

**NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS
PENSION PLAN**

**POLICIES AND PROCEDURES TO DETERMINE
QUALIFIED STATUS OF DOMESTIC RELATIONS ORDERS
AND TO ADMINISTER DISTRIBUTIONS
PURUSANT TO QUALIFIFED DOMESTIC RELATIONS ORDERS**

1. **INTRODUCTION.** In accordance with Section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), as amended by the Retirement Equity Act of 1984 (“REA”), and with Article VIII, Section 8.12 of the New York City District Council of Carpenters Pension Plan, the Board of Trustees of the New York City District Council of Carpenters Pension Plan (the “Plan”) has adopted these procedures, as amended, for determining the qualified status of Domestic Relations Orders (“DROs”) relating to benefits provided by the Plan and for administering distributions of benefits pursuant to such DROs. The effective date of these procedures shall be September 28, 2016.

Although ERISA and the Internal Revenue Code of 1986, as amended (the “Code”) contain provisions that prevent a Participant’s benefits from being assigned or alienated, REA amended ERISA and the Code thereby creating an exception to the general prohibition against the assignment or alienation of pension benefits. The exception allows pension plans to administer the assignment of a Participant’s benefits to an Alternate Payee where the Plan has been served with a DRO, which meets certain requirements as set forth in ERISA Section 206(d)(3) and Code Section 414(p) thereby constituting a Qualified Domestic Relations Order (“QDRO”). The Plan Administrator, or its agent, determines the qualified status of the DRO served upon the Plan.

ERISA Section 206(d)(3)(G)(ii) requires the Plan to establish reasonable written procedures for determining the qualified status of DROs received by the Plan and for administering distributions of benefits under such DROs. These procedures comply with this requirement and are binding on all Participants and Alternate Payees.

2. **DEFINITIONS.** The following definitions shall apply herein.

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2.1 **DOMESTIC RELATIONS ORDER.** Only a DRO can be a QDRO. A DRO is any executed (i.e., signed by a judge) judgment, decree, or order (including one that approves a property settlement agreement) that:

Relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant; and

Is rendered under a state domestic relations law (including a community property law).

2.2 **QUALIFIED DOMESTIC RELATIONS ORDER.** A QDRO is a DRO that:

Is entered on or after January 1, 1985;

Creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant under the Plan; and

Satisfies the requirements set forth in Parts 3 and 4 of these procedures.¹

2.3 **ALTERNATE PAYEE.** Alternate Payee means any spouse, former spouse, child or other dependent of a Participant who is recognized by a DRO as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

2.4 **EARLIEST RETIREMENT AGE.** The term Earliest Retirement Age means the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits taking into consideration the requirements of the Plan.

3. **STATUTORY REQUIREMENTS FOR QUALIFICATION OF DOMESTIC RELATIONS ORDER.** A DRO shall satisfy all the following statutory requirements to be considered a QDRO. The DRO shall:

Specify the name and last known mailing address of the Participant and the name and mailing address of the Alternate Payee covered by the Order.

Specify that the Order applies to the New York City District Council of Carpenters Pension Plan.

¹ For purposes of Plan administration, QDROs must be court-certified. Attorney-certified copies will not be accepted.

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Specify clearly the amount or percentage of the Participant's benefits to be paid by the Plan to the Alternate Payee or the manner in which such amount or percentage is to be determined.

Specify the commencement date of the Alternate Payee's assigned benefit.

Specify the duration of payment, that is, the number of payments or period over which payments are required to be made.

Recite that it relates to either the provision of child support, or alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of the Participant.²

Recite that it is made pursuant to a state domestic relations law including, but not limited to, a community property law.

Recite that it does not require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan. For example, the DRO shall not require the Plan to pay benefits to an Alternate Payee where the Participant has no vested benefits or is otherwise ineligible for benefits pursuant to the terms of the Plan and shall not require the Plan to make payments to an Alternate Payee before the Participant's benefits are in pay status except as provided in Section 5.1 below.

Recite that it does not require the Plan to provide increased benefits or benefits which exceed the value of the Participant's benefits (determined on the basis of actuarial value).

Recite that it does not require the payment of benefits to an Alternate Payee, which are required to be paid to another Alternate Payee under another DRO previously determined to be a QDRO.

4. **MINIMUM PLAN REQUIREMENTS FOR QUALIFICATION OF DOMESTIC RELATIONS ORDERS.** In addition to the foregoing statutory requirements, the following information should be included or addressed in the DRO:

4.1 **Dates of Birth and Social Security Number.** The DRO, or an addendum thereto, shall include the dates of birth and social security numbers for both Alternate Payee and Participant. However, taking into consideration privacy concerns, the Plan will accept the last four digits of the parties' social security numbers, e.g., xxx-xx-1234.

² If the QDRO relates to provision of child support, the tax consequences will be determined by the identity of the alternate payee.

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4.2 **Amount of Assigned Benefit.** The DRO shall recite the amount of Participant's accrued benefits payable to the Alternate Payee stated either as a specific dollar amount, percentage or coverture formula. To the extent a coverture formula is utilized, the numerator and denominator of the coverture formula must refer to the number of hours earned and not the number of months of credited service or number of benefit credits. Thus, for example, in a standard coverture formula the numerator will be the number of hours earned during the marriage and the denominator will be the total number of hours earned as of the commencement date of benefits to Participant or to Alternate Payee, if earlier.

4.3 **Commencement Date of Benefits.** As set forth in Section 3 above, the DRO shall include the commencement date of the Alternate Payee's assigned benefit. When the Participant is receiving his/her pension benefit when the DRO or draft DRO is served, the Order can only require that payments will commence to the Alternate Payee after receipt by the Plan of a certified copy of the executed and qualified DRO.

4.4 **Duration of Benefits.** The DRO shall state whether the Alternate Payee is to receive benefit payments actuarially adjusted over Alternate Payee's lifetime or the lifetime of the Participant depending on the type of DRO drafted.

5. **ADDITIONAL CONSIDERATIONS.** In addition to the foregoing requirements the following matters should be considered where appropriate.

5.1. **Early Retirement Exception.** A QDRO relating to a Participant who is not retired may direct that benefits be paid to an Alternate Payee on or after the date on which the Participant attains (or would have attained) Earliest Retirement Age in any form in which such benefits may be paid to the Participant with the exception of a joint and survivor annuity. If the Alternate Payee elects to receive his/her assigned share earlier than Participant, Alternate Payee's assigned share will be calculated based on the value of Participant's pension as if Participant had retired on the date on which such payment is to begin to Alternate Payee but will take into account only the present value of benefits actually accrued and will not take into account the present value of any Plan subsidy for early retirement.

5.2. **Qualified Pre-Retirement Survivor Exception.** A QDRO may provide that the Participant's former spouse is to be treated as the Participant's surviving spouse for purposes of the Qualified Pre-Retirement Survivor Annuity, provided that the former spouse and Participant

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were married for at least one year prior to the date of the final judgment of divorce. This is only applicable where Participant has not retired before the QDRO is served upon the Plan.

5.3. **Qualified Joint And Survivor Exception (Post-Retirement)**. A QDRO may provide that the Participant's former spouse is to be treated as the Participant's surviving spouse for purposes of the Qualified Joint and Survivor Annuity, provided that the former spouse and Participant were married for at least one year prior to the date of the final judgment of divorce.

6. **DEFAULT PROVISIONS**. The Plan will apply the following default terms and/or interpretations unless the QDRO expressly directs otherwise.

6.1 **Early Retirement Subsidy**. No early retirement subsidy will be paid to Alternate Payee unless this benefit is specifically assigned to Alternate Payee in the DRO. If this benefit is intended, the DRO must contain an affirmative statement regarding the Alternate Payee's entitlement to a share of any early retirement subsidies that are incorporated into the Participant's pension benefits. Notwithstanding any such directive, Alternate Payee will not be entitled to any such subsidy if and until it is paid to Participant. Moreover, the DRO must specify whether Alternate Payee's benefits will be recalculated by the Plan in the event Participant retires after Alternate Payee's benefit commencement date and receives a subsidized pension.³

6.2 **Early Commencement Reduction Factors**. If the QDRO includes a provision that allows the Alternate Payee to commence his/her benefits on or after the Participant's earliest retirement age, Alternate Payee's share of the benefits shall be reduced by the Plan's appropriate early commencement reduction factor and age factor, in the event Alternate Payee commences his/her share of the benefits before the Participant's normal retirement age.

6.3 **Qualified Pre-Retirement Survivor Exception**. An Alternate Payee shall not be treated as the Participant's qualified spouse for the Qualified Pre-Retirement Survivor Annuity unless the QDRO affirmatively so directs and the parties were married for at least one year prior to the final judgment of divorce or if not divorced, were married for one year prior to Participant's death.

6.4 **Qualified Joint and Survivor Exception**. An Alternate Payee will not be considered as the Participant's qualified spouse for the Qualified Joint and Survivor Annuity unless the QDRO affirmatively directs the parties to choose this form of benefit and the parties were married for at least one year prior to the final judgment of divorce or if not divorced, were

³ This default provision shall not apply to pensions paid on the basis of disability. See Section 7.8

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married for one year prior to Participant's death. The only exception to this provision is pursuant to Article VI, Section 6.1(b)(2) of the Plan which provides that Alternate Payee will be deemed the Participant's qualified spouse where the parties (i) were married on the date of Participant's retirement, (ii) chose a Joint and Survivor Annuity, (iii) were married at least one year, and (iv) thereafter were divorced. In this limited circumstance, the Alternate Payee will be designated as the Participant's surviving spouse and will receive the Qualified Joint and Survivor Annuity for his/her lifetime.

7. **ADMINISTRATIVE PROCEDURES.** The following procedures shall be used in the process for qualification of a DRO. The Plan applies different rules depending on whether it receives (a) an executed DRO, or (b) notice that the Alternate Payee and/or Participant intend to obtain a DRO. These rules do not apply to any non-written communications. Oral communication are insufficient to trigger any action by the Plan. In addition, the Plan has no obligations of any kind under any DRO that has not been received by the Fund Office.

7.1. **Initial Receipt of Domestic Relations Order.** Upon initial receipt of a DRO, the Plan, or its representative, will send a written acknowledgment of receipt of the DRO and a copy of these policies and procedures to the Participant and the Alternate Payee identified in the DRO and to their respective attorneys, if the name and address of each attorney is available. This written acknowledgment will inform the Alternate Payee and Participant that they may designate a representative (which may be legal counsel) for receipt of copies of notices, letters and/or Plan information that will be sent to the respective addresses of the Participant and Alternate Payee set forth in the DRO or, if an address is not specified, to the last known addresses of the parties, if available. Such designation shall be in writing and specify the full name and address of the designated representative.

7.2. **Determination Of Status.** Within a reasonable time after the Plan's receipt of the DRO, the Plan, or its representative, will determine whether such DRO is a QDRO, and will notify the Participant and Alternate Payee (or their designated representatives) of such determination. In the event the DRO is not qualified, the notice will describe the reasons for the determination and what modifications are necessary for the DRO to satisfy the requirements for qualified status. If the DRO is determined to qualify as a QDRO, the Plan will send a letter to the Participant and Alternate Payee (or their designated representatives) acknowledging the qualified status and setting forth how the Plan will interpret and administer the terms and

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provisions of the QDRO. In the event the parties, or their designated representatives, have an objection to the interpretation letter, they must make a written objection within ten (10) business days of the date of the interpretation letter. Failure to make such objection within this ten (10) business day period shall constitute a waiver of the objection and acceptance of the Plan's interpretation of the QDRO set forth in the qualifying letter.

7.3. **Segregation of Benefits.** Pursuant to Section 414(p)(7) of the Code, during any period in which the issue of whether an executed DRO is a QDRO is being determined (by the Plan, its representative, or otherwise), the Plan shall defer payment of and account separately for the amount of benefits in dispute including amounts which would have been payable to the Alternate Payee during such period if the DRO had been determined to be QDRO.

If, within 18 months after the DRO is received by the Plan, the Order (or a modification thereof) is determined to be a QDRO, the Plan will pay the segregated amounts to the person entitled thereto under the QDRO. This applies only to such amounts that would have been payable to Alternate Payee during this 18-month period.

If, at the expiration of the 18-month period, the Plan, or its representative, determines that the DRO is not a QDRO, or the issue of whether the DRO is a QDRO remains unresolved, then the Plan shall pay the segregated amounts to the person who would have been entitled to such amounts as if there had been no DRO.

Any determination that a DRO is a QDRO, which is made after the close of the 18-month period, shall be applied prospectively only.

This Section 7.3 shall apply only to executed (i.e., signed by a judge) DROs and shall not apply to draft DROs submitted to the Plan or its agent for pre-approval before being signed by a judge or court of competent jurisdiction.

7.4. **Review of Draft Domestic Relations Orders.** Upon request, the Plan will review a draft DRO before execution by the court. These reviews do not constitute a formal determination under ERISA because the drafts are not actual court orders. The reviews are done as a courtesy to assist the parties in drafting orders and to avoid repeated court filings due to technical errors. The Plan's receipt of a draft DRO will not trigger the 18-month segregation period set forth above in Section 7.3. Instead the procedures set forth in Section 7.5 shall apply. If a draft DRO is submitted for pre-approval, it should be forwarded to the Plan at the address set forth below:

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New York City District Council of Carpenters Pension Plan
395 Hudson Street
New York, NY 10014
Attention: Pension Plan Manager

Please keep in mind that there are many options to consider and many decisions to make in drafting a QDRO. These procedures provide information about QDROs and the Plan. It is not legal advice. The parties should consult with an attorney to protect their interest.

7.5. **Notice of an Intended Domestic Relations Order.** “Notice of an Intended DRO” shall mean receipt by the Plan of either (a) a draft DRO for pre-approval, or (b) any other written document that indicates that the parties intend to obtain a DRO or that a court has awarded an individual a portion of a Participant’s benefits to be effectuated by obtaining a DRO. Upon receipt of Notice of an Intended DRO, the Plan will acknowledge receipt of such Notice of an Intended DRO to the parties identified in the notice (or their counsel). The acknowledgment will be in writing and consist of (a) a letter acknowledging when the notice was received, and an explanation of the hold described below that will be placed on the Participant’s benefit, if any; (b) a copy of the Notice of Intended DRO received by the Plan, and (c) a copy of these policies and procedures. The following rules in Sections 7.6 and 7.7 apply if a Participant applies to commence benefits after the Plan receives Notice of an Intended DRO or has an application pending when the Plan receives Notice of an Intended DRO. In the event that a Participant’s pension is already in pay status at the time that the Plan receives Notice of an Intended DRO, such Notice of an Intended DRO shall have no effect on the Participant’s monthly benefits. In that case, segregation shall not begin until the Plan receives an executed DRO as set forth in Section 7.3.

7.6. **Hold on Account Following Notice of a Intended Domestic Relations Order for Participants Not in Pay Status (Receipt of a Draft DRO).** Upon receipt of a draft DRO, the Plan will place a hold on the distribution of the full amount of the Participant’s benefit for ninety (90) days. If an executed DRO is received by the Plan within the 90-day period, the Plan will review the DRO in accordance with Section 7.2 and 7.3 above. It is critical that the Participant and/or Alternate Payee (or their counsel) arrange to submit a draft DRO to the court for execution as soon as possible and prior to the expiration of the 90-day period. If the Plan

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receives a written statement by the Participant or Alternate Payee (or their counsel) to the effect that the court has not executed the draft DRO within the 90-day period but that the draft DRO was submitted before the expiration of the 90-day period and is pending with the court, and provides written documentation that the draft DRO was submitted to the court prior to the expiration of the 90-day period, the Plan will grant an extension of the 90-day period pending the court's execution of the draft DRO. In addition, the Plan, in its sole discretion, may extend the 90-day deadline for submission of a draft DRO to the court for an additional thirty (30) days upon written request by either party, subject to the Plan's determination that the failure to submit a draft DRO to the court within the 90-day period should be excused.

If the parties have not submitted a draft DRO to the court within the 90-day period, or the 120-day period if the request for a 30-day extension is granted, the hold shall be lifted and the Plan will pay the Participant any benefits to which he/she is entitled as if no Notice of an Intended DRO had been received. If the hold is lifted and the Participant's pension is put into pay status, the Alternate Payee will not be entitled to obtain a DRO that provides a "separate interest" benefit or a surviving spouse benefit after the Participant's death and the Plan will thereafter only approve a "shared payment" DRO that will provide benefits to the Alternate Payee while the Participant is alive.

As stated above, this section provides for a hold on the distribution of the full amount of the Participant's benefit. In the event that the Participant advises the Plan that the process to obtain an executed DRO is expected to take longer than 60 days, the Plan will replace the full hold with a partial hold so that an otherwise eligible Participant may receive a portion of his/her benefit pending the court's issuance of an executed DRO and the Plan's qualification of such DRO if he/she so selects to receive a partial distribution. Because the exact amount of the Alternate Payee's cannot be determined until the Plan is in receipt of an executed DRO, the Plan shall have the discretion to determine the amount of the benefit that can be paid to the Participant during such waiting period after deducting the estimated amount that will be due the Alternate Payee pursuant to an executed DRO. By accepting a partial benefit distribution pending the Plan's receipt of a DRO, the Participant is deemed to have agreed that, if any overpayments are made to the Participant during this waiting period, he/she agrees to the deduction of such overpayments from the Participant's future benefits once the executed DRO is received and the

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amount due to the Alternate Payee is calculated. In no circumstances will the Plan pay benefits to an Alternate Payee prior to the Plan's receipt and qualification of an executed DRO,

7.7. Hold on Account Following Notice of an Intended Domestic Relations Order (Where No Draft DRO is Submitted) for Participants Not in Pay Status. In those cases in which the Plan has not received a draft DRO but has received other written notice that the parties intend to obtain a QDRO or that reflects that an individual has been awarded a portion of a Participant's benefits to be effectuated by obtaining a DRO, the Plan will place a hold on the distribution of the full amount of the Participant's benefit for 45 days. If a draft DRO is received by the Plan within the 45-day period, the Plan will comply with the procedures set forth in Section 7.6 above, except that the amount of time from the Plan's receipt of notice that the parties intend to obtain a QDRO until the Plan's receipt of a draft QDRO will be included in measuring the 90-day period in Section 7.6. If a draft DRO is not received by the Plan within the 45-day period, the Plan will terminate the hold and the Participant's pension will be put into pay status. If the hold is lifted and the Participant's pension is put into pay status, the Alternate Payee will not be entitled to obtain a DRO that provides a "separate interest" benefit or a surviving spouse benefit after the Participant's death and the Plan will thereafter only approve a "shared payment" DRO that will provide benefits to the Alternate Payee while the Participant is alive.

In addition, the Plan, in its sole discretion, may extend the 45-day deadline for submission of a draft DRO to the Plan for an additional thirty (30) days upon written request by either party, subject to the Fund's determination that the failure to submit a draft DRO to the Plan within the 30-day period should be excused.

7.8. Disability Pensions. Where an executed DRO has been qualified and served upon the Plan and thereafter Participant becomes eligible to receive a disability pension, Alternate Payee's assigned share may commence at such time as Participant's disability pension commences if the DRO so provides. However, should the disability pension be terminated by the Plan, Alternate Payee's benefits will likewise be terminated. Benefits to Alternate Payee may resume, depending on the provisions of the QDRO, at such time as Participant attains Earliest Retirement Age or Participant retires.

7.9. Death of Alternate Payee Before Commencement of Benefits. If the Alternate Payee dies before he/she commences benefits in accordance with the terms of the QDRO, his/her

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assigned share of the Participant's benefits shall revert to Participant. The Plan does not permit Contingent Alternate Payees.

7.10. **Missing Alternate Payee.** The Plan may deem the benefits payable to the Alternate Payee as forfeited for any period during which the Alternate Payee cannot reasonably be located. Benefits will be reinstated once the Alternate Payee is located. Alternate Payee has the affirmative duty to provide current and correct address information to the Plan.

7.11. **Prohibition Against Designation of Beneficiary by Alternate Payee.** The Alternate Payee may not designate a beneficiary to receive his/her share of Participant's benefits.

7.12. **Obtaining Participant Information From the Plan.** Upon written request by a prospective Alternate Payee (or designated representative thereof) of an identified Participant, the Plan will provide the prospective Alternate Payee (or designated representative) with information sufficient to prepare a QDRO, provided that the Alternate Payee submits to the Plan 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.

8. **AMENDMENTS AND INTERPRETATIONS**

8.1. **By Board Of Trustees.** The Plan's Board of Trustees may amend these procedures from time to time without notice.

8.2. **Interpretations and Regulations.** The Board of Trustees intends that these policies and procedures should comply with all mandatory provisions of regulations which the Department of Labor or the Department of Treasury may issue pursuant to ERISA Section 206(d)(3) and its parallel Code provisions. These policies and procedures will be interpreted in accordance with any such mandatory regulatory provisions. Interpretations of these policies and procedures by the Board of Trustees shall be final and binding on all affected persons provided that such interpretations are not arbitrary or capricious.

9. **NOTIFICATIONS.** Any change of address or contact information must be reported promptly to the Plan by the Participant, Alternate Payee, his/her representative, custodial parent or guardian. In the case of the death of a Participant or Alternate Payee, his/ her representative must promptly contact the Plan.

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Adopted by the Board of Trustees on September 28, 2016



Dave Stewart

Executive Director, New York City District Council of Carpenters Pension Fund