

***THIS MODEL ORDER IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY
AND IS NOT INTENDED AS LEGAL OR TAX ADVICE.***

MODEL DOMESTIC RELATIONS ORDER

For

THE SUPPLEMENTAL RETIREMENT INCOME PLAN OF NORTH CAROLINA (NC 401(k) PLAN)

This model order has been prepared to assist in drafting domestic relations orders involving benefits payable by the Supplemental Retirement Income Plan of North Carolina (the “NC 401(k) Plan”), a governmental plan that is *not* subject to ERISA. *See* 29 U.S.C. §§ 1002(32) and 1003(b)(2). The provisions of this model order are not mandatory. They are provided as examples of provisions that are consistent with the statutes governing the NC 401(k) Plan and that can be administered by the plan. Parties are strongly encouraged to submit proposed domestic relations orders to the NC 401(k) Plan for approval prior to submission to the court. Parties should allow at least four weeks for a response.

The NC 401(k) Plan is administered by the Retirement Systems Division of the North Carolina Department of State Treasurer. Empower (formerly Prudential Retirement) serves as the third-party administrator of the plan.

Draft and final domestic relations orders should be submitted to Empower as follows:

By fax: (866) 439-8602

By mail: Empower
Attn: NC 401(k) Plan
P.O. Box 5340
Scranton, PA 18505

Revised August 2022

STATE OF NORTH CAROLINA
JUSTICE

IN THE GENERAL COURT OF
DISTRICT COURT DIVISION
___CVD___

COUNTY OF _____

_____,
Plaintiff,
v.
_____,
Defendant.

DOMESTIC RELATIONS ORDER
The NC 401(k) Plan

THIS MATTER coming on for hearing before the Honorable_____, District Court Judge presiding, in the civil District Court for_____County, North Carolina;

AND IT APPEARING to the Court that an equitable distribution judgment has been entered in this action [**OR: that parties have agreed to the entry of this Consent Domestic Relations Order relative to marital property**] concerning a distribution of [**PLAINTIFF’S/DEFENDANT’S**] interest in benefits payable by the Supplemental Retirement Income Plan of North Carolina;

NOW, THEN, the Court makes the following:

FINDINGS OF
FACT

1. The parties were married and that the parties separated on [**DATE**] [**and are now divorced**].
2. An action seeking an equitable distribution of the parties' marital property pursuant to G.S. § 50-20 was filed, and a judgment dividing said property has been entered by the Court [**OR: The parties have agreed to the entry of this Consent Domestic Relations Order**].
3. The Supplemental Retirement Income Plan of North Carolina (hereinafter the “NC 401(k) Plan”) is a qualified defined contribution plan under Internal Revenue Code Section 401(a) that is sponsored by the State of North Carolina. The Retirement Systems Division of the North Carolina Department of State Treasurer serves as the administrator of the NC 401(k) Plan (hereinafter the “Administrator”) and has retained a third party to provide certain record keeping and

administrative functions (hereinafter the “Third-Party Administrator”). The NC 401(k) Plan is governed by a plan document (hereinafter the “Plan Document”) and certain provisions of the North Carolina General Statutes, the Internal Revenue Code, regulations, rulings, and guidance of the Internal Revenue Service and United State Department of Treasury, and other applicable laws (together hereinafter “Applicable Law”).

4. At the time of the parties’ separation, the [PLAINTIFF/DEFENDANT] (hereinafter the “Participant”) was a participant of the NC 401(k) Plan. The Participant’s last known mailing address is _____.

5. This Order recognizes [PLAINTIFF’S/DEFENDANT’S] (hereinafter the “Alternate Payee”) marital interest in the benefits payable by the NC 401(k) Plan to the [PLAINTIFF/DEFENDANT]. The marital interest of the Alternate Payee in the Participant’s benefits payable by the NC 401(k) Plan shall be calculated as follows [or shall be the total amount of the Participant’s account if such amount is less than such calculated amount] (the “Award”):

Percentage plus gains/losses

Fifty percent (50%) [OR: ___ percent (___%)] of the balance of the Participant’s account as of the date of separation, including [OR: not including] any outstanding loan balance in the account, plus any gains or losses attributable to such amount from the date of separation to the date that the Third-Party Administrator establishes a separate account for the Alternate Payee in the NC 401(k) Plan.

OR

Dollar amount plus gains/losses

[\$ _____], plus any gains or losses attributable to such amount from the date of separation to the date that the Third-Party Administrator establishes a separate account for the Alternate Payee in the NC 401(k) Plan.

OR

Percentage amount without gains/losses

Fifty percent (50%) [OR: ___ percent (___%)] of the Participant’s account, including [OR: not including] any outstanding loan balance in the account.

OR

Dollar amount without gains/losses

A fixed amount of \$ _____.

OR

[Any other method of calculation (1) agreeable to the parties or the Court; and (2) sufficiently specific and otherwise capable of administration by the NC

401(k) Plan.]

WHEREFORE, based upon the foregoing Findings of Fact, the Court concludes as a matter of law that the Alternate Payee is entitled to the entry of an order directing the distribution, in the manner set forth, to the Alternate Payee of the Alternate Payee's marital share of a portion of all benefits payable by the NC 401(k) Plan to the Participant.

IT IS THEREFORE ADJUDGED, ORDERED, AND DECREED:

1. The term "Participant" refers to the [PLAINTIFF/DEFENDANT] herein, and the term "Alternate Payee" refers to [PLAINTIFF/DEFENDANT] herein.

2. That the name and last known mailing address of the Participant are:

Name: _____

Address: _____

The Participant's Social Security number and date of birth will be provided to the Third-Party Administrator of the NC 401(k) Plan under separate cover.

3. That the name and last known mailing address of the Alternate Payee are:

Name: _____

Address: _____

The Alternate Payee's Social Security number and date of birth will be provided to the Third-Party Administrator of the NC 401(k) Plan under separate cover.

4. The name and mailing address of the plan to which this Order is directed are: The Supplemental Retirement Income Plan of North Carolina (NC 401(k) Plan), c/o Empower (Third-Party Administrator), P. O. Box 5340, Scranton, PA, 18505.

5. The Administrator shall calculate the Award pursuant to the provisions of this Order and shall place the Award in a separate account for the Alternate Payee in the NC 401(k) Plan.

6. The Award shall be taken pro rata from the Participant's investments in the NC 401(k) Plan, and the tax basis for the investments in the Award shall be the same tax basis as the investments in the Participant's account.

7. Any formula used in the Award shall be applied to all retirement benefits payable to the Participant or to the Participant's designated survivor(s) under any option provided by the NC 401(k) Plan.

8. The Alternate Payee may elect to take distributions from the Alternate Payee's NC 401(k) Plan account (hereinafter "Distributions") as permitted by the Plan Document and Applicable Law. The Alternate Payee's options include the right to take a full or partial Distribution as soon as administratively possible in a manner permitted by the Plan Document and

Applicable Law.

9. In the event that the Alternate Payee dies prior to the date that, pursuant to this Order, the Third-Party Administrator establishes a separate account for the Alternate Payee in the NC 401(k) Plan, the Alternate Payee's marital share of the Participant's benefits in the NC 401(k) Plan shall be paid to such person or persons as are named in the Alternate Payee's will or in the absence of any such designation to the Alternate Payee's heirs by intestate succession.

10. This Order shall not be affected by the death of the Participant.

11. Nothing in this Order shall be construed to require the NC 401(k) Plan to provide to the Alternate Payee any type or form of benefit or any option not otherwise available to the Participant.

12. A copy of this Order shall be served upon the NC 401(k) Plan (c/o Third-Party Administrator), and the Administrator shall determine within a reasonable period of time whether this Order can be administered by the NC 401(k) Plan. This Order shall take effect immediately and shall remain in effect until further orders of this Court. Until this Order is accepted by the NC 401(k) Plan, this Court retains jurisdiction to modify this Order as may be required or necessary.

This the _____ day of _____, 20__.

District Court Judge Presiding