

This pamphlet is intended to assist VCERA members considering a divorce. In California, retirement accounts are generally considered to be *community property*, which refers to any assets belonging equally to a married couple that were accumulated from the date of marriage to the date of separation. The couple, with court approval, can determine how those assets, including VCERA benefits, shall be divided. Each party's awarded portion is known as his/her *community property interest*.

VCERA cannot give legal advice concerning such matters, so you may want to hire legal counsel to assist with your divorce proceedings. In this pamphlet, information regarding divorce also applies to dissolution of registered domestic partnerships; the date of registration with the State of California would substitute for the date of marriage.

Required Documentation

A *Marital Settlement Agreement* (MSA) sets forth the agreed-upon terms of a divorce, including if a member's VCERA account will be divided. If the parties cannot agree, the court hears their case and issues an order dividing the property. An MSA or court order is often incorporated into a *Judgment*, which tells VCERA that the divorce is final.

A *Domestic Relations Order* (DRO) provides detailed direction to VCERA on how to divide the member's retirement account with a former spouse.

Ideally, the couple signs a stipulated (agreed-upon) DRO that complies with their MSA, but ultimately the DRO alone will determine VCERA's actions. A court-filed Judgment and DRO must be received before VCERA will pay benefits. If an MSA is available, it should be provided, too.

VCERA urges divorcing parties to prepare an MSA that states whether the former spouse will receive a *separate* account or *share* the member's benefit.

Separate Account

Under the separate account option,¹ an agreed-upon percentage of the contributions and service credit accrued during the marriage is transferred to the former spouse's account. If the active member is vested in VCERA as of the marital separation date, the former spouse may have some of the same rights as the member. For example, the former spouse may (a) file for retirement after age and service requirements are met or (b) withdraw contributions and interest transferred from the member's account.

*If the former spouse files for retirement,*² the monthly benefit will be based on his/her age at retirement and transferred service credit as well as the member's

¹ Pursuant to Government Code section 31685, et seq.

² Former spouse can retire when member has sufficient years of service and when either person attains the minimum age.

NEARLY ALL active members and former spouses choose separate accounts because doing so may provide a lifetime benefit to the former spouse (or the ability to refund contributions at will). But retirees are *required* to share the member's monthly benefit.

final average compensation. The benefit will be payable throughout the former spouse's lifetime and, depending on the retirement option elected, may continue to an eligible beneficiary after the former spouse dies.

If the former spouse withdraws the contributions and interest, he/she will irrevocably waive all rights to a lifetime VCERA benefit. If this occurs, the member has five years to redeposit the funds in VCERA to restore the lost service credit.

Shared Benefit

Under the shared benefit option, the former spouse's benefit is linked to the member's benefit. Therefore, the former spouse can only receive a monthly VCERA benefit or refunded contributions when the member elects to retire or withdraw contributions.

When the member retires, the former spouse usually receives a monthly benefit equal to the community property ("time rule") percentage of the member's benefit. Also, the former spouse's benefit is

payable only during the lifetime of the member (and his/her eligible beneficiary, if applicable). When the member and his/her beneficiary die, the former spouse's benefit ends.

Model DROs

VCERA offers multiple model DROs for members and attorneys to use. Although the models satisfy most situations, DROs can be edited to accommodate unique scenarios.

Because the DRO will direct how VCERA pays benefits, it is critical that it conforms to the laws governing VCERA. Please submit a draft DRO for review prior to court filing. If a DRO is filed in court without VCERA's pre-approval, VCERA has 30 days to approve the order or to file a motion to set it aside or modify it. The legal requirement to "join" VCERA to a divorce action can be satisfied if VCERA's General Counsel signs a stipulated DRO.

VCERA's Response to a Divorce

First, VCERA must determine if there is community property to be divided. If

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the Judgment/MSA clearly awards the entire VCERA pension to the member, no further action is needed. However, if a community property division with a former spouse is required by the court, VCERA will not take any action related to payment (e.g., retirement or refund) until a court-filed (“conformed”) DRO is on file. Depending on your membership status, VCERA’s response will vary:

Active and deferred members: If your DRO requires separate accounts, VCERA will split the member’s account promptly. However, if your DRO is not on file when you retire, VCERA will withhold benefit payments until it is received.

Retirees: Absent a court order or stipulation to withhold benefits, VCERA will continue to pay your monthly benefit until your DRO is on file. At that time, VCERA will calculate each party’s portion of the shared benefit and prospectively issue payments to each party.

Other Important Tips

- A divorcing couple can bypass the DRO process if their MSA states either that the VCERA account has been awarded as the member’s “sole and separate property” or that the former spouse waives all interest in the VCERA account.
- The assets earned by a member *before* the date of marriage and *after* the date of separation are the member’s separate property.

- A modified DRO may be required if a member made a service purchase or redeposit in the past or might do so in the future. The same is true if a member was awarded a service-connected disability retirement from VCERA.
- If a former spouse is awarded a separate account, he/she may elect a retirement option that provides a lifetime continuance to an eligible beneficiary (assuming the member was vested at the time of marital separation).
- A member’s beneficiary designation is void after a divorce is final. Members and former spouses are encouraged to keep their beneficiary designations up-to-date to ensure accurate and timely payment of death benefits.
- VCERA is not the same as the Ventura County Deferred Compensation Plan, which administers your 457 and 401(k) plans. Contact the Deferred Compensation representative at (805) 654-2620 with questions about that community property asset.

THE RULES and procedures governing VCERA’s divorce process are complex. Before making major decisions about the division of your retirement account, contact VCERA at (805) 339-4250 to discuss your situation and the model DRO that will best meet your needs.

If there is any difference between this publication and the County Employees Retirement Law of 1937 (CERL), the law shall prevail.

The material herein is for informational purposes only and does not constitute legal advice.



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Divorce & Community Property

