

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If the joinder is withdrawn, written notice is required.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.

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

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

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.

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 (marital settlement agreement in its entirety).

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.

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

DOMESTIC RELATIONS ORDER REQUIREMENT – CONT'D

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 go to StanCERA’s website at www.stancera.org to view the most recent version.

METHOD OF DIVIDING COMMUNITY PROPERTY

UNMODIFIED 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, a sample language DRO is provided as an example of acceptable method for dividing community property.

This 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.

Unmodified Method

This method allows the member to elect Government Code §31760, which provides an unmodified benefit. This allows a nonmember to receive his/her community interest in the retirement benefit at the time the benefit becomes payable to the member. However, the nonmember’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 nonmember upon further order of the court.

This method uses the “Brown formula” to calculate the community property interest.

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

SUMMARY OF UNMODIFIED METHOD OF DIVIDING COMMUNITY PROPERTY

Available to active and deferred members

	SHARED PAYMENT
Retirement date and receipt of benefit payment	Member and nonmember begin to receive monthly benefits when member retires
Benefit payment options	Member may elect Government Code §31760, which is an unmodified benefit. This will provide nonmember a percentage interest benefit in member's allowance.
Member or nonmember dies before retirement	<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 nonmember dies, his/her beneficiary will be entitled to the community property share upon the member's retirement.</p>
Member or nonmember dies after retirement	<p>Upon death of member, nonmember's monthly benefit will stop. If member leaves an eligible spouse, the nonmember may petition the court for a share of the survivor's allowance.</p> <p>Upon nonmember's death, the monthly benefit will stop.</p>

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

Additionally, Option 4 is available upon request. Please view the Option 4 booklet on the StanCERA website at www.stancera.org.

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 benefit payments 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?

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

ACTIVE MEMBER	Currently employed; not retired or terminated
BENEFICIARY	<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"> • Member's surviving legal spouse • If there is no surviving spouse, member's unmarried minor children • If there are no surviving spouse or qualifying children, member's estate <p>Beneficiary designations are subject to modification by court order.</p>
BENEFIT AMOUNT	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.
CONTRIBUTIONS EMPLOYEE	Money deducted from member's biweekly pay and credited to his/her retirement account.
EMPLOYER	Contributions made by your employer on behalf of StanCERA members, in total, to finance StanCERA benefits.
DEFERRED MEMBER	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.
DEFINED BENEFIT PLAN	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).
FINAL COMPENSATION	A monthly amount based on the average compensation earnable during any consecutive one or three year elected by a member
JOINDER	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.
MEMBER	An active, deferred, inactive non-vested or retired StanCERA participant.
NONMEMBER	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.
RETIRED MEMBER	A member who has met the eligibility requirements for a service or disability retirement and is receiving a monthly retirement benefit.
SUBPOENA DUCES TECUM	A legal document that commands a witness to produce documents.
VESTED	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.
For additional definitions, refer to the StanCERA Member Handbook.	

ATTACHMENTS



BENEFICIARY DESIGNATION

In the event of the payment of benefits upon the member's death in accordance with the 1937 Act.

Section 1: MEMBER INFORMATION		Please check one: <input type="checkbox"/> Active <input type="checkbox"/> Deferred			
<input type="checkbox"/> Male	First Name	MI	Last Name		Social Security Number - -
	Street Address				
<input type="checkbox"/> Female					
Birth Date / /	City	State	Zip	Telephone Number ()	
Marital Status	Employer	Department		Title	

In accordance with the provisions of the County Employees' Retirement Act of 1937, I hereby revoke the nomination of my present beneficiary and all previously named beneficiaries and hereby nominate as my beneficiary, to receive any benefits payable under Article 12, Sections 31780 through 31782 of said Act in the event of my death prior to retirement, the following person(s):

Note: If you are not naming your spouse/registered domestic partner as beneficiary #1 assigned 100%, your spouse's/partner's signature is required on the reverse side of this form and must be witnessed by either a StanCERA staff member or a notary.

Section 2: BENEFICIARY INFORMATION						
Beneficiary Number 1	<input type="checkbox"/> Male	First Name	MI	Last Name		Social Security Number - -
	<input type="checkbox"/> Female	Street Address				
Percent %	Relationship	Birth Date / /				City
		State	Zip	Telephone Number ()		
Beneficiary Number 	<input type="checkbox"/> Male	First Name	MI	Last Name		Social Security Number - -
	<input type="checkbox"/> Female	Street Address				
Percent %	Relationship	Birth Date / /				City
		State	Zip	Telephone Number ()		
Beneficiary Number 	<input type="checkbox"/> Male	First Name	MI	Last Name		Social Security Number - -
	<input type="checkbox"/> Female	Street Address				
Percent %	Relationship	Birth Date / /				City
		State	Zip	Telephone Number ()		
Beneficiary Number 	<input type="checkbox"/> Male	First Name	MI	Last Name		Social Security Number - -
	<input type="checkbox"/> Female	Street Address				
Percent %	Relationship	Birth Date / /				City
		State	Zip	Telephone Number ()		

Member's Signature (Required)	Date
--------------------------------------	-------------

Each person you name must have a Beneficiary Number and Percent assigned. If beneficiaries share benefits, assign each the same beneficiary number and indicate the percentage each is to receive. The percents of all beneficiaries with the same beneficiary number must add up to 100%. If you are married, in a registered domestic partnership or have minor children, your spouse/partner or minor children may have superior rights over any other person you name as a beneficiary. Some beneficiaries may not be eligible to receive certain monthly continuances or benefits. **Note: Funds may not be dispersed for minor children until legal guardianship is established.**

Beneficiary Designation Continued

Section 3: TRUST INFORMATION		Complete this section if you are naming a Trust as your beneficiary.	
Beneficiary Number _____	Percent % _____	Official Name of Trust _____	Tax ID Number _____
Contact Person for Trust _____		Telephone Number of Contact _____	
Member's Signature (Required) _____		Date _____	

Use the language your attorney has given you when naming the Trust and include the tax identification number if applicable. Remember if your beneficiary is eligible for a monthly continuance upon your death that continuance cannot be paid to a Trust.

Section 4: REQUIRED SIGNATURE(S) IF NOT NAMING SPOUSE/REGISTERED PARTNER AS BENEFICIARY #1 ASSIGNED 100%
<p>I acknowledge and consent to this beneficiary designation. I further understand that if Beneficiary 1 is other than myself and has been named in Section 2 that I am waiving any survivor benefits to which I may become eligible to receive from StanCERA.</p> <p>Spouse/Registered Domestic Partner Signature: _____ Date: _____</p> <p>Option 1: Witnessed by StanCERA Representative</p> <p>Signature of spouse/registered domestic partner witnessed this _____ day of _____, 20____.</p> <p style="text-align: right;">StanCERA Representative: _____</p> <p>Option 2: Witnessed by Notary Public</p> <p>BEFORE ME, the undersigned, a Notary Public, personally appeared _____ who executed the above Spouse / Registered Domestic Partner Consent as a free and voluntary act.</p> <p>IN WITNESS WHEREOF, I have signed my name and affixed my official notarial seal this _____ day of _____, 20____.</p> <p>(SEAL) Notary Public: _____</p> <p style="text-align: right;">Commission Expires: _____</p>

STOP – THIS SECTION TO BE COMPLETED ONLY IF YOU ARE MARRIED/REGISTERED AND YOUR SPOUSE/PARTNER DOES NOT CONSENT TO YOUR DESIGNATION.

Section 5: MEMBER'S STATEMENT – NO SPOUSE/REGISTERED DOMESTIC PARTNER CONSENT

Beneficiary information will not be accepted without your signature. California Government Code §31760.3 requires notification to the current spouse/partner of the election you have made regarding your StanCERA account. If you are married or in a registered domestic partnership, your spouse/partner's signature is required in (Section 4) as notification of your change of beneficiary designation. **SPOUSE/REGISTERED DOMESTIC PARTNER'S SIGNATURE IS REQUIRED** unless you declare, under penalty of perjury, the reason by checking one of the statements below. This new designation cancels all previous designations.

Member's statement, (necessary only if spouse/registered domestic partner signature is not included or applicable)
 I declare under penalty of perjury that a spouse/registered domestic partner signature is not included for the following reason:

- The member is not married/registered.
- The current spouse/registered domestic partner has no identifiable community property interest in the benefit.
- The member does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse/registered domestic partner.
- The current spouse/registered domestic partner has been advised of the application and has refused to sign the written acknowledgment.
- The current spouse/registered domestic partner is incapable of executing the acknowledgment because of incapacitating mental or physical conditions.
- The member and the current spouse/registered domestic partner have executed a marriage/partnership settlement agreement pursuant to Part 5 (commencing with Section 1500) of Division 4 of the family Code, which makes the community property law inapplicable to the marriage/partnership. **(Copy of Dissolution of Marriage/Partnership accompanied by settlement must be attached.)**

Member's Signature (Required) _____	Date _____
-------------------------------------	------------

**SAMPLE ORDER RE GOVERNMENT
CODE SECTION 31760** — Revised Sept 2010

Re: Government Code Section 31760

**Note: Please replace bold language
with appropriate party or pronoun
and omit fn. 1 or para. 5 as needed**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

In re the Marriage of:	)	Case No.:
)	
Petitioner,	)	STIPULATION AND ORDER FOR
	)	MODIFICATION OF JUDGMENT RE:
	)	StanCERA RETIREMENT BENEFITS
	)	UNDER GOVERNMENT CODE SECTION
and	)	31760
)	
Respondent:)	
)	
)	
Claimant:)	
)	
STANISLAUS COUNTY)	
EMPLOYEES' RETIREMENT)	
ASSOCIATION (StanCERA).)	
)	
)	

_____ and _____, and the Stanislaus
County Employees' Retirement Association ("StanCERA") hereby stipulates as follows:
_____ ("Respondent"), Social Security No. on file with Plan
Administrator, who was born _____ is currently employed by the County of
Stanislaus (**or name of appropriate employer**) and has a vested right to a service
pension from StanCERA.
_____ ("Petitioner"), is a nonmember. **His/Her** Social
Security No. and address are on file with Plan Administrator, and birth date is _____.

1 **RECITALS**

2 1. Petitioner and Respondent were married to each other on _____. They
3 separated on _____, and this Court entered a judgment of dissolution in the
4 action on _____.

5 2. This Court has personal jurisdiction over both Petitioner and Respondent
6 and jurisdiction over the subject matter of this Order and the dissolution of marriage
7 action.

8 3. StanCERA was properly joined as a party to the Petitioner and
9 Respondent's dissolution of marriage action pursuant to sections 2060 through 2065 of
10 the Family Code.

11 **STIPULATION**

12 This Order is acceptable under the County Employees Retirement Law of 1937
13 (the '37 Act), which is set forth at section 31450 et seq., of the Government Code.
14 StanCERA is a "governmental plan" as defined by 29 U.S.C. section 1002(32), and is
15 therefore statutorily exempt from the provisions of the Employee Retirement Income
16 Security Act (ERISA) 29 U.S.C. section 1001, et seq., as amended by the Retirement
17 Equity Act of 1984 (REA) which govern "Qualified Domestic Relations Orders
18 ('QDRO's)". See 29 U.S.C. section 1003 (b)(1). Therefore, any order directed to
19 StanCERA in the instant case should not be referred to as a "Qualified Domestic
20 Relations Order," nor should it require StanCERA to comply with any provisions of
21 ERISA or REA, or any other provisions of law applicable to Qualified Domestic
22 Relations Orders generally.

23 1. StanCERA is ordered to pay directly to Petitioner upon the retirement of
24 Respondent a percentage of the retirement allowance otherwise payable to Respondent
25 calculated by the formula as follows:

Nonmember's allocated monthly benefit	No. of Months of StanCERA service between marriage <u>date & separation date</u>	X	50%	X	Member's retirement allowance
	No. of months of StanCERA service at retirement of member				

1 To the extent Respondent receives a disability retirement benefit, the community
2 property interest in the Respondent's disability retirement benefit shall not exceed the
3 amount that would otherwise be payable as a service retirement allowance. Any
4 amount in excess of the service allowance amount is and remains Respondent's sole
5 and separate property.

6 Petitioner's community share shall terminate upon the death of Respondent.

7 2. In the event StanCERA inadvertently or otherwise pays to Respondent (or
8 Respondent's beneficiary or Petitioner) any benefits that are assigned to Petitioner (or
9 Respondent or Respondent's beneficiary, respectively), hereunder, Respondent (or
10 Respondent's beneficiary or Petitioner, respectively) shall be deemed a constructive
11 trustee of said amounts.

12 3. If any return of accumulated contributions becomes payable as the result
13 of the death of Respondent, the Petitioner is entitled to the community property share of
14 the accumulated contributions. Respondent is hereby ordered to name Petitioner as the
15 beneficiary for the Petitioner's community property share of the accumulated
16 contributions.
17

18 4. If Respondent withdraws **his/her** accumulated contributions, Petitioner
19 shall be entitled to receive, at the time Respondent receives **his/her** accumulated
20 contributions, Petitioner's community property share of the accumulated contributions.

21 5. If Respondent is married to an eligible surviving spouse¹ on member's
22 date of retirement, member shall elect the "Unmodified Option" under the Plan, and
23 name such eligible spouse as beneficiary for the surviving spousal continuance under
24 this option. Petitioner shall receive nonmember's community property interest in any
25 surviving spousal continuance, pursuant to the calculation described above in
26 paragraph 1. **His/her** share shall terminate upon the death of the surviving spouse.

27 _____
28 ¹Generally, an eligible surviving spouse is a spouse to whom the member has been married one year
prior to retirement. The nonmember is not an eligible spouse pursuant to **In re Marriage of Cramer**
(1993) 20 Cal.App.4th 73.

1 (See *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010.) Petitioner recognizes that
2 the right to any portion of the survivor's allowance shall be based on the lifetime of the
3 eligible surviving spouse.

4 6. If Petitioner predeceases Respondent, any benefits otherwise payable to
5 Petitioner by StanCERA, including benefits paid to a surviving spouse, shall be paid to
6 Petitioner's estate, pursuant to *In re Marriage of Powers* (1990) 218 Cal.App.3d 626.

7 7. Petitioner is ordered to keep **his/her** date of birth, current address and
8 proof of Social Security number on file with StanCERA.

9 8. In the event that StanCERA does not approve the form of this Order, then
10 each party shall cooperate and do all things reasonably necessary to devise a form of
11 Order acceptable to StanCERA.

12 9. Nothing contained in this Order shall be construed to require StanCERA:

13 (a) To provide Petitioner any type or form of benefit or any option not
14 otherwise available to Respondent under the Plan;

15 (b) To provide Petitioner increased benefits not available to
16 Respondent; and

17 (c) To pay any benefits to Petitioner, which are required to be paid to
18 another nonmember spouse under a separate court order.

19 10. The Court reserves jurisdiction to enforce, revise, modify or amend this
20 Order provided, however, neither this order nor any subsequent revision, modification,
21 or amendment shall require StanCERA to provide any form or amount of benefits not
22 otherwise provided by StanCERA.

23 DATED: _____
24 Petitioner

25 DATED: _____
26 Respondent

27 DATED: _____
28 Attorney for Petitioner

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DATED: _____
Attorney for Respondent

DATED: _____
Michele Silva, Benefits Manager
Stanislaus County Employees' Retirement
Association

APPROVED AS TO FORM:

DATED: _____
Fred Silva, General Legal Counsel
Attorney for Stanislaus County Employees'
Retirement Association

ORDER

IT IS SO ORDERED:

DATED: _____
Judge of the Superior Court

1 **SAMPLE RETIRED MEMBER ORDER**

Revised Sept 2010

2
3 **StanCERA Member is assumed to be**
4 **Respondent in this Sample**

5 **Please delete bold language within**
6 **() in document before finalizing**

7
8
9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

10 In re the Marriage of:	)	Case No.:
)	
11 Petitioner,	)	STIPULATION AND ORDER FOR
	)	DIVISION OF PENSION BENEFITS RE:
12	)	STANISLAUS COUNTY EMPLOYEES'
13 and	)	RETIREMENT ASSOCIATION
	)	(Retired Member)
14 Respondent:)	
)	
15)	
16)	
17 <u>Claimant:</u>)	
)	
18 STANISLAUS COUNTY)	
)	
19 EMPLOYEES' RETIREMENT)	
)	
20 ASSOCIATION (StanCERA).)	
)	

21 1. The Stanislaus County Employees' Retirement Association ("StanCERA")
22 has been joined as a claimant employee pension benefit plan. StanCERA is a
23 governmental plan and is therefore exempt from the provisions of the Employee
24 Retirement Income Security Act that relate to Qualified Domestic Relations Orders.

25 2. Respondent _____ ("Member"), has earned certain
26 retirement benefits administered by StanCERA pursuant to employment with the County
27 of Stanislaus **(or name of appropriate employer)**, which are the community property of
28 Petitioner _____ ("Nonmember") and Member. Member and

1 Nonmember intend, by this Stipulation and Order, to divide and allocate these benefits
2 between them.

3 3. This Order is granted pursuant to California Family Code section 2610.

4 4. Date of Marriage: _____

5 5. Date of Separation: _____

6 6. StanCERA is ordered to pay directly to Nonmember from and after the
7 date of this Order _____ % of the retirement allowance, and any cost of living
8 adjustments to such _____ % of the retirement allowance, otherwise payable to
9 Member. Nonmember's community share shall terminate upon the death of Member.

10 7. In the event StanCERA inadvertently or otherwise pays to Member (or
11 Member's designated beneficiary or Nonmember) any benefits that are assigned to
12 Nonmember (or Member/Member's designated beneficiary, respectively) hereunder,
13 Member (or Member's designated beneficiary or Nonmember, respectively) shall be
14 deemed a constructive trustee of said amounts.

15 8. If Nonmember predeceases Member, the portion of Member's benefit
16 payable to Nonmember under Paragraph 6 above shall continue to be paid to
17 Nonmember's estate or designated beneficiary during Member's lifetime.

18 9. Each party shall be responsible for and pay any taxes due in connection
19 with his or her (or its, if Nonmember's estate or designated beneficiary is receiving
20 benefits due to Nonmember predeceasing Member) receipt of distributions from
21 StanCERA. Member hereby authorized StanCERA to release such information to
22 Nonmember so that each party may determine the taxable and non-taxable portions of
23 any benefit paid by virtue of this Order.

24 10. Each party shall perform any act, which is reasonably necessary to carry
25 into effect the terms of this Order including, but not limited to, the names of
26 beneficiaries. In addition, Member and Nonmember shall execute and deliver to
27 StanCERA, at StanCERA's request, any and all necessary documents including, but not
28 limited to, the appropriate tax withholding documents, as may be required by

1 StanCERA.

2 11. This Order shall continue to be effective with respect to any successor or
3 transferee plan of StanCERA, including any plan into which StanCERA is merged.

4 12. This Stipulation and Order shall not place any additional burden upon
5 StanCERA beyond the requirements of the County Retirement Act of 1937.

6 13. Nonmember's name, current mailing address, Social Security number and
7 date of birth are:

8 Name: _____

9 Address: _____

10
11 SSN: on file with Plan Administrator

12 Date of Birth: _____

13 Member's name, current mailing address, Social Security number and date of birth are:

14 Name: _____

15 Address: _____

16
17 SSN: on file with Plan Administrator

18 Date of Birth: _____

19 14. The Court shall expressly reserve jurisdiction over the disposition of the
20 retirement benefits earned by virtue of Member's employment with the County of
21 Stanislaus **(or name appropriate employer)** and to make all necessary and
22 appropriate orders regarding those benefits pursuant to applicable law. The Court shall
23 further reserve jurisdiction to make such orders that are appropriate to enforce and
24 clarify the provisions of Paragraphs 1 through 12 of this Stipulation and Order. Finally,
25 the Court shall reserve jurisdiction to amend this Order so that its provisions are

26 ///

27 ///

28 ///

1 consistent with the intent of the parties as expressed herein and with StanCERA's
2 requirements.

3 DATED: _____
4 Petitioner

5 DATED: _____
6 Respondent

7 DATED: _____
8 Attorney for Petitioner

9 DATED: _____
10 Attorney for Respondent

11 DATED: _____
12 Michele Silva, Benefits Manager
13 Stanislaus County Employees' Retirement
Association

14 APPROVED AS TO FORM:

15 DATED: _____
16 Fred Silva, General Legal Counsel
17 Attorney for Stanislaus County Employees'
Retirement Association

18 **ORDER**

19 IT IS SO ORDERED:

20 DATED: _____
21 Judge of the Superior Court

22
23
24
25
26
27
28

STANCERA

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