

WAC 415-02-500 Property division in dissolution orders¹. This section applies to all retirement plans that the department administers. This section also directs you to additional sections as needed for your particular situation.

(1) **What can a court do?** A court can enter a dissolution order dividing your retirement account in either of the following ways:

(a) Awarding an interest² in your account to your ex-spouse by using WAC 415-02-510 or 415-02-530; or

(b) Splitting³ your account into two separate accounts (one for you and one for your ex-spouse) by using WAC 415-02-520 or 415-02-540, but only if you are vested at the time the dissolution order is entered. "Vested" is defined in subsection (16) of this section.

(2) **Which section should I use?** Consult the following table for direction to the section to use in developing your property division dissolution order. Different sections are provided depending on whether your property division dissolution order is going to provide an interest to your ex-spouse or whether you are splitting your retirement account with your ex-spouse.

If you are in this system and plan:	And the following is true:	Use this section:
Any	You need general information and rules about drafting dissolution orders related to your retirement plan and system.	415-02-500
JRF, JRS, LEOFF Plan 1, and WSPRS Plan 1	You are drafting a dissolution order. (We recommend that you contact the department for assistance because some exceptions may apply.)	415-02-510
LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, and TRS Plan 1 or 2, WSPRS Plan 2	You are drafting a dissolution order that will be entered before you are vested ; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse.	415-02-510
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-520

If you are in this system and plan:	And the following is true:	Use this section:
PERS Plan 3, SERS Plan 3, and TRS Plan 3	You are drafting a dissolution order that will be entered before you are vested ; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse.	415-02-530
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-540
PERS Plan 2, SERS Plan 2, and TRS Plan 2	The department has already accepted your property division order, and you are considering a transfer to Plan 3.	415-02-550

(3) **What are the requirements for dissolution orders and amendments that provide for a property division of my retirement account?** The order must:

- (a) Be entered by a court of competent jurisdiction and enforceable in Washington state;
- (b) Be filed with the department within ninety days of the court's entry of the order;
- (c) Establish the right of your ex-spouse to a portion of your retirement;
- (d) Provide the name and date of birth of your ex-spouse;
- (e) Incorporate the applicable language in this section and one of the following: WAC 415-02-510, 415-02-520, 415-02-530, or 415-02-540; and
- (f) Indicate which WAC section was used in support of the order.

(4) **What else, besides a copy of the dissolution order, must my ex-spouse and I provide to the department?** You must provide addresses and Social Security numbers for both you and your ex-spouse before the department will honor a dissolution order or amendment. This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(5) **I belong to more than one retirement plan. Does the order have to be written any differently?** The order must include specific provisions for each plan.

(a) Example for providing an **interest** to an ex-spouse (RCW 41.50.670 and WAC 415-02-510): Paul belongs to both TRS Plan 2 and PERS Plan 3. His preretirement dissolution order gives an interest in his retirement accounts to his ex-spouse. The order should include the language provided in:

- (i) WAC 415-02-510 to divide Paul's TRS Plan 2 monthly retirement allowance or accumulated contributions.
- (ii) WAC 415-02-530 to divide Paul's PERS Plan 3 monthly retirement allowance and/or accumulated contributions.

(b) Example for **splitting** an account with an ex-spouse: Mary is vested in both TRS Plan 2 and PERS Plan 3. Her preretirement dissolu-

tion order provides for splitting her retirement accounts with her ex-spouse. The order should include the language provided in:

(i) WAC 415-02-520 for preretirement splits to divide Mary's TRS Plan 2 retirement account.

(ii) WAC 415-02-540 for preretirement splits to divide Mary's PERS Plan 3 monthly retirement allowance and/or defined contributions.

(6) What happens if my ex-spouse misses the ninety-day deadline for filing a copy of the dissolution order with the department?

(a) RCW 41.50.670 requires the "obligee" (ex-spouse) to file a copy of the dissolution order with the department within ninety days of the order's entry with the court of record.

(b) The department will accept an order after the ninety-day deadline but will not make retroactive payments or split your defined contribution account retroactively.

(7) How will the department divide the "after-tax" and "tax-deferred" dollars in my retirement account between my ex-spouse and me?

Depending on your plan and how long you have been a member, your retirement account may include both "after-tax" and "tax-deferred" dollars. The department will divide the "after-tax" and "tax-deferred" dollars based on the amount(s) awarded to your ex-spouse, unless the dissolution order states otherwise.

Example: At the time of John's marriage dissolution, he had \$50,000 total contributions in his retirement account with \$20,000 in after-taxed dollars and \$30,000 in tax-deferred dollars. The dissolution order awards 50% of his accumulated contributions to his ex-spouse, Susan. Therefore, the department will give Susan \$10,000 of after-tax dollars and \$15,000 of tax-deferred dollars.

(8) If I am in a retirement plan that offers survivor options, can the court order me to name my ex-spouse as my survivor beneficiary? Yes. To do so, the dissolution order must include the language in RCW 41.50.790(1).

(9) Is there a minimum benefit amount that the department will pay to my ex-spouse if the property division dissolution order splits my retirement account with my ex-spouse? The answer is different depending on if the department accepts the property division dissolution order **BEFORE** or **AFTER** you retire.

(a) **BEFORE** retirement split: Yes. If the court order splits your account with your ex-spouse, and your ex-spouse's monthly payment will be less than the minimum monthly dollar amount for your retirement plan, the department may make a lump sum payment instead of monthly payments. The lump sum payment will be equal to the present value of the monthly payments. The department will **NOT** make the lump sum payment until your ex-spouse meets the age requirement for a normal retirement for your system and plan.

(b) **AFTER** retirement split: No. The department will pay the amount specified in the dissolution order as the ex-spouse's monthly payment amount even if it is less than the minimum monthly dollar amount for your system and plan.

(10) Is there a maximum payment amount that the department will pay to my ex-spouse? Yes. A court may not order the department to pay more than seventy-five percent of your monthly retirement allowance to your ex-spouse. See RCW 41.50.670(4).

(11) How much is the fee the department charges for making payments directly to my ex-spouse? The fee for making payment to your

former spouse is seventy-five dollars. The fee will be divided evenly between you and your former spouse. See RCW 41.50.680.

(12) **What happens to my account if I return to retirement system membership?** Please contact the department for information if you are in this situation.

(13) **What language should the property division order use to divide my deferred compensation program (DCP) account?** Refer to WAC 415-501-495 or contact DCP for information about your DCP account and your marriage dissolution.

(14) **How do I contact the department for additional assistance?** Complete information is available in WAC 415-06-100 (How do I contact the department?).

(15) **Where can I find examples of completed property division dissolution orders?** Following are examples of the required language from the statutes and WAC sections that must be used in a dissolution order. The information in *bold italics* will be dictated by your own circumstances.

(a) **Example 1.** Jane Doe, a nonvested member of PERS Plan 2, and her husband, John Doe, decide to divorce. **WAC 415-02-510** governs dissolution orders of nonvested members of PERS Plan 2. Jane and John complete the paragraphs in RCW 41.50.670(2) and WAC 415-02-510(2) as follows:

Defined Benefits:
RCW 41.50.670(2),
paragraph two, and
WAC 415-02-510(2)

If *Jane Doe* (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to *John Doe* (the obligee), *N/A* dollars from such payments or *a fraction where the numerator is equal to 24 (the number of months in which service credit was earned while the marital community was in existence), and the denominator is equal to the number of months of service credit earned by the obligor at the time of retirement X 50* percent of such payments.

If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

Accumulated Contributions:
RCW 41.50.670(2),
paragraph three, and
WAC 415-02-510(2)

If *Jane Doe* (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to *John Doe* (the obligee) **\$5,700** dollars plus interest at the rate paid by the Department of Retirement Systems on member contributions. Such interest will accrue from the date of this order's entry with court of record.

(b) **Example 2:** Binh Nguyen (a TRS Plan 3 retiree) and his wife, Lan Nguyen, are obtaining a property division dissolution order that splits his retirement account. When he retired, Binh had selected Lan to receive survivor benefits. WAC 415-02-540 applies, and the couple completes the required paragraphs.

Defined Benefits:
WAC 415-02-540(12)

The Department of Retirement Systems (department) shall create a **defined benefit account** for *Lan Nguyen* (ex-spouse) in the ***Teachers' Retirement System Plan 3*** (name of retirement system and plan) and pay him or her **\$350** (amount) for his or her life. To pay for this benefit, *Binh Nguyen's* (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective no more than 30 days after the department's acceptance of the order.

Defined Contributions:
WAC 415-02-540(9)

The Department of Retirement Systems (department) shall split *Binh Nguyen's* (member's) **defined contribution account** in the ***Teachers' Retirement System Plan 3*** (name of retirement system and plan) and create a separate account for *Lan Nguyen* (ex-spouse). The amount of **\$25,000** (amount) shall be transferred from *Binh Nguyen's* (member's) **defined contribution account** to *Lan Nguyen's* (ex-spouse's) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(16) **Terms used:**

- (a) Department's acceptance - The department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.
- (b) Dissolution order - RCW 41.50.500.
- (c) Obligee - RCW 41.50.500(5).

(d) Obligor - RCW 41.50.500(6).

(e) Plan 3 - WAC 415-111-100.

(f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnotes for section:

- 1 "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state. RCW 41.50.500(3) (2002).
- 2 When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement allowance or a portion of your contributions to your ex-spouse.
- 3 When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account has been established, your account and your ex-spouse's account are not tied in any way.

[Statutory Authority: RCW 41.50.050(5) and 41.50.680. WSR 10-14-072, § 415-02-500, filed 7/1/10, effective 8/1/10. Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-500, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-500, filed 5/27/03, effective 7/1/03.]