

Division of Retirement Benefits Upon Divorce

Purpose

This OCERS Administrative Procedure (“OAP”) provides information about how the community property interest of a member’s benefits are divided, pursuant to a valid a court order setting the terms and conditions of a divorce. More specifically, this OAP will describe the process of notifying OCERS of a divorce, joining OCERS in a divorce, and providing OCERS with a Domestic Relations Order that divides the member’s pension benefits.

Authority

This OAP is established pursuant to the Chief Executive Officer (CEO) Charter, section 8.f., which directs the CEO to develop staff policies and procedures to ensure effective and efficient administration of member benefits. The OAP is in conformance with Board Policy, the County Employees Retirement Law (California Government Code section 31450, et seq.) (CERL), and the Public Employees’ Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA). Also, this OAP is consistent with California Family Code §2610, which provides that the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party’s full community property share in any retirement plan, whether public or private, including all survivor and death benefits.

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 that is issued separate and apart from a final judgment granting a divorce or marital settlement agreement.

Eligible Surviving Spouse: A spouse married to a member at least one year before the date of retirement or two years before the date of the member’s death and has reached the age of 55 on or before the date of the member’s death.ⁱ

Joinder: A procedure whereby OCERS has or claims an interest in a marital dissolution action.ⁱⁱ

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.

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

Legal Separation: The parties stay married, but the court divides the marital property and debts and makes orders about financial support.

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.

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Limitations

This administrative procedure will be construed consistently with the requirements of the California Family Code. If this procedure conflicts with statute or authoritative case law, the statute or case law will control.

OCERS cannot provide legal advice to members, spouses of members, or former spouses of members. Retirement benefits paid by OCERS may constitute a substantial asset of the parties. OCERS recommends that parties consult an attorney knowledgeable in California community property law and the division of retirement benefits for advice and assistance.

Process

Notifying OCERS of a Divorce

OCERS must be provided with a conformed copy (photographs will not be accepted) of a Judgment of Dissolution of Marriage/Property Settlement Agreement with all attachments from the member's divorce proceedings. OCERS cannot assist the member with obtaining a copy from the court.

If a determination has been made that the member's pension is to be divided, OCERS Member Services Division will notify the member that OCERS will require a Domestic Relations Order (DRO), as discussed below.

Joining OCERS in a Member's Divorce

In all cases, OCERS must be joined in the parties' dissolution action so that the court will have proper jurisdiction over the benefits that OCERS administers. OCERS cannot pay a benefit to a former spouse or domestic partner unless OCERS has been properly joined in the matter.ⁱⁱⁱ Note, also, that OCERS will not pay any amounts to the non-member former spouse until the member retires and begins receiving a benefit.^{iv}

OCERS staff cannot assist the parties with filing joinder documents. Forms for joining OCERS as a party to a marital dissolution action in California are available on the California Judicial Council website at www.courts.ca.gov under the "forms" section. The specific forms required for joining 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 filled out by a party and filed with the court before service on OCERS.

Joinder documents must be properly served on OCERS. Service can be made electronically (preferred), via U.S. Mail, fax at (657) 363-3205, or in person.^v After service of the joinder documents, OCERS will file a Notice of Appearance and Response (FL 374) with the court. OCERS will serve the unfiled Notice of Appearance on the parties along with a letter providing information about OCERS.

Note: OCERS is not subject to the jurisdiction of out-of-state courts. Any Domestic Relations Orders (DROs) filed in out-of-state courts must be domesticated in a California court to be binding on OCERS.

Domestic Relations Order (DRO)

OCERS requires a DRO to divide a member's pension benefits between the parties. Parties are encouraged to have a DRO on file prior to a member's retirement.

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The parties or their attorneys are required to submit a draft DRO to OCERS prior to filing it with the court. If a DRO is filed with the court without OCERS' approval, OCERS will petition the court to set it aside if it does not comply with the terms that govern OCERS.

The DRO must provide a method for calculating the parties' respective shares. The most common calculation method is the "Time Rule" or *Judd* formula.^{vi} Under the *Judd* formula, the number of months of the member's credited employment service during marriage is divided by the total number of months of their credited employment service. This amount is then multiplied by one-half to get the non-member's percentage.

For example, if the member has 20 years of employment service and was married for 10 of those years, the non-member's share would be 25% of the member's retirement allowance:

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

Parties may designate a different method for calculation of the parties' respective shares subject to approval by OCERS. Additional information regarding Retirement Payment Options can be found on our website at: <https://www.ocers.org/retirement-benefit-payment-options>

Retirement benefit payment options available to OCERS members are found in Gov. Code sections 31761 – 31764. Options 2, 3, and 4 provide payments to a designated beneficiary or, under Option 4, multiple beneficiaries for the life of the beneficiary or beneficiaries. Optional payments are calculated to be actuarially equivalent to the payments made under the unmodified option. As a result, optional payments may be lower than the payments received under the unmodified option. This decrease in payments is referred to as the "cost" of the optional payment plan. **If the parties choose to opt for an optional retirement payment, the DRO must specify which party or parties will bear the cost of the optional election.**

OCERS cannot compel a member to choose a payment option in favor of the former spouse. Pursuant to Family Code section 2610, the court may order a member to elect a survivor benefit annuity or other similar election for the benefit of the former spouse.

Model DROs are attached to this document and are also available on our website at <https://www.ocers.org/divorce>. OCERS model DROs may not be appropriate for the unique circumstances of every individual case.

If the parties are filing a DRO under a Legal Separation, the language in the DRO must clearly state that the parties are legally separated and that the spouse is considered a surviving spouse. OCERS must also be provided a conformed copy of the Judgment of Legal Separation.

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ⁱ Gov Code, §§ 31760.1, 31760.2.

ⁱⁱ See Fam Code, §2021; Cal Rules of Ct 5.24.

ⁱⁱⁱ Gov. Code, § 31452.

^{iv} See *In re Marriage of Jensen* (1991) 235 Cal.App.3d 1137.

^v Family Code, § 2062.

^{vi} *In re Marriage of Judd* (1977) 68 Cal.App.3d 515.