



## Orange County Employees Retirement System

### DIVORCE AND RETIREMENT

### FREQUENTLY ASKED QUESTIONS

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# Divorce and Retirement

## Definitions

**Divorce:** The process of terminating a marriage or domestic partnership.

**Domestic Relations Order (DRO):** A DRO is a special type of court order that divides retirement benefits in a divorce. It is issued separately from a final judgment granting a divorce or marital settlement agreement.

**Eligible Surviving Spouse/Domestic Partner:** A spouse married to or in a registered domestic partnership with a member at least one year prior to the date of retirement or two years prior to the date of the member's death and has reached the age of 55 on or prior to the date of the member's death. (Gov. Code §§ 31760.1, 31760.2.)

**Joinder:** A procedure whereby OCERS has or claims an interest in a marital dissolution action. (Fam. Code § 2021; Cal Rules of Ct 5.24.)

**Judgment of Dissolution of Marriage:** An order that states the court's decision in a summary dissolution case to end a marriage or domestic partnership. It states the date that the parties become single and tells the parties to comply with the agreement attached to the judgment.

**Judgment of Legal Separation:** An order that divides the marital property and debts and makes orders about financial support while keeping the marriage intact.

**Registered Domestic Partnership (Domestic Partner):** Two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring that have met certain criteria and registered with the Secretary of State's Office.

## Purpose

These divorce and retirement FAQs offer general information about dividing OCERS retirement benefits as community property. The manner of division will depend upon court order and governing laws, including the California Family Code and other relevant statutes or case law.

This document does not constitute legal advice. OCERS will not provide legal advice about divorce or the division of community property, whether to members, their current or former spouses, domestic partners, or beneficiaries. Also, OCERS will not participate in negotiations regarding the division of retirement benefits.

OCERS Legal Staff may communicate with attorneys representing an individual but generally will not communicate directly with the individual. Members and related parties may contact OCERS Member Services for their general inquiries and should otherwise consult an attorney knowledgeable in California community property law and the division of retirement benefits. OCERS cannot recommend an attorney.

If these FAQs conflict with statute or authoritative case law, the statute or case law will control.

## What is a registered domestic partnership?

Family Code §297 defines a "domestic partnership" as two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

In California, a domestic partnership is legally recognized when both individuals submit a Declaration of Domestic Partnership to the Secretary of State.

For additional information and requirements for Domestic Partnerships, please go to:  
[https://sco.ca.gov/Files-PPSD/FAQs\\_Domestic\\_Partnerships.pdf](https://sco.ca.gov/Files-PPSD/FAQs_Domestic_Partnerships.pdf)

**Am I required to notify OCERS of my divorce?**

Yes. OCERS requires a complete conformed copy of the Judgment of Dissolution of Marriage (Form FL-180 or FL-825), including all attachments from your divorce proceedings, as issued by the court. Photographs will not be accepted. If you do not have a copy of your judgment, you may request one through the court's website or by visiting the courthouse in the jurisdiction where your divorce action was filed. Please note that OCERS is unable to acquire a copy from the court on your behalf.

The judgment will be subject to comprehensive review to determine whether you are entitled to your retirement as separate property, or whether your former spouse or domestic partner may be entitled to their community interest in your retirement benefits. The language contained within the judgment must be unambiguous. Ideally, the judgment should explicitly reference OCERS and clearly delineate each party's entitlement (for example, 60% to one party and 40% to the other).

All documents must bear a court-filed stamp and include the judge's signature. Incomplete submissions will not be accepted. If your former spouse or domestic partner was not awarded any rights to your benefits, no further action is required. Nevertheless, you are still required to submit this documentation, and OCERS Member Services will inform you if additional steps are needed. If the former spouse/domestic partner is entitled to a portion of your retirement benefit, both a Joinder and a DRO must be provided.

**If OCERS determines that my pension is to be divided, can my former spouse/domestic partner waive their interest by submitting a written waiver?**

No. If your former spouse/domestic partner wishes to waive their interest, the parties must return to court and have their Judgment of Dissolution modified to reflect that the OCERS benefit is your sole and separate property.

**What is a Domestic Relations Order (DRO)?**

A Domestic Relations Order (DRO) is a court order that is filed separately from the Judgment of Dissolution or marital settlement agreement and directs OCERS on how to pay your former spouse/domestic partner. OCERS' model DROs can be found at: <https://www.ocers.org/divorce>. The model DROs may not be appropriate for the unique circumstances of your individual case.

**Does OCERS establish separate retirement accounts for me and my former spouse/domestic partner?**

Government Code Sections 31685 to 31685.96 are not in effect in Orange County. Generally, while you are actively employed, neither you nor your former spouse/domestic partner can receive benefits from the Retirement System. (See *In re Marriage of Jensen* (1991) 235 Cal.App.3d 1137.)

**Can my former spouse/domestic partner cash out their share of my retirement before I retire?**

No. OCERS does not allow your former spouse/domestic partner to cash out their community property portion of a member's contributions

### **Does OCERS need to be joined in my divorce?**

In all cases, OCERS must be joined in the parties' divorce action so the court will have jurisdiction over the benefits that OCERS administers. OCERS will not pay a benefit to a former spouse/domestic partner unless it has been properly joined in the matter. (Gov. Code § 31452, Fam. Code § 2021; Rules of Ct., Rule 5.24.) The parties are responsible for filing the joinder, and either party may file. OCERS staff will not assist the parties with completing the joinder documents or filing them.

Forms for joining OCERS as a party to a divorce action in California are available in the forms section of the California Judicial Council website: [www.courts.ca.gov](http://www.courts.ca.gov). The specific forms required to join OCERS are FL-370 (Pleading on Joinder – Employee Benefits Plan), FL-372 (Request for Joinder of Employee Benefit Plan and Order), and FL-375 (Summons – Joinder). These forms *must* be completed by a party and filed with the court *prior* to service on OCERS. (Fam. Code §§ 2060 – 2065.)

The Claimant name listed on the joinder documents must read: **Orange County Employees Retirement System**. If joinder documents are served with the incorrect Claimant name, they will be rejected, and the parties will be required to amend and refile them with the court and serve them upon OCERS.

OCERS accepts service electronically (preferred) to [dro@ocers.org](mailto:dro@ocers.org), via fax to (657) 363-3205, or via U.S. Mail (attn.: Legal Division). Personal service is not required.

### **If OCERS determines that I need a DRO, can I still retire and collect my benefit?**

Yes. However, 50% of your benefit will be withheld. This amount is non-negotiable., When a Joinder is filed or OCERS receives a Notice of Adverse Interest from a former spouse of domestic partner, OCERS is required to withhold a portion of any benefit payment—regardless of whether the member is retiring, receiving monthly retirement benefits, or requesting a withdrawal of contributions. (Fam. Code § 755.)

A joinder is not required for a former spouse/domestic partner to claim an interest in a member's retirement benefits or return of contributions. A former spouse/domestic partner may send *written* notice directly to OCERS asserting an interest in a member's retirement benefit without going through Family Court. Verbal notification will not be accepted.

Upon receipt of written notice, OCERS will promptly initiate the withholding of 50% of the member's benefit. Withheld funds will not be released until a joinder and either a DRO or an amended Judgment of Dissolution are provided and confirm the member's benefit is their separate property.

Parties should complete the DRO process before retirement to prevent delays in benefit payments to the member or former spouse/domestic partner.

***OCERS is not responsible for the parties' failure to comply with their Judgment of Dissolution or timely file a DRO.***

### **What does OCERS require for a DRO to be administered?**

The DRO must specify how to calculate each party's share. The "Time Rule" or *Judd* formula is most often used (In re Marriage of Judd (1977) 68 Cal.App.3d 515). It divides the months of employment during marriage by the total months of credited service, then multiplies by one-half for the non-member's

percentage. For instance, with 20 years of service and 10 years married, the non-member's share is 25% of the retirement allowance.

$$\frac{120 \text{ months of service during marriage}}{240 \text{ total months of service}} \times .5 = 25\%$$

The parties may designate a different method for calculation, such as a flat dollar amount or percentage of the parties' respective shares, subject to approval by OCERS.

The DRO must specify if the former spouse/domestic partner qualifies for a COLA adjustment.

The DRO must clearly define the disposition of any death benefits the former spouse/domestic partner may be entitled to.

If the DRO lacks clarity or is ambiguous, it will not be accepted.

**Does OCERS need to review my DRO before I file it with the court?**

OCERS must review any proposed DRO to ensure it can be administered before it's submitted to the court. If a DRO is submitted to the court without review and approval, OCERS will move to set aside the DRO if it does not meet the Retirement System's requirements. The parties will be responsible for all costs associated with revising the DRO.

**If my divorce judgment was filed in another state, and it says my pension is to be divided, will OCERS accept it?**

OCERS is not subject to the community property laws of other states or jurisdiction of out-of-state courts. California community property law applies to the OCERS Plan. If a party lives outside of the United States, the community property laws of their home country are not applicable to OCERS.

To divide the OCERS pension according to an out-of-state divorce judgment, the parties must domesticate the case in California. To file in Orange County, the following forms must be used, Form EJ-160 (Application of Sister State Judgment), Form EJ-110 (Notice of Entry of Judgment on Sister-State Judgment), and Form L-1120 (Confidential – Party Identification and Notice of Related Cases).

After the required forms are filed, they must be served on OCERS, then the parties must file joinder documents and provide OCERS with a draft DRO to review.

**OCERS will not assist either party with the domestication process.**

**How do I make changes to or vacate my DRO?**

To change a DRO, parties must amend it and include "Amended" in the caption or it will be rejected.

Vacating a DRO requires filing a Stipulation and Order with the court, confirming the DRO is vacated and the Judgment of Dissolution modified so the member receives the OCERS pension as sole property.

OCERS cannot assist any party with amending or vacating their DRO or filing documents with the court.

**If I have a DRO on file and have remarried, will my current spouse be entitled to a continuing benefit upon my death?**

If you elect or have elected the Unmodified Option at the time of retirement, your new or current spouse/domestic partner will be eligible for a continuance if the parties were married at least one year prior to the date of retirement or, if you are retired, are married two years prior to the date of your death, and your spouse/domestic partner has reached the age of 55 on or prior to the date of your death.

If you were required to elect Option 4, the current spouse/domestic partner will need to be added as a beneficiary to allow for a continuance upon the death of the member. You are responsible for the cost associated with adding your current spouse/domestic partner as beneficiary.

**I've been told that I must choose a benefit payment option in favor of my former spouse/domestic, is that true?**

OCERS does not require you to choose a payment option in favor of your former spouse or domestic partner and cannot compel you to choose such option. Pursuant to Family Code section 2610, the court may order you to elect an optional retirement for the benefit of your former spouse or domestic partner.

**Will my former spouse/domestic partner be considered a surviving spouse?**

Your former spouse/domestic partner is not considered a surviving spouse/domestic partner; however, they may receive their community property share of any continuing benefit payment that may be paid to a qualified spouse upon the death of the member.

**If my former spouse/domestic partner remarries or establishes another domestic partnership, will they stop receiving their portion of my retirement benefit?**

No. Your former spouse/domestic partner will still receive their community property share of your benefit, regardless of marital status.

**What is the difference between divorce and legal separation? If I'm legally separated, can I still file a DRO?**

Divorce is the legal process that ends a marriage or domestic partnership, typically involving the cancellation or reorganization of the couple's legal rights and responsibilities, thereby dissolving their marital or partnership bond according to the law. In contrast, legal separation means the couple remains married, but the court divides their property and debts and may set financial support orders. If individuals are legally separated and want to file a DRO under that status, OCERS requires a filed Judgment of Legal Separation along with any property settlement agreement. The DRO must also clearly state that the parties are legally separated.

The parties must inform OCERS if they decide to divorce. After a divorce is finalized, the former spouse or domestic partner is no longer eligible to receive survivorship death benefits.

**Will OCERS explain and interpret the terms of my DRO for me?**

No. OCERS staff will not explain or interpret the terms of the DRO to the parties.

**How will divorce/legal separation affect my beneficiary designations?**

It is advisable to review your OCERS beneficiary designation after a divorce. Typically, if a former spouse/domestic partner has been named as a beneficiary prior to or during the marriage, this designation is automatically revoked upon divorce unless there is clear evidence you intended to keep them as beneficiary. (Prob. Code § 5040.) To ensure that your intentions are accurately reflected and to prevent any unnecessary delays in locating and compensating your beneficiaries, it is recommended you update your beneficiary designation promptly.

If you wish to maintain your former spouse's/domestic partner's status as designated beneficiary, you must re-designate them as beneficiary or obtain a court order that maintains their beneficiary status. Information on updating your beneficiary is available on OCERS' website: [www.ocers.org/update-my-beneficiary](http://www.ocers.org/update-my-beneficiary)

If legally separated, your spouse/domestic partner may be eligible for a continuance or other death benefits as a surviving spouse/domestic partner. A judgment for legal separation does not terminate the beneficiary designation of a legally separated spouse/domestic partner.

**Limitations**

OCERS cannot administer a DRO that requires it to pay benefits with a total value that would exceed the value the Member would have received if the DRO had not been issued. OCERS is **not** subject to ERISA or its provisions applicable to Qualified Domestic Relations Orders (QDROs).

OCERS does **not** administer Orange County's or other employers' 457 Deferred Compensation Plan or 401(k) plan.