

# **DIVIDING COMMUNITY PROPERTY**

**HOW DIVORCE AFFECTS YOUR  
STANCERA BENEFIT**



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## **INTRODUCTION**

Stanislaus County Employees' Retirement Association (StanCERA) retirement benefits are generally payable only to members or their beneficiaries and cannot be paid to others. California state law recognizes an exception to this rule in the case of dissolution of marriage. Because retirement benefits earned during marriage are considered community property assets, they must be considered in the property settlement agreement and are subject to disposition by the court.

This booklet provides information for members, nonmembers and their representatives to assist in the allocation of a member's retirement benefit. All parties are encouraged to review the StanCERA Member Handbook, which describes the plan and various benefits available to the member.

## **NOTIFYING StanCERA OF PENDING MARITAL DISSOLUTION ACTION**

When a marital dissolution action has been filed, the member and/or other parties involved should notify StanCERA immediately in writing. The nonmember has an interest in the member's retirement account if he/she was married to a StanCERA member while the member worked for Stanislaus County\*. To protect the nonmember's interest in the plan, StanCERA should be notified in writing that the nonmember is asserting a claim for community property interest in the member's benefit.

Additionally, StanCERA requires that it be joined as a party to the dissolution proceeding pursuant to Sections 2060-2065 of the California Family Code.

When StanCERA first receives notice of a pending dissolution, or is served with a joinder, and the member has not retired, the pending dissolution is noted in the member's account. StanCERA is unable to distribute any payments from the member's account until the dissolution is resolved and StanCERA has been notified.

If the joinder is withdrawn, written notice is required. The joinder of StanCERA can be released only with a court-approved Petition to Dismiss or, in the case of reconciliation, a copy of the court order that dismisses the dissolution case.

\*For purposes of this booklet, "Stanislaus County" includes all participating employers who use StanCERA for retirement benefit administration.

## REQUEST FOR CONFIDENTIAL MEMBER INFORMATION

By law, a member's retirement records are confidential. To release information about a member's account, StanCERA must receive one of the following:

- ❖ Written request from the member (form enclosed) outlining the specific data needed
  - Marital period (date of marriage, date of separation)
  - Member's name and Social Security Number
  - Member's current address
  - Name and address of the attorney representing the member
  - Former spouse's name and date of birth
  - Former spouse's current address, or name and address of the attorney representing former spouse

**OR**

- ❖ Subpoena duces tecum, which may be served on StanCERA by mail

If the member or his/her attorney, with a properly executed authorization, requests records, a \$15.00 check payable to StanCERA will be required.

## ACTUARIAL VALUATION

StanCERA does not provide actuarial valuations of a member's retirement benefits, or legal, tax or other advice concerning the division of a member's benefits. An actuary may be retained by the parties to determine the present value of the benefit.

The member and/or ex-spouse are responsible for the cost of any special actuarial analysis for Option 4. Currently the cost of this analysis could be several hundred dollars depending on the complexity of the beneficiary structure chosen.

## LEGAL REQUIREMENTS AND PROCEDURES

### JOINDER REQUIREMENT

Joinder is a legal process that names StanCERA as a third-party claimant in the dissolution proceeding (sections 2060 – 2065 of the California Family Code).

When joined, StanCERA is notified of the dissolution of marriage action and is a party to that action. StanCERA requires that it be joined as a party to the proceeding and will not recognize court orders addressing a member's account in the system unless StanCERA has been joined.

Joinder forms are available from the court. The member or representing attorney must complete these forms, file them with the court and serve them on StanCERA. StanCERA will accept service of joinder by mail at the following address:

Stanislaus County Employees Retirement Association  
P O Box 3150  
Modesto CA 95353-3150

If both parties have pension plans and each party retains his/her pension plan in total, or if the StanCERA member will retain all interest in his/her plan due to a buyout of the former spouse's community property interest, StanCERA does not need to be joined as a party to the dissolution. In this case, the member should give StanCERA a copy of the order establishing that the pension is entirely his/her sole and separate property.

#### DOMESTIC RELATIONS ORDER REQUIREMENT

A domestic relations order (DRO) is a legal document. It consists of a stipulation signed by all parties and an order executed by a judge identifying how retirement benefits are to be divided.

For a DRO dividing community property interest to be acceptable, it must be in compliance with the terms of the 1937 Act\*\* and other applicable laws. A court cannot make an order that is not in compliance with the 1937 Act or that would require the retirement plan to make payments in any manner that would result in an increase in the amount of benefits provided by the plan. Under no circumstances will payments be made to the member and nonmember that exceeds the amount that otherwise would have been paid to the member alone. This may result in a reduction of the retirement benefit to both the member and the nonmember.

To avoid unnecessary delay, a draft DRO should be submitted to StanCERA for pre-approval before obtaining the signatures of the member and nonmember. StanCERA will review the draft and may recommend changes, then will return the draft to the appropriate parties for signing and filing with the court.

After the parties involved have completed a final "StanCERA approved" version of the DRO and have signed the documents, StanCERA will sign the final version before it is filed with the court. Once the court approves the DRO, StanCERA requires a conformed or certified file-stamped, court-executed DRO.

#### **INFORMATION FOR ATTORNEYS DRAFTING DOMESTIC RELATIONS ORDERS**

Sample DROs are attached to the back of this booklet to assist attorneys in drafting orders. The model DROs are intended as **samples only** and do not suggest the necessary, proper or desirable arrangement for the division of community property. Other language may be used in the DRO as long as it is consistent with the terms of the 1937 Act. StanCERA is not subject to the federal Employee Retirement Income Security Act (ERISA). Orders using ERISA language should be avoided, as they are not applicable to StanCERA.

The sample DROs attached to the back of this booklet may be revised periodically. Before preparing a draft, please contact StanCERA at 209-525-6393 to request the most recent version.

\*\* "1937 Act" means the County Employees Retirement Law of 1937 and is found in California Government Code Section 31450 et seq.

## METHODS OF DIVIDING COMMUNITY PROPERTY

### METHOD AVAILABLE TO ACTIVE AND DEFERRED MEMBERS

(Former spouse receives a percentage of each monthly payment when member retires)

If an active or deferred member's StanCERA benefit must be divided, as determined by the court or an agreement of the parties, two sample language DRO's are provided as examples of acceptable methods for dividing community property.

Either method will divide the community property interest of an active StanCERA member's account. This division allows the nonmember to receive his/her community property interest in the retirement benefit at the time benefits become payable to the member.

#### FIRST METHOD

If elected, this method requires the member to elect Option 4 (Government Code Section 31764) at retirement and name the nonmember as a beneficiary. Member benefits provided under Option 4 are reduced in order to provide survivor benefits to eligible beneficiaries. The community property interest is calculated by StanCERA based on what is commonly referred to as the "time rule" or "Brown formula". However, the parties may provide another method of allocating the member's retirement benefits provided the method is consistent with the terms of the 1937 Act and other applicable laws.

The Brown formula is as follows:

$$\begin{array}{l} \text{Non-members} \\ \text{allocated monthly} \\ \text{benefit} \end{array} = \frac{\text{No. of months StanCERA service between} \\ \text{marriage date \& separation date}}{\text{No. of months of StanCERA service at} \\ \text{retirement of member}} \times 50\% \times \text{Member's} \\ \text{retirement} \\ \text{allowance}$$

If the member predeceases the nonmember, the nonmember would continue to receive a monthly community property benefit for life.

After monthly retirement benefits have begun, if the nonmember dies before the member, the nonmember's community property monthly benefit would stop and revert to the plan. If the DRO specifically states that the nonmember's community interest reverts to the member or continues to beneficiaries or heirs, an actuarial reduction in the retirement benefit is required at the outset of receiving the retirement benefit payments.

The selection of Option 4 still allows the member, at retirement, to name another lifetime beneficiary for any remaining portion of the retirement benefit. Certain plan limitations may affect the amount available under this option to another lifetime beneficiary. For example, an additional actuarial reduction is required at the outset in order to provide a lifetime benefit to a current surviving spouse.

**NOTE:** If Option 4 is chosen, the member and/or ex-spouse are responsible for the cost of any special actuarial analysis for Option 4. Currently the cost of this analysis could be several hundred dollars depending on the complexity of the beneficiary structure chosen.

**SUMMARY OF FIRST METHOD OF DIVIDING COMMUNITY PROPERTY**

Available to active and deferred members

	<b>SHARED PAYMENT</b>
<b>Retirement date and receipt of benefit payment</b>	Member and nonmember begin to receive monthly benefits when member retires
<b>Benefit payment options</b>	Member must select Option 4, which provides nonmember with a lifetime benefit based on his/her percentage interest in member's retirement.
<b>Member or nonmember dies before retirement</b>	If member has not remarried, nonmember receives community property percentage interest in death benefit.  If member has remarried, the court reserves jurisdiction over the nonmember's entitlement to monthly benefit of the surviving spouse.
<b>Member or nonmember dies after retirement</b>	Member's death: Monthly continuance available to beneficiary if named at date of retirement; nonmember's benefit is not affected by member's death.  Nonmember's death: Monthly benefit will stop. An actuarial provision must be made for continuance to member or beneficiary.

SECOND METHOD

This method allows the member to elect Government Code §31760, which provides an unmodified benefit. This allows a non-member to receive his/her community interest in the retirement benefit at the time the benefit becomes payable to the member. However, the non-member's community share shall terminate upon the death of the member. If the member leaves an eligible surviving spouse, a portion of the survivor's allowance may be payable to non-member upon further order of the court.

This method also uses the "Brown formula" to calculate the community property interest.

$$\begin{array}{l}
 \text{Non-members} \\
 \text{allocated monthly} \\
 \text{benefit}
 \end{array}
 =
 \frac{\text{No. of months StanCERA service between} \\
 \text{marriage date \& separation date}}{\text{No. of months of StanCERA service at} \\
 \text{retirement of member}}
 \times 50\% \times \text{Member's} \\
 \text{retirement} \\
 \text{allowance}$$

## SUMMARY OF SECOND METHOD OF DIVIDING COMMUNITY PROPERTY

Available to active and deferred members

	<b>SHARED PAYMENT</b>
<b>Retirement date and receipt of benefit payment</b>	Member and nonmember begin to receive monthly benefits when member retires
<b>Benefit payment options</b>	Member may elect Government Code §31760, which is an unmodified benefit. This will provide non-member a percentage interest benefit in member's allowance.
<b>Member or nonmember dies before retirement</b>	<p>If member dies and has not remarried, nonmember receives community property percentage interest in death benefit.</p> <p>If member has remarried, the court reserves jurisdiction over the nonmember's entitlement to monthly benefit of the surviving spouse.</p> <p>If non-member dies, his/her beneficiary will be entitled to the community property share upon the member's retirement.</p>
<b>Member or nonmember dies after retirement</b>	<p>Upon death of member, non-member's monthly benefit will stop. If member leaves an eligible spouse, the non-member may petition the court for a share of the survivor's allowance.</p> <p>Upon non-member's death, the monthly benefit will stop.</p>

**NOTE:** Purchased service credit requires special consideration for either method of division. Contact StanCERA for further information.

### METHOD AVAILABLE TO RETIRED MEMBERS

For retired members who are receiving a benefit, a sample language DRO is provided as an acceptable method of dividing community property.

The retirement benefit option a member elects at retirement cannot be changed. If the member's marriage is dissolved after retiring, the member's retirement benefit is reduced to provide retirement income to the nonmember based on the percentage or formula provided in the DRO.

If the retired member dies first, the nonmember is no longer eligible to receive a retirement benefit. A nonmember is not considered a surviving spouse for any purpose under the 1937 Act; therefore the nonmember community interest terminates upon the death of the retired member.

If the nonmember dies first, the portion of the retired member's benefit payable to the nonmember will continue to be paid to the nonmember's estate or designated beneficiary during the member's lifetime.

A DRO can be structured to divide the member's retirement payments until the member's death. A DRO can also address how any applicable lump sum death benefits are to be divided.

## **EFFECTS OF DISSOLUTION ON BENEFICIARY DESIGNATION**

It is important to review your StanCERA beneficiary designation following dissolution of marriage. The designation of a spouse as beneficiary is automatically cancelled by a dissolution of marriage, which occurs after January 1, 2002 (Probate Code sections 5600 and 5604). A Change of Beneficiary form is included in the back of this booklet.

## **FREQUENTLY ASKED QUESTIONS**

### **Can StanCERA provide a statement of the value of the member's pension?**

No. StanCERA cannot provide the accrued pension benefit or the value of the plan. An actuary must perform an analysis that computes present value of the expected benefit payments with assumptions for expected retirement effective dates and longevity of the beneficiary.

### **Do I need an attorney?**

This is a decision that only you can make. If you retain an attorney, be certain that your attorney is familiar with the complexities presented by a defined benefit pension plan, such as the plans that StanCERA administers.

### **What if the parties reconcile before final judgment of dissolution?**

If the parties reconcile after StanCERA is joined but before the final judgment of dissolution has been entered, a request for dismissal of the case may be filed with the court. A conformed (signed by the judge) copy of the court order showing the case was dismissed must be submitted to StanCERA.

### **What if the marriage was dissolved in a state other than California or outside of the USA?**

StanCERA is a statutory entity created under California law, commencing at Government Code Section 31450 et seq. Other states' courts may lack jurisdiction and parties may be required to file for judgment in California to obtain a DRO in this state.

### **How does a marital dissolution affect my participation in the deferred compensation plans?**

A joinder of StanCERA does not result in a joinder of your employer's deferred compensation plans. Contact your deferred compensation plan administrator for additional information.

**My final dissolution documents, such as a judgment, state that my pension is to be divided and that the court will retain jurisdiction. Do I need anything else?**

Yes. A separate DRO that specifically addresses the division of your StanCERA pension is required. StanCERA cannot process your retirement benefits until it receives this separate legal order.

**Are pension benefits always divided 50-50?**

Not necessarily. Typically, a pension is divided 50-50 but not always. For example, the member could be given 75% of the community interest in the pension with the nonmember getting 25% of the pension plus other community assets equalizing his/her share (car, house, etc). It is up to the parties (or the court) to decide how the community interest in the pension is to be divided.

**What happens if the member remarries?**

Since the benefit was permanently divided, the member's account has already been reduced and the benefits to the nonmember will not be affected.

**What happens if the nonmember remarries?**

If the nonmember remarries, the retirement benefit is not affected under terms of the retirement law.

## DEFINITIONS

<b>ACTIVE MEMBER</b>	Currently employed; not retired or terminated
<b>BENEFICIARY</b>	<p>Person(s) named to receive lump sum and/or monthly payments (if eligible) upon a member's death. A vested member's surviving spouse or minor children have superior rights over any other named beneficiary. If no beneficiary is named or the beneficiary is no longer living, the beneficiary will be:</p> <ul style="list-style-type: none"> <li>• Member's surviving legal spouse</li> <li>• If there is no surviving spouse, member's unmarried minor children</li> <li>• If there are no surviving spouse or qualifying children, member's estate</li> </ul> <p>Beneficiary designations are subject to modification by court order.</p>
<b>BENEFIT AMOUNT</b>	The amount of the monthly retirement benefit is determined by a formula based on a member's age, total years of service credit and final compensation. The StanCERA Member Handbook provides a summary of the plan and information on benefit calculations.
<b>CONTRIBUTIONS EMPLOYEE</b>	Money deducted from member's biweekly pay and credited to his/her retirement account.
<b>EMPLOYER</b>	Contributions made by your employer on behalf of StanCERA members, in total, to finance StanCERA benefits.
<b>DEFERRED MEMBER</b>	A member, who leaves employment with five or more years of StanCERA/reciprocal retirement service credit, leaves employee contributions (if any) on deposit with StanCERA and defers retirement to the date first eligible to retire or a later date.
<b>DEFINED BENEFIT PLAN</b>	The StanCERA retirement plan is an IRC 401(a) Internal Revenue code (IRC) defined benefit pension plan and is <u>not</u> subject to the federal Employee Retirement Income Security Act (ERISA).
<b>FINAL COMPENSATION</b>	A monthly amount based on the average compensation earnable during any one year elected by a member
<b>JOINDER</b>	The process of including StanCERA as a party to the dissolution action. A joinder authorizes StanCERA to implement a court order dividing StanCERA retirement benefits and must comply with the applicable procedures of the California Family Code and California Rules of the Court.
<b>MEMBER</b>	An active, deferred, inactive non-vested or retired StanCERA participant.
<b>NONMEMBER</b>	A member's spouse, former spouse, child or other dependent (as ordered by the court) that petitioned the court for the division of community property and was awarded an interest in the member's retirement benefit.
<b>RETIRED MEMBER</b>	A member who has met the eligibility requirements for a service or disability retirement and is receiving a monthly retirement benefit.
<b>SUBPOENA DUCES TECUM</b>	A legal document that commands a witness to produce documents.

<b>VESTED</b>	Completion of sufficient (usually five) years of StanCERA/reciprocal retirement service credit to be eligible to receive a monthly retirement allowance at some legal minimum age with a minimum length of participation as a member of StanCERA.
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For additional definitions, refer to the StanCERA Member Handbook.

# ATTACHMENTS