

**THE SHEET METAL WORKERS' LOCAL NO. 73 PENSION PLAN
PROCEDURES FOR THE DIVISION OF PENSION BENEFITS PURSUANT TO
QUALIFIED DOMESTIC RELATIONS ORDERS**

NOVEMBER 2014

**A COPY OF THESE PROCEDURES MAY BE OBTAINED FROM
THE QDRO ADMINISTRATOR AT ANY TIME, UPON REQUEST**

The Employee Retirement Income Security Act (ERISA) protects individuals' retirement benefits with the anti-alienation provision. This provision prevents the alienation or division of an individual's benefits under a retirement plan, with the exception of the division of retirement benefits pursuant to a Qualified Domestic Relations Order (QDRO). A QDRO is a domestic relations order that creates or recognizes the existence of an individual's (other than the participant) right to receive, or assigns to said individual the right to receive, all or a portion of the benefits payable with respect to a participant under a retirement plan; and that includes certain information and meets certain other requirements. In the event of a participant's divorce, all or a portion of his or her accrued benefits under the Sheet Metal Worker's Local No. 73 Pension Plan ("Pension Plan" or "Plan") may be paid to his or her spouse, former spouse, child or other dependent (alternate payee) if provided for in a domestic relations order which is determined by the Plan to be a QDRO, pursuant to the procedures and requirements described in this **Procedures for the Division of Pension Benefits Pursuant to Qualified Domestic Relations Orders (Procedures)**.

I. Scope of Procedures. These qualified domestic relations order procedures ("QDRO Procedures") are adopted pursuant to Section 414(p)(11) of the Internal Revenue Code of 1986, as amended ("Code") and Section 206(d)(3) of ERISA. The procedures are adopted to facilitate compliance with applicable law and are not intended to expand on, or restrict, the requirements of the Code and ERISA.

II. Definition. For purposes of the QDRO Procedures, the term "domestic relations order" ("Order") means any judgment, decree, or order (including approval of a property settlement agreement) which:

- (1) Relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Plan participant ("Participant"), and
- (2) Is made pursuant to a state domestic relations law (including a community property law); and
- (3) That purports to create or recognize 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.

For purposes of this QDRO Procedures, the term "Alternate Payee" means any spouse, former spouse, child, or other dependent of a Participant who is recognized by an Order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

III. QDRO Administrator. The QDRO Administrator and his or her delegates for day-to-day administration shall act as agent for the Pension Plan in handling Orders. References to the QDRO Administrator in the QDRO Procedures are to designate the QDRO Administrator and his or her delegates, and any reference herein to the QDRO Administrator is to be interpreted to include the QDRO

Administrator's delegates for day-to-day administration. Any Order under the Pension Plan should be delivered to the QDRO Administrator at the following address:

Pension QDRO Administrator
4530 Roosevelt Road
Hillside, IL 60162
Telephone (708) 449-7373
Fax (708) 449-7333

IV. Notice of Receipt of Information and/or Receipt of Order. Upon receipt of any of the following:

- (a) written information regarding divorce proceedings in progress of any Participant;
- (b) written information regarding the dissolution of a marriage of any Participant;
- (c) a written request to withhold benefit payments or a QDRO Procedures inquiry;
- (d) a proposed or draft Order that purports to be a qualified domestic relations order ("QDRO"); or
- (e) a final court-entered Order that purports to be a QDRO,

the QDRO Administrator shall promptly cause the Participant and his or her spouse, former spouse, or the Alternate Payee named in the Order (each a "party" and all combined the "parties") to be notified of the receipt of such information, request to withhold benefits, QDRO Procedures inquiry, draft Order or final court-entered Order by sending to the parties the **Notice of Receipt of Information Regarding Pending Divorce or Domestic Relations Order**. The QDRO Administrator shall include with the notice a copy of these QDRO Procedures and the model QDRO to the extent that they have not been furnished to the parties previously. The model QDRO is only provided for the parties' convenience and as a guide of all the information and issues which must be addressed in any QDRO for purposes of approval. It is not intended to suggest, recommend or demand any particular format, terms or manner of division of benefits. However, any default Plan administration rules provided in the Model QDRO, and as provided in Item V.C below, are incorporated to these QDRO Procedures.

Each party shall be permitted to designate their own legal representative for receipt of copies of notices that are sent to any one of them with respect to the division of Pension Plan benefits. Further, the parties are responsible for updating with the QDRO Administrator in writing their contact information and informing of any changes with respect to their designated legal representative.

A. Preliminary Actions of QDRO Administrator. As soon as the QDRO Administrator receives any one of the items listed in (a) through (e) above, the QDRO Administrator shall direct Fund staff to:

- 1) open a file labeled "[Participant's Last Name] QDRO" and this file should be integrated with the Participant's Pension Plan file; and
- 2) add a flag to the Participant's computer records, and an "**IMPORTANT RESTRICTION INFORMATION**" stamp to all Participant's files and records; and

- 3) stop the distribution of the Participant's benefits if a request to hold or suspend payments is made as described below or while a draft or court-entered Order is under review by the QDRO Administrator.

B. Distribution Hold or Suspension of Payments. The distribution of a Participant's benefits may be placed on hold if distribution has not commenced or payments may be suspended, if they have already begun, for a period of up to a maximum of **30** calendar days, following receipt of a **written request** from the spouse, former spouse or an Alternate Payee, to withhold benefit payments and prevent the distribution of the Participant's benefits while a draft QDRO or final court-entered QDRO is forthcoming (item IV (c) above). The receipt of written information regarding divorce proceedings in progress or dissolution of a marriage (including a Judgment of Dissolution of Marriage or Divorce Decree) (items IV (a) and (b) above) is not sufficient to prevent the distribution of the Participant's benefits, unless the written information provided expressly requests the withholding of benefit payments.

If within the **30-day** period, the spouse, former spouse or an Alternate Payee does not provide the QDRO Administrator with a draft Order or court-entered Order, the distribution hold or suspension of payment shall be lifted. If a draft Order or court-entered Order is presented after the end of the **30-day** period, then any restriction on distribution commencement or payment of benefits shall be prospectively only from the date of the receipt of the Order.

If during the **30-day** period a draft Order or final court-entered Order is submitted for determination as a QDRO, distributions to the Participant may only commence or payments may only continue to be made to the extent that the QDRO Administrator and the Plan actuary are able to reasonably determine the amount that would be payable to the Alternate Payee during the period that the Order is being determined as a QDRO and is therefore able to segregate and withhold said amount from amounts payable to the Participant. Notwithstanding the foregoing, the Participant's benefits shall not be divided and no amounts shall be segregated until a final court-entered Order is submitted and qualified. For purposes of withholding from payments to be made to the Participant any amounts payable to the Alternate Payee, a Judgment of Dissolution of Marriage or Divorce Decree shall not be sufficient to determine the amounts to be withheld. Either a draft Order or a court-entered Order must be provided to the QDRO Administrator.

However, if the QDRO Administrator cannot determine the amount that would be payable to the spouse, former spouse or Alternate Payee while an Order is under review, no amounts shall be distributed until the Order is determined to be a QDRO as provided in Item V below.

V. Procedure for Determining Status of Order.

A. Draft Orders. A draft Order shall be treated as a written request to place a distribution hold with respect to the Participant benefits under the Plan or suspend benefit payments being made, to the extent necessary to protect the prospective Alternate Payee's benefits.

Within a reasonable period after receipt of a draft Order, the QDRO Administrator shall determine and notify the Participant and each Alternate Payee whether the Order, if entered, would qualify as a QDRO and/or what revisions are necessary for the Order to so qualify. Orders submitted to the QDRO Administrator in draft form may only be *conditionally approved* before they are entered with a court.

If the Order is *conditionally approved*, the QDRO Administrator will send a **Notice of Qualification Determination** to the party who submitted the Order and the party shall provide the QDRO Administrator with a court-entered Order within **45** calendar days of the date the QDRO Administrator notifies the parties of the *conditional approval*.

If the Order may *not be conditionally approved*, the QDRO Administrator will send a **Notice of Qualification Determination** to the party who submitted the Order explaining the reasons for not qualifying the Order (on a conditional basis) and the party shall provide to the QDRO Administrator a new draft Order revised as appropriate within **30** calendar days of the date the QDRO Administrator notifies the parties that the draft Order cannot be qualified as a QDRO.

If a new draft or a court-entered Order is *not* received within the time periods specified above, the Fund office may consider that the party who originally submitted the Order has withdrawn the request for division of the Pension Plan benefits and will send the parties a **Notice of Request Withdrawal**. Any restriction which had been placed on the distribution of the Participant's benefits shall be removed immediately following the notification to the parties, and any segregated amounts shall be paid to the Participant or other person or persons who would have been entitled to such amounts if there had been no draft Order.

If a new draft or court-entered Order is received after the end of the periods specified above, then any flag on the Participant's benefits or any segregation of the Participant's benefits shall operate prospectively only.

B. Court-Entered Orders. Within a reasonable period after receipt of a court-entered Order, the QDRO Administrator shall determine and notify the Participant and each Alternate Payee whether it is a QDRO. The Pension Plan procedures for determining the qualified status of an Order are as follows:

1) The QDRO Administrator, through the Fund office staff, shall determine whether the affected Participant's benefits are in pay status. If such benefits are or become payable during any period in which the issue of whether an Order is a QDRO is under consideration (by the QDRO Administrator, a court of competent jurisdiction, or otherwise), the QDRO Administrator shall separately account for and withhold from the Participant the amounts that would be payable to the Alternate Payee during such period as if the Order has been determined to be a QDRO.

If, within the 18-month period beginning with the date on which the first payment would be required to be made under the Order, the Order (or modification thereof) is determined to be a QDRO, the QDRO Administrator shall cause the amounts separately accounted to be paid to the person or persons entitled to the amounts when appropriate. Amounts that are separately accounted for will be subject to the same gains or losses as they would have been adjusted if they would not have been separately accounted.

If, within the 18-month period referenced above it is determined that, (a) the Order is not a QDRO, or (b) the issue of the Order's status as a QDRO is not resolved, then the QDRO Administrator shall remove any flag or hold with respect to the Participant's benefits. Any amounts separately accounted for which were held for the person or persons who would have been entitled to such amounts if there had been no Order shall be paid to the Participant or other persons who would have been entitled to such amounts if there is no such Order.

Any determination that an Order is a QDRO which is made after the close of the 18-month period shall be applied prospectively only.

2) The QDRO Administrator shall review the Order to determine factual accuracy, consistency with the terms of the Judgment of Dissolution of Marriage or Divorce Decree, the terms of the Plan, the Plan administrative practices and compliance with the criteria set forth in these Procedures.

3) If necessary, the QDRO Administrator will forward the Order to the Pension Plan legal counsel and/or actuary or consultant for their review and opinions regarding whether the Order is a QDRO.

4) Legal counsel and/or the actuary or consultant shall review the Order as requested and shall make every good faith effort to forward their recommendations to the QDRO Administrator within thirty (30) calendar days after receipt of the court-entered Order from the Fund office.

5) The QDRO Administrator shall forward the Order to the Pension Administrator with their recommendations as to whether the Order is a QDRO.

6) The Pension Administrator shall review the recommendations of the QDRO Administrator and/or the Pension Plan legal counsel and/or the actuary or consultant, if any, and shall make a determination whether the Order is a QDRO.

The QDRO Administrator shall work with the parties and their legal representatives both before and after an Order is submitted to assist them in preparing and revising the Order as necessary to procure its approval as a QDRO in accordance with the Procedures and the Plan's administrative practices and to resolve all questions as necessary for the proper determination of the Order in accordance with the administration of the Pension Plan.

7) If revisions were required to satisfy the QDRO requirements, the parties and/or their legal representatives shall resubmit the finalized or revised Order to the QDRO Administrator. The QDRO Administrator, with assistance from legal counsel, shall review the Order in its final form to confirm that all requested revisions have been made and that no substantive alterations have been made to the terms of the Order.

C. Default Rules. In the event that an order is silent on any of the items below, the Fund will administer the order as follows (after it has been determined to be a QDRO):

1) Alternate Payee's death prior to the commencement of benefits: In the event of the Alternate Payee's death prior to the commencement of the Alternate Payee's benefits, the assigned benefits will be paid to the Alternate Payee's default beneficiary under the Plan, if any. If no beneficiary can be identified or located, the assigned benefits will revert to the Plan.

2) Alternate Payee's death after the commencement of benefits: In the event of the Alternate Payee's death after to the commencement of the Alternate Payee's benefits, the assigned benefits will be paid to the Alternate Payee's default beneficiary under the Plan, if any. If no beneficiary can be identified or located, the assigned benefits will revert to the Plan.

3) Pre-retirement survivor benefits: The Alternate Payee will be deemed the spouse at the time of the Participant's death for purposes of the pre-retirement survivor benefits to the extent necessary to provide the benefits assigned under the order.

4) Early retirement subsidy adjustment: The Alternate Payee's benefits will not be adjusted for any early retirement subsidy paid to the Participant if the Alternate Payee has already commenced benefits at the time the subsidy is paid. If the Alternate Payee has *not* commenced benefits at the time the Participant receives the early retirement subsidy, the Alternate Payee's benefits will be adjusted to account for the subsidy.

VI. Notice Regarding Status of Order. Once it has been determined that an Order is a QDRO, the QDRO Administrator shall notify the Participant and each Alternate Payee of the

determination with a **Notice of Qualification Determination** and the QDRO Administrator shall implement the QDRO and provide the Alternate Payee with a beneficiary designation form and necessary guidance for completing said form. However, a Notice of Qualification Determination will not be issued unless and until, the Judgment of Dissolution of Marriage or Divorce Decree is entered by the court. If a court-entered Order meets the requirements of a QDRO, but the Judgment of Dissolution of Marriage or Divorce Decree has not been entered, the Order may only be *conditionally approved*. Once the divorce proceedings are finalized and the Judgment of Dissolution of Marriage or Divorce Decree is entered, a final Notice of Qualification Determination shall be issued.

If an Order is determined not to be a QDRO, the QDRO Administrator will notify the Participant and each Alternate Payee of the determination with the **Notice of Qualification Determination**, stating the reasons for the determination, with specific reference to the provisions of Code Section 414(p) and ERISA Section 203(d), the terms of the Pension Plan and/or the facts on which the determination is based, and describing any additional material information or revisions required to approve the Order as a QDRO and why it is necessary.

VII. Appeal of Decision to Board of Trustees. The Participant or an Alternate Payee may appeal the determination by submitting a written objection to the **Fund Administrator** at the above address. The written objection must be filed within **45** calendar days from the date of the **Notice of Qualification Determination, or Notice of Request Withdrawal** and may be prepared by the Participant or the Alternate Payee or an authorized representative. Upon receipt of a written objection, the **Fund Administrator** shall present the Order for review at the next **Board of Trustees meeting**, together with the determination of the QDRO Administrator, and the recommendations of the Pension Plan legal counsel and make a determination regarding the Order's status as a QDRO. The determination of the **Board of Trustees** is final and binding on the parties and all other persons involved.

The final determination by the **Board of Trustees** on an appeal will be accorded judicial deference in any later court action or administrative proceeding to the extent that it does not constitute an abuse of discretion and is not arbitrary or capricious.

The parties must exhaust this appeal procedure before bringing or initiating any court action or administrative proceeding.

The Procedures contain a two (2) year statute of limitations. Notwithstanding any other state or federal law, any and all legal actions relating to a QDRO must be filed within two (2) years of the action or inaction complained of. This includes but is not limited to actions to recover benefits that must be filed within two (2) years of the latest **Notice of Qualification Determination, or Notice of Request Withdrawal**. The situs of the Plan is in Cook County, Illinois. Legal actions in connection with QDROs related to the Plan must be brought in the United States District Court for the Northern District of Illinois.

VIII. Resubmission of Order. If an Order that has been determined not to be a QDRO is re-filed with the QDRO Administrator, the procedure described above for review of the initial Order shall be used to determine whether the revised Order qualifies as a QDRO.

IX. Revocation Procedure. If the parties to an Order which has been determined to be a QDRO by the Plan Administrator wish to revoke said QDRO, said revocation may only become effective after, and shall only apply prospectively from, the first benefit payment immediately following, the date on which the QDRO Administrator receives a court entered order which clearly identifies the QDRO it is revoking by identifying the Participant and Alternate Payee, the date on which the QDRO was entered by

the court, the plan name and the case number. The court entered order which revokes the QDRO must also specify that it revokes the QDRO in its entirety.

X. Waiver of Right to Benefits. The Alternate Payee may, at any time, waive his or her right to all or a portion of the Participant's benefits under the Plan, by executing a waiver of rights. Any such waiver shall be voluntarily and freely signed by the Alternate Payee and notarized. Any such waiver shall identify the Participant, the Plan, the court which entered the Judgment of Dissolution of Marriage, the date in which the judgment was entered, and the case number. Following any such waiver, the Plan Administrator shall disregard any preexisting assignment of benefits or rights to the Alternate Payee per the Judgment of Dissolution of Marriage or otherwise and apply the waiver prospectively only. Once submitted to the QDRO Administrator, any such waiver of rights is final and irrevocable.

XI. Processing Timetable. Participants, Alternate Payees and their representatives **should keep in mind that the foregoing review process takes, at minimum, several weeks to complete. The review process will take longer if: (i) revisions to the Order are required, (ii) an amended Order must be submitted to a court for entry or (iii) there are issues with the calculation of the assigned benefits. The parties are advised to keep these timeframes in mind. The QDRO Administrator will make good faith efforts to process all Orders received in an expeditious manner and appreciates the cooperation of the parties and their representatives to prevent delays, by revising Orders as promptly as possible once the Plan Administrator has notified them of any necessary changes.**