. subsidized early retirement benefits). However, if the Alternate Payee's pension commences at the same time, or after, the Participant's pension commences, the Alternate Payee shall be entitled to share in the subsidy in the same proportion as provided in Section 4, above.

(b) If the Fund increases the amount of the Participant's pension with regard to benefits accrued during the marital period, the Alternate Payee shall be entitled to share in the increase in the same proportion as provided in Section 4, above.

**Section 10: Limitations**

(a) This Order shall be construed and applied in accordance with ERISA and the Code. Nothing in this Order shall be construed as requiring the Fund:

- (1) to pay any benefits that are not permitted by ERISA or the Code;
- (2) to provide any type or form of benefit or any option not provided under the terms of the Fund;
- (3) to pay total benefits with a value in excess of the benefits that the Participant otherwise would receive under the Fund; or
- (4) to pay benefits to the Alternate Payee that are required to be paid to another alternate payee under another qualified domestic relations order that pre-dates this Order.

(b) It is understood that no benefits shall be payable under the Plan to either the Participant or to the Alternate Payee unless the Participant is or becomes vested in his accrued benefit and other applicable eligibility requirements of the Plan are satisfied.

(c) It is understood that the Alternate Payee's benefit amount may be subject to actuarial adjustment under the terms of the Plan to reflect her age and the time when she begins to receive benefits.

#### **Section 11: Taxes**

The Alternate Payee shall be responsible for any income taxes or other taxes due with regard to the interest assigned to her under this Order, except to the extent otherwise required by federal or state law. The Participant shall be responsible for any income taxes or other taxes due with regard to his interest, except to the extent otherwise required by federal or state law.

#### **Section 12: Miscellaneous**

(a) In the event that the Fund does not recognize this Order as a QDRO, the parties shall cooperate and do all acts necessary to devise a form of Order that is acceptable to the Fund as a QDRO.

(b) The Alternate Payee and the Participant shall timely provide to the Fund written notice of any change in their respective mailing addresses.

(c) In the event that the Fund mistakenly pays to the Participant benefits that are owed to the Alternate Payee under this Order, the Participant shall be deemed to be a constructive trustee of the mistaken payment and shall forthwith transfer the mistaken payment to the Alternate Payee. In the event that the Fund mistakenly pays to the Alternate Payee benefits that are owed to the Participant under this Order, the Alternate Payee shall be deemed to be a constructive trustee of the mistaken payment and shall forthwith transfer the mistaken payment to the Participant.

**Section 13: Service**

The Alternate Payee shall forthwith cause a certified copy of this Order to be served on the Fund together with a request that the Fund determine the Order to be a QDRO.

**Section 14: Reservation of Jurisdiction**

This Court reserves jurisdiction to amend this Order for the purpose of establishing or maintaining its status as a QDRO under ERISA and the Code.

**IT IS SO ORDERED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.**

\_\_\_\_\_  
**Judge**

**Sample QDRO Form #2:  
Shared Benefit Approach  
(Participant In Pay Status Or Not In Pay Status)**

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**[CASE CAPTION]**

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**QUALIFIED DOMESTIC RELATIONS ORDER**

This Order is intended to be a Qualified Domestic Relations Order (“QDRO”) as that term is defined in Section 206(d) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §1056(d), and Section 414(p) of the Internal Revenue Code, 26 U.S.C. §414(p) (“Code”).

In accordance with [*insert citation(s) to applicable State domestic relations law(s)*], this Order is entered in connection with (check the appropriate box):

- the dissolution of the parties’ marriage and division of marital property; or
- the determination of marital property rights not involving dissolution of the parties’ marriage; or
- award of child support; or
- award of spousal support between current or former spouses in matrimonial action.

The purpose of this Order is to divide the pension benefits that [*insert name of the Participant*] is entitled to receive from the below-named employee pension plan, and to assign a portion of those benefits to [*insert name of the Alternate Payee*].

**Section 1: Identification of the Pension Plan**

This Order applies to the Laborers National Pension Fund (hereinafter the “Fund”), whose mailing address is Post Office Box 803415, Dallas, Texas 75380-3415, whose telephone number is 972-233-4458, and whose facsimile number is 972-233-3026.

**Section 2: Identification of the Participant**

[*Insert the name of the Participant*] is hereinafter referred to as the “Participant.” The Participant’s mailing address is [*insert address*]. The Participant’s date of birth is [*insert date of birth*]. The Participant’s Social Security Number shall be provided to the Fund along with a certified copy of this Order.

**Section 3: Identification of the Alternate Payee**

[*Insert name of the Alternate Payee*] is hereinafter referred to as the “Alternate Payee.” The Alternate Payee’s mailing address is [*insert address*]. The Alternate Payee’s date of birth is [*insert date of birth*]. The Alternate Payee’s Social Security Number shall be provided to the Fund along with a certified copy of this Order.

**Section 4: Amount of Benefit Assigned to Alternate Payee**

(a) Commencing and ending at the times specified in Section 5, the Alternate Payee shall be entitled to receive directly from the Fund [ *insert the specific percentage of, or specific dollar amount,* ] from each benefit payment to which the Participant is entitled. This share of the Participant’s benefit payments is assigned to the Alternate Payee as her sole property. The Participant shall be entitled to the balance of each benefit payment as his sole property.

(b) The sum of the benefit payment to the Participant and the benefit payment to the Alternate Payee shall not exceed the benefit amount to which the Participant would be entitled but for the division of his benefit under this Order.

**Section 5: Commencement and Termination of Payments to Alternate Payee**

(a) Subject to subsection (b) below, the Alternate Payee shall be entitled to her share of the Participant’s monthly benefit effective as of the first monthly benefit payment to the Participant that comes due after the Fund determines that this Order is a QDRO. The Alternate Payee shall not be entitled to any benefits unless and until the Participant begins to receive monthly benefit payments from the Fund.

(b) The Alternate Payee’s entitlement to share in the Participant’s benefit payments shall cease as of the earliest of the following events:

- (1) the cessation of benefit payments by the Fund to the Participant;
- (2) the Participant’s death;
- (3) the Alternate Payee’s death.

(c) In the event that the Alternate Payee dies before the Participant, the Alternate Payee's share shall revert to the Participant.

**Section 6: Treatment of Alternate Payee as a Surviving Spouse**

The Alternate Payee shall be treated as the Participant's spouse for purposes of Sections 401(a)(11) and 417 of the Code (relating to qualified pre-retirement survivor annuity and qualified joint and survivor annuity benefits) or for any other surviving spouse benefits or rights provided by the Fund.

**Section 7: Limitations**

This Order shall be construed and applied in accordance with ERISA and the Code. Nothing in this Order shall be construed as requiring the Plan:

- (a) to pay any benefits that are not permitted by ERISA or the Code;
- (b) to provide any type or form of benefit or any option not provided under the terms of the Plan;
- (c) to pay total benefits with a value in excess of the benefits that the Participant otherwise would receive under the Plan; or
- (d) to pay benefits to the Alternate Payee that are required to be paid to another alternate payee under another qualified domestic relations order that pre-dates this Order.

**Section 8: Taxes**

The Alternate Payee shall be responsible for any income taxes or other taxes due with regard to the share of benefits assigned to her under this Order, except to the extent otherwise required by federal or state law. The Participant shall be responsible for any income taxes or other taxes due with regard his share of the benefit payments, except to the extent otherwise required by federal or state law.

**Section 9: Miscellaneous**

- (a) In the event that the Fund does not recognize this Order as a QDRO, the parties shall cooperate and do all acts necessary to devise a form of Order that is acceptable to the Fund as a QDRO.
- (b) The Alternate Payee and the Participant shall timely provide to the Fund written notice of any change in their respective mailing addresses.

(c) In the event that the Fund mistakenly pays to the Participant benefits that are owed to the Alternate Payee under this Order, the Participant shall be deemed to be a constructive trustee of the mistaken payment and shall forthwith transfer the mistaken payment to the Alternate Payee. In the event that the Fund mistakenly pays to the Alternate Payee benefits that are owed to the Participant under this Order, the Alternate Payee shall be deemed to be a constructive trustee of the mistaken payment and shall forthwith transfer the mistaken payment to the Participant.

**Section 10: Service**

The Alternate Payee shall forthwith cause a certified copy of this Order to be served on the Fund together with a request that the Fund determine the Order to be a QDRO.

**Section 11: Reservation of Jurisdiction**

This Court reserves jurisdiction to amend this Order for the purpose of establishing or maintaining its status as a qualified domestic relations order under ERISA and the Code.

**IT IS SO ORDERED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.**

\_\_\_\_\_  
**Judge**