



## 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 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 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 are intended to provide you with general information regarding the division of the community property interest of OCERS member benefits in accordance with a court order setting forth the terms and conditions of the dissolution of marriage or domestic partnership issued pursuant to the California Family Code and applicable case law.

This document does not constitute legal advice and OCERS will not provide legal advice to members, spouses of members, former spouses of members, domestic partners, or beneficiaries. As such, OCERS Legal Staff does not generally communicate with members, spouses of members, former spouses of members, domestic partners, or beneficiaries directly. If either party is represented by an attorney, OCERS Legal Staff will only communicate with the attorney. OCERS will not participate in any negotiation between parties related to retirement benefits. The parties should consult an attorney knowledgeable in the areas of 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.

A domestic partnership is established in California when both persons file a Declaration of Domestic Partnership with 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)

**How do I notify OCERS of my divorce?**

OCERS must be provided with a conformed copy (photographs will not be accepted) of a Judgment of Dissolution of Marriage (Form FL-180 or FL-825) with all attachments from the member's divorce proceedings. OCERS will not obtain a copy from the court on behalf of the member or former spouse/domestic partner.

The judgment will undergo a detailed review to assess whether the member is entitled to their retirement, including the community property portion, as separate property or whether the former spouse is entitled to an interest in the community property portion of the member's retirement benefit as determined by the court. The language in the judgment must be clear. It is best if the judgment specifically mentions OCERS and clearly states what the member and former spouse are entitled to (e.g., 60% and 40%).

All documents must contain a court's file stamp and the judge's signature. Incomplete documents will be rejected. If a former spouse/domestic partner was not granted any rights to a member's benefit, no further steps are necessary. However, members are still required to submit this documentation and OCERS Member Services Department will notify the member if any additional steps are necessary. If the former spouse/domestic partner is entitled to a portion of the members retirement benefit a Joinder and DRO are required.

**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 they wish to waive their interest the parties will be required to return to court and have their Judgment of Dissolution amended to reflect that the OCERS benefit is the sole and separate property of the member.

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

A Domestic Relations Order, or DRO, is a type of court order that is filed separate and apart from the Judgment of Dissolution or marital settlement agreement that will direct OCERS on how to pay your former spouse/domestic partner. OCERS' model DROs can be found <https://www.ocers.org/post/legal-forms>. The model DRO may not be appropriate for the unique circumstances of every individual case.

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

No. Government Code §§ 31685 through 31685.96 have not been adopted in Orange County. In addition, the Retirement System will not pay out benefits to either the member or former spouse/domestic partner while the member is still working. (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 a former spouse/domestic partner to cash-out part of a member's contributions. If a member terminates employment and asks for a return of their contributions, a percent of those cashed out contributions may be payable to a former spouse/domestic partner. Also, should a

member wish to retire, their former spouse/domestic partner can only receive a direct payment from OCERS when a member retires and not before.

### **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 OCERS has been properly joined in the matter. (Gov. Code § 31452.) 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 on the California Judicial Council website [www.courts.ca.gov](http://www.courts.ca.gov) in the forms area. 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 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 the Retirement System.

OCERS will accept service electronically (preferred) or via fax to (657) 363-3205, or service via U.S. Mail. Personal service is not required. For electronic service, please email Member Services at [msemail@ocers.org](mailto:msemail@ocers.org).

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

Yes, 50% of your benefit will be withheld. Family Code section 755 requires OCERS to withhold part of any benefit payment, whether the member is receiving a monthly retirement benefit or seeking to withdraw their contributions, when it either has a Joinder on file or if there is a written Notice of Adverse Interest from a former spouse/domestic partner.

A joinder is not required for a former spouse/domestic partner to claim an interest in a member's retirement benefit 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.

When OCERS receives this written notice, OCERS will immediately begin withholding 50% of the member's benefit and will not release any withheld funds until we receive joinder and a DRO.

Parties are encouraged to complete the DRO process *prior* to retirement. Doing so would avoid any potential delay in benefits being paid to the member or former spouse/domestic partner. OCERS is not responsible for the parties' failure to comply with their Judgment of Dissolution and timely file a DRO.

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

The DRO must provide a method for calculating the respective shares of the parties. The most common method for calculation is the "Time Rule" or Judd formula (In re Marriage of Judd (1977) 68 Cal.App.3d 515). 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:

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

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 clearly define how death benefits are to be handled.

If the DRO is vague and ambiguous it will be rejected.

**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 a DRO that does not meet its guidelines.

OCERS must be joined before the proposed DRO will be reviewed.

**If I have a DRO that was filed in another state, will OCERS accept it?**

California Community Property Law governs the OCERS Plan. OCERS is not subject to the jurisdiction of out-of-state courts.

OCERS is unable to administer an out-of-state DRO unless it is domesticated in California. Once the DRO is registered in California, OCERS must be joined to the court proceeding in California. After OCERS is joined, the parties must provide OCERS with a copy of the out-of-state DRO for review prior to it being filed with the court. If the proposed DRO is approved, you must file it in a California court, join OCERS in the divorce action and serve OCERS with a conformed copy of the DRO.

OCERS will not assist either party with the domestication process.

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

If the Parties wish to changes to their DRO, they will be required to amend it. The caption of the DRO must specifically reference the term "Amended", otherwise, the DRO will be rejected.

To vacate a DRO, OCERS requires a Stipulation and Order that has been filed with the court stating that the DRO has been vacated.

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

If a member elects or has elected the Unmodified Option at the time of retirement, the new or current spouse would be eligible for a continuing benefit if the parties were married at least one year prior to the

date of retirement or were married two years prior to the date of death and the spouse has reached the age of 55 on or prior to your date of death.

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

A 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.

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

Divorce is the process of terminating a marriage or domestic partnership. Divorce usually entails the canceling or reorganizing of the legal duties and responsibilities of marriage, thus dissolving the bonds of matrimony between a married couple under the rule of law. In a legal separation, the parties stay married, but the court divides the marital property and debts and makes orders about financial support. If parties are legally separated and wish to file a DRO under that status, OCERS will require a copy of a filed Judgment of Legal Separation complete with any property settlement agreement. Additionally, the DRO must contain language indicating that the parties are legally separated.

OCERS will monitor the legally separated parties' court action on a monthly basis. If it finds that a divorce has been granted, then the former spouse will no longer be eligible for a surviving spouse continuance.

**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 the Orange County's or other employer's 457 Deferred Compensation Plan or 401(k) plan.

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 the member to elect a survivor benefit annuity or other similar election for the benefit of the former spouse.