

AMALGAMATED TRANSIT UNION LOCAL 1596 PENSION FUND
4360 Northlake Blvd. Suite 206
Pam Beach Gardens, FL 33410

**INFORMATION FOR DIVORCING MEMBERS
AND SPOUSES OF THE
AMALGAMATED TRANSIT UNION LOCAL 1596 PENSION FUND**

To assist your attorneys in resolving pension issues involved in your divorce, please give this memorandum, prepared by the Pension Fund's general lawyer, to your divorce lawyers and mediator. This will assist them in resolving any pension issues which arise in the divorce proceedings and will save you lawyers' fees. This information should be given to the lawyers for both you and your spouse.

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MEMORANDUM

November 17, 2009

TO: Attorneys representing members and their spouses in dissolution proceedings and Mediators

FROM: Bob Sugarman

RE: Amalgamated Transit Union Local 1596 Pension Fund (ATU Local 1596 Pension Fund)

This memorandum is to assist you in resolving pension issues in dissolution proceedings involving Fund members and their spouses. The question of whether the pension is a marital asset and the division of the pension we defer to you, as family law attorneys. This memo is to assist you in implementing any division of the pension which has been agreed upon or ordered.

1. Nature of the Fund. The Fund is governed by a board of trustees that administers the Pension Plan and Trust providing retirement, disability and pre-retirement death benefits.

2. Governing Law. The Fund is established and set forth pursuant to the Pension Plan and Trust Agreement and is also governed by Chapter 112 (Part VII), Florida Statutes, and the Internal Revenue Code. As a governmental plan, the Fund is not covered by ERISA.

3. Appraisal of Pension Value. An annual estimate of a Member's accrued benefit is provided to each member. You can obtain this from your client or his or her spouse. However, to obtain an exact calculation of the value of the pension benefit and any share account that accrued during the marriage, you should engage your own independent actuary or you may engage the Pension Fund's actuary at your client's expense (\$300). The actuarial firm is Gabriel, Roeder, Smith & Company. To obtain a calculation, you must submit a written request to the Plan Administrator, Pension Resource Center, 4360 Northlake Boulevard, Suite 206, Palm Beach Gardens, FL, 33410 and enclose a check for \$300.00 made payable to the ATU Local 1596 Pension Fund for the cost of the calculation.

4. Division of Pension. Of course, the Pension Fund prefers that the member provide the spouse with other assets to equal the value of the pension marital assets to ease the Pension Fund's administrative burden. Should this not be possible and the benefits payable by the Pension Fund be divided, the Pension Fund requires that the precise dollar amount per month or percentage of benefit to be paid to the ex-spouse be specified in an income deduction order (and NOT in a QDRO).

5. QDROs not Honored. As a governmental plan, the Pension Fund **is not required to and will not honor QDROs.**

This was recognized in Board of Trustees of the City General Employees Pension Plan, City of Jacksonville v. Vizcaino, 653 So.2d 1012 (Fla. 1st DCA 1994), in which the court held:

However, the QDRO exception to the prohibition against assignment or alienation of pension benefits is of no assistance to Anna because, as the parties correctly recognize, "governmental plans" (defined as including plans established or maintained by a political subdivision of a state) are expressly excluded from ERISA coverage. 29 U.S.C. Secs. 1003(b)(1) & 1002(32).

The only exception to the non-alienation provisions is set forth in the Alvarez case, 580 So.2d 1st DCA (Fla. 1991), which makes the Pension Fund subject to income deduction orders.

QDROs also violate the non-alienation provisions of the Pension Fund.¹

Although QDROs are not available, there are two methods by which you can effect a distribution of the spouse's pension share. The spouse's distribution must start at the same time that the member's pension payments begin and can continue only so long as the member's pension payments continue (which is for life for a retirement pension or until recovery or death for a disability pension).

6. Available Means of Distributing a Spouse's Share.

a. Payment by Member. The Court can order or the parties can agree that upon receiving her or his monthly pension payment, the member will remit the spouse's share to the ex-spouse. Since Pension Fund monthly benefit payments are made by direct deposit and many banks offer automatic electronic payment of recurring monthly payments, this arrangement can assure timely receipt by the Member of the monthly benefit and timely payment of the ex-spouse's share. This is the method **preferred** by the Pension Fund since it does not incur the cost of setting up separate payments to the ex-spouse.

b. Income Deduction Orders. Under the Alvarez case, 580 So.2d 1st DCA (Fla. 1991), the Pension Fund is required to honor IDOs. If you choose this method, which we do not recommend, the IDO must specify the amount to be paid each month to the ex-spouse, the duration of such payments, and the name and address of the ex-spouse.

¹ §13.02 of the Restated Agreement & Declaration of Trust and Pension Plan of the ATU Local 1596 Pension Fund.

Once issued, the IDO should be sent by certified mail, return receipt requested, to ATU Plan Administrator, at Pension Resource Center, 4360 Northlake Boulevard, Suite 206, Palm Beach Gardens, FL, 33410, together with a check for \$100.00 made payable to the ATU Local 1596 Pension Fund to cover the cost of setting up the separate account, direct deposit or monthly check authorization and tax reporting. Once received by the Pension Fund, the IDO will remain in effect until a pension is no longer payable to the member² or a subsequent court order is received by the Pension Fund.

7. Any Questions. This memo is meant to provide all the information the parties need to resolve the division and distribution of a pension. If you have any legal issues to discuss, please call Bob Sugarman, the Pension Fund's general counsel. Ask for his assistant to schedule a conference call among Bob and both parties' attorneys or between Bob and the mediator. The conference call must be arranged by the parties who must pay any telephone charges. One conference call with Bob is available at no charge to the parties. Additional conferences must be prepaid at \$350 per hour with a \$350 minimum.

² All pensions are no longer payable to a member after the member dies. A disability pension is no longer payable after a member recovers from the disability. All Florida governmental pensions are no longer payable if the member is convicted of a specified criminal offense and the pension is forfeited pursuant to Article 11, Section 8(d), Florida Constitution and Section 112.3173, Florida Statutes.