

Legal Separation and Dissolution of Marriage

Overview of SBCERS Guidelines & Policies

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A member's retirement service credit that accrues during a marriage is considered community property under California law. Accordingly, when a SBCERS employee, former employee or retiree is divorced or legally separated, the spouse's community property interest in the member's retirement account or pension benefit must be addressed in the court judgment allocating the community property accrued during the marriage. In order to implement that judgment, it is generally required for the parties to join SBCERS as a party to the court case and obtain from the court a domestic relations order ("DRO") dividing the parties' interest in the SBCERS retirement account or pension benefit. A more detailed description of the joinder process is described in a related document entitled "[Outline of Joinder Process in Dissolution and Legal Separation Proceedings.](#)"

There are three ways in which community property rights in a retirement account or pension benefit are addressed:

1

ACCOUNT DIVISION FOR CURRENT & DEFERRED MEMBERS

The first of these three methods applies to current and former employees who are not yet retired. For those members, SBCERS follows a statutory process set forth in the County Employees' Retirement Law of 1937 ("CERL") contained at Government Code Sections 31685 et seq. That process requires that the member's retirement account be split into two separate retirement accounts. The member and non-member may then each retire separately with separate pensions and each separately control the timing of their respective refunds or retirements. The account division process is more specifically described in a related document entitled "[Guidelines for Division of Member Account Prior to Retirement.](#)"

2

ACCOUNT DIVISION FOR RETIRED MEMBERS

The second way that pension rights are adjudicated concern members who are already retired and receiving a benefit when they are legally separated or divorced. In such circumstances SBCERS does not create two separate retirement accounts. Instead, the benefit being received by the member is divided. After a DRO splitting a post-retirement pension, both the member and nonmember receive a share of what had previously been paid to the member. The details of this process are more specifically described in a related document entitled "[Guidelines for Division of Member Benefits After Retirement.](#)"

3

WAIVER OF INTEREST

The third way that retirement accounts or pension benefits may be adjudicated is for the member to retain 100 percent of their retirement account or pension benefit, usually in exchange for receiving a lesser share of other community property. In such circumstances the non-member may waive their interest in the SBCERS pension account or pension benefit, with or without joinder of SBCERS in the dissolution proceedings. SBCERS policy regarding the waiver of interests in retirement accounts or benefits is set forth in a related document entitled "[Guidelines for Waiver of Interest in SBCERS Retirement.](#)"

Although the guidelines referenced above refer throughout to dissolution or legal separation of marriage, the same standards apply to a dissolution or legal separation of a domestic partnership registered with the State of California.

Legal Separation and Dissolution of Marriage:

Guidelines for Division of Member Accounts Prior to Retirement

Summary

These guidelines of the Santa Barbara County Employees' Retirement System ("SBCERS") are provided in order to summarize the provisions of Government Code Sections 31685 et. seq. which apply to the legal separation or dissolution of marriage of SBCERS members who are **not yet retired**. The intent of this law is:

- 1) To allow division of nonmember's community property share in a member's account.
- 2) To avoid an adverse actuarial financial impact on the Retirement System as a result of the division.
- 3) To define the role of SBCERS in the administration of domestic relations orders.

The law allows the retirement account of the member to be divided into two separate and distinct accounts. Once the separate accounts are established, the nonmember is eligible to:

- (a) receive a refund of the balance of member contributions plus interest in their separate account, or
- (b) receive a monthly allowance upon the earlier of the member's or nonmember's eligibility for retirement.

The nonmember's potential monthly retirement benefits will increase as the member's compensation increases, until the date the nonmember withdraws, retires, dies, or the member ceases to be an active member. The nonmember's rights to the separate account are not affected by the member's subsequent withdrawal, death, disability, or retirement. After a member's account is divided, the member may continue to accrue additional service credit as the member's separate property to increase the member's benefit. However, the combined benefits of the member and nonmember cannot exceed what the member would have received had the member and nonmember remained married .

General Guidelines

This document is intended as a general guideline. There will be variations depending on the unique circumstances of the member. Examples of such circumstances include where both spouses are members of SBCERS or where there is reciprocal membership in more than one retirement system that may be affected by legal separation or dissolution. Members and their spouses are encouraged to contact a SBCERS Member Service Representative for further guidance when these Guidelines do not address their particular circumstances.

JOINDER REQUIRED In order for SBCERS to be bound by a domestic relations order, it must be joined as a party to the proceedings. The process for joinder is described in more detail in a separate document entitled "[Outline of Joinder Process in Dissolution and Separation Proceedings](#)."

VESTED A member who was vested (a minimum of five years of service credit) prior to the issuance of the domestic relations order shall continue to be vested after the transfer of service credit to the nonmember's account, even if the remaining balance is less than five years of service credit.

CONFIDENTIALITY After the account is divided, each party gains sole control over their own separate account. However, the Retirement System is authorized to advise:

- (1) the member, if the nonmember withdraws or dies; and
- (2) the nonmember, if the member retires or dies before the nonmember. Unless specified in the domestic relations order, or as required by public records disclosure laws, neither party will be provided any other information regarding the other party's actions relative to their separate account.

Various Situations and Their Effects

Situations that occur frequently are set described in the attached table. The effects described assume the domestic relations order is approved before the member begins receiving SBCERS benefits. These scenarios do not apply to members who are already receiving a retirement benefit from SBCERS when they are divorced or legally separated. A separate document entitled "[Guidelines for Division of Member Accounts After Retirement](#)" addresses these issues.

Table on the following page.

Various Situations and Their Effects

Situation and Applicable Government Code Section	Member's Account	Nonmember's Account
<p>Member is vested (minimum five years of service credit at time of dissolution or legal separation).</p> <p>§ 31685</p>	<ul style="list-style-type: none"> • Member's service credit, contributions, and interest is divided in accordance with court order. • Member may name a new beneficiary in the case of dissolution. In a legal separation the member may designate a new beneficiary to receive a lump sum death benefit but the non-member remains eligible to receive a continuance based on the member's benefit as well as a separate non-member benefit. • Member remains vested. 	<ul style="list-style-type: none"> • A separate account is established with service credit, contributions, and interest in accordance with court order. • Nonmember may name a beneficiary, but only to receive retirement benefits due at death or a refund of contributions if the nonmember is not retired. • Nonmember may maintain the separate account or request a refund.
<p>Member is not vested.</p> <p>§ 31685.2</p>	<ul style="list-style-type: none"> • Member's service credit, contributions, and interest is divided in accordance with court order. • Member may name a new beneficiary, subject to the same limitations noted above. • Member will become vested based on combined service credit in both accounts. 	<ul style="list-style-type: none"> • A separate account is established with service credit, contributions, and interest in accordance with court order. • Nonmember must be paid a refund.
<p>Nonmember is paid a refund.</p> <p>§ 31685.2</p>	<ul style="list-style-type: none"> • System must notify the member. • The member has five years to elect to purchase the service credit transferred to nonmember. The manner of payment, interest rates, and time limits to redeposit are the same as for other redeposits. 	<ul style="list-style-type: none"> • Refund is irrevocable. Redeposit is prohibited. All future rights to benefits cease.
<p>Nonmember is not paid a refund.</p> <p>§ 31685</p>	<ul style="list-style-type: none"> • No effect on member. 	<ul style="list-style-type: none"> • May name a beneficiary as discussed above. • Interest is credited to account semi-annually. • May receive a service retirement allowance when eligible.
<p>Eligibility for service retirement; nonmember retires before member.</p> <p>§ 31685.5</p>	<ul style="list-style-type: none"> • Any service credit requirement is met using the combined service before account split plus any service earned after the account split. Once both the member and nonmember are retired, combined benefits may not exceed retirement benefit available to member absent divorce or separation. 	<ul style="list-style-type: none"> • On the date of retirement the member must have sufficient credited service to retire, notwithstanding any service credit awarded to nonmember. • The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member. Benefit determined based on final average compensation of member at time of nonmember retirement and nonmember will not benefit from any subsequent increases in final average compensation of the member.
<p>Member retires before nonmember.</p> <p>§ 31685.7</p>	<ul style="list-style-type: none"> • Member's benefit is based on service credit remaining after account division plus credit earned or purchased after account division, age factor, and final average compensation. Once both the member and nonmember are retired, combined benefits may not exceed retirement benefit available to member absent divorce or separation. • Member may select any optional allowance available. 	<ul style="list-style-type: none"> • Nonmember is notified of member's retirement. • Nonmember may then elect: (a) to defer retirement to a later date, with final average compensation frozen at the amount used in calculating the member's retirement, or (b) to begin receiving a monthly benefit based on nonmember's service credit remaining after account division plus any service purchased after account division, nonmember's age factor, and member's final average compensation.
<p>Member dies before or after retirement.</p>	<ul style="list-style-type: none"> • Benefit is paid as any other death benefit to member's beneficiary, which may be the non-member if the spouses remain married but legally separated. 	<ul style="list-style-type: none"> • Same options and treatment as when member retires before nonmember.
<p>Nonmember dies before retirement.</p> <p>§31685, Sec. 31685.2 §31685.3, §31685.4</p>	<ul style="list-style-type: none"> • Member is notified of nonmember's death. Member is eligible to redeposit contributions refunded to nonmember's beneficiary or estate. 	<ul style="list-style-type: none"> • Beneficiary named by nonmember receives nonmember's account balance consisting of member contributions plus accrued interest. If no beneficiary is named the death benefit is payable to the nonmember's estate.

Situation and Applicable Government Code Section	Member's Account	Nonmember's Account
Nonmember dies after retirement. §31685	<ul style="list-style-type: none"> Member's interests not affected. 	<ul style="list-style-type: none"> Non-member's beneficiary may be entitled to remaining member contributions in the nonmember's account and any unpaid balance payable at the nonmember's death.
Member granted a disability retirement before or after nonmember retires. §31685.9	<ul style="list-style-type: none"> Combined member and nonmember benefit may not exceed the amount which would be paid to the member if the dissolution of marriage had not occurred. Each benefit proportionally adjusted, taking into account non-member's age at retirement. 	<ul style="list-style-type: none"> Same as "member's account".
Vested member terminates. §31700	<ul style="list-style-type: none"> Member may elect a refund; retirement, if eligible; or deferred retirement. Unless reciprocity is established, final average compensation is frozen at member's termination. 	<ul style="list-style-type: none"> Nonmember's account not affected. Nonmember notified that member's final average compensation will not increase absent subsequent SBCERS or reciprocal employment
Nonvested member terminates. §31685.2	<ul style="list-style-type: none"> Member may elect a refund; or, if going to a reciprocal system, a deferred retirement. 	<ul style="list-style-type: none"> Not applicable. Nonmember must receive a refund at time of dissolution if member is not vested.
Purchase of service credit. §31685.4	<ul style="list-style-type: none"> A member may have accrued unexercised rights to purchase additional service credit during the marriage, for example the right to purchase unpaid leave time. Member is eligible to purchase community property share as specified in the court order. If the court order is silent, member may purchase entire amount. Member may purchase nonmember's share if nonmember receives a refund or dies without having purchased the service credit. Purchase of service credit must be made before member's retirement. 	<ul style="list-style-type: none"> Nonmember is eligible to purchase community property share, if specified in the court order. Purchase of service credit must be made prior to retirement of the nonmember or the effective date of a refund of contributions.
Redeposit of accumulated contributions and interest refunded to member prior to court order. §31685.3	<ul style="list-style-type: none"> Member is eligible to purchase community property share as specified in the court order. If the court order is silent, member may redeposit entire amount of accumulated contributions and interest previously refunded. Member may redeposit nonmember's share if nonmember receives a refund or dies before redeposit is completed. 	<ul style="list-style-type: none"> Nonmember is eligible to purchase community property share, if specified in the court order. If the court order is silent, the nonmember may not redeposit, accumulated contributions and interest previously refunded. Payment must be in a lump sum and all eligible service must be purchased.
Redeposit of accumulated contributions and interest refunded after court order. §31685.3	<ul style="list-style-type: none"> Member may repurchase nonmember's share if nonmember receives a refund or dies. Member has five years after notice to elect to repurchase nonmember's account. 	<ul style="list-style-type: none"> Nonmember refunds are final and may not be redeposited by the nonmember. Nonmember may not redeposit amounts refunded to the member.

Legal Separation and Dissolution of Marriage:

Guidelines for Division of Member Accounts After Retirement

Summary

These guidelines are to assist members and their spouses or domestic partners whose relationship is legally separated or dissolved after the member has retired and is receiving a retirement benefit. In such circumstances, the law allows for the division of the retirement benefit in proportion to the member's and nonmember's community property interest in the benefit. Such a division is typically provided for in a judgment of legal separation or dissolution. However, it is further required that the parties also obtain what is known as a domestic relations order ("DRO") providing SBCERS with specific instructions as to how the retirement benefit is to be divided.

General Guidelines

This document is intended as a general guideline. There may be unique circumstances that are not discussed in this document. Members and their spouses are encouraged to contact a SBCERS member services representative should these guidelines not address their questions or concerns.

Joinder Required

In order for SBCERS to be bound to the provisions of a DRO, it must be joined as a party in the legal separation or dissolution proceeding. This joinder process is described in a separate document entitled "[Outline of Joinder Process in Dissolution and Separation Proceedings.](#)"

Frequently Asked Questions

How is a retirement benefit split after retirement? The benefit is generally split in accordance with the period of time that the couple was married during employment with a SBCERS employer. The nonmember is entitled to 50% of the benefit earned by service credit accrued during the marriage. The parties are also free to agree to divide the benefit in a different manner in exchange for other consideration. Members and nonmembers should consult with qualified legal counsel for advice on how their retirement benefit is best divided between the parties.

If the divorcing or separating couple were married after the member stopped working for an SBCERS employer, is the non-member entitled to a share of the retirement benefit? Generally, no. A community property interest in a retirement benefit is only acquired during marriage while a member is working and paying retirement contributions with community property assets. If a couple is legally separated rather than divorced, the nonmember may still be entitled to a continuance benefit following the death of the member. Divorced spouses are generally not entitled to a continuance benefit unless the member elected an optional retirement allowance and named the nonmember as a beneficiary.

Once a benefit is split, do both the member and non-member receive cost of living adjustments to their benefit? Yes. Both the member and the nonmember receive annual cost of living adjustments on their split benefit depending on their retirement plan. Plan 2 members and nonmembers do not receive cost of living adjustments to their benefits.

Is the nonmember entitled to a share of the member's post-retirement health care subsidy benefit? Generally not, because former spouses are not eligible participants in the County's health insurance plan or the County's post-retirement health care subsidy benefit plan. Regardless of how a retirement benefit is split, the member will continue to receive the full amount of their health care subsidy and the non-member will need to receive equalizing compensation in some other way for their community property interest in that benefit. A nonmember spouse who is legally separated rather than divorced may have greater rights in this regard depending on the circumstances. Questions regarding continuing eligibility in such circumstances should be directed to the SBCERS member services team.

What happens when the member dies before the non-member? When a retirement benefit is split after retirement, the non-member's share of the benefit generally ceases on the member's death. A surviving former spouse is not eligible to receive a continuance benefit following the member's death unless the member elected an optional retirement allowance and designated the former spouse as a beneficiary. If a member remarries after divorce, the subsequent spouse may be eligible for a continuance benefit depending on their age and the duration of the marriage. When spouses are legally separated, but not divorced, the nonmember is eligible to receive a continuance benefit as a surviving spouse absent the member's selection of an optional retirement allowance naming another beneficiary.

What happens when the non-member dies before the member? The non-member is allowed to designate a beneficiary to receive their share of the member's benefit until the member's death, at which time the benefit ceases. If no beneficiary is designated, the benefit is payable to the nonmember's estate.

Legal Separation and Dissolution of Marriage:

Outline of Joinder Process in Dissolution & Legal Separation Proceedings

Pursuant to sections 2060-2065 of the California Family Code, SBCERS must be joined in the legal separation or dissolution proceeding. The Superior Court of California Santa Barbara website www.sbdcourts.org contains information about legal assistance, and many FL- (Family Law) forms. Forms submitted to SBCERS include:

- FL-370 Pleading on Joinder
- FL-372 Request for Joinder of Employee Benefit Plan and Order
- FL-375 Summons (Joinder)
- FL-374 Notice of Appearance and Response of Employee Benefit Plan

Joinder Process

The process takes three to six months, depending on the cooperation of all parties:

- 1** A party files appropriate forms with the court and serves them on SBCERS. SBCERS accepts service by mail or by electronic service at 130 Robin Hill Road, Suite 100, Goleta, CA 93117 or by email to info@sbcers.org.
- 2** SBCERS files a response with the court and sends a copy to all parties which includes:
 - FL-374 Notice of Appearance and Response of Employee Benefit Plan
 - Correspondence advising the parties of the steps needed to conclude a DRO and enclosing explanatory materials and the appropriate Model DRO form for the particular case. Model DROs include the following:
 - DRO-A (for members not retired)
 - DRO-A-Refund Only (for non-vested members not retired)
 - DRO-B (for members already retired).
- 3** A party or counsel drafts the proposed Stipulated DRO and sends it to SBCERS for review and approval by counsel.
- 4** SBCERS' counsel reviews the proposed DRO and either requests revisions, or signs and returns it to the requesting party.
- 5** The party obtains all signatures and files the Stipulated DRO with the court for the judge's signature.
- 6** The party obtains a conformed (file stamped) copy of the Stipulated DRO from the court and sends it to SBCERS, along with a conformed copy of the Final Judgment documents.
- 7** SBCERS receives the Stipulated DRO, and as soon as administratively practical, either divides the member's service credit, account and contributions; or divides the retiree's monthly pension benefit.
- 8** SBCERS mails letters to both parties explaining the action taken.

The letter to the SBCERS member who is not yet retired describes how the court order affects their account; how much service credit remains; and their ability to update their named beneficiary for available death benefits. The letter to the non-member explains their available options. Generally the non-member may request a refund, defer a retirement benefit, or begin a monthly retirement benefit, if eligible. When the member has accrued less than five year of SBCERS service credit with SBCERS or a reciprocal retirement system as of the date of legal separation or dissolution, the nonmember is only entitled to receive a refund of their share of member contributions plus interest.

The letter to the SBCERS member who is retired states the deduction amount from their monthly pension benefit paid to the non-member; and the notifies the member of the opportunity to update their named beneficiary for any available death benefits. If the retiree chose a modified retirement option, they may not change the beneficiary for a continuance, but may change it for the Lump Sum Death Benefit. The letter to the non-member states the amount of the monthly pension payable and includes the forms needed for placement on payroll.

- When a non-member elects or is required to receive a refund, SBCERS sends a letter to the member advising them of the option to redeposit that refund and restore the service credit to their account. Once notified, there is a five year limit to accept this option during which time interest accrues on the total.
- When a member retires, SBCERS sends a letter to the non-member, if they have not yet retired, advising them that the final compensation used to calculate their retirement benefit will not change.

Legal Separation and Dissolution of Marriage:

Guidelines for Waiver of Interest in SBCERS Retirement

Summary

As noted in related guidelines, SBCERS service credit earned during a marriage, including interest earned on member contributions, is a community property asset. In most cases that community property asset is divided between the parties. However, in some cases, the parties agree that the member may retain 100% of their retirement account or pension benefit in consideration for the member's receipt of a lesser share of other assets.

These guidelines explain how best to document a waiver of interest in a member's SBCERS retirement account or pension benefit. They are intended as a general guideline. There may be unique circumstances that are not discussed in this document. Members and their spouses are encouraged to contact a SBCERS member services representative should these guidelines not address their questions or concerns.

Guidelines

A nonmember's waiver of an interest in a SBCERS retirement account or pension benefit must be part of a judgment or other court order. SBCERS cannot accept a waiver of interest that has not been submitted to court for approval, particularly where such a waiver contradicts a prior court award to the nonmember of an interest in the member's retirement account or pension benefit.

For a waiver to be valid, a court judgment or order should specifically identify the SBCERS retirement account or pension benefit by name. When a judgment does not correctly identify a SBCERS retirement account or pension benefit, for example referring to it as a Santa Barbara City retirement benefit or simply a "retirement account," amendment of the judgment or order will usually be required to make the waiver effective.

Parties are encouraged to consult with counsel to assist them in preparing the legal documents required to effectuate a waiver of SBCERS pension rights.

Where a court judgment or order needs to be modified or clarified, a stipulated amendment to the judgment or order may be required. Where a court judgment or order is silent as to the SBCERS retirement account or pension benefit, a stipulation and order regarding omitted asset may be utilized. Information about legal assistance and family law court forms (numbered documents commencing in "FL") can be found on the Superior Court website: www.sbcourts.org.

When a judgment or other court order clearly waives the nonmember's interest in a member's retirement account or pension benefit, joinder of SBCERS as a party in the proceeding is not required. However, in such circumstances submittal of a certified copy of the judgment or court order is required so that SBCERS can verify its authenticity.

When SBCERS has been joined as a party to the legal separation or dissolution proceeding, the parties should seek review and approval by SBCERS counsel of any proposed waiver before submitting a stipulation and order to the court for approval.

Death of the nonmember does not constitute a waiver of the nonmember's interest in the member's SBCERS retirement account or pension benefit, since the nonmember beneficiary or estate may still have an interest in that account or pension benefit. If there are questions regarding the interests of a beneficiary or the nonmember's estate, a court order resolving those questions may be required.