DISSOLUTION AND LEGAL SEPARATION (Updated April 1, 2026)

All ACERA members are strongly encouraged to engage independent legal counsel to advise them on matters relating to dissolution or legal separation proceedings. This memorandum and other materials on the ACERA website are provided for informational purposes and are not legal advice.

Disposition of Community Property

Under California law, retirement benefits earned between the date of marriage and the date of separation generally are community property, and benefits earned outside of that time period generally are separate property. In a dissolution or legal separation proceeding, a court can award a portion of an ACERA member's benefits to the member's spouse/domestic partner. There are two ways a court typically will address community property rights to a member's ACERA benefits.

- The court may award all of the community property interests in the member's ACERA benefits to the member, with an award of other assets to the spouse/domestic partner. If the court proceeds in that manner, the member should provide ACERA with a copy of the judgment and related agreements/orders showing that the court has awarded all ACERA benefits to the member.

- The court may award the member's spouse/domestic partner their community property share of the member's ACERA benefits. In order to accomplish this, the parties need to "join" ACERA to the dissolution or legal separation proceeding. Judicial forms for joining ACERA (FL-370, FL-372, FL-375) can be found at https://www.courts.ca.gov/forms.htm. It is important to read all instructions on how to process those forms with the court and ACERA. If ACERA is joined to the proceeding, it can be bound by a Domestic Relations Order ("DRO"), which provides specific directions to ACERA on how to pay out benefits. The DRO is typically issued after the court has entered final judgment in the dissolution or legal separation proceeding. There are two recommended forms of DROs posted at https://www.acera.org/publications.

    - Shared Records: Under this form of DRO, which is available to all ACERA members, ACERA continues to administer a single account and the member decides when to retire (if not already retired). A portion of the member's retirement allowance is paid directly to the spouse/domestic partner. Those payments to both parties stop when the member dies.

    - Separate Records: Under this form of DRO, which is available only to members who have not yet retired, ACERA establishes a separate account for the spouse/domestic partner who can then decide whether to (a) withdraw their share of contributions (plus interest), or (b) leave the funds on deposit and later withdraw the funds or retire when eligible. After their retirement, the spouse/domestic partner receives a benefit for the rest of their life.

Parties should carefully review the recommended forms of DROs and carefully consider whether

those recommended forms are consistent with their intent. ACERA can administer other forms of DROs or modified versions of the recommended forms, provided the DRO is clear and does not violate any laws or ACERA policy. In all cases, a DRO cannot obligate ACERA to pay more projected benefits than are available in the absence of the DRO.

In most cases, the parties agree to the disposition of the member's ACERA benefits, but a court can order a division of ACERA benefits after a contested hearing. Even when using a recommended form of DRO, the parties are encouraged to provide a draft DRO to ACERA's Chief Counsel for review, before submitting a DRO to the court for the judge's signature. If there are problems with the DRO signed by a judge, ACERA will seek relief from the court, which will cause significant delays for the parties.

"Surviving Spouse" Benefits

The surviving spouse/domestic partner of an ACERA member may be entitled to a life-long continuance if the member elected the "unmodified option" at retirement. For a member who retires for service or a non-service-connected disability under the "unmodified option," 60% of the member's benefit is paid to a surviving spouse/domestic partner if the marriage or domestic partnership started at least one year before the member's retirement. For a member who retires for service-connected disability under the "unmodified option," 100% of the member's benefit is paid to a surviving spouse/domestic partner if the marriage or domestic partnership began prior to the date of the member's retirement. These benefits also may be available to a surviving spouse/domestic partner of a member who dies while in active service. It is important to understand that:

- A former spouse/domestic partner cannot qualify for a "surviving spouse" continuance. *Cramer v. San Bernardino County Employees' Retirement Association* (1993) 20 Cal.App.4th 73.

- A legally separated spouse/domestic partner can qualify for a "surviving spouse" continuance. *Irvin v. Contra Costa County Employees' Retirement Association* (2017) 13 Cal.App.5th 162.

Health Coverage

When the member has already retired, dissolution of a marriage or domestic partnership will terminate the former spouse's/domestic partner's rights to any existing health coverage (medical, dental, vision) through ACERA as the member's spouse/domestic partner. On termination of the marriage, the member must notify ACERA's Benefits Department to remove the former spouse/domestic partner from the member's health coverage. The former spouse/domestic partner may, however, be able to receive health coverage through ACERA at their own expense if ACERA is paying them an allowance under a DRO. Also, they can continue coverage for up to 36 months on COBRA at their own expense.

Beneficiary Designations

Members who wish to change beneficiary designations should contact their ACERA retirement technician. A member can name a former spouse/domestic partner or legally separated spouse/domestic partner as a beneficiary, but in most cases, if a member named a former spouse/domestic partner as a beneficiary before the dissolution of marriage or domestic partnership, the dissolution causes the designation to fail, per Prob. Code § 5040. Thus, if a member intends to name a former spouse/domestic partner as a beneficiary, it is important to make that designation (or re-designation) after the dissolution.