

## UFCW LOCAL ONE PENSION FUND

### QUALIFIED DOMESTIC RELATIONS ORDER PROCEDURES

Pursuant to Section 206(d) of the Employee Retirement Income Security Act of 1974, as amended and Section 414(p) of the Internal Revenue Code of 1986, as amended, the Board of Trustees of the UFCW Local One Pension Fund ("Fund") have adopted the following procedures for reviewing a Domestic Relations Order ("DRO") that may be entered with regard to benefits payable under the UFCW Local One Pension Plan ("Plan") and for determining whether any such DRO constitutes a Qualified Domestic Relations Order ("QDRO").

1. A DRO is an order entered by a court or court approval of a property settlement that relates to the provision of support, alimony payments, or marital property rights to an Alternate Payee and is made pursuant to a State domestic relations law.

An Alternate Payee means any spouse, former spouse, child, or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a Plan with respect to such Participant. To the extent provided in any Qualified Domestic Relations Order, the former spouse of a Participant may be treated as a surviving spouse of the Participant for purposes of the provision requiring a joint and survivor annuity and/or a pre-retirement survivor annuity if the former spouse and Participant were married for at least one year as of the date of divorce.

2. Upon receipt of a DRO, the Fund will send the Participant and the Alternate Payee a notice stating that it has received the DRO and will provide a copy of these procedures.
3. The Fund will next determine the "qualified" status of the DRO. For the DRO to be considered a QDRO, the DRO must meet the following requirements:
  - a. The DRO must indicate the name and last known mailing address (if any) of the Participant. The Fund will consider the "address" requirement met if the identity of the Participant is sufficiently clear and the Fund has reason to know the Participant's current address.
  - b. The DRO must indicate the name and mailing address of the Alternate Payee(s). The Fund will consider the "address" requirement met if the identity of the Alternate Payee is sufficiently clear and the Fund has reason to know the Alternate Payee's current address.
  - c. The DRO must indicate the amount of the benefit to be paid to the Alternate Payee. This requirement may be met by: (1) specifying a fixed amount; (2) specifying a percentage of the Participant's benefit; or (3) providing a formula by which the Fund can determine the amount due the Alternate Payee at any given time.
  - d. The DRO must state when the Alternate Payee's benefits will commence. Under the Plan, the Alternate Payee's benefits may commence on or after

the Participant attains the earliest retirement date under the Plan or such later date as the Alternate Payee may elect.

- e. The DRO must indicate the period of time for which the DRO will remain in effect. This requirement can be met by specifying: (1) a specific time period (e.g., "for 24 months" or "for the Alternate Payee's lifetime"); (2) the total amount to be paid over time (e.g., "until \$\_\_\_ has been paid"); (3) a particular form of payment (e.g., a single life annuity); or (4) an indefinite duration (e.g., "until further order of court").
- f. The DRO must correctly identify the Fund as the fund to which the Order applies.

4. If the DRO requires any of the following, the DRO is not a QDRO:

- a. The DRO cannot require the Fund to provide any type of benefit or form of benefit that is not otherwise provided for under the Plan.

A QDRO can allow the Alternate Payee to elect any form of payment allowed under the Plan based on his/her lifetime, except the Alternate Payee may not elect to receive a benefit in the form of a joint and survivor benefit with a subsequent spouse.

A QDRO also may require payment of a benefit to an Alternate Payee while the Participant is still in employment covered by the Plan as long as it requires payments to the Alternate Payee no earlier than the date of the Participant's earliest retirement age under the Plan.

A DRO that is entered after the death of the Participant whose benefit is subject to the DRO cannot be a QDRO.

- b. The DRO cannot require the Fund to provide a larger benefit than it would otherwise provide under the Plan. For purposes of this requirement, benefits that are actuarially equivalent are considered to be equal.
- c. If there is another DRO previously determined to be a QDRO, under which the Fund must pay another Alternate Payee, the two Orders cannot require the Fund to pay more than 100% of the Participant's benefit.

5. If the DRO satisfies these requirements, the DRO will be determined to be a QDRO and the Fund will notify the Participant and the Alternate Payee (or their designated representatives) of this determination and of the action taken. If the DRO is determined *not* to be a QDRO, the Fund will notify both the Participant and the Alternate Payee (or their designated representatives) of this determination.

6. In the event that the Fund receives a court-entered DRO pertaining to a Participant that is in pay status at the time of receipt, the Fund will withhold and separately account from the Participant's benefit the amounts awarded to the Alternate Payee in the DRO for up to 18 months pending determination of the "qualified" status of the DRO. However, the Fund will only withhold and separately account for amounts that can be reasonably ascertained from the DRO. The Participant and the

Alternate Payee will be advised of this action on the initial notice under Section 2 of these procedures. If the DRO is determined to be a QDRO, the withheld amounts will be released to the Alternate Payee upon the determination that it is a QDRO and completion of any necessary application process.

If the DRO is determined *not* to be a QDRO and the Alternate Payee would be entitled to receive benefits immediately if the DRO were a QDRO, the Fund will continue to withhold the Alternate Payee's portion of the Participant's benefit for up to 60 days after the date of the notice to the parties that the DRO is not qualified. If, within this 60-day period, the parties submit a revised DRO and the Fund determines that it is qualified, the withheld amounts will be released to the Alternate Payee upon the determination that it is a QDRO. If the parties do not submit a revised DRO within the 60-day period or submit a DRO that is determined not to be qualified, the withheld amounts will be released to the Participant upon the earlier of (1) the date the subsequent DRO is determined not to be a QDRO or (2) the expiration of the 60-day period.

If the qualified status of a DRO has *not* been determined within 18 months of the Fund's receipt of the original DRO, then any amounts withheld pursuant to this Section will be released to the Participant.

7. If a modified DRO is received by the Fund after the periods described in Section 6 expire, the Fund will send the Participant and the Alternate Payee a notice of the receipt of such order and will proceed in accordance with these procedures (starting with Section 2 above).
8.
  - a. If the Alternate Payee dies before his/her benefits commence, the QDRO will have no effect and benefits will revert to the Participant, unless a successor Alternate Payee is designated in a QDRO.
  - b. If the QDRO awards the Alternate Payee the right to elect any form of payment allowed under the Plan based on his or her life expectancy, the Participant's death after the DRO is determined to be a QDRO by the Fund will not affect the Alternate Payee's benefit. If the Alternate Payee is awarded a share of the Participant's monthly benefit for as long as the Participant receives it, the Participant's death after the DRO is entered and determined to be a QDRO will terminate the Alternate Payee's benefit unless the QDRO provides otherwise.
  - c. If the Alternate Payee dies after his/her benefits commence in the form based on his or her life expectancy, the Alternate Payee's benefit will not revert to the Participant. If the Alternate Payee dies after his/her benefits commence as a share of the Participant's monthly benefit for as long as the Participant receives it, the Alternate Payee's benefit will revert to the Participant unless the QDRO provides otherwise.
1. In order to commence receiving benefits after a DRO has been entered by a court and qualified by the Fund, the Alternate Payee must notify the Fund of the request to commence benefits and must complete any necessary application forms and supply any documents requested by the Fund.

2. Upon request, the Fund will review a proposed domestic relations order to determine whether the proposed order would meet the requirements of a QDRO if entered or approved by a court. Following review, the Fund will notify the Participant and the Alternate Payee (or their designated representatives) of its determination.
  
11. The Fund will not review the reasonableness of the allocation of the Participant's benefit under the QDRO. Further, the Fund does not make any determination as to the validity of the underlying domestic relations proceeding or its compliance with the applicable state domestic relations law.

**PLEASE BE ADVISED THAT THESE PROVISIONS PROVIDE ONLY A SUGGESTED FRAMEWORK FOR YOUR ORDER. YOU MUST DRAFT YOUR ORDER TO ACCURATELY REFLECT YOUR CLIENT'S INTERESTS AS OUTLINED IN THE PARTIES' JUDGMENT OF DIVORCE.**

STATE OF NEW YORK  
SUPREME COURT: County of

Plaintiff:

vs.

**QUALIFIED DOMESTIC  
RELATIONS ORDER**

Defendant:

**IT IS HEREBY ORDERED AS FOLLOWS:**

**1. Effect of this Order as a Qualified Domestic Relations Order:**

(a) 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 of 1974 ("ERISA") and Section 414(p) of the Internal Revenue Code of 1986 ("Code").

(b) This QDRO is granted in accordance with Section 236(B) of the New York State Domestic Relations Law, which relates to marital property rights, child support, and/or spousal support between spouses and former spouses in matrimonial actions. This Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employee sponsored defined benefit pension plan that is qualified under Section 401 of the Code.

(c) This is a "separate interest" order.

**2. Identification of Plan:**

(a) This Order applies to benefits under the UFCW Local One Pension Fund ("Plan"). Any successor plan to the Plan or any other plans, to which liability for the provision of the Participant's benefits described below is incurred, shall also be subject to the terms of this Order.

(b) Any change in Plan Administrator, Plan Sponsor or name of the Plan shall not affect the Alternate Payee's rights as stipulated under this Order.

**3. Identification of Participant and Alternate Payee:**

(a) **PARTICIPANT:** The name, last known address, social security number and date of birth of the plan participant are:

NAME: ("Participant")

ADDRESS:

SOCIAL SECURITY NUMBER:

BIRTH DATE:

(b) **ALTERNATE PAYEE:** The name, last known address, social security number and date

of birth of the Alternate Payee are:

NAME: ("Alternate Payee")

ADDRESS:

SOCIAL SECURITY NUMBER:

BIRTH DATE:

The Alternate Payee shall have the duty to notify the Plan Administrator in writing of any changes in mailing address subsequent to the entry of this Order.

(c) Participant and Alternate Payee were married on \_\_\_\_\_, \_\_\_\_\_

#### **4. Benefit to be Paid to Alternate Payee:**

a.) **BENEFIT CALCULATION:** The Alternate Payee is assigned a separate interest of \_\_\_\_\_% of the Participant's benefits under the Plan accrued \_\_\_\_\_ [insert date or event]. (Note: The Alternate Payee's benefit may be expressed as (1) a fixed dollar amount; (2) a percentage of the Participant's benefit; or (3) a formula. The Alternate Payee's benefit may not exceed the total benefit amount payable on behalf of the Participant under the Plan.)

b.) **FORM OF BENEFIT:** The Plan is hereby ordered to pay directly to Alternate Payee as a separate interest the actuarial equivalent of the amount set forth in Paragraph (a). The Alternate Payee may elect to receive his/her benefit in any form allowable under the Plan, except for a joint and survivor annuity with a subsequent spouse. The Alternate Payee's benefit will be actuarially adjusted in amount to reflect payment for the Alternate Payee's lifetime, early or late payment if applicable and any special form of benefit elected.

c.) **COMMENCEMENT OF BENEFIT PAYMENTS TO ALTERNATE PAYEE:** The Alternate Payee's benefit shall commence on the Alternate Payee's request on or after the Participant's attainment of the earliest retirement age) under the Plan [or such later date as the parties elect], but not later than the date the Plan requires benefits to commence.

d.) **DURATION OF BENEFIT PAYMENTS TO ALTERNATE PAYEE:** The payments which are required to be made to the Alternate Payee are based on actuarial factors relating to the life expectancy of Alternate Payee.

##### **1.) Death of Participant.**

The death of Participant after entry of this Order shall have no effect on the payment of the benefit assigned by this Order to Alternate Payee. The assigned payment will be for the life of the Alternate Payee.

If the Participant dies before the Alternate Payee's benefits are in permanent pay status, the Alternate Payee shall be deemed to have elected to begin her benefit on the day before the Participant died, payable from the earliest date permitted under the Plan. (In the alternative, the parties may elect to insert the following language: If the Participant dies before either party begins to receive a benefit under the Plan, or while the Participant is receiving a disability pension, the Alternate Payee will be treated as the Participant's surviving spouse for purposes of the pre-retirement survivor annuity based on \_\_\_\_\_ [insert

percentage, formula or fixed dollar amount of the Participant's benefit that will be the basis for calculating the Alternate Payee's share of the pre-retirement survivor annuity. For example: "based on the Participant's benefit accrued as of January 1, 2001."] This benefit will be payable in lieu of the benefit described under Section 4(a)).

2.) *Death of Alternate Payee before benefits are in pay status.*

In the event of the death of Alternate Payee before he/she has begun to receive benefits, the Alternate Payee's benefit shall revert to the Participant. (Note: In the alternative, the Alternate Payee may name a contingent Alternate Payee to receive her benefits. A contingent Alternate Payee may only be a spouse, former spouse, child or other dependant of the Participant.)

3.) *Death of Alternate Payee after benefits are in pay status.*

In the event of the death of Alternate Payee after he/she has begun to receive benefits, any remaining benefit shall be paid in accordance with the optional form of benefit that the Alternate Payee elected.

e.) **DISABILITY PENSION:** If the Participant begins to receive a monthly Disability Pension benefit under the Plan, the Alternate Payee shall be entitled to a share of each such monthly payment. Such share shall equal the percentage of the marital portion of such pension already established in Section (a).

The payment of such share to the Alternate Payee shall begin at the same time that the Participant begins to receive the Disability Pension, after proper application by the Alternate Payee, and shall stop with the last payment just before the earlier of:

- 1.) the cessation of the payment of the Disability Pension to the Participant;
- 2.) the death of the Alternate Payee; and
- 3.) the election of the Alternate Payee to begin his/her benefit on a permanent basis under Section 4(c) of the Order.

If the Alternate Payee elects to begin receiving his/her benefit on a permanent basis while the Participant is receiving a Disability Pension benefit under the Plan, the calculation of the Alternate Payee's benefit will be made without regard to the Participant's eligibility for a Disability Pension.

**5. Savings Clause:**

This Order is not intended and shall not be construed in such a manner as to require the Plan:

- (a) to provide any type or form of benefit, or any option, not otherwise provided under the terms of the Plan;
- (b) to provide increased benefits determined on the basis of actuarial value; or
- (c) to require the payment of any benefits to the Alternate Payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

**6. Certification of Necessary Information:**

All payments made pursuant to this Order shall be conditioned on the certification by the

Alternate Payee and the Participant to the Plan Administrator of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.

**7. Continued Qualified Status of Order:**

It is the intention of the parties that the QDRO continue to qualify as a QDRO under Section 414 (p) of the Internal Revenue Code, as it may be amended from time to time, and that the Plan Administrator shall reserve the right to re-confirm the qualified status of the Order at the time benefits become payable hereunder.

**8. Continued Jurisdiction:**

The Court shall retain jurisdiction with respect to this Order to the extent required to maintain its qualified status and the original intent of the parties as stipulated herein.

**9. Effect of Plan Termination:**

In the event that the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), the Alternate Payee's benefits, as stipulated herein, shall also be guaranteed to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed by the PBGC.

**10. Effect of Plan Reorganization:**

In the event that the Plan enters Reorganization Status, as that term is defined in Section 418 of the Internal Revenue Code, and benefits must be reduced, the Alternate Payee's benefit will be reduced in the same proportion as the reduction in the combined benefits payable to both the Participant and the Alternate Payee.

**11. Overpayments:**

In the event that the Plan Administrator determines that an overpayment has been made to the Participant and/or the Alternate Payee for any reason and the parties cannot come to an agreement regarding their respective liability toward the Plan's recoupment of such overpayments, the parties agree that the Plan may recover the full amount of any overpayment from either party and the Court shall reserve jurisdiction regarding the subsequent allocation of such repayments to the Plan between the Participant and Alternate Payee.

**12. Authority of Plan's Board of Trustees:**

The Board of Trustees shall have full and final discretionary authority to implement and interpret this Order, including any uncertain or ambiguous terms, in order to comply with the terms of the Plan and all legal requirements.

**13. Service of Order and Qualification Determination:**

A certified copy of this Order shall be served upon the Board of Trustees by counsel of record forthwith. The Board of Trustees shall, within a reasonable time after receipt of this Order, determine whether this Order is a QDRO and shall so notify the Participant, the Alternate Payee and their respective counsel.

IT IS SO ORDERED:

DATE: \_\_\_\_\_

\_\_\_\_\_  
*JUDGE*

**PLEASE BE ADVISED THAT THESE PROVISIONS PROVIDE ONLY A SUGGESTED FRAMEWORK FOR YOUR ORDER. YOU MUST DRAFT YOUR ORDER TO ACCURATELY REFLECT YOUR CLIENT'S INTERESTS AS OUTLINED IN THE PARTIES' JUDGMENT OF DIVORCE.**

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(a) 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 of 1974 ("ERISA") and Section 414(p) of the Internal Revenue Code of 1986 ("Code").

(b) This QDRO is granted in accordance with Section 236(B) of the New York State Domestic Relations Law, which relates to marital property rights, child support, and/or spousal support between spouses and former spouses in matrimonial actions. This Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employee sponsored defined benefit pension plan that is qualified under Section 401 of the Code.

(c) This is a "shared payment" order

**2. Identification of Plan:**

(a) This Order applies to benefits under the UFCW Local One Pension Fund ("Plan"). Any successor plan to the Plan or any other plans, to which liability for the provision of the Participant's benefits described below is incurred, shall also be subject to the terms of this Order.

(b) Any change in Plan Administrator, Plan Sponsor or name of the Plan shall not affect the Alternate Payee's rights as stipulated under this Order.

**3. Identification of Participant and Alternate Payee:**

(a) **PARTICIPANT:** The name, last known address, social security number and date of birth of the plan participant are:

NAME: ("Participant")  
ADDRESS:  
SOCIAL SECURITY NUMBER:  
BIRTH DATE:

(b) **ALTERNATE PAYEE:** The name, last known address, social security number and date of birth of the Alternate Payee are:

NAME: \_\_\_\_\_ (“Alternate Payee”)  
ADDRESS: \_\_\_\_\_  
SOCIAL SECURITY NUMBER: \_\_\_\_\_  
BIRTH DATE: \_\_\_\_\_

The Alternate Payee shall have the duty to notify the plan administrator in writing of any changes in mailing address subsequent to the entry of this Order.

(c) Participant and Alternate Payee were married on \_\_\_\_\_, \_\_\_\_\_

**4. Benefit to be Paid to Alternate Payee:**

a.) **BENEFIT CALCULATION:** The Alternate is assigned a share of \_\_\_\_\_% of the Participant’s monthly pension payment based on his accrued benefit as of \_\_\_\_\_ [insert date or event]. (Note: the Alternate Payee’s share may be expressed as: (1) a fixed dollar amount; (2) a percentage of the Participant’s monthly benefit; or (3) a formula. The Alternate Payee’s share may not exceed the total benefit amount payable on behalf of the Participant under the Plan.)

b.) **COMMENCEMENT OF BENEFIT PAYMENTS TO ALTERNATE PAYEE:** The Alternate Payee’s benefit shall commence on the Alternate Payee’s request upon the Participant’s commencement of benefits under the Plan.

c.) **DURATION OF BENEFIT PAYMENTS TO ALTERNATE PAYEE:** The Alternate Payee will continue to receive benefits under Section 4(a) until [insert date or event]. (Note: The Alternate Payee’s benefits under Section 4(a) must cease upon the earlier of his/her death or the Participant’s death.) No payment shall be made to the Alternate Payee for any month for which no payment is made to the Participant.

**5. Death of Alternate Payee.**

Upon the death of Alternate Payee, his/her benefit shall revert to the Participant.

**6. Surviving Spouse Benefits (OPTIONAL):**

If the Participant dies before either party begins to receive a benefit under the Plan, or while the Participant is receiving a disability pension, the Alternate Payee will be treated as the Participant’s surviving spouse for purposes of the pre-retirement survivor annuity based on \_\_\_\_\_ [insert percentage, formula or fixed dollar amount of the Participant’s benefit that will be the basis for calculating the Alternate Payee’s share of the pre-retirement survivor annuity. For example: “based on the Participant’s benefit accrued as of January 1, 2001.”] This benefit will be payable in lieu of the benefit described under Section 4(a).

If the Participant dies after he/she has begun to receive a permanent benefit under the Plan, the Alternate Payee will be treated as the Participant’s surviving spouse for purposes of the 50% post-retirement joint and survivor annuity under the Plan based on \_\_\_\_\_ [see above explanation]. Consequently, the Participant must elect to receive a part of his benefits in the form of

a 50% joint and survivor annuity with the Alternate Payee as his surviving spouse to ensure that the Alternate Payee will receive the benefit described in this section of the Order after the post-retirement death of the Participant.

(Note: the assignment to the Alternate Payee of the pre-retirement and/or post-retirement survivor annuity payable on the Participant's behalf is optional.)

**7. Savings Clause:**

This Order is not intended and shall not be construed in such a manner as to require the Plan:  
(a) to provide any type or form of benefit, or any option, not otherwise provided under the Plan;

(b) to provide increased benefits determined on the basis of actuarial value; or

(c) to require the payment of any benefits to the Alternate Payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

**8. Certification of Necessary Information:**

All payments made pursuant to this Order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan Administrator of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.

**9. Continued Qualified Status of Order:**

It is the intention of the parties that this QDRO continue to qualify as a QDRO under Section 414 (p) of the Internal Revenue Code, as it may be amended from time to time, and that the Plan Administrator shall reserve the right to re-confirm the qualified status of the Order at the time benefits become payable hereunder.

**10. Continued Jurisdiction:**

The Court shall retain jurisdiction with respect to this Order to the extent required to maintain its qualified status and the original intent of the parties as stipulated herein.

**11. Effect of Plan Termination:**

In the event that the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), the Alternate Payee's benefits, as stipulated herein, shall also be guaranteed to the same extent in accordance with the Plan's rules and applicable law.

**12. Effect of Plan Reorganization:**

In the event that the Plan enters Reorganization Status, as that term is defined in Section 418 of the Internal Revenue Code, and benefits must be reduced, the Alternate Payee's benefit will be reduced in the same proportion as the reduction in the combined benefits payable to both the Participant and the Alternate Payee.

**13. Overpayments:**

In the event that the Plan Administrator determines that an overpayment has been made to the Participant and/or the Alternate Payee for any reason and the parties cannot come to an

agreement regarding their respective liability toward the Plan's recoupment of such overpayments, the parties agree that the Plan may recover the full amount of the overpayment from either party and the Court shall reserve jurisdiction regarding the subsequent allocation of such repayments to the Plan between the Participant and Alternate Payee.

**14. Authority of Plan's Board of Trustees:**

The Board of Trustees shall have full and final discretionary authority to implement and interpret this Order, including any uncertain or ambiguous terms, in order to comply with the terms of the Plan and all legal requirements.

**15. Service of Order and Qualification Determination:**

A certified copy of this Order shall be served upon the Board of Trustees by counsel of record forthwith. The Board of Trustees shall, within a reasonable time after receipt of this Order, determine whether this Order is a QDRO and shall so notify the Participant, the Alternate Payee and their respective Counsel.

IT IS SO ORDERED:

DATE: \_\_\_\_\_

\_\_\_\_\_  
*JUDGE*