



BENEFICIARIES BY THE NUMBERS



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BY THE NUMBERS

- **13** sections of Chapter 32 dealing with those who receive a benefit “on account of membership of a person other than himself [or herself].”
- **10** takeaways from the 2013 IRS Private Letter Ruling Letter which impact beneficiaries
- **6** fun facts about Chapter 32 beneficiaries
- **4** recent cases, **1** somewhat recent case, and **1** really old case (if you consider 1989 a long time ago)
- **1** statement regarding electronic signatures on forms
- **1** Civil War pensioner still living



THE LENGTH OF PENSION LIABILITY

- Irene Triplett, born in 1930, is alive and 86 years of age as of 3/17/16.
- She is disabled, and receives a pension as a dependent of her father, Mose Triplett, on the basis of his service in the United States Civil War. President Andrew Johnson issued a proclamation formally ending that war on August 20, 1866.



AND NOW, A BIT OF PERA HISTORY...

- First letter from PERA, PERAC's predecessor agency, addressing a beneficiary question was issued on March 24, 1983 to the Lawrence Retirement Board. (***PERA Opinion 83/28***)





E-SIGNATURES AND BENEFICIARY FORMS

- A massive project is underway at PERAC to assess the viability of using electronic signatures on certain forms.



- E-Signatures on Beneficiary Forms will **NOT** be allowed.

PERAC
BENEFICIARY
FORM

SIGN: _____

E-SIGNATURES
NOT ALLOWED
ON
BENEFICIARY
FORMS





6 QUICK FACTS ABOUT CHAPTER 32 BENEFICIARIES

1. They cannot vote in retirement board elections.
2. They are eligible to receive COLAs.
3. The taxation of their benefit mirrors that of the member upon whose benefit their allowance is based.
4. Sometimes they get a benefit which was unintended.
5. Their benefit ends upon their own death or
6. Their benefit ends when they reach a certain age.



BENEFICIARY, DEFINED

1. A person or group that receives benefits, profits, or advantages.
2. A person designated as the recipient of funds or other property under a will, trust, insurance policy, etc.



Source: *Dictionary.com*





SECTION 1

“Beneficiary”

[A]ny person entitled to any present or potential benefit on account of membership of a person other than himself, under the provisions of sections one to twenty-eight, inclusive.

Source: *Section 1 of Chapter 32*





WHAT IS THE QUESTION?

Answer: The event which usually precedes a person's entitlement to a Chapter 32 benefit "on account of membership of a person other than" himself or herself.

Question: What is death?





A CHAPTER 32 BENEFICIARY WILL RECEIVE ONE OF TWO THINGS

- A lump sum of money **OR**
- An allowance of some sort **BUT**
- Accidental death beneficiaries receive both the lump sum and the allowance, in **most** cases.





PART ONE

The death of an active member:

- Section 9
- Section 100
- Section 12(2)(d)
- Section 12A
- Section 12B
- Sections 12C & 20(5)(c)(2)





SECTION 9

- Accidental death benefit (active member)
- A member in service dies as a result of and while in the performance of his duties.
- All sums credited in his annuity account immediately disbursed to his beneficiary or beneficiaries of record.
- Surviving spouse receives pension equal to seventy-two percent of member's annual rate of compensation on date of death.



SECTION 9 BENEFIT TO CHILDREN

- Children of a deceased member receive an additional allowance of **\$846.12** annually, until they turn 18, 22 (if a student) or are adopted or marry.
- Payment of this dependent allowance is to the guardian of the child and/or children.



SECTION 100

- Available only to certain named employees including police officers, firefighters or corrections officers.
- Death under certain conditions triggers this section, which pays an amount equal to the salary that would have been paid to the deceased member if he or she had continued on in their position.
- A spouse is required.
- Children only take benefit after spouse, and then only receive 72% of what surviving spouse was receiving.





SECTION 12(2)(d) BENEFICIARIES: SELECTED OR ELECTED

- A member designates an Option D beneficiary on a prescribed form.
- Only one beneficiary may be named, and only a spouse, child, former spouse who has not remarried, mother, father, brother or sister is eligible for designation.

OR

- An eligible spouse makes the election after the member's death.



SPOUSAL ELECTION OF A 12(2)(d) BENEFIT

- The member must have completed at least *two years of creditable service*.
- The member and spouse must have been *married for at least one year*.
- The member and spouse must have been *living together* at the time of the member's death.
- If they were not living together at the time of the member's death, the board must find that they were *living apart for justifiable cause*, other than desertion or moral turpitude on the part of the applying spouse.



THE MINIMUM ALLOWANCE

- Allows for a minimum allowance of either \$250 or \$500 per month, depending upon whether a local option has been adopted.
- Acceptance occurs upon filing with PERAC.
- For members of the State and Teachers Retirement Systems, the minimum allowance increased to \$500 per month on April 2, 2012.
- Available only to the surviving spouse of an active member.
- See PERAC Memorandum #14/2012.



12(2)(d): IF A SPOUSE DOES NOT ELECT

- If the member had not named another individual as his/her Option D beneficiary, the member's accumulated deductions would be paid to the surviving Section 11 beneficiaries of record, or, if there are none, to the member's surviving spouse in one sum.
- If the member had named another individual as his/her Option D beneficiary, that individual would receive a lifetime allowance (instead of a lump sum payment being made to the surviving beneficiaries of record.)

SECTION 12A

- Available to those people otherwise eligible for Section 12(2)(d) who are also applying for Section 9 benefits.
- Expands the “90 day window” to one full year.





INACTIVE MEMBERS

- A 12(2)(d) allowance may be available to a beneficiary of an inactive member, **HOWEVER**
- No benefit for children is available under Section 12B.
- No eligibility for the “minimum allowance.”



CALCULATING SECTION 12(2)(d) FOR THOSE WHO WERE MEMBERS BEFORE 4/2/12

- Provides beneficiary with the allowance the member would have received under Option C had they not died and instead had retired on the date of their death. If under age 55 at death, the age of the deceased will be “bumped up” to 55 to calculate the allowance.
- Beneficiary age “bumped up” an equal amount.



CALCULATING 12(2)(d) BENEFITS FOR THE "ON OR AFTER" SET

- Group 1: As if the person retired at age 60, with a 1.45 age factor
- Group 2: As if the person retired at age 55, with a 1.45 age factor.
- Group 4: As if the person retired at age 55, with a 2.2 age factor.

Caveat: Different age factors will be employed after 30 years of service



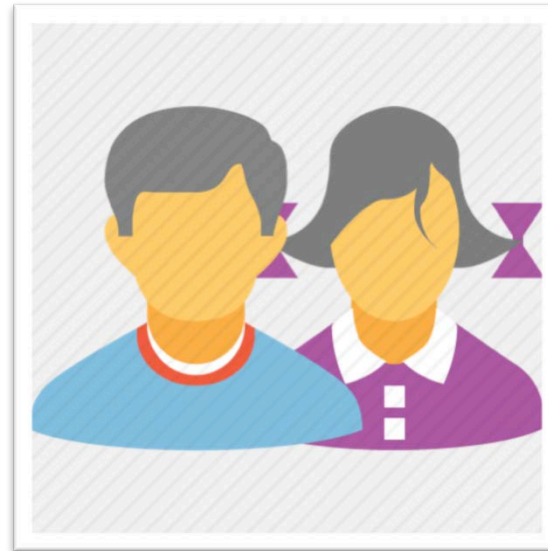
SECTION 5 AGE FACTOR RECAP

A MEMBER BEFORE APRIL 2, 2012	A MEMBER ON OR AFTER APRIL 2, 2012
<ul style="list-style-type: none">• Group 1, Age 55, Age Factor 1.5	<ul style="list-style-type: none">• Group 1, Age 60, Age Factor 1.45
<ul style="list-style-type: none">• Group 2, Age 55, Age Factor 2.0	<ul style="list-style-type: none">• Group 2, Age 55, Age Factor 1.45
<ul style="list-style-type: none">• Group 4, Age 55, Age Factor 2.5	<ul style="list-style-type: none">• Group 4, Age 55, Age Factor 2.2



BENEFITS PAYABLE TO CHILDREN

- When a 12(2)(d) allowance is paid, Section 12B gives an additional allowance for a member's minor children:
 - \$120.00 per month to the oldest child
 - \$90.00 per month to each additional child
 - Payable to a guardian



SECTION 12B

- Sometimes there is no spouse.
- In that event, any minor children would divide the Member Survivor Allowance amongst them, and the 12B allowance would still be payable.
- Benefit payable to a guardian.
- This benefit ends as described in this section.





THE **12B** BENEFIT ENDS FOR A CHILD...

- Upon his or her adoption
- Upon reaching age 18
- Upon reaching age 22 if a full-time student
- Upon his or her marriage
- Upon his or her death



SECTION 12C

- May cross pollinate with 20(5)(c)(2)
- Available when a person should have been a member, but wasn't
- Very poorly worded, but it has been used in the past to get a child a benefit



SECTION 20(5)(c)(2)

- Retirement boards required to correct errors when discovered.
- If a deceased person should have been a member, but wasn't, board could use this subsection to posthumously make someone a member.



PART TWO

The death of a retiree:

- Section 12,
 - Option A
 - Option B
 - Option C
- Section 9
- Section 101





BENEFITS TO SURVIVORS OF RETIREES

- Option A: remainder of what was due retiree for month of death
- Option B: amounts, if any, remaining in annuity account
- Option C: allowance for the lifetime of one certain, statutorily acceptable, beneficiary
- Accidental death benefits (Section 9)



OPTION A

- Gets the largest possible retirement allowance, known as “Life Annuity”
- Upon his death, no money payable to anyone except:
 - If he dies on the 16th of September, for example, his estate will be due 16 days of retirement allowance





OPTION B

- Selected by retiree or assigned by default.
- Option B provides a lifetime allowance that is 1% to 5% less per month than Option A.
- The member's annuity account is gradually depleted by an amount equal to the annuity portion of your retirement allowance.
- Usually, the annuity account will be depleted about 15 years after retirement.
- Member still gets full allowance after depletion.
- Upon member's death, beneficiary gets whatever amount is remaining in the annuity account, if anything.



OPTION C

- A/k/a “the joint and last survivor allowance”
- Allowance will be 7% to 15% less than that which a person would receive under Option A.
- Upon the retiree’s death the beneficiary will be paid a monthly allowance for life.
- Amount of benefit depends on the life expectancies of member and beneficiary.
- Benefit paid to children if surviving spouse recipient dies.
- If beneficiary pre-deceases member, there will be a “pop up.”



THE OPTION C BENEFICIARY

- A member may only designate one Option C beneficiary.
- The beneficiary may be the spouse, parent, former spouse who has not remarried, sibling or child.
- Eligibility of the beneficiary is determined at the time of option selection.



OTHER FACTS ABOUT OPTION SELECTION

- An option, once selected, may not be changed following the date the retirement allowance becomes effective.
- A married member's spouse must acknowledge the selection of option, but has no power to disapprove it.
- Although the option may not be changed post-retirement, Option B retirees do get to change their beneficiaries if they so desire.



BARKER v. STATE BOARD OF RETIREMENT

- DALA Decision, issued June 26, 2015
CR-15-72 (on appeal to CRAB)



In a nutshell: Wife retired in 2010, picking Option C and naming her husband as her Option C beneficiary. They divorced in 2014. Wife sought to change her option to A or B.

Held: Chapter 32 does not allow the change of Option after retirement, nor may an Option C beneficiary be changed following retirement.



MIGLIORI v. HAVERHILL RETIREMENT BOARD

- DALA Decision, issued on September 4, 2015 but not appealed so now the final decision of CRAB. CR-13-307



In a Nutshell: Husband retired in 2004, and chose Option B. At some point, Husband resumed his job. He retired again in 2012, this time picking Option A. His Wife wrote all over the spousal notification form that she did not agree with his option selection. Husband died shortly after retirement.

Held: The option selected cannot be changed after retirement, and the spousal acknowledgement does not mean the spouse has to agree with the option selected



BACK TO SECTION 9

- Retiree dies of the cause for which he retired.
- Widow entitled to not less than the pension portion he was receiving.
- Here, annuity account unavailable for disbursement if the retiree picked Option A or Option C upon his or her death.
- Possibility of “concurrent benefit” no longer arises.
- Spouse must have been living with member at time of death, but one year of marriage not required.
- Same benefits to minor children as described in Section 9 for active members.



LARSSON v. STONEHAM RETIREMENT BOARD

- DALA decision issued on August 9, 2013, but not appealed so now the final decision of CRAB.

CR-10-779



In a nutshell: Member retired for ADR under a presumption, picking Option C and naming his former wife as his Option C beneficiary. Member married 2nd wife, and died of the cause for which he had retired.

Held: Second wife gets a Section 9 benefit, but former wife does not get the Option C benefit. The Section 9 benefit extinguishes the possibility of paying out an Option C.



SECTION 101

- Available to spouses of ordinary disability retirees who retired prior to December 30, 1971.
- Available to spouses of accidental disability retirees who retired prior to November 7, 1996.

(These members could not pick Option C until those dates.)



SECTION 101 *(Continued)*

- Amount may be \$6,000, \$9,000 or \$12,000, depending upon the acceptance of a local option.
- Also available to widowers. (See Opinion of the AG, Dec. 12, 1987)
- Also available to a widow(er) who wasn't your spouse when you retired. (See Opinion of the AG, Feb. 7, 1974, p. 109)



ACCEPTING A SECTION 101 INCREASE

- Majority vote of the board required.
- Then approval by the “legislative body.”
- Acceptance of the local option shall be deemed to have occurred upon the filing of the certification of the votes of the Board and the legislative body with PERAC.



PART THREE - OTHER BENEFICIARY ISSUES

- Lump sum distributions
- Section **100A**
- Section **11**
- The private letter ruling
- Section **19**
- Section **17**





SECTION 100A

- “Killed-in-the-line-of duty benefits”
- A lump sum payment.
- Payable on the death of “public safety employee” who dies “while in the performance of his duties and as a result of incident, accident or violence.”
- No spouse required.
- Payable to spouse, but if no spouse, to child or children and, if no spouse or children, to a parent.





SECTION 11

Chapter 32's "gatekeeper"

- Provides for disbursement of annuity account
- Also prohibits disbursement of annuity account
- Allows boards varying levels of flexibility in determining proper beneficiary or beneficiaries.



WHEN IS AN ANNUITY ACCOUNT DISTRIBUTED?

- When a member so requests.
- When a member dies prior to retirement and no allowance is to be paid to a survivor.
- When a member in service dies “as a result of, and while in the performance of,” his duties.
- When any retiree dies having picked Option B.



DEATH AFTER RETIREMENT: SECTION 11(2)(b)

“Upon receipt by the board of proper proof of the death of any member on or after the date any retirement allowance payable under the terms of option (b) of subdivision (2) of section twelve becomes effective for him...”



DEATH BEFORE RETIREMENT: SECTION 11(2) (c)

- More restrictive than disbursement of account after retirement.
- Certain limitations apply.
- Circumstances may prevent disbursement of account.



WHEN IS AN ANNUITY ACCOUNT **NOT** DISTRIBUTED?

- A member is in arrears in child support payments.
- A member owes an obligation to an employer under an employee benefit plan.
- The member is survived by a minor child.
- The member nominated a Section 12(2)(d) beneficiary.
- The member's spouse made the Section 12(2)(d) election.
- A retiree picked Option A or Option C.



10 TAKEAWAYS FROM 2013 PLR

Taxable:

- Section 101 recipients whose spouses went out under ODR
- Option C beneficiaries whose spouses retired under ODR
- COLAs received by beneficiaries of ODR retirees
- Return of annuity account ALWAYS a taxable event



10 TAKEAWAYS FROM 2013 PLR *(Continued)*

Not Taxable:

- Section 101 recipients whose spouses went out under ADR
- Option C beneficiary whose spouse retired under ADR
- Section 9 benefits
- Section 100 benefits
- Section 9 dependent allowances
- COLAs under Sections 9, 100 or an Option C payment derivative of an ADR



ANOTHER ANSWER IN SEARCH OF A QUESTION

Answer: The only section in Chapter 32 which allows for the payment of a benefit to a person “on account of membership of a person other than himself” while the person who is the member of a Chapter 32 system is still living.

Question: What is Section 19?





SECTION 19

- Forbids the attachment of a member's pension or annuity account except in certain limited circumstances:
 - *Nothing in this section shall prevent a member's annuity pension, retirement allowance or return of accumulated total deductions from being attached, taken on execution, assigned, or subject to other process to satisfy a support order under chapter two hundred and eight, two hundred and nine, two hundred and nine A, two hundred and nine C, two hundred and seventy-three, or received, entered or registered pursuant to chapter 209D, or an assignment of marital property under chapter two hundred and eight.*

(Emphasis supplied.)



CONTRIBUTORY RETIREMENT BD. OF ARLINGTON v. MANGIACOTTI



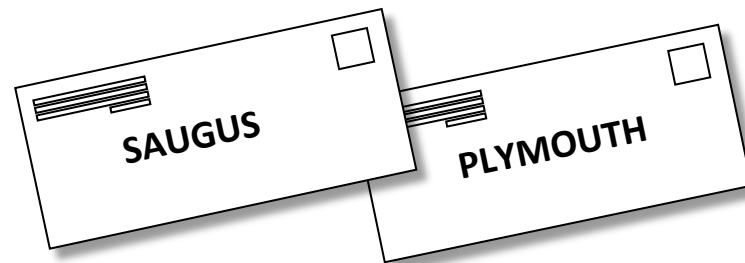
- 406 Mass. 184 (1989)
 - The divorcing Mangiacottis had a domestic relations order dividing his pension.
 - Arlington sought a declaration that Section 19 of Chapter 32 forbid the assignment of any portion of the husband's pension.
 - SJC: *We, therefore, include within [Section] 19's authorization of the assignment of public pension interests all assignments made pursuant to a marital separation agreement and not just assignments for support, at least when the assignment is supported by a parallel court order entered under G.L. c. 208, [Section] 34.*



And again, A BIT OF HISTORY...

- First two letters from PERAC addressing a beneficiary question were both issued on December 3, 1996 – one to the Town of Plymouth Retirement Board, the other to the Saugus Retirement Board.

(PERAC Opinions 96/150 and 96/157)





DOMESTIC RELATIONS ORDERS

- Member = Participant
- Member's Spouse = Alternate Payee
- Plan Administrator = Retirement Board
- Spells out what is expected of each party.
- Contingencies should also be addressed.
- If problems arise, parties may be required to return to the drawing board.



SECTION 19 ISSUES

- People trying to earn more under 91A because they are subject to a DRO
- DROs which are impossible to implement, for a variety of reasons
- Checking should be done at the time the form is submitted, not right before retirement



BORIN v. MTRS

- DALA decision, issued on October 2, 2015
CR-14-53 (on appeal to CRAB)



In a nutshell: Retiree subject to a DRO didn't want the portion of his retirement which is paid to his former wife to be included in calculation of his post-retirement earnings.

Held: MTRS properly calculated excess earnings of retired school administrator based on his total retirement allowance rather than the amount he received after the former wife was paid in accord with the DRO.



Section 17

- Any option, election or right existing in any member may be exercised or enforced, if such member is incompetent or for any other reason is unable to exercise or enforce the same himself, by the spouse of such member if they are living together at the time any such action is instituted, or if there is no such spouse then by his guardian or conservator, or if there is no such spouse, guardian or conservator then by any other person found by the board to be acting in behalf of and for the best interests of such member.



MOORE v. PERAC

- A DALA decision issued on October 9, 2015 CR-12-73 (on appeal to CRAB)



In a nutshell: Member died prior to filling out Option Selection Form naming his former wife as Option C beneficiary as required by a DRO. Former wife sought to have DRO serve as prescribed form.

Held: A DRO is not a “prescribed form approved by the actuary” and may not be used as a substitute for the same.



CONCLUSION

- For every member of the system, making wishes known is key.
- The oddest of situations will come up in Chapter 32, but answers may also be found in Chapter 32.
- Make sure all forms are up to date.
- Make sure all DROs can be implemented before you place them in the file.