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## MEMORANDUM

TO: Board of Trustees, Miami Beach Policemen's Relief and Pension Fund

FROM: Adam Levinson  
Cassandra M. Harvey

RE: Information for Divorcing Members and Spouses of the Miami Beach Policemen's Relief and Pension Fund

FILE: 16-0046

DATE: February 2020

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In an effort to provide information to Members who are going through the process of marital separation and divorce, the Board of Trustees of the Miami Beach Policemen's Relief and Pension Fund (hereinafter the "Pension Board") has prepared the following summary and materials in order to familiarize you, your spouse and any attorneys or mediators with the pension benefits payable under the retirement system (hereinafter, the "Pension Plan").

It is important to recognize that the Pension Plan is a defined contribution retirement system. This means that pension benefits may not be paid to you or a former spouse unless and until you vest in the Pension Plan and separate from service with the City of Miami Beach. In other words, benefits cannot be paid to anyone (you or a spouse) until the Member is eligible, has applied for retirement under the provisions of the Pension Plan and has been granted a benefit. Members are encouraged to review the Pension Plan ordinance, as well as the Summary Plan Description.

The Retirement System is set forth in Subpart B, Article VIII of the City of Miami Beach Code (available online at <http://municode.com>) and is also governed by Chapter 185, Chapter 112 (Part VII), Florida Statutes, and the Internal Revenue Code. As a governmental plan, the Retirement System is not covered by ERISA. For this reason, the Pension Plan is not required to and cannot honor Qualified Domestic Relation Orders ("QDROs").

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As a general rule, the parties to a dissolution of marriage may voluntarily agree to the division of marital property. In the absence of an agreement, a court will make that decision for the parties.

Nevertheless, even if a Member is eligible for retirement, the ability of the Pension Plan to pay benefits *directly* (through the State Disbursement Unit) to a former spouse is limited to court ordered "child support" and "alimony." These payments are usually awarded using an Income Deduction Order ("IDO") or Income Withholding Order ("IWO"). Please be aware, that effective January 1, 2019, changes to the federal tax laws have eliminated tax deductions for alimony if a marriage was dissolved or a property settlement agreement was made on or after January 1, 2019. Modifications to existing orders or agreements on or after January 1, 2019, can be made tax deductible if both parties agree.

Under Florida law, pension benefits earned during a marriage are treated as marital property. The Pension Plan is not permitted to pay "equitable distribution" of marital assets directly to a former spouse.<sup>1</sup> For this reason, we have included a sample order entitled "Order Distributing Marital Interests in a Public Employee Retirement Plan," (hereinafter the "Model Order") that the Pension Board recommends using to distribute the former spouse's share of pension benefits. The Model Order is not necessary for "child support" or "alimony" when an IDO has been entered. The Model Order is only required when "equitable distribution" is to be paid to a former spouse.

As set forth in the Model Order, the preferred method for distribution of retirement benefits is payment from the Pension Plan into a joint account. The trustee of the joint account, to be mutually agreed upon by the parties, would then distribute the husband and wife's respective share of the pension benefit. Alternatively, a Member may roll over funds into an individual retirement account ("IRA"). Once funds are in the Member's IRA, a QDRO may be entered.

Please provide a copy of the Model Order to your spouse and all attorneys who are involved, as it will avoid unnecessary expenses for everyone involved in the process. Once a court order has been entered finalizing the divorce and distributing marital interests, please provide a copy to the Plan's Administrator.

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<sup>1</sup>See *Board of Trustees v. Vizcaino*, 635 So.2d 1012 (Fla. 1<sup>st</sup> DCA 1994) (holding that qualified domestic relations order cannot be used to force direct payment to a non-participating spouse of a portion of a spouse's municipal pension benefits in order to achieve equitable distribution of the parties' marital assets); *Alvarez v. Board of Trustees*, 580 So.2d 151 (Fla. 1991) (discussing the use of income deduction orders in relation to governmental retirement plans); *Board of Trustees v. Langford*, 833 So. 2d 230 (Fla. 5<sup>th</sup> DCA 2002) (holding that the qualified domestic relations order could not be used to force direct payment to ex-wife of portion of former employee's pension benefits). All cases are available upon request.

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In sum, pension benefits can be distributed using: (1) the Model Order, (2) an IDO, or (3) a QDRO only when the Member rolls over their funds into an IRA. Lastly, the Court can order or the parties can agree that upon receiving his or her pension payment, the Member will remit the spouse's share to the ex-spouse.

The Pension Office CANNOT give legal advice concerning the division of pension benefits. Members are strongly encouraged to seek experienced counsel.