

## Northern California Cement Masons Funds Administration, Inc.

1600 Harbor Bay Pkwy, Suite 200, Alameda, CA 94502 \* Telephone: (707) 864-3300 or (888) 245-5005

### **INFORMATION FOR DRAFTING A QDRO DIVIDING COMMUNITY PROPERTY INTERESTS IN THE CEMENT MASONS PENSION TRUST FUND FOR NORTHERN CALIFORNIA**

#### **WHEN THE PARTICIPANT HAS NOT RETIRED OR DIED**

The Pension Plan maintained by the Cement Masons Pension Trust Fund for Northern California is a defined benefit pension plan. Benefits accrue depending, first, on Benefit Units or employer contributions earned by the participant and when he earned them (which in turn depends primarily on hours of work reported by contributing employers) and, second, on the terms of the Plan at the time benefits become payable. See Section 3.03.a. and 6.04 of the Pension Plan. Benefits are fully vested in the Plan in one step upon accrual of 10 Years of Credited Service without an intervening Permanent Break in Service. Benefits are not payable to the Participant until he satisfies the Plan's requirements for Retirement and makes suitable application for a pension. Benefits are payable solely in the form of monthly Pension or Death Benefits (unless the Actuarial Present Value of total benefits is \$3,500.00 or less).

The Pension Plan is governed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Retirement Equity Act of 1984 (REA). Section 206(d)(3) of ERISA as amended (United States Code, Title 29, Section 1056(d)(3)) provides that pension plans such as this may not pay benefits to any person other than the participant or his beneficiary except on the basis of a state domestic relations order that satisfies the requirements for a "qualified domestic relations order" (QDRO). Accordingly, if a former spouse of a participant wishes to have her community property share of pension benefits paid directly to her by the Fund when her share becomes payable, she must submit to the Fund a qualified domestic relations order. The requirements for such an order are set forth in subparagraphs (B), (C), and (D) of Section 206(d)(3) of ERISA, Section 1056(d)(3) of Title 29 of the United States Code. For an explanation of those requirements, see Hogoboom & King, California Practice Guide - Family Law, ¶¶ 8:270.2 et seq.

The Pension Plan is multiemployer plan and has important features distinguishing it from the usual forms of single employer plans. As a result, the sample QDROs published elsewhere and designed to fit single employer plans are largely unsuitable here. In their place we provide the following advice for drafting a QDRO dividing community property interests in the Pension Plan that will fit this Plan. This advice assumes that the QDRO will be entered by the court before the Participant retires or dies. ***If the participant has already retired or died, please advise us, and we will provide further assistance.***

- A. Specify the names and last known mailing addresses of the Participant and the Alternate Payee (participant's former spouse).
- B. Identify the Pension Plan as "**the Pension Plan maintained by the Cement Masons Pension Trust Fund for Northern California,**" and specify that the Fund is to make payments of Alternate Payee's share directly to her.
- C. Adhere closely to the terms of the Plan. The order may not require the Plan to provide any type or form of benefit or option not otherwise provided under the plan.
- D. In defining the community property portion of the participant's accrued benefits in the Plan, take notice that the manner in which benefits are accrued under the Plan does not allow use of the usual "time rule" formula. See Hogoboom & King, California Practice Guide - Family Law, ¶¶ 8:247 et seq. Instead, define the Alternate Payee's interest in the Pension Plan simply as "**one half of that portion of the participant's monthly pension benefit that accrued during the period between the date of marriage and the date of separation.**" Provide the dates of marriage and separation.
- E. In defining how the Alternate Payee's share will be calculated and paid, the following points should be observed:
  1. Alternate Payee may not begin receiving payment of her share until the Participant reaches (or would have reached) earliest retirement date under the Plan.
  2. Alternate Payee may elect (by application to the Fund) to begin receiving payment of her share in the Pension Plan, prior to Participant's separation from service with respect to the Plan, on the first day of any month on or after the Participant's benefits have vested and Participant has reached earliest retirement age under the Plan.
  3. In the case of such an election,
    - (a) the Alternate Payee's share shall be calculated as if the Participant had retired on the date on which such payment is to begin (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement, unless and until any such subsidy becomes payable to the Participant), and

- (b) Alternate Payee may elect to have her share paid to her in any form in which such benefits may be paid under the Plan (other than in the form of a joint and survivor annuity with respect to the Alternate Payee and a subsequent spouse).
- 4. Alternate Payee must begin receiving her share no later than the effective date of the Participant's pension.
- 5. But, if Participant retires on a Disability Pension prior to reaching earliest retirement date under the Plan for a non-disability pension, Alternate Payee's community property share will mature and become payable to her beginning the first day of the first month after the Participant reaches (or would have reached) earliest retirement age under the Plan for a non-disability pension. In such case, Alternate Payee's one-half community property share, as defined above, will be calculated as if the participant had retired on that date on the largest non-disability pension for which the participant would have been eligible.
- 6. If Alternate Payee does not begin receiving payment of her share until Participant retires, Alternate Payee shall have the right to elect to have her share paid to her in any form permitted by the Plan and current law and regulations at that time, including (a) one half of a Joint-and-Survivor Pension with the Participant based on the community property portion of the Participant's accrued pension benefit or (b) a pension payable for Alternate Payee's life (with available guarantee of benefits). The amount of payment under the form elected shall be calculated using the actuarial assumptions specified in the Plan to provide the actuarial equivalent of the Alternate Payee's un-adjusted share of the participant's benefit.
- F. Alternate Payee will have the right to designate a beneficiary for her share only if she elects to begin receiving payment of her share as a monthly benefit for her life with an available guarantee of benefits.
- G. The order may provide that, "if Participant dies prior to retirement and Alternate Payee has not begun receiving payment of her share as a monthly benefit for her own life, the Alternate Payee shall be treated as a surviving spouse of the Participant to the extent of the community property portion of Participant's accrued pension benefit for the purpose of the surviving spouse benefit under the Plan." If it does not so provide, it should expressly waive the Alternate Payee's interest in any survivorship or death benefits.
- H. In order to reserve the first option described in paragraph E (6) above, the order should provide that "if, when Participant retires, Alternate Payee has not already begun receiving payment of her share as monthly benefit for her own life, she shall be treated as a surviving spouse of the Participant to the extent of the community property portion of Participant's accrued pension benefit." If it does not so provide, it should expressly waive the Alternate Payee's right to be so treated.
- I. The order may provide that "unless Alternate Payee begins receiving payment of her share as a monthly benefit for her own life, she shall share equally in any post-retirement benefit increases awarded to Participant the extent such increases are based upon accrual of benefits between the date of marriage and the date of separation."
- J. The order should not include any clause that conflicts with the provisions of ERISA, in particular subparagraphs (G) and (H) of Section 206(d)(3), 29 U.S.C. § 1056(d)(3), which govern the plan administrator's fiduciary duties in handling QDROs and determining the qualified status of domestic relations orders.
- K. Once the order is determined to be a qualified order, the Alternate Payee's rights with respect to the Fund, e.g., of notice and remedies, will be the same as apply to any beneficiary under the Plan.

We recommend that you submit the proposed order to the Fund for its review before submitting it to the court for entry.

***The Fund will not stipulate to the terms of a QDRO. In accordance with the Retirement Equity Act, the Plan Administrator's designee will acknowledge the receipt of any duly entered domestic relations order and then make a determination whether or not the order is a qualified domestic relations order within the meaning of that Act. He will make the determination in accordance with his fiduciary responsibility under ERISA as amended by REA.***

The Plan Administrator for the Pension Plan is the Board of Trustees of the Pension Fund. The Board of Trustees has designated the Secretary for the Fund, Mr. Scott Wall, as the person who shall determine the qualified status of any domestic relations order received by the Fund. He will make that determination with the advice of the plan's co-legal counsel, consultants, and administrators.

If you have further questions, they should be directed to the Fund office at 1600 Harbor Bay Parkway, Suite 200, Alameda, CA 94502. Telephone: (707) 864-3300 or toll free (888) 245-5005.

1 Insert Name/Address/Telephone

4 Attorney for

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF [COUNTY]

10 [Party Name 1]

11 Petitioner,

12 v.

13 [Party Name 2]

14 Respondent

Case No.: [Case Number]

**STIPULATION FOR DIVISION OF  
CEMENT MASONS PENSION TRUST  
FUND BENEFITS AND QUALIFIED  
DOMESTIC RELATIONS ORDER  
(QDRO)**

15 WHEREAS:

16 A. Petitioner and Respondent married on \_\_\_\_\_, separated on \_\_\_\_\_, and  
17 a Judgment of Dissolution of Marriage was entered in this proceeding on  
18 \_\_\_\_\_, finally dissolving the marriage effective \_\_\_\_\_;

19 B. This Court has personal jurisdiction over both Petitioner and Respondent and  
20 jurisdiction over the subject matter of this Order;

21 C. Petitioner and Respondent intend this Order to be a qualified domestic relations  
22 order (QDRO) as defined in § 206 (d)(3) of the Employee Retirement Income  
23 Security Act of 1974 (ERISA), as amended by the Retirement Equity Act of 1984,  
24 29 U.S.C, § 1056(d)(3); and

25 D. Petitioner and Respondent hereby stipulate to the entry of the following Order:

26 //

27 //

28 //

1 IT SHALL BE ORDERED AS FOLLOWS;

2 1. As used in this Order the following terms apply:

3 a. "Participant" is

4 Name: \_\_\_\_\_

5 Address: \_\_\_\_\_

6 Social Security Number: To be provided under separate cover

7 Date of Birth: (MM/YYYY)

8  
9 b. "Alternate Payee" is:

10 Name: \_\_\_\_\_

11 Address: \_\_\_\_\_

12 Social Security Number: To be provided under separate cover

13 Date of Birth: (MM/YYYY)

14  
15 c. "Plan" refers to the Pension Plan maintained by the Cement Masons Pension Trust  
16 Fund for Northern California and which is administered by the Board of  
17 Trustees for the Cement Masons Pension Trust Fund for Northern California located  
18 at 1600 Harbor Bay Parkway, Suite 200, Alameda, CA 94502.

19  
20 2. Participant has accrued benefits in the Plan that are the community property of  
21 Participant and Alternate Payee. For the purpose of dividing this community  
22 property, Alternate Payee is assigned as her separate property one-half of that  
23 portion of the Participant's total , unadjusted monthly pension benefit that  
24 accrued between the date of marriage and the date of separation.

25 3. By written application to the Plan, Alternate Payee may elect to begin receiving  
26 payment of her share, as defined in paragraph 2, prior to the Participant's  
27 separation from service with respect to the Plan, on the first day of any month on  
28 or after this Order has been entered by the Court and received by the Fund,

1 Participant's benefits have been vested, and Participant has reached earliest  
2 retirement age under the Plan for a non-disability pension. In the event of this  
3 election, Alternate Payee's share (a) will be calculated as if Participant had  
4 retired on the date on which the payment is to begin (but taking into account only  
5 the present value of benefits actually accrued and not taking into account the  
6 present value of any employer subsidy for early retirement) and (b) may be paid  
7 in any form in which benefits may be paid under the Plan (other than in the form  
8 of a joint and survivor annuity with respect to Alternate Payees and a subsequent  
9 spouse). If after the Alternate Payee's interest is already being paid the  
10 Participant begins receiving from the Plan a pension which includes an employer  
11 subsidy for early retirement, Alternate Payee's monthly benefit will be adjusted  
12 to allow Alternate Payee to receive her pro rata share of the subsidy as long as  
13 she is receiving benefits and Participant (or his beneficiary) is receiving a  
14 subsidized pension.

15 4. Alternate Payee's pension beginning date will not be later than Participant's  
16 pension beginning date, unless Participant retires on a Disability Pension prior to  
17 reaching earliest retirement age under the Plan for a non-disability pension. In  
18 the latter case Alternate Payee's community property share will mature and  
19 become payable on the first day of the first month after Participant reaches (or  
20 would have reached) earliest retirement age under the Plan for a non-disability  
21 pension.

22 5. If Alternate Payee begins receiving her share coincident with or following  
23 Participant's retirement on a Disability Pension, Alternate Payee's on-half  
24 community property share, as defined in paragraph 2, above, will be calculated as  
25 a share of the largest non-disability pension for which the Participant otherwise  
26 would have been eligible on Alternate Payee's beginning date.

27 6. If Alternate Payee does not begin receiving payment of her share until Participant retires,  
28 Alternate Payee may elect to receive her share in any form permitted by

1 the Plan at that time. The amount of Alternate Payee's monthly benefit will then  
2 be determined by applying to Alternate Payee's share the Plan's terms for the  
3 elected form of payment.

4 7. If Participant dies prior to retirement and Alternate Payee has not already begun  
5 receiving payment of her share (as provided in paragraph 3), she will be treated  
6 to the extent of the community property portion of Participant's accrued benefit  
7 as if she were Participant's surviving spouse for the purpose of the Pre-  
8 Retirement Surviving Spouse Benefit provided under the Plan.

9 8. If, when Participant retires, Alternate Payee has not already begun receiving  
10 payment of her share (as provided in paragraph 3), she will be treated to the  
11 extent of the community property portion of Participant's accrued benefit as if  
12 she were the Participant's current spouse for the purpose of the Joint-and-Survivor Pension  
13 available under the Plan.

14 9. If Participant is awarded a post-retirement benefit increase calculated on the  
15 amount of the benefits accrued, Alternate Payee will share equally in that portion  
16 of the increase attributable to benefits accrued between the date of marriage and  
17 the date of separation.

18 10. Nothing in this Order will be construed to require the Plan to provide a type or  
19 form of benefit or an option not otherwise provided under the Plan.

20 11. Nothing in this Order will be construed to require the Plan to provide increased  
21 benefits determined on the basis of actuarial value.

22 12. This Order does not require the Plan to pay Alternate Payee benefits which are  
23 required to be paid to another alternate payee under another order previously  
24 determined to be a qualified domestic relations order.

25 13. This Order is intended to be a QDRO made pursuant to ERISA, and its  
26 provisions will be administered and interpreted in conformity with ERISA and  
27 the Plan, as amended from time to time. To that end, the Plan Administrator  
28 reserves the right to reconfirm the qualified status of this Order at the time

1 benefits become payable. If either ERISA or the Plan is amended or the law  
2 regarding QDROs is otherwise changed or modified, then either party may take  
3 the necessary steps to amend this Order to comply with any amendments,  
4 changes and/or modifications, or, if permissible under any amendment, change or  
5 modification, the Plan Administrator may continue to treat this Order as a  
6 qualified order.

7 14. The Court will retain jurisdiction for the purpose of amending this Order so that  
8 it may qualify or continue to qualify as a QDRO.

9  
10 APPROVED AS TO FORM AND CONTENT;

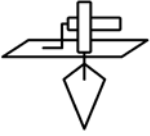
11  
12  
13  
14 Date: \_\_\_\_\_  
15 \_\_\_\_\_  
16 Petitioner

17 Date: \_\_\_\_\_  
18 \_\_\_\_\_  
19 Respondent

20 IT IS SO ORDERED.

21 Date: \_\_\_\_\_  
22 \_\_\_\_\_  
23 Judge of the Superior Court

24 \*\*\*\*\*

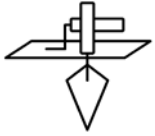


**CEMENT MASONS PENSION TRUST FUND FOR NORTHERN CALIFORNIA**  
**Procedures to Determine the Qualified Status of**  
**Domestic Relations Orders and to**  
**Administer Distributions Under Such Orders**

Pursuant to Section 206 (d) of ERISA as amended by the Retirement Equity Act of 1984, the Board of Trustees of the Cement Masons Pension Trust Fund for Northern California has adopted the following procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders:

1. In accordance with Section 1(c) of Article IV of the Trust Agreement, the Secretary of the Board of Trustees is designated to carry out the responsibilities of the Plan administrator specified in ERISA Section 206 (d) as amended.
2. Upon receipt of a domestic relations order, the Secretary shall promptly notify the Participant, the Alternate Payee named in the order and any other Alternate Payee of the receipt by the Plan of the order and the Plan's procedures for determining the qualified status of domestic relations orders. Such notice shall be sent by certified mail, return receipt requested, to each such person at the address included in the order, or if such no address is included, at any address the Secretary has reason to know independently of the order.
3. If the order is not based upon a stipulation, property settlement agreement or other evidence of concurrence in the order by the Participant, or an attorney on the Participant's behalf, a copy of the order shall be attached to the notice and the notice shall:
  - .. (a) Request the Participant or other Alternate Payee, if any, to advise the Secretary in writing within 60 days after receipt of the notice whether or not he or she disputes the qualified status of the order;
  - .. (b) Notify the Participant or other Alternate Payee, if any, that unless the Secretary is advised within such period that he or she disputes the qualified status of the order, and of specific reasons for such dispute, such status will be deemed admitted.
4. The notice to the Alternate Payee named in the order shall advise her or him that she or he may designate in writing a representative for receipt of notices that are sent to such Alternate Payee with respect to the order.
5. In any case covered by paragraphs 2 and 3, the Secretary may dispense with the procedures provided in those paragraphs if he is furnished with a statement signed by the Participant under penalty of perjury under the laws of the State of California certifying that the Participant has received a copy of the domestic relations order, that he has read and understands the provisions of the order relating to the Pension Plan maintained by the Fund and that he does not dispute the qualified status of the order under ERISA Section 206 (d) as amended. The Secretary may also accept the certificate of the Participant as supplying for the purposes of the order the address of the Participant and the Alternate Payee named in the order, if one or both of such addresses are omitted from the order, and in such circumstances the similarly executed certificate of such Alternate Payee as supplying the address of the Alternate Payee for the purposes of the order.
6. The Secretary shall promptly send copies of such notice or such statement, as the case may be, the order and any correspondence in connection therewith, a statement of the Accumulated Credited Service and Benefit Units of the Participant and any other documents bearing on the qualified status of the order to co-legal counsel for the Fund for review and opinion as to such qualified status.
7. After receipt of the order, the Secretary shall segregate in a separate account or in an escrow account any amount thereafter coming due which would have been payable to the Alternate Payee named in the order during the period of such segregation if the order had been determined to be a qualified domestic relations order. The segregated amount shall bear interest to the extent and at the rate provided under the rules and regulations applicable to the account.





**Procedures to Determine the Qualified Status of  
Domestic Relations Orders and to  
Administer Distributions Under Such Orders**

8. After receiving the opinion of co-legal counsel and considering any responses of the Participant or other Alternate Payee to a notice given pursuant to paragraphs 2 and 3 above, the Secretary shall determine whether or not the order is a qualified domestic relations order as defined in ERISA Section 206 (d) as amended.
9. If the order is determined to be a qualified order, and if the Participant has furnished a statement pursuant to paragraph 5 or the Participant and any other Alternate Payee have advised the Secretary in writing that qualified status is not disputed, or have failed to respond to a notice given pursuant to paragraph 2 within the time limit specified in paragraph 3, the Secretary shall pay the segregated amounts (plus any interest thereon) to the person or persons entitled thereto.
10. If the order is determined to be a qualified order, and if the Secretary has been advised in writing within the time limit specified in paragraph 3 that the Participant or other Alternate Payee disputes such qualified status, the Secretary shall notify the person claiming that the order is not qualified of his determination and of the specific reasons therefor, and shall advise such person of his right to petition the Board for a review of such determination pursuant to Section 9.04 of the Pension Plan within 60 days after receipt of such notice. The Secretary shall continue to segregate the amounts designated in said order as payable to the Alternate Payee pending the resolution of the issue as to whether the order is a qualified order, or the expiration of 18 months from the receipt of the order by the Plan, whichever first occurs.
11. If the order is determined not to be a qualified order, the Secretary shall promptly notify the Participant, the Alternate Payee named in the order and any other Alternate Payee of such determination. The notice shall set forth in a manner calculated to be understood by the recipient (a) the specific reason or reasons for the determination; (b) specific reference to pertinent provisions of the law or of the Plan on which the determination is based; and (c) a description of any additional material, information or action necessary to enable the Alternate Payee named in the order to perfect the qualified status of the order and any explanation of why such material, information or action is necessary, and shall advise that if the Alternate Payee named in the order does not furnish the material or information or take the action necessary to perfect the order within 60 days after receipt of the notice, or within such reasonable period thereafter as the Secretary may allow, the Secretary shall pay the segregated amount (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.
12. After expiration of the period of time allowed for perfection of the order, or after expiration of 18 months from the receipt of the order by the Plan, whichever first occurs, the Secretary shall pay the segregated amount (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no such order.
13. Any payment made pursuant to these procedures shall be without prejudice to the right of the Secretary or the Board to segregate or withhold payments coming due subsequent to such payment if such action is determined by the Secretary or the Board to be necessary to protect the interests of the Fund.
14. The Secretary shall treat a domestic relations order entered before January 1, 1985 as a qualified domestic relations order if the Plan was paying benefits pursuant to such order on that date. After following the procedures specified above, the Secretary may treat any other domestic relations order entered prior to January 1, 1985 as a qualified domestic relations order even if such order does not meet the requirements of ERISA Section 206 (d) as amended.
15. The objective of these procedures is to minimize the costs and delay involved in implementing the provisions of Section 206 (d), consistent with the requirements of Part 4 of ERISA, and the Secretary and co-legal counsel are authorized to supplement or modify the procedures to accomplish this objective.