

Ventura County Employees' Retirement Association

Policy Regarding the Division of the Community Property Interest in the Accrued Benefits of a Member of the Ventura County Employees' Retirement Association Pursuant to the Provisions of Article 8.4 of the County Employees' Retirement Law of 1937 (Adopted by the Board of Supervisors Effective May 20, 2000)

General Information:

The County Employees' Retirement Law provides an optional method for the division of the community property interest in a member's retirement account upon the legal separation or dissolution of marriage of the member (Government Code section 31685 et seq.). These provisions allow the member's account to be divided into two separate accounts. One account remains in the name of the member, the other in the name of the nonmember. The nonmember's account is credited with his/her share of the community property interest in both the accumulated contributions and accrued service credit in the member's account.

This policy applies only to the division of a members account pursuant to the provisions of Government Code section 31685 et seq.

Provisions Not Mandatory:

These provisions are intended to provide the parties with more flexibility in drafting a domestic relations order, however, members and their attorneys are not required to use these provisions to divide the community property interest in the member's retirement account. In addition, Family Code section 2610, subdivision (a)(3) provides that the provisions of Government Code section 31685 may be ordered only upon the agreement of the non-employee spouse.

Joinder Required:

In order for the Ventura County Employees' Retirement Association (VCERA) to respond to a Domestic Relations Order (DRO), it must be joined as a party to the proceedings in accordance with the provisions of the Family Law Code. However, if the parties have not served joinder pleadings upon VCERA but have signed a stipulation and proposed DRO, VCERA will accept the proposed DRO for review and approval, but will not be bound by the terms of the DRO until VCERA is served with a conformed copy of the court order. Pursuant to the provisions of Family Code section 4363.2, if the parties obtain a DRO from the court without prior written approval of VCERA, VCERA will have 30 days from the date of service of the order within which to review the order and either approve it or file a motion to set aside or modify the order. The DRO shall not

become effective until the court has resolved the motion. If no motion is filed, the DRO shall become effective upon the expiration of the 30-day period.

The court is prohibited from imposing a DRO on VCERA which would require the payment of benefits with an actuarial value in excess of the value of benefits that would be received by the member had the DRO not been issued.

Confidentiality:

After the member's account is divided pursuant to a DRO, each party gains sole control over his/her own account. Unless specifically provided for by the DRO, and other than the required notifications by VCERA discussed later in this document, confidentiality of activity in each account will be honored by VCERA with respect to inquiries from the other party. Information pertaining to each account may be released upon presentation of a signed consent to such release or in response to a subpoena.

Vesting:

A member who is vested at the time a DRO is issued will continue to be vested with VCERA even after the court ordered transfer of service credit to the account of the nonmember.

Events and Subsequent Impact:

The following summarizes a series of events and the related impact on the account of the member and nonmember.

A. Member is Vested in the Retirement System:

Member's Account – Member's service credit, contributions and interest credited to his/her account are divided in accordance with the provisions of the DRO. The member remains vested in the retirement system regardless of the amount of service credit remaining in his/her account after the division. The member will be requested to name a beneficiary.

Nonmember's Account – A separate account is established by the Retirement Association on behalf of the nonmember with service credit, contributions and interest transferred from the account of the member in accordance with the provisions of the DRO. The nonmember will be requested to name a beneficiary. The nonmember may request a refund of contributions and interest, commence receipt of a monthly retirement benefit if eligible, or maintain the account by electing a deferred retirement until such time as he/she elects either a refund of contributions and interest or becomes eligible to receive a monthly retirement benefit.

B. Member is Not Vested in the Retirement System:

Member's Account – Member's service credit, contributions and interest credited to his/her account are divided in accordance with the provisions of the DRO. The member will become vested based on the combined service in both accounts. The member will be requested to name a beneficiary.

Nonmember's Account – A separate account is established by the Retirement Association on behalf of the nonmember with service credit, contributions and interest transferred from the account of the member in accordance with the provisions of the DRO. The nonmember must be paid a refund of contributions and interest. The nonmember may request a "rollover" of the taxable portion of any distribution.

C. Nonmember is Paid a Refund:

Member's Account – VCERA must notify member in writing that the nonmember has elected a refund of his/her share of the member's accumulated contributions. Member has five (5) years from the date notification is mailed to elect to redeposit with VCERA all contributions withdrawn, plus interest, in order to regain service credit forfeited by nonmember. The redeposit of such contributions may be made in lump sum or through biweekly payroll deductions for a period of time not to exceed five years.

Nonmember's Account – By accepting a refund, nonmember waives all rights to receive a retirement benefit in the future. Nonmember may not redeposit contributions that are withdrawn and may not rescind the election to accept a refund after a check is placed in the mail by VCERA.

D. Nonmember Does Not Elect a Refund (Member Vested):

Member's Account – No effect.

Nonmember's Account – The nonmember may elect a deferred retirement. Contributions on deposit will be credited with interest semiannually. Nonmember may rescind this election at any time and elect to receive a refund of contributions. Nonmember may also receive a service retirement allowance if minimum eligibility requirements are met.

A nonmember who elects a deferred retirement, and later files for a monthly retirement allowance, shall have his/her retirement allowance calculated pursuant to the benefit provisions applicable to the member at the time such service was accrued.

E. Eligibility for Service Retirement:

Member's Account – Service credit requirement is met using the combined service before the division of the account, plus service credit accrued after the division of the account.

Nonmember's Account – Member must have sufficient service credit to retire (includes service awarded to nonmember), and the member or nonmember must have attained the minimum age for receipt of a retirement allowance as provided for by the benefit formula applicable to the member.

F. Member Retires Before Nonmember:

Member's Account – The member's retirement benefit will be based on the age factor applicable to the member on the date of retirement, final average compensation, and service credit remaining in his/her account after the account division, service credit accrued after the account division (separate property), plus any other eligible service credit that may have been purchased by the member. Member may elect any retirement option and beneficiary.

Nonmember's Account – VCERA provides notice to nonmember of member's retirement. Nonmember may (a) Elect to leave account intact (deferred retirement). Final compensation that will be used to calculate benefit is frozen at the rate applicable to calculate the retirement benefit paid member; (b) Elect to begin receiving a retirement benefit computed using member's final compensation, service credit received from the division of member's account, plus other eligible service credit that may have been purchased, and age factor based on nonmember's age on the effective retirement date. The retirement allowance shall be computed pursuant to the benefit provisions that were applicable to the member at the time such service was accrued.

The nonmember may elect an optional retirement allowance as provided for pursuant to Government Code sections 31761, 31762, 31763 or 31764. The election of an optional retirement allowance is the only method whereby a nonmember may provide a survivors continuance. The nonmember may elect a beneficiary.

G. Nonmember Retires Before Member:

Member's Account – No impact on member.

Nonmember's Account – Retirement benefit would be calculated based on member's final compensation prior to the effective date of nonmember's retirement, service credit received from the division of the member's account, plus any other eligible service credit that may have been purchased, and age factor based on nonmember's age on the effective retirement date. The

retirement allowance shall be computed pursuant to the benefit provisions that were applicable to the member at the time such service was accrued.

The nonmember may elect an optional retirement allowance as provided for pursuant to Government Code Sections 31761, 31762, 31763 or 31764. The election of an optional retirement allowance is the only method whereby a nonmember who retires may provide a survivors continuance. Nonmember may elect a beneficiary.

H. Purchase of Retirement Service Credit:

Member's Account – Member may purchase his/her community property share as specified in the DRO. If the DRO is silent, member may elect to purchase entire amount of eligible service credit. Purchase of service credit must be completed before member retires. Purchase of service credit may be made in lump sum or through biweekly installment payments. The member may purchase any community property share of service credit awarded to nonmember if the nonmember elects a refund of contributions or dies prior to purchasing his/her interest in member's retirement service credit.

Nonmember's Account – Nonmember may purchase his/her community property share as specified in DRO. Payment for service credit purchased must be made in lump sum prior to effective date of retirement. If nonmember elected a refund of contributions awarded when account was divided, he/she is not eligible to make a purchase of retirement service credit.

I. Redeposit of Contributions Withdrawn Before DRO:

Member's Account – Member has same options as is the case with the purchase of retirement service credit (see H.).

Nonmember's Account – Nonmember has the same options as is the case with the purchase of retirement service credit (see H.).

J. Redeposit of Account Withdrawn After DRO:

Member's Account – Member may redeposit previously withdrawn contributions, plus interest, to reinstate service credit. Member may also redeposit any contributions withdrawn by nonmember if election is made within five years of receipt of notice from VCERA of such withdrawal.

Nonmember's Account – Nonmember may not redeposit his/her contributions once withdrawn and may not redeposit contributions withdrawn by member under any circumstances.

K. Member Dies Prior to Retirement:

Member's Account – Benefit is paid to member's beneficiary as would be the case had there not been a DRO.

Nonmember's Account – Nonmember would have the same choices as if the member had retired before nonmember (see F.).

L. Death of Nonmember:

Upon the death of the nonmember before the effective date of retirement, his/her accumulated contributions shall be paid to such person as he/she nominates as beneficiary by written designation duly executed and filed with the Board. Should the death of the nonmember occur prior to the effective date of retirement of the member, the member shall have the option to redeposit all contributions refunded to the beneficiary of the nonmember as set forth in Section C.

Upon the death of the nonmember after the effective date of his/her retirement, if the total retirement allowance income received by the nonmember during his/her lifetime was less than his/her accumulated contributions, his/her designated beneficiary shall be paid in one lump-sum the difference between the total contributions and the total retirement allowance income.

(This section, added by amendment to this policy on June 20, 2005, shall be effective as of February 5, 2001)

M. Vested Member Terminates Service:

Member's Account – The member may retire for service if eligibility requirements are met, elect a refund of his/her contributions and interest or elect a deferred retirement. Unless reciprocity is established, final average compensation is frozen at member's termination.

Nonmember's Account – Same as for member.

N. Nonvested Member Terminates:

Member's Account – Member must either elect a refund or establish reciprocity with a reciprocal retirement system.

Nonmember's Account – Must elect a refund of contributions and interest credited to his/her account at the time member's account was divided.

O. Member is Granted Disability Retirement Before or After Retirement of Nonmember:

Member's Account – The combined benefit payable to the member and nonmember may not exceed the benefit that would have been payable to the member alone had the DRO not been issued. Once the amount of disability retirement is determined, the parties will be required to obtain a court order which allocates the percentage of the disability retirement benefit to be paid to each party, unless the parties can stipulate to a method of division which can be calculated and administered by VCERA.

Nonmember's Account – Same as for member.

P. Vested Fixed Supplemental Benefit (\$108.44)

The vested \$108.44 fixed supplemental retirement benefit shall be allocated between the member and nonmember based upon the ratio of total service in each party's account on the effective date of the retirement of the member or nonmember, whichever is earliest.

Q. Legal Representation

Neither the Board of Retirement, its staff, nor its attorney, can provide legal advice on this subject. It is recommended the parties consult with an attorney prior to entering into any agreement for the division of retirement benefits under these provisions.

Amendment Approved by the Board of Retirement, June 20, 2005

WILLIAM W. WILSON, Chair

(Original Policy Approval Date: February 5, 2001)