

Dividing Community Property



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Introduction

Stanislaus County Employees' Retirement Association (StanCERA) retirement benefits are generally payable only to members or their beneficiaries. California state law recognizes an exception to this rule in the case of a dissolution of marriage/domestic partnership. Retirement benefits earned during marriage/domestic partnership are considered community property assets and must be considered in the property settlement agreement which are subject to disposition by the court.

This booklet provides information for members, non-members, and their representatives in assisting with the allocation of the retirement benefit. All parties are encouraged to review the StanCERA Member Handbook, which describes the Plan and various benefits available to members.

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. The non-member may have an interest in the member's retirement account if he/she was married to a StanCERA member during the time of employment with a StanCERA participating employer. To protect the non-member's interest in the plan, StanCERA should be notified there is a claim of community property interest in the member's benefit.

Additionally, StanCERA requires to 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 is not retired, the pending dissolution is noted in the member account. StanCERA is unable to distribute funds from the member's account until the dissolution is resolved and StanCERA is notified of the resolution.

If the joinder is withdrawn, a Dismissal of Joinder is required.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 dismissing the dissolution case.

Request for Confidential Member Information

By law, a member's retirement record is confidential. To release information regarding a member's retirement account, StanCERA must receive one of the following:

- Written request from member outlining specific data needed, using enclosed form:
 - Marital/partnership period (date of marriage(partnership)/date of separation);
 - Member's name, date of birth, and Social Security Number;
 - Member's estimated retirement date;
 - Name and address of attorney representing member, if applicable;
 - Former spouse's/registered domestic partner's name and date of birth;
 - Former spouse's/registered domestic partner's current address and phone number, if applicable;
 - Signature of Member.

OR

- Subpoena duces tecum, which may be served to StanCERA by mail.

If non-member or non-member's attorney, with a properly executed authorization, requests records, a \$25.00 check, payable to StanCERA, will be required.

Actuarial Valuation

StanCERA does not provide actuarial valuations of a member's retirement benefits, legal tax advice, or other advice concerning the division of a member's benefit. An actuary may be retained by the concerned 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 (California Family Code §2060-2065).

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

Joinder forms are available from the court. The member or representing attorney must complete the 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

StanCERA does not need to be joined as a party to the dissolution if the StanCERA member will retain all interest in the benefit plan due to a buyout of the former spouse's/registered domestic partner's community property interest. In this case, the member must provide StanCERA a copy of the order establishing the pension plan is 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.

A DRO dividing community property must comply the County Employees Retirement Law of 1937 (1937 Act) and other applicable laws to be acceptable. 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 StanCERA. Under no circumstances will payments be made to the member and non-member that exceeds the amount that otherwise would have been paid to the member alone.

To avoid unnecessary delay, a draft DRO shall be submitted to StanCERA for pre-approval before obtaining signatures of the member and non-member. StanCERA and its legal counsel will review the draft, recommending changes if necessary. The draft DRO will be returned to the appropriate parties for signing and filing with the court. StanCERA will not recognize any court orders addressing a member's account unless StanCERA and StanCERA's Legal Counsel have pre-approved the DRO pursuant to the foregoing process.

After the involved parties have completed the final version of the DRO, which was previously approved by StanCERA, and the documents have been signed, StanCERA will sign the final version prior to its filing with the court. Once the court approves the DRO, a conformed or certified file-stamped, court executed copy must be provided to StanCERA.

If an active or deferred members' StanCERA benefit must be divided, as determined by the court or agreement of the parties, a DRO is provided to StanCERA.

Please review the Dissolution of Marriage or Registered Domestic Partnership Policy. It may be found at www.stancera.org.

Information for Attorneys Drafting Domestic Relations Orders

Sample DROs, for active and retirement members, are found in the back of this booklet in order to assist legal counsel in drafting orders. These model DROs are intended as samples only. They do not suggest the necessary, proper, or desirable arrangement for community property. Other language may be used in the DRO provided it is consistent with the terms of the 1937 Act. StanCERA is not subject to the federal Employee Retirement Income Social Security Act (ERISA). Orders using ESRISA language should be avoided as they are not applicable.

Method of Dividing Community Property

Unmodified Method (Government Code §31760) – Available to Active & Deferred Members

The Unmodified method will divide the community property interest of an active StanCERA member's account. This division allows the non-member to receive his/her community property interest in the retirement benefit upon the retirement of the member, when the DRO is final. The non-member's community share shall terminate upon the death of the member. If the member leaves an eligible surviving spouse/registered domestic partner, a portion of the survivor's allowance may be payable to the non-member upon order of the court, unless stated otherwise in the final DRO.

This method of division uses the "Brown Formula" to calculate the community property interest.

$$\begin{array}{ccccc} \text{Non-member's} & & \text{Number of months of StanCERA} & & \text{Member's} \\ \text{allocated monthly} & = & \text{service between marriage/registered} & \times & \text{retirement} \\ \text{benefit} & & \text{partnership date and separation date} & \times 50\% & \text{allowance} \\ & & \text{Number of months of StanCERA} & & \\ & & \text{service at retirement of member} & & \end{array}$$

Unmodified Method Information

SHARED PAYMENT

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

	Upon non-member's death, the monthly benefit may stop or may be continued to non-member's named beneficiary; dependent on language in final DRO.
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Purchased service credit requires special consideration for an Unmodified method division. Contact a legal professional for further information.

Method Available to Retired Members

The retirement benefit option elected by a member upon retirement cannot be changed. If a member's marriage/registered domestic partnership is dissolved after retiring, the member's retirement benefit is reduced to provide retirement income to the non-member based on the percentage formula provided in the DRO.

If the retired member predeceases the non-member, the non-member is no longer eligible to receive a retirement benefit. A non-member is not considered a surviving spouse/registered domestic partner under the 1937 Act therefore the non-member community interest terminates upon death of the retired member.

If the non-member predeceases the member, the non-member's portion will be paid to the non-member's estate or designated beneficiary during the member's lifetime.

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

Effects of Dissolution on Beneficiary Designation

It is important to review your StanCERA beneficiary designation following a dissolution of marriage/registered domestic partnership. The designation of spouse/registered domestic partner as a beneficiary is automatically cancelled by a dissolution of marriage/registered domestic partnership, which occurs after January 1, 2002 (Probate Code §5600 and 5604). A beneficiary change form is included in this booklet and may be found at www.stancera.org.

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 the present value of the expected benefit payments with assumptions for expected retirement dates and longevity of the beneficiary.

Do I need an attorney?

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

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

If the parties reconcile after StanCERA is joined but before the final judgment has been entered, a request for dismissal may be filed with the court. A conformed copy of the court order must be submitted to StanCERA.

What if the marriage/domestic partnership was dissolved outside of California or outside of the United States?

StanCERA is a statutory entity created under California Law, commencing at Government Code §31450 et seq. Other states' courts may lack jurisdiction and parties may be required to file judgement 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 plan. 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 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 legal order.

Are retirement benefits always divided 50-50?

A pension may be divided 50-50, but not always. As an example, the member may be granted 75% of the community interest in the pension and the non-member granted 25% community interest in the pension in addition to other community assets. It is up to the parties, or the court, to decide how the community interest in the pension is divided.

What happens if the member remarries?

Since the benefit is permanently divided, the member's account is reduced and the benefits to the non-member are not affected.

What happens if the non-member remarries?

The retirement benefit is not affected under the terms of the 1937 Act.

Definitions

Active Member	<p>Currently employed; not retired or terminated</p> <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/registered domestic partner 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>
Beneficiary	<ul style="list-style-type: none">• Member's surviving legal spouse/registered domestic partner;• If no surviving legal spouse/registered domestic partner, members unmarried minor children;• If no surviving legal spouse/registered domestic partner or qualifying children, member's estate. <p>Beneficiary designations are subject to modification by court order.</p>
Benefit Amount	<p>The amount of monthly retirement benefit is determined by a formula based on a member's age, total years of service credit, and final compensation. StanCERA Member Handbooks provide summaries of the plans and information on benefit calculations.</p>
Deferred Member	<p>A member who leaves employment with a StanCERA employer and leaves employee contributions on deposit with StanCERA, deferring retirement to the date first eligible to retire or later.</p>
Defined Benefit Plan	<p>A defined benefit plan provides a fixed, pre-established benefit for employees at retirement.</p>
Employee Contributions	<p>Money deducted from member's biweekly pay and credited to his/her retirement account.</p>
Employer Contributions	<p>Contributions made by member's employer on behalf of StanCERA members, in total, to finance StanCERA benefits.</p>
Final Compensation	<p>A monthly amount based on the average compensation earnable/pensionable compensation during any consecutive one or three year elected by a member.</p>
Joinder	<p>The process of including StanCERA as a party to the dissolution action. A joinder authorizes StanCERA to implement a court order dividing StanCERA retirements and must comply with the applicable procedures of the California Family Code and California Rules of the Court.</p>
Member	<p>An active, deferred, inactive non-vested or retired StanCERA participant.</p>

Non-Member	A member's spouse/registered domestic partner, former spouse/registered domestic partner, child, or other dependent, as ordered by the court, that petitioned the court for 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 subpoena requiring a witness to produce documents.
Vested	Vesting entitles you to receive a lifetime monthly retirement benefit from StanCERA once you have met all eligibility requirements. All members are vested after earning the required years of service credit. If reciprocity has been established with another qualified retirement system, reciprocal service credit is included in determining eligibility for both vesting and retirement.



Addendums

Dissolution of Marriage or Domestic Partnership Policy

Request for Information Due to Dissolution

Beneficiary Forms

Sample Domestic Relations Order for Active/Deferred Members

Sample Domestic Relations Order for Retired Members

Stanislaus County Employees' Retirement Association



DISSOLUTION OF MARRIAGE OR REGISTERED DOMESTIC PARTNERSHIP POLICY

Policy 3003

April 24, 2012

Stanislaus County Employees' Retirement Association (StanCERA) retirement benefits are generally payable to members or their beneficiaries. California state law recognizes an exception to this rule in the case of dissolution of marriage or registered domestic partnership. Retirement benefits earned during marriage or registered domestic partnership are considered community property assets, these benefits must be considered in the property settlement agreement and are subject to disposition by the court.

For consistency, the parties referenced in all documents, including court documents, **shall** be referred to as "Member" or "Non-Member."

- **"Member"** represents the member of StanCERA, and
- **"Non-Member"** represents the party with a community property interest in the Member's StanCERA account.

The Non-Member has an interest in the Member's retirement account if he/she was married or registered to a StanCERA Member while the Member was employed by a StanCERA employer. To protect the Member and Non-Member's interest in the plan, StanCERA *must be notified, in writing*, that the Non-Member is asserting a claim for a community property interest in the Member's benefit.

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

I. Active/Deferred Members

When StanCERA is served with a Joinder, and the Member has **not** retired, the pending dissolution is noted in the Member's account. StanCERA will not distribute any payments from the Member's account until the dissolution is resolved and the Member has retired or withdraws his/her monies.

Prior to filing the Domestic Relations Order (DRO) with the court, the parties shall submit the draft DRO to StanCERA for review by StanCERA's Legal Counsel prior to obtaining signatures of the Member and Non-Member. The draft DRO will be reviewed by StanCERA's Legal Counsel and StanCERA staff for consistency with StanCERA's policies. Once the draft DRO is preapproved, it is returned for signing by the Member and Non-Member and attorneys, if applicable. After the parties and attorneys, if applicable, signed the DRO, it must be returned to StanCERA's Legal Counsel for final approval and signatures.

StanCERA will return the fully executed DRO to the appropriate party for filing with the court. Once the court approves and signs the DRO, StanCERA is to be provided with a conformed, file-marked copy. *StanCERA will not recognize any court orders addressing a Member's account unless StanCERA Legal Counsel and StanCERA staff have approved the DRO pursuant to the foregoing process.*

II. Retired Members

If the Member's marriage or registered domestic partnership is dissolved after retiring, the Member's retirement benefit is reduced in order to provide retirement income to the Non-Member. This is based on the retirement option selected at retirement and the percentage formula provided in the DRO. *Retired Members who are receiving a benefit may not change their retirement option election, which was chosen at the time of retirement.*

Once StanCERA is served with a Joinder, StanCERA will pay the retired member fifty percent (50%) of the retirement benefit and will withhold the remaining 50%, of the retirement benefit, until StanCERA receives the completed DRO. StanCERA must receive a completed DRO, which has been executed by all parties, and signed by the Court. StanCERA will then disburse the withheld 50% pursuant to the terms of the DRO.

If, at the time of retirement, the Member chooses the unmodified option, and the marriage or registered domestic partnership is dissolved, should the Member predecease the Non-Member, the Non-Member is not eligible to receive a retirement benefit. A Non-Member is not considered a surviving spouse or registered domestic partner for any purpose under the County Employees Retirement Law of 1937; therefore, the Non-Member's community interest terminates upon the death of the retired Member.

If the Non-Member dies first, the portion of the retired Member's benefit payable to the Non-Member will continue to be paid to the Non-Member's estate, or designated beneficiary, during the Member's lifetime, unless otherwise stated in the Domestic Relations Order.

Prior to filing the Domestic Relations Order (DRO) with the court, the parties shall submit the draft DRO to StanCERA for review by StanCERA's Legal Counsel prior to obtaining signatures of the Member and Non-Member. The draft DRO will be reviewed by StanCERA's Legal Counsel and StanCERA staff for consistency with StanCERA's policies. Once the draft DRO is preapproved, it is returned for signing by the Member and Non-Member and attorneys, if applicable. After the parties and attorneys, if applicable, signed the DRO, it must be returned to StanCERA's Legal Counsel for final approval and signatures.

StanCERA will return the fully executed DRO to the appropriate party for filing with the court. Once the court approves and signs the DRO, StanCERA is to be provided with a conformed, file-marked copy. *StanCERA will not recognize any court orders addressing a Member's account unless StanCERA Legal Counsel and StanCERA staff have approved the DRO pursuant to the foregoing process.*

III. Revocation of California Government Code Section 31764

Upon the StanCERA Retirement Board's approval of this policy, California Government Code Section 31764 (Option Settlement 4) is repealed from policy adoption and no longer an option for StanCERA members.

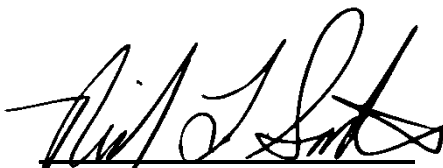
Policy Review

This Board shall review this policy at least every three years.

Policy History

Adopted by the Retirement Board on April 24, 2012.

Reviewed and updated June 10, 2020.



Richard Santos, Executive Director

POLICY APPROVAL DATE: April 24, 2012

REQUEST FOR RETIREMENT BENEFIT INFORMATION DUE TO MARITAL DISSOLUTION

By law, the contents of a member's retirement file are confidential, except to the member or authorized representative. The non-member and/or representing attorney may obtain information, if the request includes the member's written authorization or if Stanislaus County Employees' Retirement Association (StanCERA) has been joined as a party to the dissolution.

To obtain information, one of the following must be provided to StanCERA:

- This written authorization to release information signed and dated by the member; or
- A subpoena duces tecum.

Please complete the following information and return this form to StanCERA. A statement, including retirement service credit, member contributions, accumulated interest, and/or estimated monthly benefit payable to the member will be prepared and forwarded within four to six weeks. StanCERA does not provide actuarial valuation of retirement benefits.

If the non-member or his/her attorney requests records, a \$25.00 fee will be charged.

Requesting Party: ☐ Member ☐ Former Spouse/Registered Domestic Partner ☐ Representing Attorney

Member Status: ☐ Active ☐ Retired ☐ Deferred

MEMBER INFORMATION

FIRST NAME:	MI:	LAST NAME:	DATE OF BIRTH:
SOCIAL SECURITY NUMBER:	RETIREMENT DATE (ESTIMATE):	CONTACT PHONE NUMBER:	

FORMER SPOUSE INFORMATION

FIRST NAME:	MI:	LAST NAME:	DATE OF BIRTH:
DATE OF MARRIAGE:		DATE OF SEPARATION:	

Mail Request To: ☐ Member ☐ Former Spouse ☐ Representing Attorney

MAILING ADDRESS:	CITY:	STATE:	ZIP CODE:

MEMBER SIGNATURE

I, a StanCERA member, authorize the release of all retirement benefit information maintained or proclamed by StanCERA, to the above parties, that is necessary in the proper division of my and my former spouse's/registered domestic partner's community property interest in my StanCERA retirement benefits.

Member

Signature: _____ Printed Name: _____ Date: _____

Beneficiary Designation

Type or print in ink.

SECTION 1: MEMBER INFORMATION					
FIRST NAME:	MI:	LAST NAME:	DATE OF BIRTH:	SOCIAL SECURITY NUMBER:	
MAILING ADDRESS:		CITY:		STATE:	ZIP CODE:
HOME PHONE:	CELL PHONE:	EMAIL ADDRESS:			
MARITAL STATUS:	EMPLOYER:	DEPARTMENT:			

SECTION 2: BENEFICIARY INFORMATION					
PRIMARY BENEFICIARY					
FIRST NAME:	MI:	LAST NAME:	DATE OF BIRTH:	SOCIAL SECURITY NUMBER:	
BENEFIT PERCENT:	MAILING ADDRESS:		CITY:	STATE:	ZIP CODE:
	HOME PHONE:	CELL PHONE:	E-MAIL ADDRESS:		RELATIONSHIP:
BENEFICIARY #2		PRIMARY	CONTINGENT		
FIRST NAME:	MI:	LAST NAME:	DATE OF BIRTH:	SOCIAL SECURITY NUMBER:	
BENEFIT PERCENT:	MAILING ADDRESS:		CITY:	STATE:	ZIP CODE:
	HOME PHONE:	CELL PHONE:	E-MAIL ADDRESS:		RELATIONSHIP:
BENEFICIARY #3		PRIMARY	CONTINGENT		
FIRST NAME:	MI:	LAST NAME:	DATE OF BIRTH:	SOCIAL SECURITY NUMBER:	
BENEFIT PERCENT:	MAILING ADDRESS:		CITY:	STATE:	ZIP CODE:
	HOME PHONE:	CELL PHONE:	E-MAIL ADDRESS:		RELATIONSHIP:
BENEFICIARY #4		PRIMARY	CONTINGENT		
FIRST NAME:	MI:	LAST NAME:	DATE OF BIRTH:	SOCIAL SECURITY NUMBER:	
BENEFIT PERCENT:	MAILING ADDRESS:		CITY:	STATE:	ZIP CODE:
	HOME PHONE:	CELL PHONE:	E-MAIL ADDRESS:		RELATIONSHIP:

SECTION 3: TRUST INFORMATION

BENEFIT PERCENT:	OFFICIAL NAME OF TRUST:	TAX ID NUMBER:
	TRUST CONTACT:	CONTACT PHONE:

SECTION 4: REQUIRED IF NOT NAMING SPOUSE/REGISTERED PARTNER AS 100% PRIMARY BENEFICIARY

I acknowledge and consent to this beneficiary designation. I further understand that if a Primary Beneficiary other than myself has been named in Section 2, that I may be waiving any survivor benefits to which I may become eligible to receive from StanCERA.

Spouse/Domestic

Partner Signature: _____ **Printed Name:** _____ **Date:** _____

Option 1: Witnessed by StanCERA Representative

Signature of spouse/registered domestic partner witnessed this _____ day of _____, 20 ____.

StanCERA Representative: _____

Option 2: Witnessed by Notary Public – Attach separate acknowledgement certificate

THIS SECTION IS TO BE COMPLETED IF YOU ARE MARRIED/REGISTERED AND SPOUSE/PARTNER DOES NOT CONSENT TO DESIGNATION

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

California Government Code Section 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 unless you declare under penalty of perjury, the reason by checking one of the statements below.

I declare under penalty of perjury that my spouse/registered domestic partner signature is not included for the following reason:

- ☐ Member is not married/registered.
- ☐ Current spouse/registered domestic partner has no identifiable community property interest in the benefit. (Provide supporting documentation.)
- ☐ Member does not know, and has taken all reasonable steps to determine, whereabouts of current spouse/registered domestic partner.
- ☐ Current spouse/registered domestic partner has been advised of the application and has refused to sign the written acknowledgment.
- ☐ Current spouse/registered domestic partner is incapable of executing the acknowledgement due to incapacitating mental or physical conditions.
- ☐ Member and current spouse/registered domestic partner have executed a marriage 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 provided.)

SECTION 6: MEMBER'S SIGNATURE

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 those named above in Section 2 and/or Section 3 as my beneficiary(ies), to receive any benefits payable under Article 12, Sections 31780 through 31782 of said Act in the event prior to my retirement.

Member Signature: _____ **Printed Name:** _____ **Date:** _____

**SAMPLE ORDER RE GOVERNMENT
CODE SECTION 31760 — Revised August 2018**

**StanCERA Member is assumed
to be Member in this Sample**

**Note: Please replace bold language
with appropriate party or pronoun
and omit fn. 1 or para. 8 as needed**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

In re the Marriage of:

Petitioner,

and

Respondent:

Claimant:

STANISLAUS COUNTY
EMPLOYEES' RETIREMENT
ASSOCIATION (StanCERA).

) Case No.:

)
) **STIPULATION AND ORDER FOR**
) **MODIFICATION OF JUDGMENT RE:**
) **StanCERA RETIREMENT BENEFITS**
) **UNDER GOVERNMENT CODE SECTION**
) **31760**

Member _____ (hereinafter "Member") and Non-Member

_____ (hereinafter "Non-Member") and the Stanislaus County

Employees' Retirement Association (hereinafter "StanCERA") hereby stipulate as
follows:

RECITALS

1. Member and Non-Member were married to each other on _____.
They separated on _____, and this Court entered a judgment of dissolution
in this action on _____.

2. This Court has personal jurisdiction over both Member and Non-Member and jurisdiction over the subject matter of this Order and the dissolution of marriage action.

3. StanCERA was properly joined as a party to the dissolution of marriage action of Member and Non-Member pursuant to sections 2060 through 2065 of the California Family Code.

STIPULATION

1. Member is/was currently **[formerly]** employed by the County of Stanislaus **[or name of appropriate employer]** and has a vested right to a service pension from StanCERA. Said service pension is the community property of Member and Non-Member, who intend, by this Stipulation and Order, to divide and allocate said service pension benefits between them.

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

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

4. StanCERA shall pay directly to Non-Member upon the retirement of Member a percentage of the retirement allowance otherwise payable to Member calculated by the formula as follows:

Non-Member's allocated monthly benefit	=	Number of months of StanCERA service between marriage <u>date & separation date</u> Number of months of StanCERA service at retirement of Member	X	50%	X	Member's retirement allowance
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(a) To the extent Member receives a disability retirement benefit, the community property interest in the Member's disability retirement benefit shall not exceed the amount that would otherwise be payable as a service retirement allowance. Any amount in excess of the service allowance amount is and remains Member's sole and separate property.

(b) Non-Member's community share shall terminate upon the death of Member.

5. In the event StanCERA inadvertently or otherwise pays to Member (or Member's designated beneficiary or Non-member) any benefits that are assigned to Non-member (or Member/Member's designated beneficiary, respectively) hereunder, Member (or Member's designated beneficiary or Non-member, respectively) shall be deemed a constructive trustee of said amounts.

6. If any return of accumulated contributions becomes payable as the result of the death of Member, the Non-Member is entitled to the community property share of the accumulated contributions.

7. If Member withdraws **his/her** accumulated contributions, Non-Member shall be entitled to receive, at the time Member receives **his/her** accumulated contributions, Non-Member's community property share of the accumulated contributions.

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1 8. If Member is married to an eligible surviving spouse¹ on Member's
2 date of retirement, Member shall elect the "Unmodified Option" under the Plan,
3 and name such eligible spouse as beneficiary for the surviving spousal continuance
4 under this option. Non-Member shall receive Non-Member's community property
5 interest in any surviving spousal continuance, pursuant to the calculation described
6 above in paragraph 4. **His/her** share shall terminate upon the death of the surviving
7 spouse. (See *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010.) Non-Member
8 recognizes that the right to any portion of the survivor's allowance shall be based on the
9 lifetime of the eligible surviving spouse.

10 9. If Non-Member predeceases Member, any benefits otherwise payable to
11 Non-Member by StanCERA, including benefits paid to a surviving spouse, shall be paid
12 to Non-Member's named beneficiary or estate, pursuant to *In re Marriage of Powers*
13 (1990) 218 Cal.App.3d 626.

14 10. Member and Non-Member shall each keep **his/her** current address and
15 phone number on file with StanCERA.

16 11. Member's name, current mailing address, phone number, Social Security
17 number and date of birth are:

18 Name: _____

19 Address: _____

21 Phone: _____

22 SSN: to be provided to StanCERA under separate cover

23 Date of Birth: _____

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

1 12. Non-Member's name, current mailing address, phone number, Social
2 Security number and date of birth are:

3 Name: _____

4 Address: _____

6 Phone: _____

7 SSN: to be provided to StanCERA under separate cover

8 Date of Birth: _____

9 13. 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 14. Each party shall be responsible for and pay any taxes due in connection
13 with his or her (or its, if Non-Member's estate or designated beneficiary is receiving
14 benefits due to Non-Member predeceasing Member) receipt of distributions from
15 StanCERA. Member hereby authorizes StanCERA to release such information to
16 Non-Member so that each party may determine the taxable and non-taxable portions
17 of any benefit paid by virtue of this Order.

18 15. Each party shall perform any act, which is reasonably necessary to
19 carry into effect the terms of this Order including, but not limited to, the names of
20 beneficiaries. In addition, Member and Non-Member shall execute and deliver to
21 StanCERA, at StanCERA's request, any and all necessary documents including, but
22 not limited to, the appropriate tax withholding documents, as may be required by
23 StanCERA.

24 16. This Order shall continue to be effective with respect to any successor or
25 transferee plan of StanCERA, including any plan into which StanCERA is merged.

26 ///

27 ///

17. This Stipulation and Order shall not place any additional burden upon StanCERA beyond the requirements of the County Employees Retirement Law of 1937.

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

(a) To provide Non-Member any type or form of benefit or any option not otherwise available to Member under the Plan;

(b) To provide Non-Member increased benefits not available to Member; and

(c) To pay any benefits to Non-Member, which are required to be paid to another Non-Member spouse under a separate court order.

19. The Court shall expressly reserve jurisdiction over the disposition of the retirement benefits earned by virtue of Member's employment with the County of Stanislaus **[or name of appropriate employer]** and to make all necessary and appropriate orders regarding those benefits pursuant to applicable law. The Court shall further reserve jurisdiction to make such orders that are appropriate to enforce and clarify the provisions of this Stipulation and Order. Finally, the Court shall reserve jurisdiction to amend this Order so that its provisions are consistent with the intent of the parties as expressed herein and with StanCERA's requirements.

DATED: _____

DATED: _____ Respondent _____

DATED: _____

Attorney for Petitioner

DATED: _____

Attorney for Respondent

1 DATED: _____

Benefits Manager
Stanislaus County Employees'
Retirement Association

2
3
4 APPROVED AS TO FORM:

5
6 DATED: _____

General Legal Counsel
Attorney for Stanislaus County
Employees' Retirement
Association

7
8
9
10
11 IT IS SO ORDERED:

ORDER

12
13 DATED: _____

Judge of the Superior Court

SAMPLE RETIRED MEMBER ORDER

Revised August 2018

**StanCERA Member is assumed to be
Member in this Sample**

**Please delete bold language within
[] in document before finalizing**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

In re the Marriage of:

) Case No.:

Petitioner,

)

) **STIPULATION AND ORDER FOR
DIVISION OF PENSION BENEFITS RE:
STANISLAUS COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**

and

)

) **(Retired Member)**

Respondent:

)

)

)

)

)

Claimant:

)

)

STANISLAUS COUNTY
EMPLOYEES' RETIREMENT
ASSOCIATION (StanCERA).

)

)

)

)

)

Member _____ (hereinafter "Member") and Non-Member

_____ (hereinafter "Non-Member") and the Stanislaus County

Employees' Retirement Association (hereinafter "StanCERA") hereby stipulate as
follows:

RECITALS

1. Member and Non-Member were married to each other on _____.
They separated on _____, and this Court entered a judgment of dissolution
in this action on _____.

2. This Court has personal jurisdiction over both Member and Non-Member and jurisdiction over the subject matter of this Order and the dissolution of marriage action.

3. StanCERA was properly joined as a party to the dissolution of marriage action of Member and Non-Member pursuant to sections 2060 through 2065 of the California Family Code.

STIPULATION

1. Member has earned certain retirement benefits administered by StanCERA pursuant to employment with the County of Stanislaus **[or name of appropriate employer]**, which are the community property of Member and Non-Member. Member and Non-Member intend, by this Stipulation and Order, to divide and allocate these benefits between them.

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

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

4. StanCERA shall pay directly to Non-Member from and after **[the date of this Order OR the date that StanCERA was joined as a party herein]** _____% of the retirement allowance, and any cost of living adjustments otherwise payable to Member.

1 5. If Member predeceases Non-Member, Non-Member's community share
2 shall terminate upon the death of Member.

3 6. If Non-Member predeceases Member, the portion of Member's benefit
4 payable to Non-Member under Paragraph 4 above shall continue to be paid to Non-
5 Member's designated beneficiary or estate **[or revert back to the member]** during
6 Member's lifetime.

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

12 8. Each party shall be responsible for and pay any taxes due in connection
13 with his or her (or its, if Non-Member's estate or designated beneficiary is receiving
14 benefits due to Non-Member predeceasing Member) receipt of distributions from
15 StanCERA. Member hereby authorizes StanCERA to release such information to
16 Non-Member so that each party may determine the taxable and non-taxable portions
17 of any benefit paid by virtue of this Order.

18 9. Each party shall perform any act, which is reasonably necessary to
19 carry into effect the terms of this Order including, but not limited to, the names of
20 beneficiaries. In addition, Member and Non-Member shall execute and deliver to
21 StanCERA, at StanCERA's request, any and all necessary documents including, but
22 not limited to, the appropriate tax withholding documents, as may be required by
23 StanCERA.

24 10. This Order shall continue to be effective with respect to any successor or
25 transferee plan of StanCERA, including any plan into which StanCERA is merged.

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27 ///

1 11. This Stipulation and Order shall not place any additional burden upon
2 StanCERA beyond the requirements of the County Employees Retirement Law of 1937.

3 12. Member and Non-Member shall each keep **his/her** current address and
4 phone number on file with StanCERA.

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

7 Name: _____

8 Address: _____

10 Phone: _____

11 SSN: *to be provided to StanCERA under separate cover*

12 Date of Birth: _____

13 14. Non-Member's name, current mailing address, phone number, Social
14 Security number and date of birth are:

15 Name: _____

16 Address: _____

18 Phone: _____

19 SSN: *to be provided to StanCERA under separate cover*

20 Date of Birth: _____

21 15. Nothing contained in this Order shall be construed to require StanCERA:
22 (a) To provide Non-Member any type or form of benefit or any option
23 not otherwise available to Member under the Plan;

24 (b) To provide Non-Member increased benefits not available to
25 Member; and

26 *///*

(c) To pay any benefits to Non-Member, which are required to be paid to another Non-Member spouse under a separate court order.

16. The Court shall expressly reserve jurisdiction over the disposition of the retirement benefits earned by virtue of Member's employment with the County of Stanislaus **[or name appropriate employer]** and to make all necessary and appropriate orders regarding those benefits pursuant to applicable law. The Court shall further reserve jurisdiction to make such orders that are appropriate to enforce and clarify the provisions of this Stipulation and Order. Finally, the Court shall reserve jurisdiction to amend this Order so that its provisions are consistent with the intent of the parties as expressed herein and with StanCERA's requirements.

DATED: _____
Petitioner

DATED: _____
Respondent

DATED: _____
Attorney for Petitioner

DATED: _____
Attorney for Respondent

DATED: _____
Benefits Manager
Stanislaus County Employees'
Retirement Association

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///

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1 APPROVED AS TO FORM:

2 DATED: _____

General Legal Counsel
Attorney for Stanislaus County
Employees' Retirement
Association

7 **ORDER**

8 IT IS SO ORDERED:

9 DATED: _____

Judge of the Superior Court