

Divorce and Your ACERA Benefits

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Disclaimer

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This PowerPoint Presentation is provided to you as a convenience, and does not constitute legal advice.



California- Community Property

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- In this state, most assets acquired, or income earned by a married person, while living with his or her spouse, is called community property (CP).



Equal Division: 50-50

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- California law requires that the community estate be divided equally unless there is a written enforceable agreement to the contrary.



Are The Wages Earned CP?

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- The wages earned from working while married and living together are likely community property.
- Wages earned from County employment therefore are most likely community property.



Are amounts deposited with ACERA CP?

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- Since retirement contributions are deducted from your county wages (and then entrusted with ACERA) they are most likely community property).



ACERA Contributions- CP?

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- The Courts generally think the accumulated contributions/interest earned on funds entrusted to ACERA are community property--To be divided equally.



ACERA Benefits- CP?

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- If you elect to receive a refund of your retirement contributions, the \$\$ paid to you is likely community property.



ACERA Benefits- CP?

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- If you elect to receive monthly retirement benefits, the amount paid is most likely treated as community property?



If I divorce will my ex-spouse get the Continuance?

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- At retirement, married members may select to leave a monthly continuance allowance to surviving spouses/state registered domestic partners (see GC 31760.1)
 - Unmodified Option
 - 60% Continuance allowance



Divorce

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- If a retired member elected to leave his surviving spouse/domestic partner a continuance benefit for his/her lifetime, and later they divorce, there will be not be a SURVIVING spouse/partner.



Divorce

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- If retired member divorces, ACERA will not pay a monthly 60% continuance to former spouse/ domestic partner.



Is Anything Different If I Just Legally Separate?

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Legal Separation:

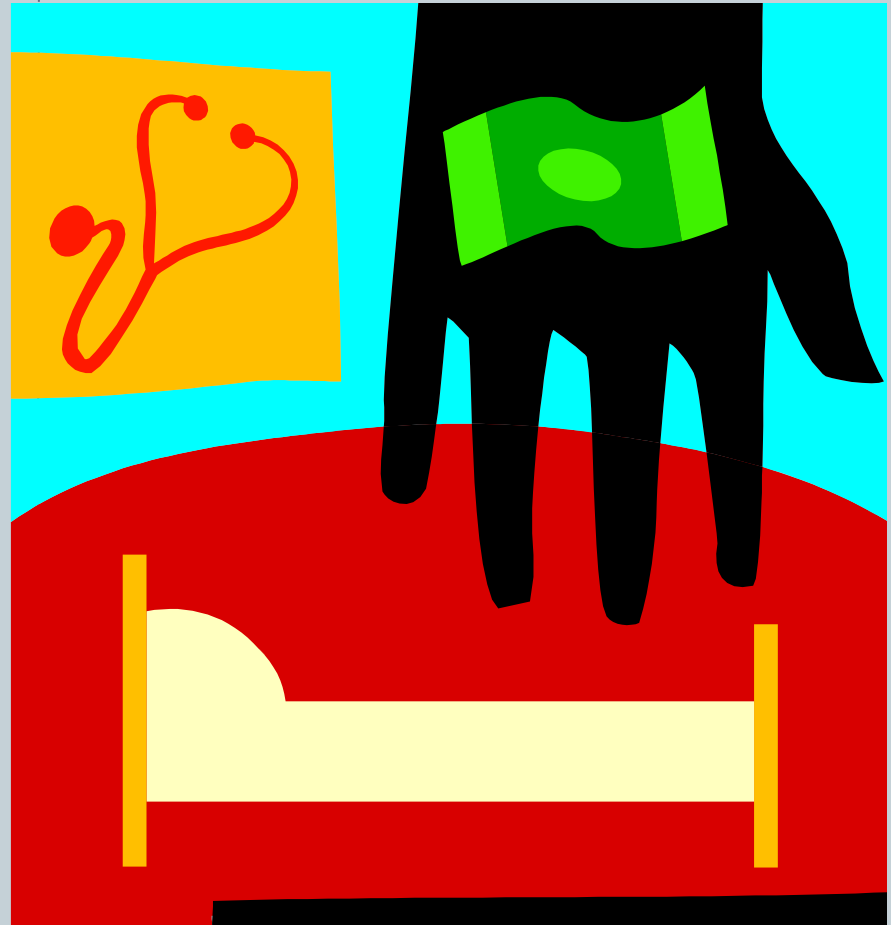
- The marriage does not end.
- Property (such as community property) is usually divided in the final court order.



Legal Separation

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- Retired Members:
- Non member's health insurance coverage paid from member's monthly retirement allowance can continue
- Active Member retires: Non member can receive 60% continuance.



Does it have to be 50-50?

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- 50-50 is most common, but remember
- ACERA will divide the benefits in accordance with the court order.



ACERA Must be Joined

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- ACERA must be joined to the divorce action in order to divide the benefits
- Fam. Code Sec. 2337(d)



Request a CP Estimate

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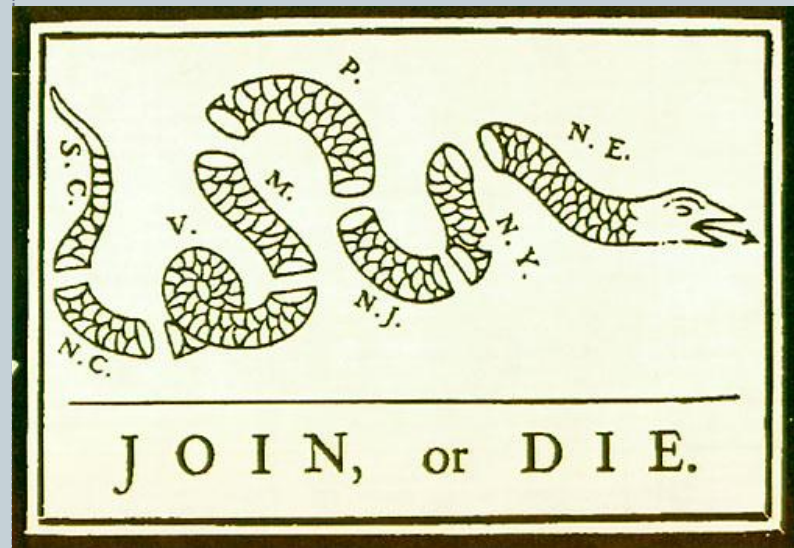
- Sign Authorization to Release Information Form
- Request a Community Property Estimate (use ACERA Form)



Request Joinder Packet

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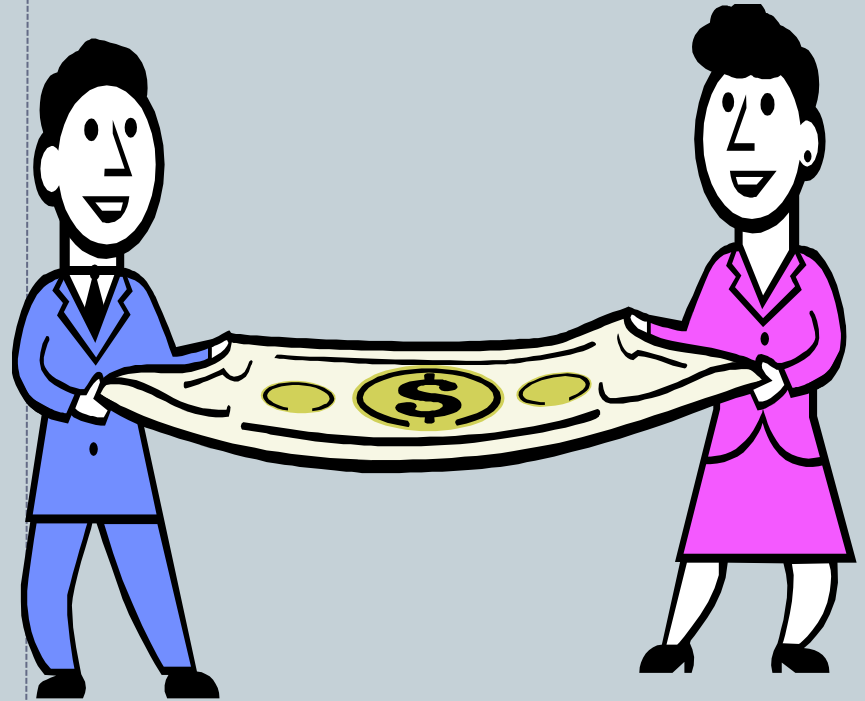
- Request a packet of the forms required for Joinder from ACERA.



Methods of Dividing Benefits?

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- Active Members have a choice
 - Shared Method
 - Separate Method



Method of Dividing Benefits?

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- Retired Members don't have a choice
 - Shared Method is the only way to divide ACERA benefits.



What is the Shared Method?

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- ACERA calculates the community property interest of the (ex)spouse, then:
 - Divides the monthly retirement allowance paid to retiree into 2 parts;
 - ACERA Pays the retiree a monthly lifetime benefit; and
 - Pays the (ex)spouse monthly—the community property interest by separate check.



Facts about the Shared Method

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- (Ex)spouse can only be paid if retiree is paid;
- (Ex)spouse's monthly payment stops when retiree dies;
- (Ex)spouse cannot withdraw his or her community property interest as a lump sum.



What is the Separate Method?

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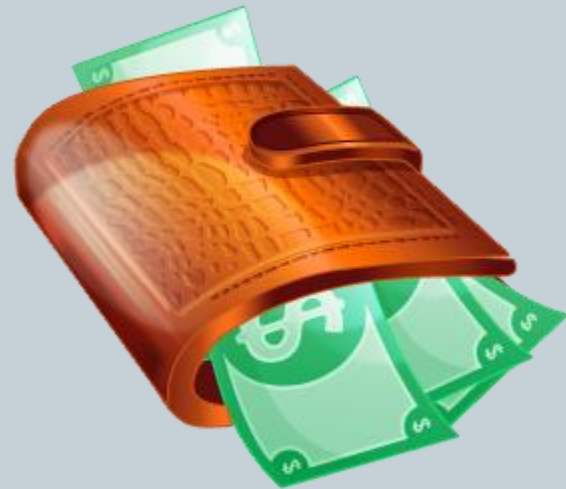
- ACERA will separate the (ex)spouse's CP interest-\$\$ from the active member's accumulated contributions, & give non member access the \$\$ now.



Facts about the Separate Method

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- (Ex)spouse can withdraw his or her community property interest as a lump sum or roll over to a qualified IRA;
- (Ex)spouse can receive monthly lifetime payment from ACERA starting when (ex)spouse is eligible to retire;
- (Ex)spouse can receive monthly lifetime payment from ACERA starting when member retires



Advantages – Separate Method

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- (Ex)spouse can receive monthly lifetime payment from ACERA starting when *member* retires
- (Ex)spouse's monthly payment is for *his/her life time* (not only for member's life);



Advantages – Separate Method Con't

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- (Ex)spouse can designate a beneficiary to receive unpaid community property (i.e., accumulated contributions); and
- (Ex)spouse has other rights under the law (GC 31685, et. Seq.)



ACERA POLICY

ACERA's policy requires:

- Members must have draft of court orders approved; and
- ACERA must be joined before we will pay benefit or split off/divide benefits.



Sample Court Orders on Website

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- SEE Sample court orders for shared and separate court orders to divide benefits .
- Go to www.acera.org
 - Shared Method-sample called Shared Account
 - Separate Method-sample called Separate Account



ACERA Short Topic Seminars:

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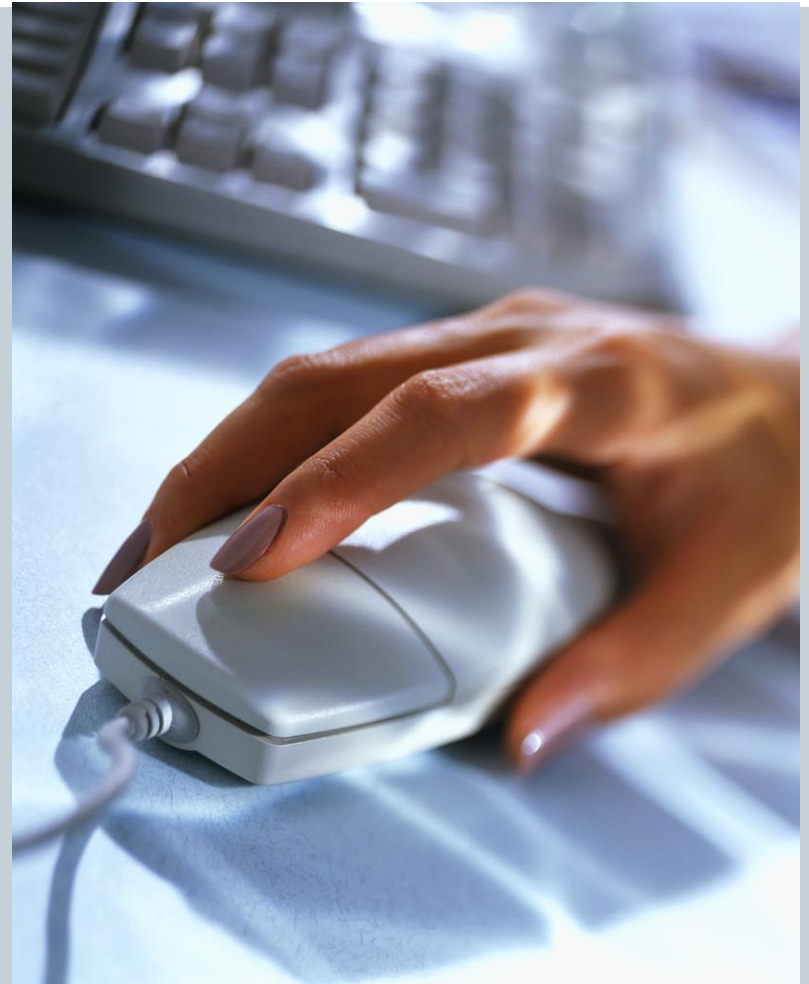
- Come to a seminar on the impact of divorce on your ACERA benefits.
- Schedule your attendance:
 - Call ACERA Office:
Tel. 510-628-3000



Update Beneficiary Designation

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- ACERA reminds members to update your beneficiary designation after legal separation or divorce.
- Go to our website and download the appropriate form.



Seek Legal Consultation

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Find a family lawyer
with experience:

- Alameda County Bar Association-Referral
Tel. 510-302-2222
- San Francisco Bar Association-Referral
Tel. 415-989-1616

