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General Information on Divorce Benefits

This publication is not a legal reference and is not a complete statement of the laws or the Oregon Savings Growth Plan administrative rules. In any conflict between this and Oregon laws or administrative rules, the laws and administrative rules shall prevail.

Laws Pertaining to Divorce and 457 Deferred Compensation Benefits

The Oregon Savings Growth Plan, a 457 Deferred Compensation Plan, can pay benefits to an alternate payee according to *Oregon Revised Statutes (ORS) 243.507 and Oregon Administrative Rules (OAR) 459, Division 050*. These statutes and rules allow the Oregon Savings Growth Plan to pay an alternate payee that which would otherwise be paid to an eligible employee if, and to the extent, expressly provided for in the terms of any court decree of annulment, dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation. Any payment under this subsection to an alternate payee bars recovery by any other person.

Under *IRC section 457* a deferred compensation plan must receive copies of the final court documents that have been signed by a judge with proof of the decree being filed in court. The Oregon Savings Growth Plan office must approve the court documents as a Qualified Domestic Relations (QDRO) before separating funds or making payments to an alternate payee. A draft decree may be reviewed by the Oregon Savings Growth Plan for compliance prior to submission to a court.

The final court order or judgment must clearly specify the amount awarded to an alternate payee from the participant's deferred compensation account, and the language must be administrable under *ORS Chapter 243.507 and OAR Chapter 459, Division 050*. The final court order is subject to the requirements of the Internal Revenue Code and Oregon law.

ORS 243.507 allows the Oregon Savings Growth Plan to divide benefits and make distributions to the alternate payee. Distributions to an alternate payee may commence prior to the time a participant retires or terminates employment if early distribution is specifically stated in the decree of divorce or domestic relations order but must commence no later than the alternate payee's required beginning date of April the year following the year the alternate payee turns 70 ½ in accordance with *IRC 401(a)(9), ORS 243.507, and OAR Chapter 459, Division 050*. The alternate payee may elect to receive payment in any manner available to the employee under the deferred compensation plan without regard to the form of payment elected by the employee as long as the participant's severance from employment occurs before distribution begins.

Request for Information, Confidentiality, and Subpoenas

Prior to a divorce, participants and their legal representatives normally obtain information about the participant's current account value. This is often the basis for discussions of what assets are available for division and is used during the divorce proceedings to determine the alternate payee's award.

The Oregon Savings Growth Plan must receive a written release as defined in *OAR 459-050-0001* from the participant or the alternate payee to provide any person information pertaining to the deferred compensation account, beneficiary designations, distributions or award information contained in any draft or final court order on record. A written authorization to release information is valid indefinitely unless a specific end date is provided in the written statement. The only exception to receiving written authorization from the participant to provide information is if the Oregon Savings Growth Plan receives a subpoena.

Subpoenas should be made out to the State of Oregon, Deferred Compensation Program. **Subpoenas will not be accepted by FAX and the Oregon Savings Growth Plan requires at least three full business days to respond.** The Oregon Savings Growth Plan would prefer to provide written information in response to a subpoena as we have limited staff available to testify in a court setting.

Creating an Alternate Payee Account

OAR 459-050-0210 describes the segregation of an alternate payee's award from a participant's deferred compensation account and the maintenance of the alternate payee's account.

The QDRO should specify a date between January 1 and December 31 on which to calculate the award and segregate the alternate payee's award from the participant's deferred compensation account. If a date is not specified in the QDRO, the Oregon Savings Growth Plan shall use the date the QDRO was signed by the court to calculate and segregate the alternate payee's award from the participant's deferred compensation account.

The QDRO must specify a segregation of a specific percentage or dollar amount to be awarded to the alternate payee. The percentage or dollar amount awarded to the alternate payee shall be deposited into a separate account in the name and for the benefit of the alternate payee. Once an account has been established in the alternate payee's name, the alternate payee shall have the same rights and privileges as a participant concerning the investment of funds under the Oregon Savings Growth Plan. The alternate payee assumes the risk of the selected investments. The alternate payee's segregated account shall bear all fees and expenses as though the alternate payee were a participant.

Distribution of an Alternate Payee Account

As of January 1, 2008, the alternate payee may elect to begin receiving benefits prior to the participant's date of severance if early distribution is specifically stated in the decree of divorce or domestic relations order, under the provisions of the deferred compensation plan in accordance with *IRC 401(a)(9)*, *ORS 243.507*, and *OAR Chapter 459-05-0220*, but no later than April following the year the alternate payee turns age 70 1/2. The alternate payee must file an application for distribution at least 30 days prior to the requested date of the distribution

The alternate payee may elect to receive payment in any manner available to the participant under the Oregon Savings Growth Plan and *OAR 459-050-0080*, without regard to the form of

payment elected by the participant. Life expectancy of the alternate payee shall be used when the form of distribution elected by the alternate payee is based on a life expectancy factor.

Tax Liability

If the alternate payee is a spouse or former spouse, the alternate payee shall be solely responsible for the total amount of state and federal taxes at time of distribution of an alternate payee's account. If an alternate payee is someone other than the spouse or former spouse of the participant, the participant shall be solely responsible for the total amount of state and federal taxes at time of distribution of the alternate payee account.

The Oregon Savings Growth Plan recommends you refer all tax questions to the IRS, the Oregon Department of Revenue, or a qualified tax consultant.

Naming a Beneficiary

After a divorce, the participant and the alternate payee are separately responsible for filing any beneficiary designations or changes in beneficiary designations with the Oregon Savings Growth Plan. **A divorce shall not automatically revoke a beneficiary designation on file with the Oregon Savings Growth Plan that names the former spouse.** A participant's designation of beneficiary may be revoked or nullified by decree of divorce, decree of annulment, or other similar circumstance effective upon the entry of a judgment that revokes the designation of the beneficiary (*OAR 459-050-0060, ORS 243.401 – ORS 243.507, Ch. 285 OL 2005*). The participant or alternate payee is responsible for the filing and maintenance of all designations of beneficiary(s) to comply with any designation of beneficiary requirements in a QDRO. Benefits shall be awarded only to the designated beneficiary(s) on file with the Oregon Savings Growth Plan.

Administrative Fee

The Oregon Savings Growth Plan will charge an administrative fee not to exceed \$300 for expenses to establish a separate account for an alternate payee. The \$300 fee will be allocated between the participant and the alternate payee based on the fraction of the account received by the participant and alternate payee. The fee will be deducted from the deferred compensation account(s) after the accounts have been segregated per court order.

Additional Information

It is the responsibility of the participant, the alternate payee, or their attorney(s) to see that the Oregon Savings Growth Plan receives a filed copy of the court order. The Oregon Savings Growth Plan will not make retroactive payments to an alternate payee for any period of time between the date of divorce and the date the court order is received by the Oregon Savings Growth Plan.

The court order on file with the Oregon Savings Growth Plan will determine what benefits are available to the alternate payee. If the court order conflicts with provisions of *ORS 243.507* as amended in the future, the parties may be required to amend or modify the decree.

The Oregon Savings Growth Plan will not provide payroll or personnel records.

Both the participant and the alternate payee must keep the Oregon Savings Growth Plan informed of their current mailing addresses at all times. Notification of addresses must be signed and in writing.

A participant's account is not subject to garnishment for past due consumer credit bills or attorney fees.

The Oregon Savings Growth Plan is not responsible for contacting PERS or other public retirement plans. A separate court order must be sent to these entities if applicable.

Note: Any divorce awards involving the Public Employees Retirement System need to be mailed directly to:

**PERS: Divorce Unit
P.O. Box 23700
Tigard, OR 97281-3700**

Definitions:

Alternate payee - means a spouse, former spouse, child or other dependent of a participant.

Court - means any court of appropriate jurisdiction of this or any other state or of the District of Columbia.

Deferred Compensation Plan - means the deferred compensation plan provided for under *ORS 243.400 to 243.507*, and any other deferred compensation plan or program established by a public employer that satisfies the requirements of section 457 of the Internal Revenue Code of 1986 and amendments thereto.

Eligible employee - means an employee of a public employer who participates in a deferred compensation plan established by the public employer.

Public employer - means the state, one of its agencies, any city, county, municipal or public corporation, any political subdivision of the state or any instrumentality thereof, or any agency created by two or more such political subdivisions to provide themselves governmental services.

Web sites for additional information:

Oregon Revised Statutes (ORS) 243.507

<http://www.leg.state.or.us/ors/243.html>

Oregon Administrative Rules (OAR) 459, Division 50

http://arcweb.sos.state.or.us/rules/OARS_400/OAR_459/459_050.html

Oregon Savings Growth Plan

www.oregon.gov/PERS/OSGP.com