

***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. Prudential Retirement serves as the third-party administrator of the plan.

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

By fax: (866) 439-8602

By mail: Prudential Retirement
Attention: The Supplemental Retirement Income Plan of North
Carolina
P.O. Box 5340
Scranton, PA 18505

STATE OF NORTH CAROLINA
JUSTICE

IN THE GENERAL COURT OF

DISTRICT COURT DIVISION

COUNTY OF _____

___CVD _____

_____)
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. That the parties were married and that the parties separated on **[DATE]** **[and are now divorced]**.

2. That 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: That the parties have agreed to the entry of this Consent Domestic Relations Order]**.

3. That at the time of the parties’ separation, **[PLAINTIFF/DEFENDANT]**, **[NAME]** was a participant of the Supplemental Retirement Income Plan of North Carolina (hereinafter “the NC 401(k) Plan”). **[HIS/HER]** last known mailing address is _____ . The **[PLAINTIFF’S/DEFENDANT’S]** Social Security number _____.

and date of birth will be provided to the Administrator of the NC 401(k) Plan under separate cover.

4. This Order recognizes **[PLAINTIFF’S/DEFENDANT’S]** (hereinafter “the non-participant ex-spouse”) marital interest in the benefits payable by the NC 401(k) Plan to the **[PLAINTIFF/DEFENDANT]** (hereinafter “the participant”). The marital interest of the non-participant ex-spouse 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]**:

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 of distribution (or the date that a separate account is established by the Administrator for the non-participant ex-spouse, if the non-participant ex-spouse does not take an immediate distribution).

OR

Dollar amount plus gains/losses

[\$_____], plus any gains or losses attributable to such amount from the date of separation to the date of distribution (or the date that a separate account is established by the Administrator for the non-participant ex-spouse, if the non-participant ex-spouse does not take an immediate distribution).

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.]

5. If a formula is set out in Finding of Fact **[4]**, it shall be applied to all retirement benefits payable to the participant or to **[HIS/HER]** designated survivor(s) under any option

provided by the NC 401(k) Plan.

WHEREFORE, based upon the foregoing Findings of Fact, the Court concludes as a matter of law that the non-participant ex-spouse is entitled to the entry of an Order directing the distribution, in the manner set forth, to **[HIM/HER]** of **[HIS/HER]** 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 “non-participant ex-spouse” 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 Administrator of the NC 401(k) Plan under separate cover.

3. That the name and last known mailing address of the non-participant ex-spouse are:

Name: _____

Address: _____

The non-participant ex-spouse’s Social Security number and date of birth will be provided to the Administrator of the NC 401(k) Plan under separate cover.

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

5. The NC 401(k) Plan shall distribute to the non-participant ex-spouse a portion of the participant’s benefits payable by the NC 401(k) Plan, calculated pursuant to the provisions of Finding of Fact **[4]** of this order.

6. If a formula is set forth in Finding of Fact 4, it shall be applied to all retirement benefits payable to the participant or to **[HIS/HER]** designated survivor(s) under any option provided by the NC 401(k) Plan.

7. The non-participant ex-spouse’s share shall be paid as soon as administratively possible and in such manner as **[HE/SHE]** may direct, consistent with all statutory and regulatory provisions governing the Plan and with the Plan Document.

8. In the event that the non-participant ex-spouse dies prior to the time that distribution is made to the non-participant spouse under this Order, the non-participant ex-spouse’s marital share of the participant’s retirement benefits shall be paid to such person or persons as are

named in the non-participant ex-spouse's will or in the absence of any such designation to [HIS/HER] heirs by intestate succession.

9. Nothing in this Order shall be construed to require the NC 401(k) Plan to provide to the non-participant ex-spouse any type or form of benefit or any option not otherwise available to the participant.

10. A copy of this Order shall be served upon the Administrator of the Supplemental Retirement Income Plan of North Carolina, 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