

# DIVIDING COMMUNITY PROPERTY

HOW LEGAL SEPARATION OR DIVORCE  
AFFECTS YOUR SDCERA BENEFIT



SDCERA

Supporting The  
Membership



*Strength. Service. Commitment.*

## **DIVIDING COMMUNITY PROPERTY INFORMATION BOOKLET**

### **Updated information**

#### DOMESTIC PARTNERSHIP

Assembly Bill 205 extends the rights and duties of marriage to persons registered as domestic partners and provides the state's superior courts jurisdiction in governing the dissolution and legal separation of domestic partnerships.

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#### JOINDER REQUIREMENT

SDCERA will accept service of joinder by mail at the following address:

San Diego County Employees Retirement Association  
2275 Rio Bonito Way, Suite 200  
San Diego, California, 92108-1685

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#### INFORMATION FOR ATTORNEYS DRAFTING DOMESTIC RELATIONS ORDERS

The sample DROs enclosed in the pocket of this booklet may be revised periodically. Before preparing a draft, please contact the SDCERA Call Center at 619.515.6800 or toll-free at 1.888.473.2372 to request the most recent versions.

#### Page 13 (last page)

#### REQUEST FOR ESTIMATE/STATEMENT OF ACCOUNT DUE TO LEGAL SEPARATION OR MARITAL DISSOLUTION

Complete the form and send it to SDCERA at the following address:

San Diego County Employees Retirement Association  
2275 Rio Bonito Way, Suite 200  
San Diego, California, 92108-1685

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# DIVIDING COMMUNITY PROPERTY

## HOW LEGAL SEPARATION OR DIVORCE AFFECTS YOUR SDCERA BENEFIT

This summary booklet provides disclosure of certain terms and conditions of SDCERA membership and benefits for the purpose of assisting members involved in the dissolution of marriage. It is designed to provide information as simply and accurately as possible as of the date of issuance of this booklet. SDCERA is governed by the County Employees Retirement Law of 1937 (Government Code Section 31450 et seq.) as it has been adopted and implemented by the San Diego County Board of Supervisors and the SDCERA Board of Retirement. If there is any inconsistency between this booklet and the governing law, the law will govern. Decisions relating to the plan will be made after reference to the statutes and any resolutions, regulations and policies governing administration of SDCERA, as they exist at the same time of the decisions.



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## INTRODUCTION

SDCERA 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 legal separation and 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 SDCERA *Retirement Plan* booklet, which describes the plan and various benefits available to the member.

## NOTIFYING SDCERA OF PENDING LEGAL SEPARATION OR MARITAL DISSOLUTION ACTION

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

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

Once notified, the case will be assigned to a manager, who will answer questions, provide necessary materials, receive and review the domestic relations order and other documents, and notify the appropriate parties throughout the process.

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

If the joinder is withdrawn, written notice is required. The joinder of SDCERA 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 legal separation or dissolution case.

\*County of San Diego may also include other participating employers.



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## REQUEST FOR CONFIDENTIAL MEMBER INFORMATION

By law, a member's retirement records are confidential. To release information about a member's account, SDCERA 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 SDCERA by mail

## ACTUARIAL VALUATION

SDCERA does not provide actuarial valuations of a member's retirement benefits, 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 SDCERA as a third-party claimant in the legal separation or dissolution proceeding (section 2060-2065 of the California Family Code).

When joined, SDCERA is notified of legal separation or dissolution of marriage action and is a party to that action. SDCERA 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 SDCERA 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 SDCERA. SDCERA will accept service of joinder by mail at the following address:

San Diego County Employees Retirement Association  
401 West A Street, Suite 1300  
San Diego, California 92101-7906

If both parties have pension plans and each party retains his/her pension plan in total, or if the SDCERA member will retain all interest in his/her plan due to a buyout of the former spouse's community property interest, SDCERA does not need to be joined as a party to the



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dissolution. In this case, the member should give SDCERA 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 exceed 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 SDCERA for pre-approval before obtaining the signatures of the member and nonmember. SDCERA will review the draft and may recommend changes, then will return the draft to the appropriate parties for signing and filing with the court.

SDCERA should sign the final version of the DRO after both parties have signed but before filing with the court. Once the court approves the DRO, SDCERA requires a conformed or certified file-stamped, court-executed DRO.

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

Sample DROs are enclosed in the back pocket 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. SDCERA 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 SDCERA.

The sample DROs enclosed in the pocket of this booklet may be revised periodically. Before preparing a draft, please contact the SDCERA Call Center at **619-515-0130** to request the most recent versions.



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## METHODS OF DIVIDING COMMUNITY PROPERTY

If an active or deferred member's SDCERA benefit must be divided, as determined by the court or by agreement of the parties, one of two methods of dividing community property must be selected.

For retired members who are receiving a benefit, one method of dividing community property is available.

### METHODS AVAILABLE TO ACTIVE AND DEFERRED MEMBERS

The two community property division methods available to active members are described below. It is the sole responsibility of the parties and their respective counsel to determine which method is most desirable based upon the parties' obligations and needs.

#### ***Separate account***

(Division and segregation of member's accumulated contributions and service credit)

With this method, community property interest in a member's account is divided immediately, per court order, upon legal separation or dissolution of marriage. The member's retirement service credit and accumulated employee contributions accrued during the marriage are divided into two separate accounts – one in the name of the member and one in the name of the nonmember.

If the member was vested on the date of legal separation or marital dissolution, and when either the member or nonmember meets the minimum age and eligibility requirement for a service retirement, the nonmember has the right to apply for and receive a monthly retirement benefit independent of the member. The monthly benefit payable to the nonmember would be based on the service credited to his/her separate account, the nonmember's age at retirement and the highest final compensation earned by the member. If the member retires before the nonmember, the final compensation used in calculating the nonmember's retirement benefit is frozen.

If the member was not vested on the date of legal separation or marital dissolution, the only option available to a nonmember is to receive a refund of his/her community property interest in the accumulated contributions. If the nonmember takes a refund of contributions and interest, the member would have the option of redepositing those contributions plus interest to restore the service credit and contributions to the member's account. The nonmember also has this option if the member withdraws the accumulated contributions plus interest from his/her member account.

Once the vested member's account has been divided, the nonmember may submit his/her written retirement application to SDCERA if the following conditions are met:

- Either the member or nonmember has met the minimum age requirement determined by the applicable service retirement formula of the member, **and**
- On the date of retirement, the **member** had sufficient credited service to qualify for a service retirement, notwithstanding any service credit awarded to the nonmember.

The nonmember's monthly retirement benefit is calculated using the member's final compensation on the date of the nonmember's retirement, not on the date of separation.



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In lieu of a monthly benefit, the nonmember has the right to receive a refund of the member's accumulated contributions credited to the nonmember's account, plus earned interest.

After the separation of accounts, the benefits payable to the member at retirement or payable upon the member's death prior to retirement will be based on the actual service credit and/or contributions remaining in his/her account.

***The parties and their respective counsel are advised to review Government Code Section 31685 et seq. for a complete description of this method of dividing a member's account.***

### ***Shared payment***

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

This method divides the community property interest of an active SDCERA 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.

If the shared payment method is elected, the member must 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 SDCERA based on what is commonly referred to as the "time rule" or "Brown formula." 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:

$$\frac{\text{Service credit earned during community period}}{\text{Total years of service credit}} \times 50\% = \text{Nonmember's community portion}$$

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

If the nonmember dies before the member and after monthly retirement benefits have begun, 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 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:** Purchased service credit requires special consideration for either method of division. Contact SDCERA for further information.



## SUMMARY OF METHODS OF DIVIDING COMMUNITY PROPERTY

Available to active and deferred members

	SEPARATE ACCOUNT	SHARED PAYMENT
<b>Retirement date and receipt of benefit payment</b>	<p>Member and nonmember make independent decisions on when to apply for retirement and begin receipt of monthly benefit.</p> <p>Nonmember is eligible to retire either when he/she meets the age and service credit requirements to retire or when the member meets the age and service credit requirement to retire.</p>	<p>Member and nonmember begin to receive monthly benefits when member retires.</p>
<b>Benefit payment option</b>	<p>Member and nonmember make independent elections for benefit payment option.</p>	<p>Member must select Option 4, which provides nonmember with a lifetime benefit based on his/her percentage interest in member's retirement.</p>
<b>Member or nonmember dies before retirement</b>	<p>Member's death: Standard death benefits available based on years of service remaining in account.</p> <p>Nonmember's death: Beneficiary receives a refund of accumulated contributions.</p>	<p>If member 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>
<b>Member or nonmember dies after retirement</b>	<p>Benefit continuance based on retirement benefit payment option selected at retirement.</p>	<p>Member's death: Monthly continuance available to beneficiary if named at date of retirement; nonmember's benefit is not affected by member's death.</p> <p>Nonmember's death: Monthly benefit will stop. An actuarial provision must be made for continuance to member or beneficiary.</p>



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## **METHOD AVAILABLE TO RETIRED MEMBERS**

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 SDCERA 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 pocket of this booklet.



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## FREQUENTLY ASKED QUESTIONS

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

No. SDCERA 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 do, be certain that your attorney is familiar with the complexities presented by a defined benefit pension plan, such as the SDCERA plan.

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

If the parties reconcile after SDCERA 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 SDCERA.

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

SDCERA is a statutory entity created under California law, commencing at Government Code Section 31450 et seq. Other states' courts may lack jurisdiction. In an out-of-state or out-of-country situation, please contact SDCERA.

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

A joinder of SDCERA does not result in a joinder of the County's deferred compensation plans. Contact Deferred Compensation at 619-531-5840 for additional information.

### **My final dissolution documents 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 SDCERA pension is required. SDCERA cannot process your retirement 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 a member is divorced and is granted disability retirement?**

If the member is granted a service-connected disability retirement, the member's account is still divided due to a marital dissolution the same as it is for a service retirement. The member and nonmember receive separate retirement accounts based upon the division of contributions and service credit set out in the DRO. If the member is granted a disability retirement, the nonmember remains eligible to retire when he/she meets the age and service credit requirements under the law.



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The nonmember will not be granted a disability retirement. Remember that combined benefit payments to both the member and the nonmember cannot exceed the amount that would otherwise have been paid to the member alone. This may result in a reduction of the retirement benefit to both the member and the nonmember.

**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. Keeping in mind the differences between separate and shared accounts, the member may designate a new beneficiary under the existing statutes and benefit options of the 1937 Act. Refer to the SDCERA *Survivor and Beneficiary Information* booklet.

**What happens if the nonmember remarries?**

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

**The following apply only to the separate account method of dividing community property (see Government Code §31685):**

**Can I buy back the service credit awarded to my former spouse?**

Only if your former spouse elected a refund.

**Can I work longer to earn back the service credit awarded to my former spouse?**

Yes. In no circumstance, however, can the benefits paid to the parties exceed the benefit that would have been paid to the member alone.

**Can the nonmember receive a lump sum payment?**

Yes. A lump sum may be paid, but only when a refund of contributions is elected. The payment is only the nonmember's portion of the employee contributions plus interest on those contributions.

This payment does not include employer contributions; therefore, it may not be equivalent to the value of the monthly retirement benefit.



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## DEFINITIONS

**ACTIVE MEMBER** - Currently employed; not retired or terminated

**BENEFICIARY** - 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:

- Member's surviving legal spouse
- If there is no surviving spouse, member's unmarried minor children
- If there are no surviving spouse or children, member's estate

Beneficiary designations are subject to modification by court order.

**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 SDCERA *Retirement Plan* booklet 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. Since January 1, 1997, the deductions are made on a pre-tax basis.

**EMPLOYER** - Contributions made by the County of San Diego on behalf of SDCERA members, in total, to finance SDCERA benefits

**COUNTY OF SAN DIEGO** – County of San Diego may also include other participating employers

**DEFERRED MEMBER** – A member who leaves County service with five or more years of SDCERA/reciprocal retirement service credit, leaves retirement accumulations (if any) on deposit with SDCERA, and defers retirement to the date first eligible to retire or a later date.

**DEFINED BENEFIT PLAN** - The SDCERA retirement plan is an IRC 401(a) defined benefit pension plan and is not subject to the federal Employee Retirement Income Security Act (ERISA).

**FINAL COMPENSATION** – A monthly amount based on the average compensation earnable during any one year elected by a member

**JOINER** - The process of including SDCERA as a party to the dissolution action. A joinder authorizes SDCERA to implement a court order dividing SDCERA 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 SDCERA participant

**NONMEMBER** - A member's spouse, former spouse, child or other dependent (as ordered by the court) who petitioned the court for the division of community property and was awarded a distinct and separate account reflecting specific credited service and accumulated contributions.



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**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 five years of SDCERA / reciprocal retirement service credit

For additional definitions, refer to the SDCERA *Retirement Plan* booklet.





**REQUEST FOR ESTIMATE/STATEMENT OF ACCOUNT DUE TO LEGAL SEPARATION OR MARITAL DISSOLUTION**

By law, the contents of a member's retirement file are confidential, except to the member or his/her authorized representative. The nonmember and/or representing attorney may obtain information if the request includes the member's written authorization or if SDCERA has been joined as a party to the dissolution. To obtain information, one of the following must be provided to SDCERA:

- Written authorization to release information, signed and dated by the member, or
- A subpoena duces tecum

Please complete the following information and send this form to SDCERA at the above address. A statement including retirement service credit, member contributions and interest accumulated, and/or an estimate of the monthly benefit payable to the member will be prepared and forwarded to you within four to six weeks.

**SDCERA does not provide actuarial valuations of retirement benefits.**

\_\_\_\_\_  
Member name

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Social Security Number

Check member status  Active  Retired  Deferred

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date of marriage

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date of separation

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date of retirement (estimated)

\_\_\_\_\_  
Former spouse name

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Former spouse date of birth

\_\_\_\_\_  
Former spouse or representing attorney address

\_\_\_\_\_  
Member signature

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date

**Marital/Domestic Partnership Dissolution  
Statement of Confidential Information**

**CASE INFORMATION**

Case name

In re Marriage of: \_\_\_\_\_

Case number

Court name

Plan name

San Diego County Employees Retirement Association (SDCERA)

**MEMBER'S CONFIDENTIAL INFORMATION**

Member's name

Mailing address

City

State

ZIP

Birth date

/ /

Social Security number

**FORMER SPOUSE'S CONFIDENTIAL INFORMATION**

Former spouse's name

Mailing address

City

State

ZIP

Birth date

/ /

Social Security number



San Diego County Employees Retirement Association  
401 West A Street, Suite 1300  
San Diego, CA 92101-7906  
619-515-0130  
888-473-2372  
Fax: 619-515-0177  
[www.sdcer.org](http://www.sdcer.org)