

*POMPANO BEACH POLICE & FIREFIGHTERS'
RETIREMENT SYSTEM*

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**QUESTIONS AND ANSWERS FOR DIVORCING MEMBERS
AND SPOUSES OF THE
POMPANO BEACH POLICE AND FIREFIGHTERS'
RETIREMENT SYSTEM (THE "SYSTEM")**

To assist your attorneys in resolving pension issues involved in your divorce, please give this memorandum to your divorce lawyers and mediator. This will assist them in resolving any pension issues which arise in the divorce proceedings and will save you lawyers' fees. This information should be given to the lawyers for both you and your spouse.

Q.1. What is the nature of the Trust Fund?

The Trust Fund is governed by a board of trustees that administers a defined benefit governmental pension plan providing retirement, disability and pre-retirement death benefits.

Q.2. What is the governing law?

The Trust Fund is established and administered pursuant to sections 34.046 of the City of Pompano Beach Code, Sections 175, 185, and 112 (Part VII), Florida Statutes, and the Internal Revenue Code. As a governmental plan, the Trust Fund is not covered by ERISA.

Q.3. Is the pension a marital asset?

The question of whether the pension is a marital asset and the division of the pension we defer to your family law attorneys. If the parties determine that the pension is a marital asset, it is preferable that the member provide the spouse with other assets to offset the value of the pension benefit.

Q.4. How do we determine the member's benefit and the appraised value of it?

The portion of the member's benefit that might be subject to the division of marital assets is generally determined based on the credited service and covered wages the member earned during the marriage, whether or not the member was vested, and the plan provisions that were in effect when the marriage dissolved. The System's staff can provide this information. However, to obtain an exact calculation of the pension benefit that accrued during the marriage or the present value of such benefit, you should engage your own independent actuary, although the System's actuary will provide this service with certain limitations.

Q.5. If we determine that the pension is a marital asset subject to division, may the plan make a direct payment to the spouse for his/her portion?

No. The member's benefit is not assignable except in limited circumstances, which do not include the division of marital assets. Specific governing law is as follows:

*City of Pompano Beach Code Section 34.065 – Pensions Not Assignable:
No pension provided for herein shall be assignable or subject to garnishment for debt or for other legal process; except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the city or BSO, to pay the certified bargaining agent of the city or BSO, and to make any payments for child support or alimony. Further, the recipient of any monthly benefit may authorize the Board of Trustees upon written request, to withhold from the monthly benefit those*

funds necessary to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents. The retirement system shall not incur any liability for participation in such permissive program if its action is taken in good faith.

*Florida Statutes Chapters 175.061(7) (firefighters) and 185.05(6) (police officers): The board of trustees may, upon written request of the retiree of the plan, or by a dependent, if authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment funds that are necessary to pay for the benefits being received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, **and to make any payments for child support or alimony.** Upon the written request of the retiree of the plan, the board may also authorize the plan administrator to withhold from the retirement payment those funds necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith.*

Q.6. Is the plan governed by Federal law relating to Qualified Domestic Relations Orders (QDROs)?

No. QDROs violate the non-alienation provisions of the City code and Chapters 175 and 185, Florida Statutes, as referenced above. Also, as a governmental plan, the System is not governed by ERISA and therefore will not honor QDROs. This was recognized in Board of Trustees of the City General Employees Pension Plan, City of Jacksonville v. Vizcaino, 653 So.2d 1012 (Fla. 1st DCA 1994), in which the court held:

However, the QDRO exception to the prohibition against assignment or alienation of pension benefits is of no assistance to Anna because, as the parties correctly recognize, "governmental plans" (defined as including plans established or maintained by a political subdivision of a state) are expressly excluded from ERISA coverage. 29 U.S.C. Secs. 1003(b)(1) & 1002(32).

Q.7. Will the System honor Income Deduction Orders for alimony or child support?

Yes. One of the exceptions to the non-alienation provisions is set forth in the Alvarez case, 580 So.2d 1st DCA (Fla. 1991), which makes the pension trust fund subject to income deduction orders for alimony and child support, which are allowed by governing law, as referenced above.

If you choose this method, the IDO must specify the amount to be paid each month on behalf of the child or the ex-spouse, the duration of such payments, and to whom the

checks must be payable. IDO's for child support generally require the payment to be made to the Florida Disbursement Unit. If alimony payments may be made directly to the ex-spouse, he/she may elect to have the payment deposited to an account of his/her choice.

Once issued, the IDO should be sent by certified mail, return receipt requested, to the System's office. Once received by the System, the IDO will remain in effect until a pension is no longer payable to the member or a subsequent court order is received by the System.

Q.8. How are such alimony or child support payments treated and taxed?

The payments are deducted from the member's benefit, similar to income tax withholding or insurance premiums. The entire amount of the member's benefit will continue to be taxed to the member and reported on the member's annual 1099-R form. We strongly advise the parties to consult with their tax consultants before agreeing to the final deduction amount.

Q.9. When are deductions allowed to commence?

Deductions may commence upon the later of receipt of the appropriate authorization or commencement of benefits. Deductions will only be made so long as benefits are paid to the member. In most cases this will be until death but in the case of a disability, payments could cease upon recovery from the disability. Deductions would also cease if the Member's benefit is forfeited under State law.

Q.10. Invalidation of pre-divorce beneficiary designations

The Retirement System is subject to Section 732.703 of the Florida Probate Code that, in most instances, invalidates any pre-divorce designation of spouses as beneficiaries of any benefits payable by the Retirement System. In simple terms, this means that if, before your divorce, you named your then-spouse as a beneficiary for any benefit payable upon your death, that benefit will not be paid to your ex-spouse after your divorce and may be forever lost. You should discuss this with your lawyer and, at a minimum, file new designation of beneficiaries immediately upon being divorced for any benefits that were payable to your ex-spouse (even if you want to keep your ex-spouse as beneficiary, you have to re-designate that spouse as a beneficiary after your divorce). You have a dangerous job so you should do this *immediately* after your divorce order is signed by the judge.

Q.11. Who do we call if we have questions?

Call Debra Tocarchick, the System's Executive Director, at 954-782-4161 for general questions. If you have any legal issues to discuss, please call the System's lawyer, Bob Sugarman, Sugarman & Susskind, PA at 954.327.2878. Ask for his assistant to schedule a conference call among Bob and both parties' attorneys or between Bob and the

mediator. The conference call must be arranged by the parties who must pay any telephone charges. One conference call with Bob is available at no charge to the parties as it is included in the System's retainer with his law firm. Additional conferences must be prepaid at \$400 per hour with a \$400 minimum.