VRS Guide to

Retirement Benefits and Divorce

The Virginia Retirement System (VRS) provides its members and their beneficiaries with benefits at retirement or upon disability or death. Benefits described in this guide are governed by Title 51.1 of the *Code of Virginia* (Chapters 1-7, 10, 11, 13 and 14). The information in this guide is intended to be general. It cannot be complete in all details and cannot supersede or restrict the authority granted by the *Code of Virginia*, which may be amended from time to time. If there are any discrepancies between this information and the law, the provisions of the law will prevail. If you have a question not answered in this guide, contact:

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Introduction

The Virginia Retirement System (VRS) consists of (i) a defined benefit plan, qualified as a government plan under § 401(a) of the Internal Revenue Code; and (ii) several defined contribution plans that also are qualified under the Internal Revenue Code.

Retirement contributions and interest in the VRS defined benefit plan and account balances in certain VRS defined contribution plan accounts may be considered marital property when a member divorces. The court may order a division of retirement benefits or account balances between a VRS member and the non-member spouse as part of a divorce settlement. Before VRS can divide the benefit or the account balance, however, a court of competent jurisdiction must issue an Approved Domestic Relations Order (ADRO). This booklet provides an overview of how retirement benefits or account balances may be divided in a divorce settlement and guidelines to drafting an ADRO.

Purpose of an ADRO

An ADRO permits VRS to make direct payment to the former spouse when retirement benefits are divided in a marital property settlement. Direct payment by VRS may not be possible, even if a court of competent jurisdiction awards an interest in the benefits or account balances of a VRS member to the former spouse, unless the court enters an order that VRS has already approved.

An ADRO is a domestic relations order that satisfies VRS requirements. Only VRS can decide if a domestic relations order is an ADRO.

VRS Is Not an ERISA Plan

VRS is not governed by the Employee Retirement Income Security Act (ERISA). In other words, VRS is not an ERISA plan. VRS cannot accept the same type of order used by ERISA plans as an ADRO. Instead, use the model language in this guide.

Role of VRS

The role of VRS is to administer retirement funds. VRS does not require benefits or account balances to be divided in a divorce situation. VRS does not mediate marital property disputes, nor does VRS give legal advice concerning domestic relations law.

An ADRO may direct the *member*, but not VRS, to designate a former spouse as

beneficiary. VRS *does not* enforce or otherwise monitor any beneficiary designation specified in any agreement of the parties or in the judgment, decree or order terminating the marriage, and VRS does not take any responsibility for a member who may violate the terms of an ADRO.

The following information is provided to assist with drafting orders that will produce the intended result and meet VRS ADRO requirements. Although the court determines how to divide a member's retirement benefit or account balance, only VRS can deem a domestic relations order approved.

ADRO Requirements

The *Code of Virginia* contains a clause that protects retirement benefits and VRS trust assets from assignment, execution or garnishment.[1] A special exception to that clause allows the division or transfer by the court of the portion of a member's benefits or account balances that have been deemed marital property. The *Code of Virginia* requires that VRS have a copy of an ADRO before it can pay a former spouse any court-awarded retirement benefits.[2]

The domestic relations order submitted to VRS for administration must be a copy that is certified by the issuing court.

[1] *Code of Virginia § 51.1-124.4*

[2] *Code of Virginia § 51.1-124.4*

ADRO Requirements

Certified Copy of Court Decree	The order must: • Be a judgment, decree or order from a court of competent jurisdiction. • Relate to the division of marital property. • Have been entered after July 1, 1991. If the order was entered prior to July 1,1991, a new VRS-approved ADRO must be obtained from the court in order for VRS to make payments to the former spouse.
Name, Social Security Number and Mailing Address	The order must give the name and last known address of both the member and the former spouse. Virginia law requires Social Security numbers to be provided on a separate addendum,[3] and a copy of this addendum must accompany a copy of the entered order sent to VRS.
Directions to Pay Former Spouse	The order must specifically direct or order payment of the former spouse's share of the member's benefits directly to the former spouse.
Former Spouse's Portion	The order must clearly state the former spouse's share of the member's benefits. Refer to the Division of Benefits section for a discussion of benefit division calculations. Any division must result in a monthly benefit of at least $50 being paid to the member upon retirement.
Plan Identification	The order must specify the plan: • Virginia Retirement System • State Police Officers' Retirement System • Judicial Retirement System • Virginia Law Officers' Retirement System

[3] *Code of Virginia § 20-121.03.*

Limitations on the Order

There are limitations on what an ADRO can require. The order may not:

- Require VRS to pay any type of benefit or any option that is not provided under the plan.
- Require VRS to pay increased benefits.
- Require the payment of benefits that are required to be paid to another former spouse under another ADRO or a Qualified Domestic Relations Order.
- Require VRS to notify the former spouse of any change to the member's retirement benefits.
- Require VRS to pay any life insurance proceeds or refund of retirement contributions to anyone other than those beneficiaries named on the Designation of Beneficiary (VRS-2).
- Require the payment of benefits to the former spouse before the member retires, terminates covered employment and requests a refund, or dies and a refund is payable as a death benefit.
- Require the payment of benefits to the former spouse before the member's benefits are paid.
- Reference ERISA or Qualified Domestic Relations Orders. Any order that includes any of these requirements or that references ERISA will not be approved.

VRS Procedure for Reviewing Orders

VRS strongly suggests that the drafter of the order submit the draft to VRS for pre-approval before presenting a final version to a judge for entry. The official review procedure will be quicker and simpler if the order has been pre-approved by VRS.

When an Order is an ADRO

The following procedures occur when an order is an ADRO:

VRS Sends Letter of Acceptance

VRS sends a letter of acceptance to the person who submitted the order when VRS officially determines an order qualifies as an ADRO.

VRS Notes Member's Record

Once VRS receives an order that qualifies as an ADRO, VRS notes the member's record and the documents become part of the member's record. VRS cannot note the member's record until an order that qualifies as an ADRO is on file. VRS continues appropriate payments to a retired member until an ADRO is on file.

Monthly Benefit Paid if Member Retired

When the ADRO is on file, VRS notifies the member and the former spouse by letter of the monthly amount the former spouse will receive if the member is receiving a monthly benefit. VRS processes the monthly payment as ordered in the ADRO. The former spouse is required to complete withholding forms and the appropriate taxes are withheld each month.

Refund Paid if Refund Request Pending

VRS pays the former spouse a portion of the member's refund as ordered in the ADRO, subject to the appropriate tax withholding if the member has terminated service and applied for a refund of contributions and accumulated interest. The former spouse can roll over the pre-tax portion of the refund into an IRA.

Balance Paid Out from Defined Contribution Plan Accounts

VRS pays the former spouse a distribution from the member's defined contribution plan accounts as ordered in the ADRO. The distribution is taxable to the former spouse and not to the member.

When an Order is Not an ADRO

The following procedures occur when an order is not an ADRO:

VRS Sends Notification

VRS sends a letter to the person who submitted the order, informing the person of the specific reasons the order is not an ADRO.

Order Must Be Resubmitted

The ADRO must be rewritten and resubmitted until it conforms to VRS ADRO standards. VRS provides the specific reasons the order was not approved. Because VRS cannot pay any money to the former spouse until an ADRO is received by VRS, the drafter of the rejected order should ensure a new order is submitted as soon as possible. It is not the duty of VRS to assure a new, approved order is drafted.

Release of Member Account Information

VRS can provide information about a member's account if it receives the proper authorization. Proper authorization is one of the following:

1. The member's written request for information.

2. The member's written authorization to VRS to release information to someone other than the member.
3. A *subpoena duces tecum* directed to the Director of the Virginia Retirement System.

Information Provided

The following information is available with proper authorization:

1. Member's accumulated contribution account balance for the defined benefit plan and account balances for any defined contribution plans.
2. Benefit estimates through the separation date and/or an estimate assuming continuous covered employment through the member's retirement date.
3. Current beneficiary designations for payment of member retirement contributions and group life insurance.

Note: The Designation of Beneficiary (VRS-2) on file at the time of the member's death controls payment of life insurance proceeds or refundable contributions for the defined benefit plan. If a VRS member named the former spouse as a beneficiary during the marriage, the *Code of Virginia* automatically revokes that beneficiary designation upon divorce, unless the ADRO (or some other written agreement between the VRS member and the former spouse) specifies that the former spouse should remain the beneficiary for the receipt of death benefits. A separate beneficiary designation form is required for the defined contribution plan balances.

Present Value Information NOT Provided

VRS will not compute the present value of a member's retirement benefits under the defined benefit plan, nor will it serve as an expert witness with regard to retirement benefit valuation.

Division of Benefits

A court of competent jurisdiction determines if VRS benefits are to be divided and the method to be used. The division must be compatible with VRS ADRO requirements and the basic law contained in the *Code of Virginia*. VRS does not recommend or suggest a particular method or formula.

VRS cannot:

- Create a separate account for the former spouse.
- Divide a member's account into separate accounts representing service earned during the marriage and service earned before or after the marriage.

Former Spouse's Portion

A member of the VRS defined benefit plan has the option of receiving a retirement benefit during his or her lifetime only (Basic Benefit), or receiving a lesser benefit that provides for a benefit that continues to be paid to a survivor after the member's death.

The former spouse's share is calculated based on the option the member selects at retirement, which may or may not be the Basic Benefit. Refer to the latest edition of the VRS *Handbook for Members* or visit the VRS Web site at www.varetire.org for information on retirement benefit options for the defined benefit plan.

A member may select a retirement option ONLY when applying for retirement. Unless the former spouse is awarded a fixed dollar amount, the member's selection of a retirement option can have a significant effect on the former spouse's share of the benefit.

Example: The former spouse is awarded 40 percent of the monthly retirement benefit payable to the member.

Member Retires Under the Basic Benefit

- Member retires under the Basic Benefit receiving $2,000 per month.
- Former spouse receives 40 percent of $2,000 ($2,000 x .40 = $800 per month).

Member Retires Under a Survivor Option

- Member retires under a survivor option with someone other than the former spouse as the contingent annuitant.
- Member receives $1,000 per month instead of $2,000.
- Former spouse receives 40 percent of $1,000 ($1,000 x .40 = $400 per month).

Note: A fixed dollar amount ensures the stability of the former spouse's payment, but exercise caution in using this option. The maximum amount VRS will pay to a former spouse is $50.00 less than the full monthly benefit otherwise payable to the member. If the order provides for a fixed dollar amount that exceeds the funds available from the member's benefit, VRS will not be required to pay the full amount to the former spouse.

VRS *does* accept orders that set an overall cap on payments to the former spouse. For example, the former spouse could be awarded 25 percent of the member's monthly benefit until the former spouse has received $20,000. Payments to the former spouse would then cease.

An ADRO must *clearly* state the portion of the member's benefit that is being assigned to the former spouse. For example, the order may award the former spouse a monthly benefit in the amount of:

- A fixed dollar amount, such as $300.
- A percentage or a fraction of the member's benefits, such as 50 percent of the marital share.

Determining the Marital Share

An ADRO must tell VRS how to divide the member's retirement benefit if the member takes a refund of contributions and interest or if the member takes a monthly retirement benefit. The order need not award the former spouse the same portion in each type of distribution. Examples of acceptable awards to the former spouse:

- 45 percent of the member's monthly retirement benefit or 35 percent of the member's refund.
- 50 percent of the member's monthly retirement benefit, but no portion of a refund.

  Use the following fraction to calculate the marital share of a member's retirement benefits:

- Numerator is the member's total years and months of service credit accumulated during the marriage.
- Denominator is the member's total years and months of service credit at the date of retirement.

Example

Member's years of service during marriage: 25
Member's years of service at retirement date: 30

The order splits the marital share of the member's retirement benefits 50/50.

Calculate the marital share:

25 ÷ 30 = 83%

Calculate the former spouse's portion:

50% x 83% = 41.5%

The former spouse would receive 41.5 percent of each distribution to the member. The member's portion would be 58.5 percent.

Member Retires

If the member is to receive a monthly retirement benefit, the ADRO must specify how that retirement benefit will be divided. The former spouse cannot receive any money until the member actually retires. VRS cannot force a member who has reached retirement age to retire.

VRS views payments made to a former spouse as deductions from the member's benefit and not as a separate benefit payable to the former spouse. VRS cannot create a separate account for the former spouse.

The former spouse:

- Becomes a creditor of the member.
- Does not become a beneficiary or a member of VRS.
- Cannot choose an optional form of payment, such as a survivor option.

Prior Service Credit

A member may be eligible to purchase service credit for periods of service when no contributions were made to VRS or when contributions were refunded. Information about purchasing prior service credit is available in the *Handbook for Members* and on the VRS Web site at www.varetire.org. Because the formula for calculating a monthly retirement benefit is based on years of service credit and average final compensation, purchasing service credit increases the member's benefit.

A member's purchase of service credit, and the timing of any purchase (i.e., during the marriage, post-separation, or post-divorce) could cause a change in the former spouse's portion. Increasing the monthly benefit for the member increases the monthly benefit for the former spouse who was awarded a fraction, a percentage or part of the marital share of the member's benefit.

Unless otherwise specified by the ADRO, the former spouse's portion of the member's benefit will be calculated based on the member's total years of service credit, including any service purchased after the divorce.

- The ADRO should specify whether the purchased service credit will be added to the number of years of service accumulated during the marriage.
- The ADRO may specify the former spouse's share will be determined as if the member had not purchased the additional service credit.
- The ADRO may specify the former spouse will not benefit from any post-divorce purchase of prior service credit.

Partial Lump-Sum Option (PLOP)

The Partial Lump-Sum Option (PLOP) is a lump-sum distribution paid at the time of service retirement of up to three times the annual benefit amount if the member works the required number of years past becoming

eligible for an unreduced benefit. A member may elect to receive a PLOP only when applying for retirement. Please note that VRS will not accept an ADRO that requires a member to elect the PLOP option upon retirement. Information about the PLOP is available in the *Handbook for Members* and on the VRS Web site at www.varetire.org.

- The PLOP reduces the member's monthly benefit and can substantially affect the spouse's share of the monthly benefit unless the fixed dollar amount is awarded.
- The former spouse is responsible for all taxes on the portion received, including the 10 percent penalty, if applicable. Whether the 10 percent penalty is assessed depends on the age of the member.

Advance Pension Option

The Advance Pension Option (APO) temporarily increases the monthly benefit at retirement and the increase continues until the reduction age selected by the member, which usually coincides with the onset of Social Security benefits. Information about the APO is available in the Handbook for Members and on the VRS Web site at www.varetire.org.

If the APO is selected:

- The former spouse's share increases and decreases proportionately if it is a percentage, a fraction, or other part of the member's monthly benefit.
- The former spouse's share does not change if it is a fixed dollar amount.
- The member may not select a survivor option, so any benefits to the former spouse will cease upon the member's death.

Cost-of-Living Adjustments

Unless directed by an ADRO:

- A former spouse who receives a percentage, a fraction or part of the marital share of the member's monthly retirement benefit will receive a proportionate share of any cost-of-living adjustments (COLAs) awarded to the member.
- A former spouse who received a fixed dollar amount each month *will not* receive COLAs on the share of the member's benefit.

Working After Retirement

If the member stops receiving monthly payments, the former spouse stops receiving monthly payments. A retired member may NOT work in any job covered by VRS, SPORS, JRS, or VaLORS and at the same

time receive a monthly retirement benefit. Instead, the member's monthly benefit stops for the duration of the VRS-covered employment. Because the member is not receiving a benefit, the former spouse will not receive any payments during this period. The retired member may work in any job *not* covered by VRS, SPORS, JRS or VaLORS and continue to receive a monthly benefit.

When the member retires again, after having worked in a VRS-covered position, VRS calculates a new monthly benefit for the member based on the additional service credit and salary. The member must retire under the same option selected at the time of the original retirement. Payments to the former spouse resume when the member's benefit resumes.

The payments may change unless the former spouse was receiving a fixed dollar amount. The ADRO may specify the former spouse will receive the same monthly payment as when the member originally retired. Unless specified by the ADRO, the former spouse's share will be calculated based on the member's new monthly benefit.

If a member retires under disability retirement and later becomes able to work in a full-time position covered by VRS, the monthly benefit will cease. The disability retirement benefit also will stop if the member begins working in a position not covered by VRS and the duties are similar to those the member was previously found disabled to perform.

Member Requests Refund

A member *may*, but is not *required* to request a refund of member contributions after terminating employment in a VRS- covered position. The member may elect to keep the contributions with VRS. VRS cannot divide the member's account and will not pay the former spouse's share until the member requests and receives a refund.

When the member receives a refund, the former spouse loses any right to a future monthly benefit, regardless of whether the former spouse received any portion of the member's refund. If the member later returns to VRS-covered employment and retires, the former spouse will have no interest in the member's retirement benefits.

Only member contributions are refunded. VRS can determine the amount of a member's contributions and accumulated interest at the date of separation. The ADRO must specify the former spouse's share of the refund.

If the member is taking a refund, the ADRO:

- Must clearly state the former spouse's portion.
- May award a fixed dollar amount (Interest is not earned on the fixed dollar amount.)
- May award a percentage, a fraction or part of the marital share of the member's refund. The member's total years and months of service credit accumulated during the marriage should be submitted to VRS with the order.

A post-divorce purchase of prior service credit could affect how the marital share is calculated.

Member Dies

When an active member, an inactive member or a retired member who did not choose a survivor option dies, any remaining member contributions and interest are payable to the beneficiary or beneficiaries named on the Designation of Beneficiary (VRS-2). See the *Handbook for Members* or the VRS Web site at www.varetire.org for more information on death benefits.

The *Code of Virginia*[4] requires the payment of a deceased member's contributions and interest to the person or persons designated on the Designation of Beneficiary (VRS-2) on file with VRS on the date of the member's death. At the time of divorce, Virginia law revokes any revocable designation naming the former spouse as a beneficiary. If the former spouse is named as a beneficiary and the form does not post- date the divorce, Virginia law requires death benefits to be paid as if the former spouse had predeceased the member.

The ADRO can award the former spouse a fixed dollar amount, a percentage, a fraction or a part of the marital share of the refund.

Even if a court awarded the former spouse a share of the member's contributions, VRS cannot pay the former spouse unless the member designated the former spouse as a beneficiary for the return of contributions on the Designation of Beneficiary (VRS-2) after the date of the divorce.

The member may designate multiple beneficiaries. If no Designation of Beneficiary (VRS-2) is on file or the beneficiary has pre-deceased the member, VRS must pay the member's contributions in accordance with the order of precedence set forth in the *Code of Virginia*. VRS does not check beneficiary designations against any ADRO until the member dies.

VRS will not enforce or otherwise monitor any beneficiary designation specified in any

[4] *Code of Virginia § 51.1-162(A)*

agreement or in the judgment, decree or order terminating the marriage. If a member does not comply with the court order, then the member will be responsible for any legal fees and expenses that VRS incurs in connection with the member's non-compliance.

By statute, a refund of contributions and accumulated interest is the only death benefit payable to the former spouse. The former spouse is not eligible to receive an annuity upon the death of the member, including death in service from a cause compensable under Worker's Compensation.[5] VRS cannot accept an ADRO that awards death benefits to a former spouse other than a refund.

VRS does not wish to incur litigation costs to resolve any death benefit issues, nor would the former or current spouse want to incur such costs. Accordingly, VRS suggests the ADRO contain language ordering the member to file a beneficiary designation form that is consistent with the language and intent of the order.

Member Names Former Spouse as Contingent Annuitant

The court may order the member to choose a special survivor option at retirement, naming the former spouse as contingent annuitant.

[5] *Code of Virginia § 51.1-162*

The only way the former spouse can receive a monthly benefit after the member dies is for the member to select a survivor option when filing for retirement and name the former spouse as a contingent annuitant.

Although the divorce decree may require the member to choose a certain option and name the former spouse as a contingent annuitant, VRS cannot force a member to select a specific option, beneficiary or contingent annuitant. If VRS has a copy of the order on file when the retirement application is filed and the member does not conform to the order, VRS will notify the parties. First, VRS will notify the member about the failure to conform to the ADRO and, if the matter is not resolved at that time, VRS will notify the former spouse.

A member can name more than one contingent annuitant. If more than one is named, when VRS calculates the retirement benefit, it uses the age of the youngest contingent annuitant. If one of the contingent annuitants is significantly younger than the member and other contingent annuitants, the amount of the member's monthly benefit and the amount of the contingent annuitants' potential monthly benefits could be significantly reduced.

Former Spouse or Member Dies After Retirement

If the member has retired, the death of the member or the former spouse will affect the benefits payable to the survivor. The member or former spouse's death will have a different impact for different retirement options.

Former Spouse Dies First

If the former spouse dies before the member, the former spouse's right to any portion of the member's retirement benefits terminates and reverts to the member, and the member receives the full payment for life.

Member Dies First

Benefit	Condition	Payment
Basic, PLOP with Basic and APO		All payments to the former spouse will stop. If the member had not received monthly benefits greater than the amount of the member contributions and accumulated interest, VRS will refund the difference to the beneficiary named to receive a refund of member contributions. This beneficiary may or may not be the former spouse.
Survivor Option, PLOP with Survivor Option	Member did not name the former spouse as a contingent annuitant.	Payments to the former spouse will stop.
	Member named the former spouse as the only contingent annuitant.	Payments to the former spouse will continue in the amount that the member designated for the survivor option. For example, if the member chose a 65% survivor option, the former spouse receives an amount equal to 65% of the member's monthly payment.
	Member named the former spouse and there are other contingent annuitants.	An amount equal to the percentage of the member's monthly payment the member designated for the survivor option will be divided among all contingent annuitants in accordance with the ADRO.