

October 2022

Report to the General Assembly

Survey of Localities and School Divisions: Division of Retirement Benefits Upon Divorce

SB 349, Chapter 438 of the 2022 Acts of Assembly

Table of Contents

Introduction.....	2
Survey Results	2
Non-VRS Retirement Benefits Offered by Localities and School Divisions	3
Processing of Court Orders that Require Gains and Losses Calculations for DC Plans	7
Conclusion	10
Appendix A- Chapter 438 of the 2022 Acts of Assembly.....	11
Appendix B- VRS Survey of Localities and School Divisions	17

Introduction

This report provides the General Assembly with the results of the survey conducted by the Virginia Retirement System (VRS) of all localities and school systems regarding non-VRS retirement benefits offered by localities and school systems and the processing of gains and losses calculations pursuant to court orders dividing retirement benefits upon divorce. This reporting requirement is set forth in the second enactment of [Chapter 438](#) of the 2022 Acts of Assembly (the complete Chapter 438 is included as Appendix A) and provides as follows:

That the Virginia Retirement System shall poll all localities and school systems and report to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by October 1, 2022, as to (i) whether the localities have defined benefit, defined contribution, or other pension or retirement plans independent from benefits made available by the Virginia Retirement System, and (ii) whether such plans presently process orders that require the plan administrator to calculate gains and losses on retirement benefits subject to equitable distribution.

On August 1, 2022, VRS sent a survey directly to all school systems and to all localities through a partnership with the Virginia Municipal League and the Virginia Association of Counties. The survey, included as Appendix B, was originally open for two weeks, but it was extended through August 19, 2022, to increase the participation rate. The survey received responses from 171 unique employers.¹ Approximately 26% (44) of the respondents were school systems and approximately 74% (127) of the respondents were localities. For reference, VRS covers approximately 835 total employers including state agencies and public institutions of higher education.

Survey Results

According to the survey, localities and school systems in the Commonwealth offer the following non-VRS plans:

Plans	Number	Percentage
Non-VRS defined benefit plan	7	≈ 4%
Non-VRS defined contribution plan	73	≈ 43%
“Other” ² retirement plans or benefits	11	≈ 6%
Do not offer plans other than VRS	92	≈ 54%

¹ Responses to the VRS survey were received from 44 of 133 school divisions and 127 of 323 localities, including 53 of 95 counties, 14 of 38 cities, and 60 of 190 towns.

² In response to the VRS survey, 11 localities and school districts indicated they offer “other” benefits such as a pre-tax annuity (1 response), “Nationwide” (presumably Nationwide Insurance; 1 response), AIG Retirement Services, formerly VALIC (3 responses), local retirement option for certain employees hired within a specific time period (1 response), one of two local systems, closed to new members in 1984 and 1995, respectively (1 response), part-time retirement plan (money purchase plan; 1 response), and a local service award program (LOSAP; 3 responses).

Gains and losses calculations are only relevant for orders dividing a defined contribution (DC) plan subject to equitable distribution upon divorce.³ For non-Employee Retirement Income Security Act of 1974 (ERISA) plans, including plans offered by localities and school systems of the Commonwealth, each plan provider makes its own policy decision as to whether or not to accept court orders that call for gains and losses calculations. Of the surveyed localities and school systems, the majority do not accept court orders that allow gains and losses calculations:

- 23 (or about 29% of responses) said “yes”
- 55 (or about 71% of responses) said “no”

Non-VRS Retirement Benefits Offered by Localities and School Divisions

The survey asked employers about any non-VRS retirement plans that they offer and to specify the type of plans offered, if any. Such plans could include a separate defined benefit (DB) plan, defined contribution or deferred compensation (DC) plan, including an employer match. The table below provides the responses received from localities and school divisions.

Locality	DB	DC	Other	None
Accomack County		X		
Albemarle County		X	X	
Amherst County		X		
Arlington County	X	X		
Augusta County				X
Bland County				X
Botetourt County				X
Brunswick County		X		
Campbell County		X		
Caroline County		X		
Carroll County		X		
Charles City County		X		
Charlotte County				X
Chesterfield County	X	X		
City of Buena Vista				X
City of Chesapeake		X		
City of Emporia		X		
City of Fairfax	X			
City of Fredericksburg		X		
City of Hampton				X
City of Lexington				X

³ In general, gains and losses calculations involve dividing a member’s account as of a date in the past (typically the date of separation of the parties) and then calculating investment gains and losses from that date to the date the account is ordered by the court to be segregated.

Locality	DB	DC	Other	None
City of Martinsville				X
City of Newport News	X	X		
City of Norton				X
City of Portsmouth			X	
City of Staunton		X		
City of Suffolk		X		
City of Williamsburg		X		
Clarke County				X
Culpeper County		X		
Dickenson County		X		
Fairfax County	X	X		
Fauquier County		X		
Floyd County				X
Franklin County				X
Frederick County		X		
Gloucester County		X		
Grayson County			X	
Halifax County				X
Henry County				X
Highland County				X
James City County		X		
King William County				X
Lee County				X
Loudoun County		X	X	
Lunenburg County			X	
Madison County				X
Mathews County		X		
Middlesex County				X
Montgomery County		X		
New Kent County		X		
Nottoway County		X		
Powhatan County		X		
Prince George County		X		
Prince William County	X	X	X	
Pulaski County		X		
Roanoke County				X
Rockbridge County				X
Rockingham County				X
Shenandoah County		X		
Smyth County		X		

Locality	DB	DC	Other	None
Southampton County		X		
Spotsylvania County		X	X	
Tazewell County		X		
Town of Amherst		X		
Town of Appomattox				X
Town of Ashland		X		
Town of Berryville				X
Town of Blacksburg				X
Town of Blackstone			X	
Town of Boydton				X
Town of Boykins				X
Town of Brodnax				X
Town of Cape Charles		X		
Town of Chatham				X
Town of Chincoteague				X
Town of Christiansburg				X
Town of Clifton Forge				X
Town of Coeburn				X
Town of Courtland				X
Town of Culpeper		X		
Town of Dayton				X
Town of Dillwyn				X
Town of Eastville				X
Town of Exmore				X
Town of Farmville		X		
Town of Floyd		X		
Town of Fries		X		
Town of Gate City				X
Town of Glasgow				X
Town of Gretna				X
Town of Grottoes		X		
Town of Hamilton				X
Town of Haysi				X
Town of Hillsboro				X
Town of Independence				X
Town of Iron Gate				X
Town of Jarratt				X
Town of Kenbridge				X
Town of Kilmarnock		X		
Town of La Crosse				X

Locality	DB	DC	Other	None
Town of Lawrenceville				X
Town of Leesburg		X		
Town of Louisa			X	
Town of Madison				X
Town of Montross				X
Town of Narrows				X
Town of Orange		X		
Town of Painter				X
Town of Parksley		X		
Town of Pulaski				X
Town of Saltville				X
Town of South Boston		X	X	
Town of South Hill				X
Town of Stanley				X
Town of Stony Creek				X
Town of Tappahannock				X
Town of Tazewell				X
Town of Troutville		X		
Town of Victoria				X
Town of Virgilina				X
Town of Warrenton				X
Town of Warsaw				X
Town of Wise				X
Warren County		X		
Westmoreland County				X
Wise County		X		
Albemarle County Public Schools		X		
Amelia County Public Schools				X
Amherst County Public Schools		X		
Appomattox County Public Schools				X
Arlington County Public Schools	X	X		
Augusta County Public Schools				X
Bristol City Public Schools				X
Buchanan County Public Schools				X
Buena Vista City Public Schools		X		
Carroll County Public Schools				X
Charlottesville-Albemarle Vocational Technical Center		X		
Chesapeake City Public Schools		X		
Clarke County Public Schools				X

Locality	DB	DC	Other	None
Colonial Heights City Public Schools				X
Craig County Public Schools				X
Cumberland County Public Schools				X
Frederick County Public Schools		X		
Galax City Public Schools				X
Giles County Public Schools				X
Goochland County Public Schools		X		
Greene County Public Schools		X	X	
Lunenburg County Public Schools				X
Middlesex County Public Schools				X
Nelson County Public Schools				X
Norfolk City Public Schools		X		
Norton City Public Schools				X
Nottoway County Public Schools		X		
Orange County Public Schools				X
Pittsylvania County Public Schools				X
Powhatan County Public Schools				X
Prince Edward County Public Schools				X
Prince George County Public Schools		X		
Radford City Public Schools		X		
Roanoke City Public Schools		X		
Rockbridge County Public Schools				X
Rockingham County Public Schools		X		
Rowanty Vocational Technical Center		X		
Russell County Public Schools				X
Salem City Public Schools				X
Spotsylvania County Public Schools		X		
Virginia Beach City Public Schools		X		
Waynesboro City Public Schools				X
West Point Town Public Schools				X
Winchester City Public Schools		X		

Processing of Court Orders that Require Gains and Losses Calculations for DC Plans

Retirement benefits may be considered marital property and subject to equitable distribution in the Commonwealth in accordance with the provisions of [§ 20-107.3](#), *Code of Virginia*. Therefore, a court may order a specified division of a person’s retirement benefits. Gains and losses calculations are only relevant for orders dividing a DC plan account and are not performed for DB plans. Employers that indicated that they offered a non-VRS retirement plan

other than a DB plan were asked if they process court orders that require the calculation of gains and losses. The table below provides the responses received from localities and school divisions:

Locality or School Division w/non-VRS DC Plan	Yes	No
Accomack County		X
Albemarle County		X
Amherst County		X
Arlington County	X	
Brunswick County		X
Campbell County	X	
Caroline County		X
Carroll County	X	
Charles City County		X
Chesterfield County	X	
City of Chesapeake		X
City of Emporia		X
City of Fredericksburg	X	
City of Newport News	X	
City of Portsmouth	X	
City of Staunton	X	
City of Suffolk	X	
City of Williamsburg		X
Culpeper County	X	
Dickenson County		X
Fairfax County	X	
Fauquier County		X
Frederick County		X
Gloucester County	X	
Grayson County		X
James City County	X	
Loudoun County	X	
Lunenburg County	X	
Mathews County		X
Montgomery County	X	
New Kent County		X
Nottoway County		X
Powhatan County		X
Prince George County		X
Prince William County	X	
Pulaski County		X
Shenandoah County		X
Smyth County		X

Locality or School Division w/non-VRS DC Plan	Yes	No
Southampton County		X
Spotsylvania County		X
Tazewell County		X
Town of Amherst		X
Town of Ashland	X	
Town of Blackstone		X
Town of Cape Charles		X
Town of Culpeper		X
Town of Farmville		X
Town of Floyd		X
Town of Fries		X
Town of Grottoes		X
Town of Kilmarnock		X
Town of Leesburg	X	
Town of Louisa		X
Town of Orange	X	
Town of Parksley		X
Town of South Boston		X
Town of Troutville		X
Warren County		X
Wise County		X
Albemarle County Public Schools		X
Amherst County Public Schools		X
Arlington County Public Schools		X
Buena Vista City Public Schools		X
Charlottesville-Albemarle Vocational Technical Center		X
Chesapeake City Public Schools	X	
Frederick County Public Schools	X	
Goochland County Public Schools		X
Greene County Public Schools	X	
Norfolk City Public Schools		X
Nottoway County Public Schools		X
Prince George County Public Schools		X
Radford City Public Schools		X
Roanoke City Public Schools		X
Rockingham County Public Schools		X
Rowanty Vocational Technical Center		X
Spotsylvania County Public Schools		X
Virginia Beach City Public Schools		X
Winchester City Public Schools		X

Conclusion

There are more than 800 employers throughout the Commonwealth participating in the Virginia Retirement System. As required by Chapter 438 of the 2022 Acts of Assembly, VRS surveyed the 656 localities and school systems, of which 171 responded. A majority of localities and school systems that responded to the survey choose not to offer any additional retirement plans or benefits. Of those localities and school systems that reported they offer non-VRS retirement benefits, other than DB plans, a substantial majority do not accept orders that require the calculation of gains and losses when determining the distribution to the account holder's former spouse. For plans not administered by VRS, each employer makes its own policy decision as to whether or not to accept orders that call for gains and losses calculations, taking into consideration various factors such as the administrative cost in terms of time and staffing as well as whether or not their plan administrator will accept court orders requiring gains and losses calculations.

Appendix A- Chapter 438 of the 2022 Acts of Assembly

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 438

An Act to amend and reenact § 20-107.3 of the Code of Virginia, relating to division of marital property; Virginia Retirement System managed defined contribution plan; calculation of gains and losses.

[S 349]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 20-107.3 of the Code of Virginia is amended and reenacted as follows:

§ 20-107.3. Court may decree as to property and debts of the parties.

A. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce from the bond of matrimony, or upon the filing with the court as provided in subsection J of a certified copy of a final divorce decree obtained without the Commonwealth, the court, upon request of either party, (i) shall determine the legal title as between the parties, and the ownership and value of all property, real or personal, tangible or intangible, of the parties and shall consider which of such property is separate property, which is marital property, and which is part separate and part marital property in accordance with subdivision 3 and (ii) shall determine the nature of all debts of the parties, or either of them, and shall consider which of such debts is separate debt and which is marital debt. The court shall determine the value of any such property as of the date of the evidentiary hearing on the evaluation issue. The court shall determine the amount of any such debt as of the date of the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, and the extent to which such debt has increased or decreased from the date of separation until the date of the evidentiary hearing. Upon motion of either party made no less than 21 days before the evidentiary hearing the court may, for good cause shown, in order to attain the ends of justice, order that a different valuation date be used. The court, on the motion of either party, may retain jurisdiction in the final decree of divorce to adjudicate the remedy provided by this section when the court determines that such action is clearly necessary, and all decrees heretofore entered retaining such jurisdiction are validated.

1. Separate property is (i) all property, real and personal, acquired by either party before the marriage; (ii) all property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the other party; (iii) all property acquired during the marriage in exchange for or from the proceeds of sale of separate property, provided that such property acquired during the marriage is maintained as separate property; and (iv) that part of any property classified as separate pursuant to subdivision 3. Income received from separate property during the marriage is separate property if not attributable to the personal effort of either party. The increase in value of separate property during the marriage is separate property, unless marital property or the personal efforts of either party have contributed to such increases and then only to the extent of the increases in value attributable to such contributions. The personal efforts of either party must be significant and result in substantial appreciation of the separate property if any increase in value attributable thereto is to be considered marital property.

2. Marital property is (i) all property titled in the names of both parties, whether as joint tenants, tenants by the entirety or otherwise, except as provided by subdivision 3, (ii) that part of any property classified as marital pursuant to subdivision 3, or (iii) all other property acquired by each party during the marriage which is not separate property as defined above. All property including that portion of pensions, profit-sharing or deferred compensation or retirement plans of whatever nature, acquired by either spouse during the marriage, and before the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, is presumed to be marital property in the absence of satisfactory evidence that it is separate property. For purposes of this section marital property is presumed to be jointly owned unless there is a deed, title or other clear indicia that it is not jointly owned.

3. The court shall classify property as part marital property and part separate property as follows:

a. In the case of income received from separate property during the marriage, such income shall be marital property only to the extent it is attributable to the personal efforts of either party. In the case of the increase in value of separate property during the marriage, such increase in value shall be marital property only to the extent that marital property or the personal efforts of either party have contributed to such increases, provided that any such personal efforts must be significant and result in substantial appreciation of the separate property.

For purposes of this subdivision, the nonowning spouse shall bear the burden of proving that (i) contributions of marital property or personal effort were made and (ii) the separate property increased in value. Once this burden of proof is met, the owning spouse shall bear the burden of proving that the

increase in value or some portion thereof was not caused by contributions of marital property or personal effort.

"Personal effort" of a party shall be deemed to be labor, effort, inventiveness, physical or intellectual skill, creativity, or managerial, promotional or marketing activity applied directly to the separate property of either party.

b. In the case of any pension, profit-sharing, or deferred compensation plan or retirement benefit, the marital share as defined in subsection G shall be marital property.

c. In the case of any personal injury or workers' compensation recovery of either party, the marital share as defined in subsection H shall be marital property.

d. When marital property and separate property are commingled by contributing one category of property to another, resulting in the loss of identity of the contributed property, the classification of the contributed property shall be transmuted to the category of property receiving the contribution. However, to the extent the contributed property is retraceable by a preponderance of the evidence and was not a gift, such contributed property shall retain its original classification.

e. When marital property and separate property are commingled into newly acquired property resulting in the loss of identity of the contributing properties, the commingled property shall be deemed transmuted to marital property. However, to the extent the contributed property is retraceable by a preponderance of the evidence and was not a gift, the contributed property shall retain its original classification.

f. When separate property is retitled in the joint names of the parties, the retitled property shall be deemed transmuted to marital property. However, to the extent the property is retraceable by a preponderance of the evidence and was not a gift, the retitled property shall retain its original classification.

g. When the separate property of one party is commingled into the separate property of the other party, or the separate property of each party is commingled into newly acquired property, to the extent the contributed property is retraceable by a preponderance of the evidence and was not a gift, each party shall be reimbursed the value of the contributed property in any award made pursuant to this section.

h. Subdivisions 3 d, e and f shall apply to jointly owned property. No presumption of gift shall arise under this section where (i) separate property is commingled with jointly owned property; (ii) newly acquired property is conveyed into joint ownership; or (iii) existing property is conveyed or retitled into joint ownership. For purposes of this subdivision 3, property is jointly owned when it is titled in the name of both parties, whether as joint tenants, tenants by the entireties, or otherwise.

4. Separate debt is (i) all debt incurred by either party before the marriage, (ii) all debt incurred by either party after the date of the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, and (iii) that part of any debt classified as separate pursuant to subdivision 5. However, to the extent that a party can show by a preponderance of the evidence that the debt was incurred for the benefit of the marriage or family, the court may designate the debt as marital.

5. Marital debt is (i) all debt incurred in the joint names of the parties before the date of the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, whether incurred before or after the date of the marriage, and (ii) all debt incurred in either party's name after the date of the marriage and before the date of the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent. However, to the extent that a party can show by a preponderance of the evidence that the debt, or a portion thereof, was incurred, or the proceeds secured by incurring the debt were used, in whole or in part, for a nonmarital purpose, the court may designate the entire debt as separate or a portion of the debt as marital and a portion of the debt as separate.

B. For the purposes of this section only, both parties shall be deemed to have rights and interests in the marital property. However, such interests and rights shall not attach to the legal title of such property and are only to be used as a consideration in determining a monetary award, if any, as provided in this section.

C. Except as provided in subsection G, the court shall have no authority to order the division or transfer of separate property or marital property, or separate or marital debt, which is not jointly owned or owed. However, upon a finding that separate property of one party is in the possession or control of the other party, the court may order that the property be transferred to the party whose separate property it is. The court may, based upon the factors listed in subsection E, divide or transfer or order the division or transfer, or both, of jointly owned marital property, jointly owed marital debt, or any part thereof. The court shall also have the authority to apportion and order the payment of the debts of the parties, or either of them, that are incurred prior to the dissolution of the marriage, based upon the factors listed in subsection E.

As a means of dividing or transferring the jointly owned marital property, the court may transfer or order the transfer of real or personal property or any interest therein to one of the parties, permit either party to purchase the interest of the other and direct the allocation of the proceeds, provided the party purchasing the interest of the other agrees to assume any indebtedness secured by the property, or order

its sale by private sale by the parties, through such agent as the court shall direct, or by public sale as the court shall direct without the necessity for partition. All decrees entered prior to July 1, 1991, which are final and not subject to further proceedings on appeal as of that date, which divide or transfer or order the division or transfer of property directly between the parties are hereby validated and deemed self-executing. All orders or decrees which divide or transfer or order division or transfer of real property between the parties shall be recorded and indexed in the names of the parties in the appropriate grantor and grantee indexes in the land records in the clerk's office of the circuit court of the county or city in which the property is located.

D. In addition, based upon (i) the equities and the rights and interests of each party in the marital property, and (ii) the factors listed in subsection E, the court has the power to grant a monetary award, payable either in a lump sum or over a period of time in fixed amounts, to either party. The party against whom a monetary award is made may satisfy the award, in whole or in part, by conveyance of property, subject to the approval of the court. An award entered pursuant to this subsection shall constitute a judgment within the meaning of § 8.01-426 and shall not be docketed by the clerk unless the decree so directs. An award entered pursuant to this subsection may be enforceable in the same manner as any other money judgment. The provisions of § 8.01-382, relating to interest on judgments, shall apply unless the court orders otherwise.

Any marital property, which has been considered or ordered transferred in granting the monetary award under this section, shall not thereafter be the subject of a suit between the same parties to transfer title or possession of such property.

E. The amount of any division or transfer of jointly owned marital property, and the amount of any monetary award, the apportionment of marital debts, and the method of payment shall be determined by the court after consideration of the following factors:

1. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
2. The contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties;
3. The duration of the marriage;
4. The ages and physical and mental condition of the parties;
5. The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of subdivision A (1), (3) or (6) of § 20-91 or § 20-95;
6. How and when specific items of such marital property were acquired;
7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities;
8. The liquid or nonliquid character of all marital property;
9. The tax consequences to each party;
10. The use or expenditure of marital property by either of the parties for a nonmarital separate purpose or the dissipation of such funds, when such was done in anticipation of divorce or separation or after the last separation of the parties; and
11. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

F. The court shall determine the amount of any such monetary award without regard to maintenance and support awarded for either party or support for the minor children of both parties and shall, after or at the time of such determination and upon motion of either party, consider whether an order for support and maintenance of a spouse or children shall be entered or, if previously entered, whether such order shall be modified or vacated.

G. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E:

1. The court may direct payment of a percentage of the marital share of any pension, profit-sharing or deferred compensation plan, or retirement benefits, whether vested or nonvested, ~~which~~ *that* constitutes marital property and whether payable in a lump sum or over a period of time. The court may order direct payment of such percentage of the marital share by direct assignment to a party from the employer trustee, plan administrator, or other holder of the benefits. However, the court shall only direct that payment be made as such benefits are payable. No such payment shall exceed 50 percent of the marital share of the cash benefits actually received by the party against whom such award is made. "Marital share" means that portion of the total interest, the right to which was earned during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent. Any determination of military retirement benefits shall be in accordance with the federal Uniformed Services Former Spouses' Protection Act (10 U.S.C. 1408 et seq.). *If the court enters an order to distribute any Virginia Retirement System managed defined contribution plan, the Virginia Retirement System shall, if ordered by the court, calculate and include in such distribution gains and losses from the valuation date specified in the order through the date of distribution of the benefits, but only to the extent possible based on the information available to the Virginia Retirement System.*

2. To the extent permitted by federal or other applicable law, the court may order a party to designate a spouse or former spouse as irrevocable beneficiary during the lifetime of the beneficiary of all or a portion of any survivor benefit or annuity plan of whatsoever nature, but not to include a life insurance policy except to the extent permitted by § 20-107.1:1. The court, in its discretion, shall determine as between the parties, who shall bear the costs of maintaining such plan.

H. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E, the court may direct payment of a percentage of the marital share of any personal injury or workers' compensation recovery of either party, whether such recovery is payable in a lump sum or over a period of time. However, the court shall only direct that payment be made as such recovery is payable, whether by settlement, jury award, court award, or otherwise. "Marital share" means that part of the total personal injury or workers' compensation recovery attributable to lost wages or medical expenses to the extent not covered by health insurance accruing during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent.

I. Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties pursuant to §§ 20-109 and 20-109.1. Agreements, otherwise valid as contracts, entered into between spouses prior to the marriage shall be recognized and enforceable.

J. A court of proper jurisdiction under § 20-96 may exercise the powers conferred by this section after a court of a foreign jurisdiction has decreed a dissolution of a marriage or a divorce from the bond of matrimony, if (i) one of the parties was domiciled in this Commonwealth when the foreign proceedings were commenced, (ii) the foreign court did not have personal jurisdiction over the party domiciled in the Commonwealth, (iii) the proceeding is initiated within two years of receipt of notice of the foreign decree by the party domiciled in the Commonwealth, and (iv) the court obtains personal jurisdiction over the parties pursuant to subdivision A 9 of § 8.01-328.1, or in any other manner permitted by law.

K. The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section, including the authority to:

1. Order a date certain for transfer or division of any jointly owned property under subsection C or payment of any monetary award under subsection D;

2. Punish as contempt of court any willful failure of a party to comply with the provisions of any order made by the court under this section;

3. Appoint a special commissioner to transfer any property under subsection C where a party refuses to comply with the order of the court to transfer such property; and

4. Modify any order entered in a case filed on or after July 1, 1982, intended to affect or divide any pension, profit-sharing or deferred compensation plan or retirement benefits pursuant to the United States Internal Revenue Code or other applicable federal laws, only for the purpose of establishing or maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to effectuate the expressed intent of the order.

L. If it appears upon or after the entry of a final decree of divorce from the bond of matrimony that neither party resides in the city or county of the circuit court that entered the decree, the court may, on the motion of any party or on its own motion, transfer to the circuit court for the city or county where either party resides the authority to make additional orders pursuant to subsection K or to carry out or enforce any stipulation, contract, or agreement between the parties that has been affirmed, ratified, and incorporated by reference pursuant to § 20-109.1.

2. That the Virginia Retirement System shall poll all localities and school systems and report to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by October 1, 2022, as to (i) whether the localities have defined benefit, defined contribution, or other pension or retirement plans independent from benefits made available by the Virginia Retirement System, and (ii) whether such plans presently process orders that require the plan administrator to calculate gains and losses on retirement benefits subject to equitable distribution.

Appendix B- VRS Survey of Localities and School Divisions

SB349 - Survey

Never enter confidential or personal information, such as a Social Security number.

Recent legislation (Chapter 438 of the Acts of Assembly, Regular Session 2022) requires the Virginia Retirement System (VRS) to survey all localities and school divisions for the following information:

- Whether they offer retirement plans other than those administered by VRS.
- How those employers that offered defined contribution plans handle court-ordered processing of retirement funds stemming from a member's or retiree's divorce.

Please have no more than one person from your organization complete the survey by August 12, 2022.

Here is some additional background on the survey topic:

If a court deems an individual's retirement benefits to be a marital asset, then an equitable distribution order (also known as a domestic relations order or a qualified domestic relations order) may assign a portion of retirement benefits to a plan member's former spouse.

As an example, for a defined contribution plan account, a domestic relations order dated March 1, 2022, may assign your member's former spouse "50% of the account balance as of November 4, 2008, adjusted for gains or losses through the date of distribution." This language in the new legislation might require your staff or your plan recordkeeper's staff to calculate the account balance as of November 4, 2008, and then calculate gains or losses on the balance through the date of division and distribution of funds.

If you are unsure about the answers to the survey questions, you may need to consult with your plan's recordkeeper. VRS will not have information about non-VRS retirement plan provisions and processes.

Thank you again for your time and consideration in completing this survey. If you have any questions regarding this survey, please contact Ryan LaRoche.

Chapter 438 of the 2022 Acts of Assembly requires the Virginia Retirement System to poll all Virginia localities and school divisions regarding the processing of retirement benefits in response to court orders in divorce decrees affecting plan members or retirees. VRS is required to report findings to the General Assembly.

All fields are required.

LOGIC Show/hide trigger exists.

Do you represent a locality or a school division?

- Locality
- School Division

LOGIC Hidden unless: Question "Do you represent a locality or a school division?" is one of the following answers ("Locality")

What locality do you represent?

LOGIC Hidden unless: Question "Do you represent a locality or a school division?" is one of the following answers ("School Division")

What school division do you represent?

LOGIC Show/hide trigger exists.

Other than the plans administered by the Virginia Retirement System, does your locality/school division offer your employees:

(check all that apply)

- A defined benefit plan
- A defined contribution plan
- Other retirement plan(s)
- None

LOGIC Hidden unless: Question "Other than the plans administered by the Virginia Retirement System, does your locality/school division offer your employees: " is one of the following answers ("Other retirement plan(s)")

You indicated "Other retirement plan(s)" in the previous question. Please enter the plan(s) in the space provided.

LOGIC Hidden unless: Question "Other than the plans administered by the Virginia Retirement System, does your locality/school division offer your employees: " is one of the following answers ("A defined contribution plan", "Other retirement plan(s)")

Does your locality/school division process court orders that require you or your retirement plan administrator to calculate gains and losses on retirement benefits subject to equitable distribution?

- Yes
- No

Thank you for your participation.

Copyright © Virginia Retirement System. All rights reserved. The VRS and myVRS logos are registered trademarks of the Virginia Retirement System.