

**EXCAVATING AND BUILDING MATERIAL DRIVERS UNION
LOCAL 436 PENSION FUND
DOMESTIC RELATIONS ORDER PROCEDURES**

Section I. Introduction

The goal of these Procedures is to provide information to Participants and to enable those drafting domestic relations orders (“Orders”) to do so as efficiently as possible, so as to minimize the time and expense of preparing and qualifying Orders. These Procedures include model Orders that have been prepared by the Plan Administrator to facilitate Order drafting.

The following Procedures have been adopted and amended with respect to domestic relations orders received by the Excavating and Building Material Drivers Union Local 436 Pension Fund (the “Plan”). These Procedures shall be effective for domestic relations orders received on or after December 1, 2016. The Plan, at its sole discretion, may treat a domestic relations order received before December 1, 2016, as a Qualified Domestic Relations Order (“QDRO”) covered by these Procedures and may waive one or more of the requirements set out in the provisions below.

A. These procedures cover the following Plan:

1. Excavating and Building Material Drivers Union Local 436 Pension Fund

B. Use of Terms:

1. The term “Plan”, as used in these Procedures, refers to the Plan described above.
2. The term “Participant”, as used in these Procedures, refers to a Participant in the Plan described above.
3. The term “Alternate Payee”, as used in these Procedures, refers to a spouse, former spouse, child or other dependent of a Participant who is awarded a portion of the Participant’s Plan benefits under a domestic relations order.
4. The term “Order”, as used in these Procedures, refers to a “domestic relations order”, which is any judgment, decree or order (including approval of a property settlement agreement) which: (i) relates to the provision of child support, alimony payments or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a Participant, and (ii) is made pursuant to a state domestic relations law (including a community property law).
5. The term “QDRO”, as used in these Procedures, refers to a Qualified Domestic Relations Order, which is a domestic relations order that 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 a Plan and which meets the requirements set out in these Procedures.

6. The term “Plan Administrator”, as used in these Procedures, refers to the Board of Trustees, acting in its capacity as Plan Administrator to the Plan described above.

Section II. QDRO Basics

- A. Generally, there are two types of Orders – “shared interest” and “separate interest.”
 1. A “**shared interest**” Order provides that the Alternate Payee will receive a portion of each payment from the Plan that the Participant receives. Payments may be paid to the Alternate Payee for as long as payments are made to the Participant or for some shorter amount of time, (i.e. until a dependent reaches maturity or until a spouse remarries). Once the Participant stops receiving payments, the Alternate Payee will no longer receive any payments. This is a very simple Order to prepare and administer. However, a shared interest Order does limit all benefit options (form of payment, death benefit, benefit commencement date, etc.) to those selected by the Participant. The Alternate Payee is unable to make choices inconsistent with those made by the Participant. **Also, if the Order is being entered for a Participant already in pay status, this is the only acceptable form of Order.**
 2. A “**separate interest**” Order, on the other hand, creates a separate definable interest on behalf of the Alternate Payee. A separate interest Order gives the drafting attorney more options for designing the form of benefit payable to the Alternate Payee. Under a separate interest Order, the Order may direct that the Alternate Payee receive his or her benefit under any form of benefit payable under the plan, other than a joint and survivor annuity, for the life of the Alternate Payee. Upon the Alternate Payee’s death after he/she is in pay status, the benefits to the Alternate Payee cease with no reversion of benefits to the Participant.
- B. As noted above, these procedures govern the Excavating and Building Material Drivers Union Local 436 Pension Fund. The Plan is a defined benefit plan, which is a plan that promises to pay a stated benefit to a Participant at a given age; the Plan has no individual accounts, and the risk of investment gains or losses rests with the Plan.
- C. In preparing QDROs, it is important that you bear in mind the type of plan or plans for which you are drafting the Order. For example, some plans may not offer life annuity or lump sum options. You would not want to present an Order for qualification requiring that plan to pay a life annuity or a lump sum benefit to an Alternate Payee to a plan that does not have those as distribution options. Such restrictions are incorporated into the model Orders that accompany these procedures. This is one of the reasons that we strongly suggest you utilize the format of the form Orders in preparing your Order for submission.

Section III. Drafting Orders

- A. You should carefully review these Procedures and the accompanying form Orders before you begin drafting an Order.
- B. The law sets forth some specific requirements for Orders to be considered QDROs. Your Order cannot be a QDRO unless it –

1. Is a judgment, decree or order (including approval of a property settlement agreement) signed by a court under a state domestic relations law. (NOTE: If a divorce decree and/or a property settlement is issued by a court separately from the Order, the Plan Administrator requires that copies of any such decrees or settlement agreements be forwarded to the Plan Administrator to assist in the review and interpretation of the Order).
2. 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. (NOTE: only a Participant's benefits may be divided pursuant to a QDRO. Beneficiaries' and Alternate Payees' awards are not subject to division by a QDRO).
3. Clearly specifies:
 - i. The name of the Plan to which the Order relates which is the Excavating and Building Material Drivers Union Local 436 Pension Fund. A combined order cannot be submitted for multiple plans.
 - ii. The date of marriage, date of divorce and date of division of funds;
 - iii. The name, social security number, date of birth, and last known mailing address of the Participant;
 - iv. The name, social security number, date of birth, and last known mailing address of the Alternate Payee;
 - v. The amount of percentage of benefits to be paid to the Alternate Payee covered by the Order, and the manner in which such amount or percentage is to be determined;
 - vi. The number of payments or the period to which the Order applies;
 - vii. The fact that the Alternate Payee will be responsible for all taxes on the benefit distributed to the Alternate Payee;
 - viii. The Participant is designated as constructive trustee for any payments owed to the Alternate Payee but inadvertently paid to the Participant and the Participant is responsible for payment directly to the Alternate Payee. The Alternate Payee is designated as constructive trustee for any payments owed to the Participant but inadvertently paid to the Alternate Payee and the Alternate Payee is responsible for payment directly to the Participant; and
 - ix. That in no event shall the Plan be required to provide any type of form or benefit or any option not otherwise provided for under the Plan, and that the Alternate Payee shall not be permitted to name a subsequent spouse as a survivor annuitant with respect to an annuity form of benefit under the Plan.

C. All of these requirements are satisfied by the attached forms. The Plan Administrator encourages all parties to utilize the form Orders whenever possible. Failure or refusal to utilize the format of the attached forms will result in significantly delayed processing of Orders. Orders that do not

follow the form Order format must undergo a detailed review prior to qualification. The law gives a Plan Administrator eighteen months following receipt of an Order to determine its qualified status. The Plan will require most – if not all – of this period to review orders that do not follow the format of one of the attached form Orders.

- D. Processing Orders and determining whether they are QDROs is a significant expense for the Plan. One of the reasons the Plan Administrator has prepared the attached form Orders is to minimize this expense. If you fail to utilize one of the form Orders, you are causing the Plan to incur significant additional expense.

Section IV. Procedures upon Notification of Pending Domestic Relations Order

- A. Upon receipt by the Plan Administrator of notice by a Plan participant, a prospective Alternate Payee, or the attorney of either party that the Participant is a party to any matter that may result in entry of a QDRO directed to the Plan covered by these procedures, the Plan Administrator will flag that Participant's benefit file.

Once the Plan Administrator receives an Order, as defined above, and if benefits are in pay status, the Plan Administrator will begin holding a portion of the Participant's benefit necessary to satisfy the Order if it is determined to be QDRO. The Plan Administrator, within a reasonable period of time not to exceed eighteen (18) months from the date payments are due to commence under the Order, shall determine whether the Order is qualified and shall notify the Participant and Alternate Payee of its determination. The amounts withheld during this period shall be separately accounted for.

In the event that the Plan Administrator determines that the Order is not qualified, it will provide an explanation of the deficiencies to the Participant and the Alternate Payee. If, within the 18-month period described above the Plan Administrator determines that the Order is not qualified or the issue is not yet resolved, the Plan shall pay the withheld amounts to the person or persons who would have been entitled to them had there been no Order. If any Order is determined to be qualified within the 18-month period, the Plan Administrator shall pay the segregated amounts to the Alternate Payee. Any Order that is determined to be a QDRO after the expiration of the 18-month period shall be applied prospectively only. Note that in no case will the Plan Administrator qualify an Order that calls for payment of retroactive benefits.

- B. Notice that a Participant is a party to a matter that may result in entry of an Order must be provided *in writing* to the Plan Administrator by delivering such notice to the attention of the:

Excavating and Building Material Drivers Union Local 436 Pension Fund
6051 Carey Drive
Cleveland, Ohio 44125

- C. If a hold has been placed on the Plan Participant's benefits as provided above, the Participant will be notified by the Plan Administrator (or third party record keeper, if applicable) within a reasonable period of time. The hold may be eliminated by either: (i) a written, signed and notarized, agreement between the Participant and prospective Alternate Payee (unless an Order has been

issued by a court that would prohibit such an agreement without court approval) or (ii) an additional Order (including a divorce decree) from the court having jurisdiction over the matter.

Section V. Procedures Upon Receipt of a Domestic Relations Order

- A. Upon receipt of an Order purporting to divide Plan benefits and under a state domestic relations law relating to the division of marital property or the payment of child support or alimony, the Plan Administrator will promptly notify the Participant and the Alternate Payee named in the Order at the address provided in the Order that the Plan Administrator has received the Order and is reviewing such to determine whether it is a Qualified Domestic Relations Order (“QDRO”) within the meaning of section 414(p) of the Internal Revenue Code of 1986, as amended (the “Code”) and the Retirement Equity Act of 1984 (the “Act”). The notice will advise the Participant, the Alternate Payee, the attorneys for both parties, and any representatives designated in writing by the Participant or Alternate Payee of the receipt of the Order and any additional documentation that is needed for qualification of the Order.
- B. Upon receipt of an Order, or upon request, the Plan Administrator will advise the Participant and the Alternate Payee that, in order to be a QDRO, the Order must satisfy the requirements of section 414(p) of the Code and the Act before the Plan Administrator is obligated to comply with its terms.

Section VI. Interpretation Guidelines

These guidelines are to inform you of the manner in which the Plan Administrator for the Plan will interpret certain language in Orders, unless there is specific language to the contrary. Of course, we cannot anticipate every situation that will arise. You should remember that, if an Order is ambiguous, the Plan documents give the Plan Administrator the final authority to interpret and construe the Order. In order to avoid such ambiguities, we strongly recommend that you utilize the format of the form Orders included with these procedures.

- A. Unless the Order specifically provides otherwise:
1. In the event of the death of the Alternate Payee *prior to benefit commencement*, no benefit shall be payable to the Alternate Payee’s estate or any other entity or individual and the amounts awarded to the Alternate Payee under the Order will revert to the Participant. If an Alternate payee dies *after benefit commencement*, payment to the Alternate Payee will cease upon his or her death.
 2. In the event of the death of the Participant *prior to benefit commencement*, assuming a QDRO is entered prior to the Participant’s death, the Alternate Payee shall be treated as the surviving spouse of the Participant for purposes of 29 U.S.C § 1055, and as meeting the requirements of 29 U.S.C. § 1055(f), but only with respect the benefits assigned under the QDRO.
- B. The Order must not increase the Participant’s benefits or modify the terms of the Plan relating to the Payment of the Participant’s benefits.

- C. If the Plan Administrator determines the Order constitutes a QDRO then he or she shall notify in writing the Participant, the Alternate Payee, the attorneys for both parties, and any representatives designated in writing by the Participant or Alternate Payee of the determination that the Order is a QDRO.
- D. If the Plan Administrator determines the Order *is not* a QDRO, the Participant, the Alternate Payee, the attorneys for both parties, and any representatives designated in writing by the Participant or Alternate Payee shall be notified in writing of the fact that the Order is not a QDRO. In addition, the notice shall state the adverse reasons for such a determination and the requirements to make such an Order a QDRO.

Section VII. Procedures Upon Final Determination

- A. Once an Order is determined to be a QDRO, the Plan Administrator will so notify the Participant and the Alternate Payee and will follow the terms of the Order. If the Plan Administrator has been holding the distribution of benefits pending receipt of an Order, those monies will be released in accordance with the terms set forth in the Order. If the Order applies prospectively only, all withheld monies will be released to the Participant.
- B. The Plan Administrator shall authorize distribution of the amounts subject to the Order to the Alternate Payee in accordance with the terms of the Plan. The benefit calculation relating to the payment under the QDRO will be issued by the actuary to the Plan. If the benefits awarded to an Alternate payee under an Order are not immediately payable to the Alternate Payee under Plan provisions, the Plan Administrator shall place a note in the file for the Participant indicating the earliest payment date for the QDRO. No withdrawals may be made by the Alternate Payee from the Plan prior to the time benefits are payable under the terms of the Plan and the Order.