



MEMORANDUM

DIVORCE AND ACERA BENEFITS

When an ACERA member is a party to a court case (a dissolution, legal separation, or nullity case) addressing his or her marriage, an order may be made concerning the member's retirement benefits.

Generally, the benefits earned as a result of employment covered by ACERA between the date of marriage and the date of separation are community property, belonging equally to the parties. All benefits earned as a result of employment before the date of marriage or after the date of separation are the member's separate property.

After the community and separate interests are determined, the primary approaches available to a judge awarding retirement benefits at a trial are the following:

1. **Award to One Party.** The judge might award the benefits entirely to the member and award community property to the nonmember that is equal in value to the community property interest in the benefits. Such an order would require the determination of a value, probably based on actuarial valuation, for the community interest in the benefits.

2. **Buy-Out.** Another possibility is to order a buy-out, in which the member receives the benefits and pays the nonmember one-half of the current value of the community property interest, either in cash or by an interest-bearing note. This too would require determination of a value, probably based on actuarial valuation.

3. **Division Between the Parties.** A third option, and by far the most commonly used, is to divide the community interest in the benefits equally between the parties. When the member has not yet retired, ACERA can be ordered to divide the member's contributions, earnings, and service credit into two separate accounts and treat the nonmember's account as though it too were the account of a member. When, on the other hand, the member has already retired, ACERA cannot be ordered to divide the account, but can be ordered to divide each payment during the member's lifetime into two separate checks, based on the parties' respective shares of the benefits, and send one of them to each party. Division between the parties does not require determination of a value.

Parties should be aware that far more cases end in settlement than trial. Parties who reach a settlement may make any agreement about the retirement benefits that they wish, provided that the agreement does not violate the laws and regulations under which ACERA operates. ACERA provides sample agreements that may be used to obtain court orders regarding ACERA benefits. In most cases, parties use these sample agreements without making any modifications to them. Parties should

understand, however, that such forms were not designed with their specific case in mind. Consequently, they should feel free to modify the sample agreements to fit their specific case. Examples of cases that may require special attention include those when the member has made redeposits or service purchases, or has the right to do so; when the community property interest in the benefits is not to be divided equally between the parties; and when the member has reciprocity rights based on service credit with both ACERA and one or more other public pension plans.

Proposed orders regarding payments by ACERA should always be submitted to ACERA for approval before submission to the court, to ensure that ACERA will be able to carry out the orders if the court approves them.

Even when a member's spouse or former spouse may have a community property interest in the benefits, ACERA will pay to the member all retirement benefits to which he or she is entitled under the plan, without considering any possible claim the spouse or former spouse may have, unless at least one of the two following conditions is met:

1. **Notice of Claim.** ACERA receives **written** notice that the spouse or former spouse claims to be entitled to all or some part of any future payment or refund that ACERA might make to the member under the plan; or

2. **Joinder.** Through a legal procedure known as "joinder," ACERA is made a party to a court case addressing the marriage.

If either of these conditions is met, and only in that event, ACERA will not begin payment of retirement benefits to the member until (1) ACERA is joined (if it was not already joined) and (2) ACERA receives a court order sufficient to instruct it how to distribute the benefits. ACERA can provide materials to assist in joining the plan as a party to the marital court case.

Note: If ACERA is already paying the member when it receives a notice of claim or joinder, ACERA will continue the payments to the member unless and until (1) ACERA receives a court order directing it to suspend payments, or (2) ACERA is joined (if it was not already joined) and receives a court order sufficient to instruct it to how to distribute the benefits between the parties.

When ACERA has neither received a written notice of claim nor been joined, ACERA may be contacted by a spouse or former spouse who may wish to make a claim regarding a member's benefits, but the contact is not sufficient to constitute a notice of claim, usually because it is oral, not written. In that event, ACERA will write to the spouse or former spouse, explaining the rules regarding notice of claim and joinder and providing a form of notice of claim.

If ACERA pays all retirement benefits to the member because it has received neither a notice of claim nor joinder, ACERA will be discharged from any claims by a spouse or former spouse to the benefits paid. Members should understand, however, that such payments will **not** discharge the member from such claims. A spouse or former spouse with a claim can still bring it to court and the court can still order **the member** to make the payments to the spouse or former spouse that would eventually have been made by ACERA if there had been a notice of claim or joinder. Consequently, even when ACERA can make payments entirely to the member, it may well be in the member's interest to have the shares of the member and a spouse or former spouse determined by a court order **before** the member begins receiving payments.

For members whose retirement payments exceed the maximum amount that ACERA is permitted to pay under Internal Revenue Code §415, thereby resulting in a portion of the payments being made by Alameda County under its replacement benefit plan, the County will also have to be joined as a party to the court case for a court order dividing the benefits to be enforceable against the County.

An ACERA member whose marriage is being terminated should consider the possibility that changes may be appropriate in his or her designations of beneficiaries to receive benefits on the member's death. Members who wish to change beneficiary designations should contact their ACERA retirement specialists.

If ACERA divides the account of an active member as a result of a divorce order, the member can buy back the service credit transferred to the nonmember's account if, and only if, the nonmember takes a refund of contributions, either by direct payment or rollover.

When the member has already retired, the parties should understand that termination of their marriage will terminate the nonmember's rights, if any, to continuance payments under the unmodified option on the member's death and to medical coverage through ACERA as the member's spouse. On termination of the marriage, the member must notify ACERA's Benefits Department to remove the nonmember from medical coverage.

Dissolution of Domestic Partnerships. The discussion of divorce in this memo also applies to dissolution of domestic partnerships registered with the Secretary of State, with the date of registration substituted for the date of marriage.

Call us: ACERA strongly urges both parties to a divorce or a dissolution of domestic partnership to contact ACERA's Legal Department at (510) 628-3114 as early as possible to discuss and plan for the impact on ACERA benefits.