

Order to Divide a Wisconsin Deferred Compensation Program Account

Domestic Relations Order Wis. Stats. § 40.80 (2r)

Re: the marriage or domestic partnership of:

Petitioner: _____ Respondent: _____

This court hereby makes the following findings and orders:

A. Administrative services contractor: Empower Retirement (hereinafter "Contractor") currently provides services for the Wisconsin Deferred Compensation Program (WDC) authorized by Wis. Stat. § 40.80 *et seq.*, under a contract with the Deferred Compensation Board.

B. Participant: The (*check one*) ☐ Petitioner ☐ Respondent (hereinafter referred to as the "participant") participates in the WDC and, by law and the judgment, decree or order terminating this marriage is under either a marital property or family support obligation to each Alternate Payee named in this order. (*Note: Use a separate Order for each if both the petitioner's and respondent's WDC accounts are to be divided.*)

C. Termination of marriage (*check one*):☐ Divorce ☐ Legal Separation

On (*insert date*) _____ the marriage between the participant and his/her spouse or ("Alternate Payee") was terminated by this court under a final judgment, decree or order issued under Wis. Stat. § Chapter 767. If not terminated in Wisconsin, enter the citation from the state where the marriage was terminated _____. The property division is final **or** there is no appeal pending that would affect the assignment herein.

D. Identification of the participant and first alternate payee:

Participant		First Alternate Payee (if others, see instructions)		
Name (<i>first, middle, last</i>)		Name (<i>first, middle, last</i>)		
Social Security number	Birth date (MM/DD/YYYY)	Relationship to Participant (ex-spouse, child, etc.)	Social Security number	Birth date (MM/DD/YYYY)
Last known mailing address:		Last known mailing address:		

E. Alternate payee: The first alternate payee is assigned (described below)—*choose only one option, either dollar amount or percentage, not both. Choice must be consistent with awards to other alternate payees.*

Option 1: The fixed sum specified below. This order is void if the amount exceeds the participant WDC account balance when this order is processed. <i>If marriage terminated before 12/01/2005, only this option is available.</i>	Option 2 or 3: Not available for marriages terminated before 12/01/2005. The dollar amount or percentage expressed below as of the effective date, plus all subsequent gains and losses. 2: \$ _____ <i>(dollars and cents)</i>
\$ _____ <i>(dollars and cents)</i>	3: _____ <i>% (up to 2 decimal places maximum)</i>

F. This order assigns interest in the participant's WDC account to only one alternate payee, **unless this box is checked** ☐ to indicate more than one alternate payee **and** all alternate payees other than the first are described in the [Supplement to Order to Divide Wisconsin Deferred Compensation Program Account \(ET-2368\)](#), attached to this order.

G. Important information:

- Altered, incomplete or inaccurate forms may be rejected.
- Send signed order to: WDC c/o Empower, PO Box 173764, Denver CO 80217-3764.
- The parties must submit this DRO to the WDC as soon as possible. Any delay may impact benefits.
- Distribution of copies: Original to Court file. Signed copies to the WDC, the Petitioner, and the Respondent.

Upon the above facts, it is hereby ordered that:

1. This order is final, permanent and irrevocable, except to the extent the WDC plan and trust document allows for the timely amendment of a domestic relations order. No amendment is permitted unless actually received by the Contractor within six months after the receipt of this order. Neither the remarriage of the petitioner and respondent, nor conversion of a legal separation to divorce, shall affect this order.
2. The effective date of a division under option 2 or 3 shall be the date on which the marriage was terminated under the applicable state law governing the termination of marriage.
3. This order is void if the participant or alternate payee is not still living when the order is received by the Contractor, if prior to issuing this order the court lost jurisdiction for any reason, if this order fails in any respect to satisfy the statutory or WDC provisions for dividing a WDC account, or if (in the case of a division under Option 1 only) there are insufficient funds in the participant's account.
4. Upon receipt of this order, Contractor shall divide the participant's WDC account in accord with this order and the WDC plan document, establishing a separate account for the alternate payee, or may reject this order if invalid. Contractor shall restrict disbursements from the participant's WDC account until the division is completed or the order is duly rejected. Meanwhile, the participant alone is liable for making trades or transactions that adversely affect the interests of the alternate payee.
5. A separate WDC account shall be established for each alternate payee. Each alternate payee with a separate WDC account shall be treated as a WDC participant who is no longer employed by a participating employer, including the receipt of gains and losses on the account, except that the WDC may restrict the alternate payee's access to joint and survivor annuity benefits and no alternate payee account may subsequently be divided by a Domestic Relations Order or merged with any other WDC account. An alternate payee who is the participant's current or former spouse will be responsible for any taxes due upon distributions made to the alternate payee. Under current federal law, the participant will be responsible for any taxes due upon distribution made to an alternate payee who is a former domestic partner.
6. Following the ordered division, neither the participant nor any alternate payee shall have any ownership or control of the benefits distributed to the other as a result of this order and operation of Wis. Stat. § 40.80 (2r).
7. This order does not apply to any portion of the participant's account that has already been annuitized.
8. Any Internal Revenue Service or Wisconsin Department of Revenue levy or attachment against the participant's account shall continue to apply only to the participant's account, unless the levy or attachment jointly names an alternate payee, to whom the levy or attachment shall then also apply.
9. If the Contractor pays a participant or alternate payee benefits from assets that were assigned to another party under this order, the recipient shall report the error to the Contractor within 10 days and shall personally reimburse the party actually entitled to the benefit.
10. The Wisconsin Deferred Compensation Board, ETF and the Contractor, as well as any member, employee, officer or agent thereof, are immune from civil liability for any act or omission while performing official duties related to implementing this order as provided by Wis. Stat. § 40.80 (2r) (d).
11. The costs for processing a DRO **shall** be evenly split and deducted from the accounts of the participant and alternate payee(s). Effective for DROs processed on or after January 1, 2024, the total cost is \$250.00.

Instructions

To complete an [Order to Divide Wisconsin Deferred Compensation Program Account \(ET-2367\)](#) form and, if necessary, a [Supplement to Order to Divide Wisconsin Deferred Compensation Program Account \(ET-2368\)](#) form:

- Step 1: Read all of the instructions.** **Do not** write on the top 3.5 inches of the front page of this form. That space is reserved for official court use only. Any writing in this space may cause the form to be rejected. **Do not** fill out an *Order to Divide Wisconsin Deferred Compensation Program Account* (ET-2367) form, if:
- Your marriage is not being terminated by a court. This form cannot be signed by a judge until the marriage is terminated. In Wisconsin, marriages are terminated by court-ordered annulment, divorce or judgment of legal separation. Other state laws may vary.
 - Your marriage was terminated before December 1, 2001.
 - Your marriage was terminated by a court outside the United States or its territories.
 - There is an appeal pending in your case challenging the court's property division or that might otherwise affect how the WDC account may be divided in your case.
 - Either party to the terminated marriage or any other alternate payee has died.

If your marriage was terminated before December 1, 2005, then there is only one method for dividing the WDC account. See Division Option 1 in **Step 6**.

If there is more than one alternate payee, a [Supplement to Order to Divide Wisconsin Deferred Compensation Program Account \(ET-2368\)](#) form must also be filled out. In that case, use this form (ET-2367) to identify and describe the assignment made to the spouse, former spouse and the supplement form to identify and describe the assignment(s) made to other alternate payees. If there are multiple alternate payees, none of whom are the spouse or former spouse of the WDC Participant, then it does not matter who is listed on which of the two forms. See **Steps 7 through 9**.

- Step 2: Identify the WDC participant.** The "participant" is the person who participates in the WDC and whose account is being divided by the "Order to Divide." If the participant is the same person identified in the case caption as the petitioner, then check the first box in Paragraph B, labeled "Petitioner." If the WDC participant is the respondent, then check the second box, labeled "Respondent." You will also need the participant's name, Social Security number, birth date and address to complete **Step 5**. If both parties to the divorce are WDC participants, both accounts may be divided, but it will require use of two separate [Order to Divide Wisconsin Deferred Compensation Program Account \(ET-2367\)](#) forms, one for each participant.

- Step 3: Specify the date on which the marriage was terminated.** Insert into the first blank in Paragraph C the date on which the marriage was legally terminated. For marriages ending in divorce in Wisconsin, the judge typically (but not always) terminates the marriage on the day of the trial by a verbal order from the bench. The "Findings of Fact, Conclusions of Law and Judgment" are written up and signed later. The laws of other states vary as to the date a marriage is terminated. Check with your lawyer, Clerk of Courts or the Certificate of Divorce to verify the date the marriage was terminated.

- Step 4: Insert the citation to the state law terminating the marriage.** If your marriage was terminated by divorce, legal separation or annulment in Wisconsin, you may leave the second blank in Paragraph C empty. If your marriage was terminated under another state's law, then insert a citation to the applicable state's statute in the second blank in Paragraph C. Check with your lawyer or the court for help.

- Step 5: Provide identifying information for the participant and first alternate payee.** If the spouse or former spouse will receive a share of the WDC account through the division, then he or she is the *first alternate payee*. In the box in Paragraph D, under the separate headings "Participant" and "First Alternate Payee" insert each person's name, Social Security number, birth date and last known mailing address.

This information is needed to correctly identify the specific WDC account(s) affected or created by the "Order to Divide," to notify the parties of the effects of the "Order to Divide" and for tax reporting purposes. Additionally, the alternate payee's relationship to the participant **must be identified**, such as "ex-spouse," "ex-domestic partner" or "child."

Only certain persons may be named as alternate payees. They are:

- A child of the WDC participant. The term "child" includes both natural children and adopted children. Stepchildren of the terminated marriage are not considered children of the WDC participant unless they were legally adopted by the participant.
- The person who was formerly the spouse in the specific marriage that was terminated as described in this form. A second marriage ending in divorce, for example, does not create a new opportunity for

the ex-spouse from the first marriage being eligible to be an alternate payee as part of the current "Order to Divide."

- The spouse of the WDC participant may be an alternate payee, but only if there has been a formal judgment of legal separation that resulted in a full and final, court-ordered property division between the parties.

It is possible to assign a portion of the WDC participant's account to more than one person. All such assignments must be made as part of the same "Order to Divide" and the assignment option must be the same for all alternate payees, although the specific dollar amounts (or percentages) may vary. For example, a former spouse and two children may be identified as alternate payees. Each may be assigned Option 2, with 40% assigned to the former spouse, 30% to the older child and 20% assigned to the younger child. But an order assigning \$5,000 under Option 1 to the former spouse and 30% under Option 3 to the older child and \$1,000 under Option 2 to the younger child would be rejected.

Step 6: Describe the assignment to the alternate payee. The alternate payee is the person to whom a part of the participant's WDC account is being assigned by the court.

There are three options in how the amount will be assigned to the Alternate Payee:

- **Division Option 1.** The alternate payee may be given a fixed dollar amount. This will not include any adjustments for gains and losses that might have occurred in the WDC account since the date the marriage was terminated. However, if the dollar amount exceeds the amount available in the Participant's WDC account, then it will be impossible to carry out the order. Option 1 is available in every case, regardless of when the marriage was terminated. However, it is the **only** option available if the marriage was terminated between December 1, 2001 and December 1, 2005, because daily account valuations for that period no longer exist. To select this option, insert a dollar amount in the Option 1 box in Paragraph E.
- **Division Options 2 and 3.** For marriages terminated *after* December 1, 2005, two other options are available. Under these options, the alternate payee may be assigned either a dollar amount or a percentage, plus any intervening gains and losses, *retroactive to the date the marriage was terminated*, as follows:
 - **Division Option 2.** A share of the participant's WDC account, as of the date the marriage was terminated, expressed as a dollar amount, and including all subsequent gains and losses. To select this option, insert a dollar amount in the Option 2 box in Paragraph E.
 - **Division Option 3.** A share of the participant's WDC account, as of the date the marriage was terminated, expressed as a percentage, and including all subsequent gains and losses. To select this option, insert a percentage (up to no more than two decimal places) in the Option 3 box in Paragraph E.

There are restrictions on what can be awarded. If a WDC Participant has already used all or a portion of his or her WDC account to purchase an annuity from a WDC provider, that annuity is not subject to division and will not be regarded as part of the assets to be divided.

Step 7: Determine if there is more than one alternate payee. If more than one person will be assigned a portion of the participant's WDC account, then on the second page of this form, check the box in Paragraph F. Ignore this box and go to **Step 12** if there is only one alternate payee.

If the box in Paragraph F is checked to indicate that there is more than one alternate payee, complete a [Supplement to Order to Divide Wisconsin Deferred Compensation Program Account \(ET-2368\)](#) form.

Step 8. Identify additional alternate payees. For each additional alternate payee, complete a box identifying the particular person by name, last known address, birth date, relationship to the participant and the alternate payee's Social Security number. See **Step 5**, describing who may be an alternate payee.

Step 9. Provide division option information. All assignments to all alternate payees must use the same option. However, dollar amounts or percentages awarded may differ between alternate payees. If, for example, the first alternate payee is awarded a dollar amount under Division Option 1, then any other alternate payees must also be awarded either the same or a different dollar amount under Division Option 1.

Step 10. Indicate alternate payee's decision on immediate lump-sum distribution. Normally, a separate WDC account will be established for each alternate payee. Each alternate payee then receives the gains and losses on the assets in their account and rights to future distributions similar, but not identical, to those of regular WDC participants who are no longer employed by a WDC participating employer. The alternate payee account is separate from any WDC account that the alternate payee may have through his or her own employment and the accounts may not be merged.

Once the separate account has been established, a particular alternate payee may elect to receive an immediate, lump-sum distribution of the entire amount awarded by this Order. To do that, the alternate payee should complete and send the disbursement form (*Alternate Payee Distribution Request*) requesting that distribution to the WDC. Call the WDC toll free at 1-877-457-9327 to request a copy of the *Alternate Payee Distribution Request* form.

When there is more than one alternate payee, a decision by one to receive an immediate lump-sum distribution does not affect the others.

Step 11. Obtain Court approval. The [Order to Divide Wisconsin Deferred Compensation Program Account \(ET-2367\)](#) and any [Supplement to Order to Divide Wisconsin Deferred Compensation Program Account \(ET-2368\)](#) must be approved and signed by the judge handling the legal action terminating the marriage. Local court rules and procedures will govern how these forms should be offered to the judge for signature. Check with your attorney or the Clerk of Court.

To avoid potential problems, it is best to go over these forms with all parties to the court action and their legal counsel. Make sure everyone affected agrees that the draft accurately reflects the court's intended property division and complies with these instructions, the laws of Wisconsin governing the Wisconsin Deferred Compensation Program, and conditions and procedures adopted by the Deferred Compensation Board.

Mistakes may be difficult or impossible to correct, so be sure everything is correct.

If you have questions, contact the WDC's administrator, Empower Retirement, at 866-442-3888, Option 1. Specialists are available weekdays from 7am to 5 pm, Central Time.

Presenting or causing to be presented a false or fraudulent "Order to Divide" is a crime punishable under WIS. STAT. § 343.395 (2).

Step 12. Send in this form and other necessary documents. Generally, the court will not be responsible for sending in the signed Order and other necessary documents. Make sure it is understood which party or attorney will be responsible for submitting the necessary materials. An official copy of the signed order, or a copy with the Judge's original signature, must be received at:

Wisconsin Deferred Compensation Program
c/o Empower Retirement
PO Box 173764
Denver CO 80217-3764

Time is of the essence. If the WDC participant or any alternate payee dies before Empower Retirement receives the "Order to Divide," the order is void. Depending on the assignment option selected, delays, interim trades or transactions initiated by the participant, as well as market gains and losses in the interim, can have unanticipated effects on the amount assigned to the alternate payee.

Division of the WDC Account. You will be notified by Empower Retirement of receipt of the "Order to Divide." If there are any correctable problems, Empower Retirement will contact the person who submitted the "Order to Divide" to work toward resolving the problems. Empower Retirement will notify the participant and every alternate payee if the "Order to Divide" is rejected and explain why. If it is accepted, then the participant and alternate payee(s) will be notified of the individual effects on his or her account or assignment after the division is complete.

Remember that there is a continuing duty to help carry out the intent of the court's order. Report any suspected errors immediately to Empower Retirement or ETF. Any person who receives amounts actually awarded to another person will be required to reimburse the person entitled to the benefit.