

[TO BE PLACED ON RETIREMENT PLAN LETTERHEAD]

**INFORMATION FOR DIVORCING MEMBERS
AND SPOUSES OF THE
CITY OF WEST MELBOURNE POLICE OFFICERS' RETIREMENT PLAN**

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

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MEMORANDUM

July 23, 2024

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

FROM: Sugarman & Susskind

RE: City of West Melbourne Police Officers' Retirement Plan

This memorandum is to assist you in resolving pension issues in dissolution proceedings involving Retirement Plan 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 Retirement Plan. The Retirement Plan is governed by a board of trustees that administers a defined benefit governmental pension plan providing retirement, disability and pre-retirement death benefits.

2. Governing Law. The Retirement Plan is established and set forth sections 34-70 of the City of West Melbourne Code of Ordinances, Chapter 185, Chapter 112 (Part VII), Florida Statutes, and the Internal Revenue Code. As a governmental plan, the Retirement Plan 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 pension benefit that accrued during the marriage, you should engage your own independent actuary or you may engage the Retirement Plan's actuary at your client's expense (i.e. \$200 - \$300 per benefit calculation). The Retirement Plan's actuary is: Patrick Donlan of Foster and Foster Consulting Actuaries, Inc., 13420 Parker Commons Blvd., Suite 104, Fort Myers, FL 33912.

4. Division of Pension. Of course, the City of West Melbourne Police Officers' Retirement Plan prefers that the member provide the spouse with other assets to equal the value of the pension marital assets to ease the City of West Melbourne Police Officers' Retirement Plan's administrative burden. Should this not be possible and the benefits payable by the City of West Melbourne Police Officers' Retirement Plan be divided, the Retirement Plan requires that the precise dollar amount per month or percentage of benefit to be paid to the ex-spouse be specified.

5. QDROs not Honored. As a governmental plan, the City of West Melbourne Police Officers' Retirement Plan is not required to and will not honor a QDRO.

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 Retirement Plan subject to income deduction orders.

QDROs also violate the non-alienation provisions of the City code¹ and Chapter 185, Florida Statutes.²

Although QDROs are not available, there are three 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 most West Melbourne Police Officers' Retirement Plan 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 City of West Melbourne Police Officers' Retirement Plan since it does not incur the cost of setting up separate payments to the ex-spouse.

¹ §34-91 of Article IV of Chapter 34 of the City of West Melbourne Code of Ordinances.

² §185.25.

b. Income Deduction Orders. Under the Alvarez case, 580 So.2d 1st DCA (Fla. 1991), the Retirement Plan 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.

Once issued, the IDO should be sent by certified mail, return receipt requested, to the person at the address shown in Section 3, above, together with a check for \$200 made payable to the City of West Melbourne Police Officers' Retirement Plan to cover the cost of setting up the separate account, direct deposit or monthly check authorization and tax reporting. Once received by the Retirement Plan, the IDO will remain in effect until a pension is no longer payable to the member³ or a subsequent court order is received by the City of West Melbourne Police Officers' Retirement Plan.

c. Member Authorized Deduction. **This method is recommended if direct monthly payment by the member is not possible.**

Pursuant to Section 34-91 of Code and Section 185.05(6), Florida Statutes, the member may authorize the Retirement Plan to withhold from his pension payments those funds that are necessary to make any payments for "child support or alimony."

We have attached a recommended clause for the marital settlement agreement or court order and the City of West Melbourne Police Officers' Retirement Plan's deduction authorization form which should be completed, signed, notarized and sent to the Retirement Plan by certified mail, return receipt requested, to the address shown in section 3, above, together with the \$100 set-up fee made payable to the City of West Melbourne Police Officers' Retirement Plan. The ex-spouse should keep the Retirement Plan informed of his or her current address so that payments can be sent to the ex-spouse by check or direct deposit once the member's payments begin.

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 Pedro A. Herrera, the City of West Melbourne Police Officers' Retirement Plan's general counsel. Ask for his assistant to schedule a conference call among Pedro and both parties' attorneys or between Pedro and the mediator. The conference call must be arranged by the parties who must pay any telephone charges. One conference call with Pedro is available at no charge to the parties as it is included in the City of West Melbourne Police Officers' Retirement Plan's retainer with his law firm. Additional conferences must be prepaid at \$325 per hour with a \$325 {1 hour} minimum.

³ All retirement 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.

CLAUSE TO BE INCLUDED IN MARITAL SETTLEMENT AGREEMENT OR COURT ORDER

(Assumes husband is member for purposes of this illustration)

[The parties stipulate and agree that / The Court finds that] the Wife's share of the Husband's monthly pension benefit from the City of West Melbourne Police Officers' Retirement Plan is [\$_____ per month / _____% of the monthly benefit to be received by the Husband from the City of West Melbourne Police Officers' Retirement Plan/ the sum of \$_____]. The Husband shall sign the City of West Melbourne Police Officers' Retirement Plan's irrevocable deduction authorization, attached hereto as Exhibit "A", authorizing the City of West Melbourne Police Officers' Retirement Plan, pursuant to Section 34-91 of the Code and Section 185.05(6), Florida Statutes, to deduct Wife's share from Husband's monthly pension benefit and remit same to Wife. The City of West Melbourne Police Officers' Retirement Plan's \$100.00 fee for setting up this additional payment shall be paid by [Husband/Wife]. The signed and notarized deduction authorization shall be sent to the City of West Melbourne Police Officers' Retirement Plan, certified mail, return receipt requested, within _____ days after the entry of the Final Order in this case. The Wife shall send to the City of West Melbourne Police Officers' Retirement Plan payment directions, as attached hereto as Exhibit "B", within ____ days after the entry of the Final Order in this case.

[On City of West Melbourne Police Officers' Retirement Plan Letterhead]

**IRREVOCABLE DEDUTION AUTHORIZATION
FOR PAYMENTS TO EX-SPOUSE**

The undersigned member of the City of West Melbourne Police Officers' Retirement Plan hereby authorizes the City of West Melbourne Police Officers' Retirement Plan to deduct:

[initial one box]

☐

\$_____ from my monthly retirement benefit payment; or

☐

_____ % of my monthly retirement benefit payments; or

☐

\$_____ per month from my monthly retirement benefit payments until the total amount of \$_____ has been deducted, after which deduction under this Authorization shall STOP.

This Deduction Authorization is PERMANENT and IRREVOCABLE and shall continue in effect until:

- a. I supply the City of West Melbourne Police Officers' Retirement Plan with a certified copy of a court order authorizing the discontinuance or change of this deduction authorization; or
- b. My ex-spouse dies and I supply the City of West Melbourne Police Officers' Retirement Plan with a copy of the death certificate, or
- c. I die; or
- d. I no longer receive benefits due to forfeiture or recovery from disability (if I am receiving a disability benefit).

I realize that there may be federal income tax consequences to the choices I have made and that the City of West Melbourne Police Officers' Retirement Plan has not and cannot give me personal tax advice. I acknowledge that the City of West Melbourne Police Officers' Retirement Plan has advised me to SEEK THE ADVICE OF A QUALIFIED TAX PROFESSIONAL to advise me as to what is in my best interests and to inform me of the tax consequences of any decisions I make and of the payments I receive from the City of West Melbourne Police Officers' Retirement Plan.



A check for the City of West Melbourne Police Officers' Retirement Plan's \$100 administrative fee is enclosed.

Signed at _____, Florida, on this _____ day of _____, 20_____.

Print Member's Name

Member's Signature

Name of Ex-Spouse: _____

State of Florida)
) ss:
County of _____)

Sworn to and subscribed before me this ____ day of _____, 20____, by _____, who is personally known to me and/or produced _____ as identification, and who did/did not take an oath.

My Commission Expires:

Notary Public, State of Florida

(On City of West Melbourne Police Officers' Retirement Plan Letterhead)

Ex-Spouse's Payment Direction

As authorized by the Payment Deduction Authorization signed and provided to the City of West Melbourne Police Officers' Retirement Plan by my ex-spouse, _____ (name of member), I hereby direct and request the City of West Melbourne Police Officers' Retirement Plan to make the payments authorized by Payment Deduction Authorization to me as follows:

For monthly retirement benefit payments:

(initial applicable boxes)

☐

By direct deposit to a financial institution of my choosing. I request the City of West Melbourne Police Officers' Retirement Plan to send me a direct deposit form; or

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By monthly check to be sent to me at the following address:

(include zip code)

I agree to inform the City of West Melbourne Police Officers' Retirement Plan in writing of any change of address. I understand that if a check is returned to the City of West Melbourne Police Officers' Retirement Plan because the above address is no longer correct, then the City of West Melbourne Police Officers' Retirement Plan will hold all future checks until I supply a new address. The City of West Melbourne Police Officers' Retirement Plan will have no obligation to search for me or try to determine my new address or whereabouts. It is my responsibility to inform the City of West Melbourne Police Officers' Retirement Plan of any change in my mailing address.

I understand that I am not entitled to and will not receive any payments from the City of West Melbourne Police Officers' Retirement Plan until and unless my ex-spouse named above receives payments from the City of West Melbourne Police Officers' Retirement Plan. Unless I have been designated as a joint survivor beneficiary by my ex-spouse, my monthly retirement benefit payments from the City of West Melbourne Police Officers' Retirement Plan will stop when my ex-spouse dies, recovers from disability (if a disability pension), or suffers a forfeiture of pension benefits. Should I predecease my ex-spouse, deductions from my ex-spouse's benefit payments and payments to me from the City of West Melbourne Police Officers' Retirement Plan will stop.

Notary Public, State of Florida

[On City of West Melbourne Police Officers' Retirement Plan Letterhead]

VOLUNTARY DEDUCTION AUTHORIZATION

The undersigned member of the City of West Melbourne Police Officers' Retirement Plan hereby authorizes the City of West Melbourne Police Officers' Retirement Plan to deduct from my monthly retirement benefit payments (initial applicable box):

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Retiree Health Insurance Premiums in the amount per month as from time to time determined and communicated to the City of West Melbourne Police Officers' Retirement Plan by the City of West Melbourne, the Police Department or their insurance providers or administrators, and to remit the amounts deducted as they may direct.

☐

Labor Organization Benefits and Retiree Dues in the amount per month as from time to time communicated to the City of West Melbourne Police Officers' Retirement Plan by the labor organization which represented me or the bargaining unit to which I belonged, and to remit the amounts deducted as the labor organization may direct.

THIS DEDUCTION AND AUTHORIZATION is REVOCABLE upon thirty (30) days written notice and can be revoked by me at any time by a written revocation signed by me and received by the City of West Melbourne Police Officers' Retirement Plan thirty (30) days before the revocation is to take effect. The most recent signed and received Deduction Authorization shall revoke and supercede any prior Deduction Authorization.

Signed at Florida, this _____ day of _____, 20____.

Print Name of Member

Member's Signature