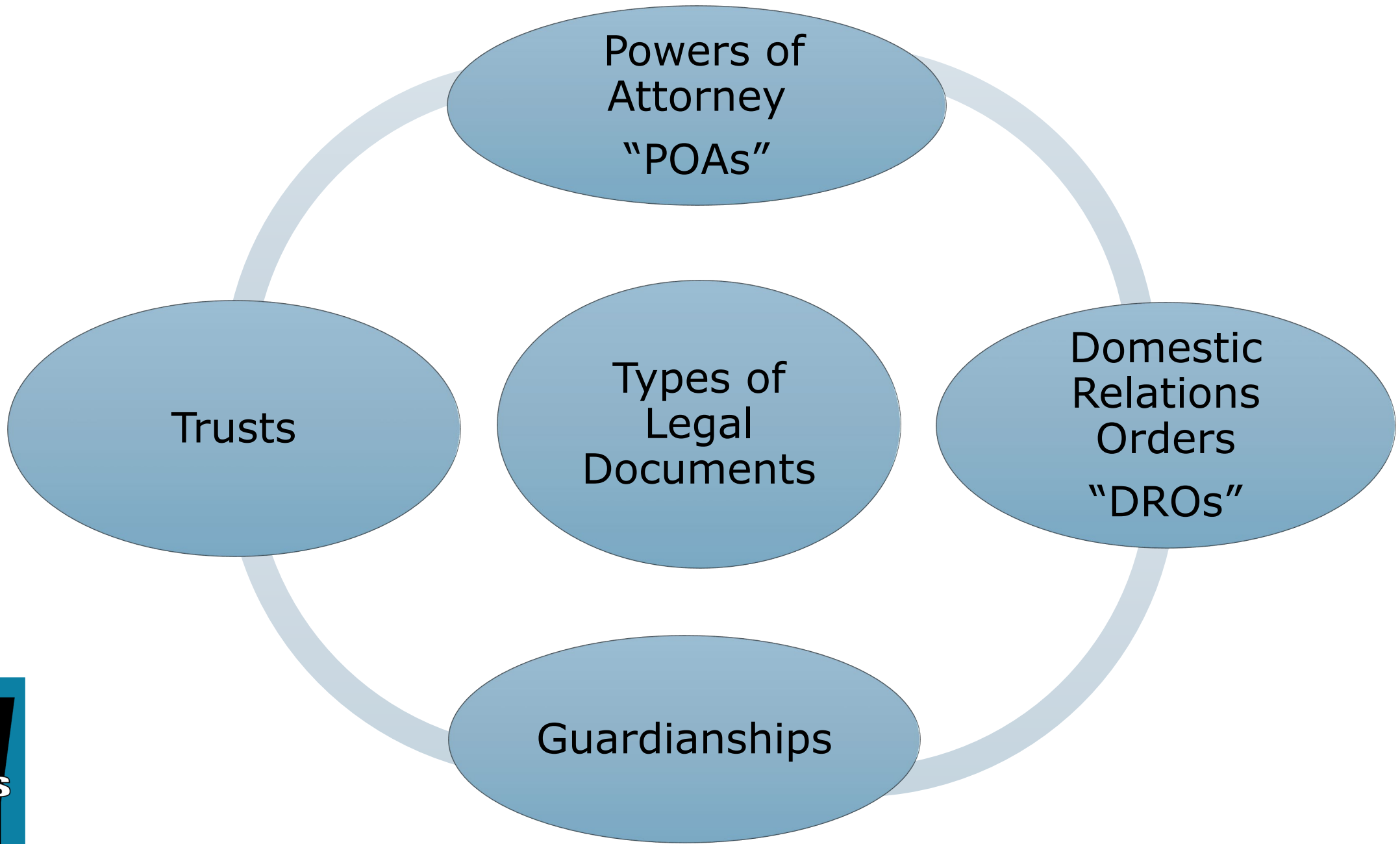


Legal Update: Review of Trusts, POAs and DROs



**Annual Delegates Meeting
November 5-6, 2023**



TRUST DOCUMENTS



What is a Trust?

- A trust is a fiduciary relationship in which a trustor gives another party, known as the trustee, the right to hold title to property or assets for the benefit of a third party, such as a beneficiary.
- The trustee holds, manages and protects the assets of the trust.
- Your beneficiary can be the trustor, a person, or an entity; and they will receive the assets of the trust at a future date.

Types of Trusts

- Testamentary Trusts
 - Part of your last will and testament.
 - No assets pass to your trust until after your death.
- Intervivos Trusts
 - Created while you are alive.
 - Assets are transferred during your lifetime.
 - Types of intervivos trusts include revocable, irrevocable, special needs trusts and charitable trusts.

Do I Need a Trust?

Trusts are established to:

- Protect assets
- Avoid probate
- Create a legacy of charitable giving

An estate planning attorney or financial advisor can provide you with expert advice about whether a trust may be a useful component in your long-term financial plan.

How Can I Use a Trust With My NYSTRS Benefits?

- Name a trust as the beneficiary of a lump sum option.
- Name a trust as a beneficiary of an in-service or post-retirement (Paragraph 2) death benefit.
- Deposit monthly retirement benefit into a trust.



Beneficiary Designation

The trust is the designated beneficiary.

- If you revoke the trust or it terminates, update your beneficiary designations as soon as possible to ensure benefits are paid according to your wishes.
- Upon your death, the System will contact the trustee/successor trustee. Your trustee will need to provide the required System forms, as well as an affidavit of trustee.
- Payment will be made to the trust, not to the individual beneficiaries named in the trust.

Bank Accounts Titled to a Trust

Education Law §524 provides that a member's benefit is not assignable.

You may deposit your monthly pension benefit into a bank account titled to a trust provided the trust is:

- revocable or irrevocable and solely for the member's benefit; and
- the Tax Identification Number for the trust and bank account are the member's Social Security Number (for purposes of Internal Revenue Service reporting).



Retirement Benefit Deposit

NYSTRS requires the following documents to have your monthly benefit directly deposited to a bank account titled to your trust:

- *Direct Deposit Authorization Agreement* (GRE-54) signed by the member or designated agent;
- *Certification of Trust for Direct Deposit* (LEG-2), signed by the current Trustee; and
- A complete copy of your trust.



What is a Certification of Trust?

A Certification of Trust, Memorandum of Trust or Affidavit of Trustee certifies the trust was established.

NYSTRS *Certification of Trust* (LEG-1) may be used when completing a beneficiary designation.

NYSTRS requires a *Certification of Trust for Direct Deposit* (LEG-2).

Please note: an attorney-drafted Certification of Trust is not acceptable for direct deposit to a trust.



Certification of Trust for Beneficiary Designations (LEG-1)

<https://www.nysters.org/NYSTRS/media/PDF/Forms/LEG-1.pdf>



Certification for Direct Deposit to a Trust (LEG-2)

<https://www.nysters.org/NYSTRS/media/PDF/Forms/LEG-2.pdf>



POWERS OF ATTORNEY (POA) and GUARDIANSHIP

Definitions Under the General Obligations Law Article 5 Title 15

- A POA is a written document by which a *principal* **with capacity** designates an *agent* to act on their behalf.
 - Principal: an individual who is 18 years of age or older.
 - Agent: also known as “attorney-in-fact,” is an individual 18 years of age or older who has authority to act on behalf of the principal. An agent acting under the POA has a fiduciary relationship with the principal.

Definitions Under the General Obligations Law Article 5 Title 15

- Durable: not affected by principal's subsequent incapacity or incompetence unless it expressly provides that it is terminated by the incapacity of the principal.
- Non-Durable: void if the principal becomes incapacitated or incompetent.
- Springing: the agent's authority is activated upon a future date or event (the most common will be the principal's incompetence).



Power of Attorney Authority

Authority granted may be general or limited. The principal may limit agent's authority to certain subjects.

The NY Statutory form lists 15 subject areas

- Real estate transactions
- Chattel and goods transactions
- Bond, share and commodity transactions
- Banking transactions
- Business operating transactions
- Insurance transactions
- Estate transactions
- Claims and litigation
- Personal and family maintenance
- Benefits from governmental programs or civil or military service
- Financial matters related to health care; records, reports and statements
- **Retirement benefit transactions**
- Tax matters
- All other matters
- Full and unqualified authority to my agent(s) to delegate any or all the foregoing powers to any person or persons whom my agent(s) select



Termination of a POA

A POA terminates when:

- the principal dies;
- the principal becomes incapacitated (if the POA is not durable);
- the principal revokes the POA;
- the principal revokes the agent's authority and there is no co-agent or successor agent who is willing or able to serve;
- the authority of the agent terminates (agent dies, divorce, etc.) and there is no co-agent or successor who is willing or able to serve;
- the purpose is accomplished; or
- a court order (ex. Guardianship) revokes the document.

Revocation of a Power of Attorney

The principal can revoke a POA:

- in accordance with the terms of the POA; or
- by delivering a revocation to the agent in person or by sending a signed and dated revocation by mail, courier, e-mail or facsimile to the agent's last known address.

Termination of an agent's authority or termination of the POA is not effective until the agent has received the revocation.

The agent is deemed to have received the revocation when it has been delivered to the agent in person or within a reasonable time after it has been sent by mail, courier, e-mail or facsimile.

Note: the execution of a new POA does NOT automatically revoke any POA previously executed by the principal.



Giftg Authority

In NYS, a POA executed after June 13, 2021 no longer requires the Statutory Gifts Rider (SGR). Giftg authority is now specified in the "modifications" section of the POA.

For NYSTRS purposes, the SGR or modifications section must expressly give specific authority for the following:

- Change direct deposit to a joint bank account;
- Elect a pension payment option with a beneficiary (if the member has not yet retired or is within 30 days of retirement);
- Designate or change death benefit beneficiaries; and/or
- Transfers to trust.

Without giftg, the agent is authorized to generally discuss retirement benefits, change the principal's address, and change direct deposit information ONLY if the principal is the SOLE owner of the account.



Already Have An Executed POA?

- NYSTRS accepts NYS POAs, Out-of-State POAs and the NYSTRS Special POA form.
- A properly executed POA, executed in accordance with the laws in effect at the time of its execution remains valid and must be honored.
- If the POA was executed over 10 years ago, NYSTRS will require your agent to submit an *Affidavit Power of Attorney is in Full Force and Effect* (POA-1).

Legal's POA Review Process

- Upon receipt of your POA document, the legal team will review your POA and send a letter outlining the authority granted.
- If your POA is unacceptable to NYSTRS, the letter will tell you why and provide information regarding next steps.
- **Please note:** you are still able to act on your own behalf after you execute a POA!

Common Errors

- Notary box incomplete.
- Missing agent's signature, or the agent signed before principal executed the POA.
- Missing pages.
- Does not authorize retirement transactions.
- Principal intended to grant agent gifting authority but did not expressly grant such authority in the modifications section of POA document (NYS only).

NYSTRS Special Durable POA

- The *NYSTRS Special Durable POA* form combines the requirements of the New York Statutory form and the requirements for gifting transactions into one form.
- Specifically limited to retirement benefit transactions.
- If the Special POA form is executed, the agent has authority to:
 - Act on behalf of the principal on all NYSTRS benefit matters;
 - Name themselves as beneficiary of a NYSTRS benefit if the agent is the spouse, domestic partner, parent or child;
 - Change direct deposit information to a joint bank account;
 - Transfer to trusts; and
 - Elect a pension payment option with a beneficiary (if the member has not yet retired or is within 30 days of retirement).



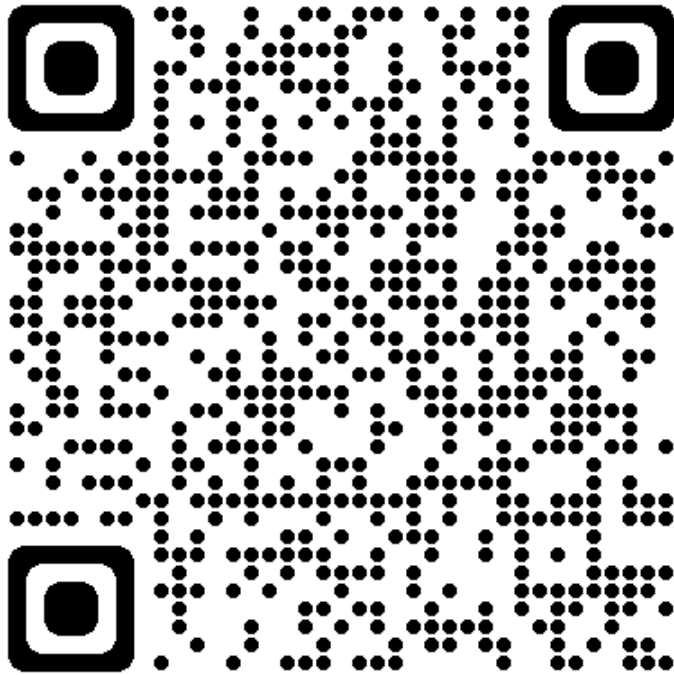
NYSTRS Special Durable Power of Attorney Form

<https://www.nystrs.org/nystrs/media/pdf/forms/poa.pdf>



POA FAQs

<https://www.nystrs.org/Library/Publications/Legal/Power-of-Attorney-FAQs>



Refer to our Power of Attorney FAQs for answers to many common questions.

Contact Us →

(800) 348-7298

communit@nystrs.org

1. What is a Power of Attorney?

A Power of Attorney (POA) is a powerful document. It allows you to designate someone else, referred to as your “agent,” to act on your behalf with or without your consent. NYSTRS accepts New York State POAs, Out-of-State POAs and the Public Retirement System Special Durable Power of Attorney (Special POA).

The Special POA allows an agent to act on your behalf with respect to your retirement transactions at NYSTRS and other New York State public retirement systems. This POA does not grant authority for any other legal transactions. The Special POA may be executed in any other state as long as it is properly notarized and witnessed. You may access the Special POA at <https://www.nystrs.org/NYSTRS/media/PDF/Forms/POA.pdf>.

2. What changes were made recently to state laws regarding a Power of Attorney?

New laws eliminated the separate Statutory Gifts Rider and changed some signature requirements among other things. For details, see the summary of the laws on our [Legislation](#) page.

3. Do I have to execute a new POA now that the law has changed?

A properly executed POA, executed in accordance with the laws in effect at the time of its execution remains valid and must be honored.

4. What is the difference between a Durable and Non-Durable POA?

A Durable POA is not affected by your subsequent incapacity or incompetence. A Non-Durable POA is void if you become incapacitated or incompetent.

What is a Guardianship?

A Guardianship is a legal arrangement where a court gives a person or organization the legal right to make decisions for another person who is unable to make all or certain decisions for themselves.

- If submitted to NYSTRS, it will be reviewed for the authority granted by the Court.
- If the Guardianship order is vacated, please send it to NYSTRS so that the member/retiree may begin to act on their own behalf.

DOMESTIC RELATIONS ORDERS (DROs)

Divorce, DROs & NYSTRS Benefits

- When parties divorce those assets acquired during the marriage are subject to “equitable distribution.”
- Equitable distribution is the division of those marital assets after the marriage has ended and a Judgment of Divorce has been granted.
- NYSTRS benefits are subject to equitable distribution, to the extent those benefits were earned during the marriage.
- For NYSTRS to pay a share of a Participant’s NYSTRS benefits to a former spouse, a DRO is required.



What is a DRO?

- A court signed order, separate from the Judgment of Divorce and from the Separation and Settlement Agreement, that sets forth how an individual's retirement benefits are to be divided between the parties who are divorced.
- A DRO submitted to NYSTRS for implementation may only address NYSTRS benefits.
- Defines the individual holding membership as the "Participant" and the former spouse as the "Alternate Payee".

NYSTRS Benefits Subject to a DRO

- Service Retirement Allowance
- Disability Retirement Allowance
- Pre-Retirement Death Benefits
- Post-Retirement Death Benefits (Tiers 2-6)
- Retirement Survivor Options
- Cost-of-Living-Adjustments (COLA)
- Loans
- Participant's contributions



Dividing NYSTRS Benefits

- *Majauskas* Formula:

$$50\% \times \left(\frac{\text{service credit during marriage}}{\text{total service credit}} \right) \times \text{annual benefit}$$

Majauskas formula may also be applied to compute an Alternate Payee's share of any death benefits, as well as a share of any contributions and what benefit is provided as a survivor option.

- Sum Certain Model
- Straight Percentage Model



Unacceptable Terms of a DRO

- Distributions to the Alternate Payee before the Participant is in pay status.
- Payments which are greater than otherwise payable.
- Payments in a form which are not otherwise available from the plan.
- Change a Participant's retirement option once their retirement has become final.
- Payment before the divorce has been granted.

Review of DROs

- NYSTRS does not provide legal advice or compare a Participant's settlement agreement or judgment of divorce to the DRO.
- Legal's role is to review all DROs to determine whether they are acceptable under the laws governing NYSTRS.
- NYSTRS accepts out-of-state DROs, provided the DRO is either registered in NYS or submitted with a Consent for New York Jurisdiction and Release.



Important Points to Consider

- Submit a draft DRO for pre-approval prior to Court submission.
- Provide confirmation that the Judgment of Divorce has been granted.
- Submit the court signed certified DRO as soon as possible.
- Survivor options - "Time is of the Essence" (30-day statutory window).
- Request an estimate prior to retirement.

Online DRO form to assist in drafting:

<https://secure.nystrs.org/DRO/Internet/Overview.aspx>



Domestic Relations Order Guide:

https://www.nystrs.org/main/library/DRO/DRO_Guide.pdf



Legal Forms



Print NYSTRS legal forms. Contact our Legal Department at (800) 348-7298, Ext. 6200 or legal@nystrs.org for assistance with these forms. For additional information, see [Legal Publications](#).

To ensure the confidentiality of your membership information and to protect your privacy, we do not send personal information via email. Likewise, we suggest you refrain from providing personal information (e.g., your Social Security number or EmplID) when emailing NYSTRS.

[Trust Certification \(LEG-1\)](#) | Use this Certification of Trust for beneficiary designations.

[Trust Certification \(LEG-2\)](#) | Use this Certification for a direct deposit to a Trust.

[Special Durable Power of Attorney Form](#)

Use this special POA to name an agent to act on your behalf with respect to your retirement benefit transactions at NYSTRS (this POA does not grant authority for any other legal transactions). Refer to our [Power of Attorney FAQs](#) for answers to many common questions.

[Domestic Relations Order Form](#)

Use our convenient online form to draft a Domestic Relations Order (DRO). Please also see our publication [Domestic Relations Orders and a Participant's Retirement Benefit – A Guide to DROs and NYSTRS Benefits](#).

[Consent for New York Jurisdiction and Release](#)

Absent a certified out-of-state DRO being registered in New York State, the participant must submit an original signed notarized Consent agreeing to treat the certified out-of-state DRO as a New York court order, authorize the System to make payments pursuant to the out-of-state DRO, release the System from any and all liability; and consent to any dispute regarding the out-of-state DRO be resolved by a court of competent jurisdiction in Albany, New York.

Forms

[Active Member Forms](#)

[Retiree Forms](#)

[Retirement-Related Forms](#)

[Prior Service Forms](#)

[Membership Withdrawal Forms](#)

[Legal Forms](#)

[Benefit Estimate Request](#)

Protect Yourself

Recent significant life event?
It's a good time to update your
MyNYSTRS password.

Legal



Legal publications, Domestic Relations Orders, and fact sheets on statutory provisions and significant legislation.

Contact Us →

(800) 348-7298
community.nystrs.org

For additional information, see [Legal Forms](#).

[2022 Compilation of Laws Covering NYSTRS](#)

A compendium of the principal laws of New York State governing NYSTRS.

[NYSTRS Rules and Regulations](#)

A compilation of the official rules and regulations guiding NYSTRS.

Domestic Relations Orders

[Domestic Relations Orders and a Participant's Retirement Benefit – A Guide to DROs and NYSTRS Benefits](#)

A look at how divorce can affect a member's retirement benefit. Use our online [Domestic Relations Order Form](#) to draft a DRO. We encourage you to submit your certified copy of a signed DRO to the System so we have it in our records at the time of your retirement.

[Important Information for Members Required by a DRO to Elect a Joint & Survivor Option in Favor of a Former Spouse](#)

Frequently Asked Questions (FAQs)

[Power of Attorney FAQs](#)

[Trust FAQs](#)

[How Divorce Impacts Beneficiary Designations \(Chapter 173 of the Laws of 2008\)](#)

[Impact of a Member's Bankruptcy on NYSTRS Benefits](#)

Library

+ [Pension Education Toolkit](#)

+ [General Reference](#)

– [Publications](#)

[Newsletters](#)

[Active Members](#)

[Nearing Retirement](#)

[Retirees](#)

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Want to Know More?

These NYSTRS numbers tell a good story. Visit Our [Press Room](#)

Related Items

[Board Governance Manual](#)

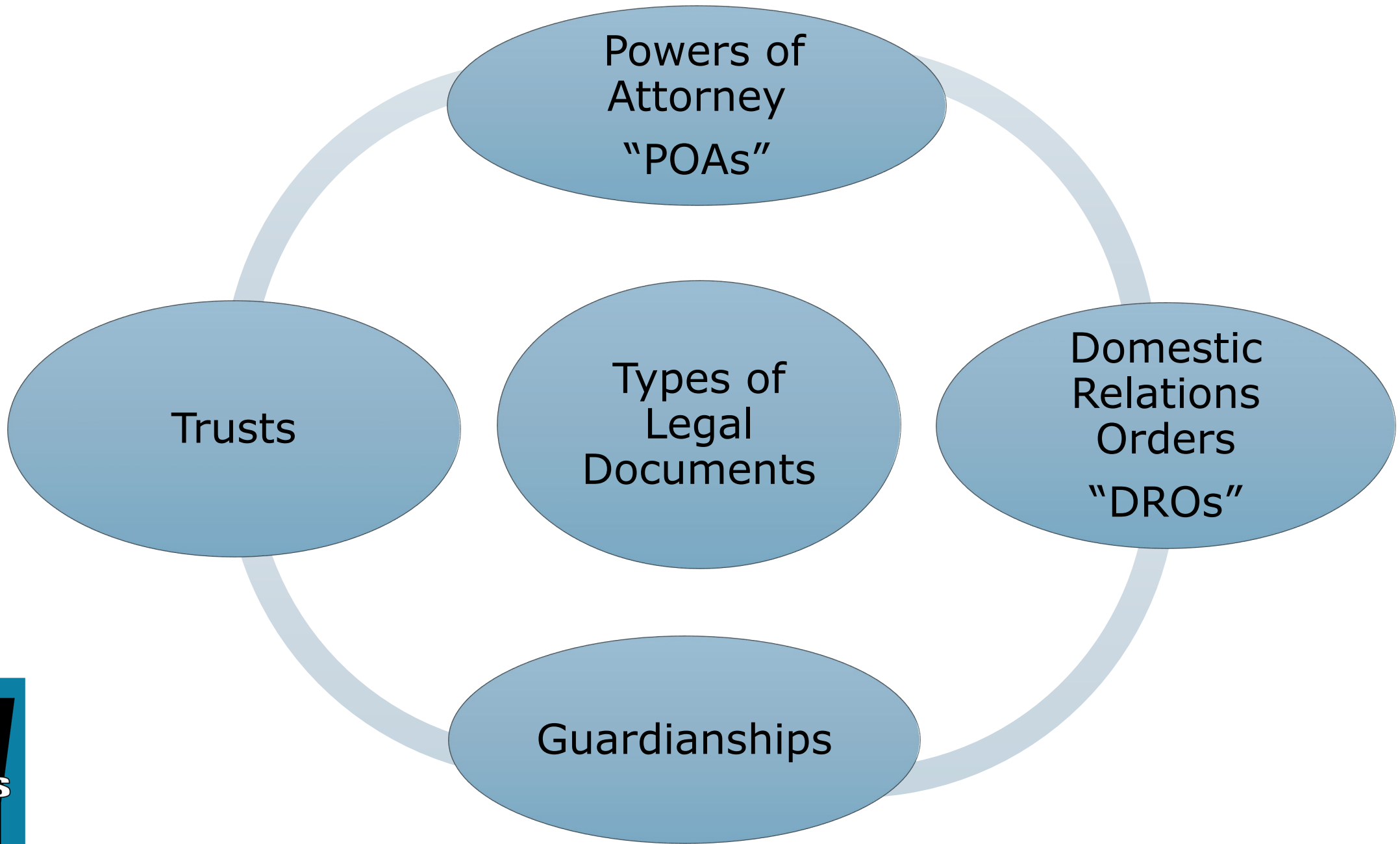
[Investment Policy Manual](#)



NYSTRS Legal Forms

<https://www.nystrs.org/Forms/Legal-Forms>





Visit us in Meeting Room 1

Call: (800) 348-7298 Ext.
6200



Email:

Legal@nystrs.org

