



Contra Costa County Employees'
Retirement Association

Retirement Benefits Handbook

Divorce or Domestic Partnership Dissolution

For all active, deferred and retired members

Divorce and Domestic Partnership Dissolution

Accrued retirement benefits are considered community property in California. Therefore, if you divorce or dissolve a registered domestic partnership, your benefit may be divided between you and your former spouse/partner, depending on the specific community property settlement agreed upon in your dissolution.

CCCERA is governed by the County Employees Retirement Law of 1937 (CERL) contained in the California Government Code. The division of CCCERA benefits is specifically governed by Article 8.4 of CERL, commencing with section 31685 and Family Code section 2610.

By law, CCCERA must be joined in (become a part of) your legal action to process your account appropriately. This joinder allows CCCERA to comply with the details of your marital settlement agreement or order as they apply to your retirement account. The court ordered agreement is called a Domestic Relations Order (DRO).¹

By law, active members' accounts are divided into two separate and distinct accounts at time of dissolution if so ordered by the court. The court is prohibited from imposing a DRO that pays benefits with a total value that exceeds the amount the active member would have received if the order had not been issued. After this account split, the active member and non-member (former spouse/domestic partner) each have the right to manage his or

her individual account going forward. They also have certain rules of law to follow.

After an account split, each person (active member and non-member) has sole control over his or her own account. Unless specifically provided by the DRO, or other legally mandated notifications, individual account activity is confidential. A required notification, for example, would be if the non-member takes a lump sum payment, which creates an opportunity for the active member to purchase forfeited service credit, or if the

WHAT TO DO WHEN:

Divorce or dissolution of a Registered Domestic Partnership:

1. Verify your beneficiary.
2. Understand changes to your service credit, if an account split has been ordered by a Domestic Relations Order (DRO). A former spouse cannot be removed as a beneficiary until community interest is resolved.

Name changes:

Notify CCCERA in writing of your new legal name. Proof is required, such as a Driver's License, Social Security Card, Passport, Marriage Certificate, or Divorce Decree.

active member retires before the non-member. It is important to discuss split account details with a CCCERA counselor in order to understand the process and the results. CCCERA also strongly suggests consulting with an attorney.

BENEFICIARY DESIGNATION

If a member is married or in a domestic partnership, California Law requires the beneficiary of their retirement account to be the member's spouse/domestic partner, unless a *Spousal Waiver (Form 303)*, or Section 5 of a *Beneficiary Designation Form (Form 102)* is signed and on file with CCCERA. After your account is split, each person may name a new beneficiary. If your dissolution results in your choice of a new beneficiary, be sure to change this information with CCCERA. For clarification, divorced/former registered domestic partner non-members are also called alternate payees.

What is a joinder?

CCCERA must be made a party in dissolution (divorce) cases, since retirement benefits are community property in California. A joinder is a form that must be filed with the court to legally include CCCERA in the dissolution action. CCCERA cannot accept a Domestic Relations Order (DRO) without a joinder.

It is important to review your beneficiary designation following a dissolution of marriage. The designation of a spouse as a beneficiary is automatically canceled by a dissolution of marriage which occurs after January 1, 2002, pursuant to Probate Code section 5600.

This information only applies to active members. If you become divorced, or your partnership is dissolved after retirement, the options are different. Post-retirement DROs do not split the account. Instead, they divide each monthly payment into two separate payments, based on the parties' respective share of the benefit. The nonmember should understand that terminating their marriage will terminate the nonmember's right, if any, to payments upon the death of the member unless the the member selected a "modified option" at the time of retirement. Contact CCCERA to confirm wwhich option was selected at retirement.

Members who have retired must complete a *Retiree Change of Beneficiary Designation (Form 206)*.

HOW ACCOUNTS ARE SPLIT

If you were married or in a California registered domestic partnership for part of your career, and that relationship dissolved, your community property settlement may include a DRO. The DRO may split your retirement account between you and your former spouse/partner. In this circumstance, some or all of your service credit and retirement contributions may be divided between you and your former spouse/partner. You do not lose your benefit eligibility but you may lose some years of service credit, which are awarded to your former spouse/partner, as part of a community property settlement. If your former spouse/partner takes a refund of contributions that were awarded in the settlement before you retire, you may be able to regain the lost service credit by re-depositing contributions.

Member eligibility for retirement and disability benefits is not affected by account splits. The following tables show some examples of how account splitting during divorce or domestic partnership dissolution may affect active members and former spouse/domestic partners.

MEMBER WITH FIVE OR MORE YEARS OF RETIREMENT SERVICE CREDIT	
Active Member	Non-Member
Account is split according to DRO.	May name new beneficiary.
Service credit and contributions are divided according to DRO.	May maintain new separate account.
Member may choose new beneficiary.	Interest will be credited to new account.
If spouse/partner takes a refund, member has five years to purchase service credits forfeited to former spouse/partner.	May later receive service retirement benefit.
Retirement eligibility is not affected.	May request a refund, closing account permanently.

MEMBER WITH LESS THAN FIVE YEARS OF RETIREMENT SERVICE CREDIT	
Active Member	Non-Member
Account is split according to DRO.	Must take a refund of contributions and interest.
Service credit and contributions are divided according to DRO.	After refund, no rights to future benefits.
Member may choose new beneficiary.	Interest will be credited to new account.
Member has five years after refund date to purchase service credits forfeited to former spouse/partner.	Refund may not be canceled.

DRO ACCOUNT SPLITTING AND RETIREMENT	
Active Member	Non-Member
Service credit requirement is met using combined service before account split plus any service earned after split.	Eligible at earlier of 1) member's eligibility due to age, or 2) non-member's eligibility due to age.
Benefit is based on service credit after split, plus any service purchased after account split, FAS and member's age factor.	If member retires prior to non-member, non-member may elect to leave account intact. FAS calculation is frozen at value used for member.
May choose any optional payout available.	Non-member may elect to begin receiving retirement benefit using service credits from account split, plus any purchased service credits. FAS based on member's salary at time of non-member's retirement. Age factor is non-member's, at time of retirement. May select any optional payout available.

MEMBER RE-DEPOSITS OF ACCOUNTS WHICH WERE WITHDRAWN AFTER DRO	
Active Member	Non-Member
Member has same re-deposit rights as before.	May not re-deposit his/her account once withdrawn.
May re-deposit non-member's share within five years of spouse/partner's notice of withdrawal.	May not re-deposit account withdrawn by member.

MEMBER RE-DEPOSITS OF ACCOUNTS WHICH WERE WITHDRAWN BEFORE DRO	
Active Member	Non-Member
If specified by DRO, member is eligible to purchase community property share.	If specified by DRO, non-member is eligible to purchase his/her community property share.
If DRO is silent, member is eligible to purchase entire service amount.	If DRO is silent, non-member may not purchase any service.
Installment payments allowed.	Must pay by lump sum only.
May purchase former spouse/partner's share if non-member receives a refund, or dies.	All eligible service must be purchased.

SERVICE PURCHASES: MEMBERS WITH FIVE OR MORE YEARS OF SERVICE CREDIT	
Active Member	Non-Member
If specified by DRO, member may purchase community property share.	If specified by DRO, non-member is eligible to purchase his/her community property share.
If DRO is silent, member is eligible to purchase entire service amount.	If DRO is silent, non-member may not purchase any service.
Installment payments allowed.	Must pay by lump sum only.
May purchase former spouse/partner's share if non-member receives a refund, or dies.	No purchase allowed if former spouse is paid a refund.

MEMBER WITH LESS THAN FIVE YEARS OF SERVICE CREDIT TERMINATES MEMBERSHIP	
Active Member	Non-Member
May elect refund or defer account. Final Average Salary is frozen at termination unless member establishes reciprocity with another public agency.	Must take a refund.

MEMBER WITH 5 OR MORE YEARS OF SERVICE CREDIT TERMINATES MEMBERSHIP	
Active Member	Non-Member
May elect refund or defer account. Final Average Salary is frozen at termination, unless member establishes reciprocity with another public agency.	Same choice as member, including Final Average Salary frozen at termination.

RE-DEPOSITS AFTER A DOMESTIC RELATIONS ORDER (DRO)

If you are required to divide accumulated service credit due to a divorce or domestic partnership dissolution court-ordered settlement, you may be able to reinstate (purchase) the service credit awarded to your former spouse/domestic partner with a re-deposit, under specific circumstances.²

Since separate accounts are created for both individuals, re-depositing contributions and interest may be possible for both the active member and/or the non-member (former spouse/domestic partner), in order to restore each account to pre-DRO levels. For example, non-members may only re-deposit contributions and interest previously refunded to the active member, and considered community property.

Active members may re-deposit contributions and interest forfeited to the non-member, only if the non-member takes a refund. The active member must re-deposit the funds within five years of notification that a refund was taken and no later than 120 days after retirement.

If a non-member takes a refund of court awarded contributions and interest, the non-member permanently relinquishes all rights to any retirement benefits, potential re-deposits, or service credit purchases.

Each dissolution is different, so be sure to speak with a retirement counselor to verify your options.

REFERENCES TO CERL

(1) 31685

§31685. Legal separation or marriage dissolution; date of separation; separation of member and nonmember accounts; nonmember's rights

(a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

- (1) The right to a retirement allowance.
- (2) The right to a refund of accumulated

retirement contributions.

(3) The right to redeposit accumulated contributions that are eligible for redeposit by the member.

(4) The right to purchase service credit that is eligible for purchase by the member.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

(Added by Stats. 1994, Ch. 670, Sec. 2).

(2) 31685, 31685.1, 31685.2, 31685.3, 31685.4

§31685.1. Nonmember

"Nonmember," as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.

(Added by Stats. 1994, Ch. 670, Sec. 2)

§31685.2. Nonmember awarded separate account; right to refund; application; effective date; waiver

(a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.

(b) The nonmember shall file an application on a form provided by the system to obtain the refund.

(c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.

(d) The nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective.

(e) The nonmember may not cancel a refund once it has become effective.

(f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.

(g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.

(h) If the nonmember receives a refund under this section, the member may elect

to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

(Added by Stats. 1994, Ch. 670, Sec. 2)

§31685.3. Nonmember's redeposit of accumulated contributions and interest previously refunded to member; court determination; member's rights

(a) The nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the member in accordance with the determination of the court required by Section 31685.

(b) The nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded

that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to the court-determined nonmember share of any previously refunded accumulated contributions and interest whether or not the nonmember elects to redeposit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before redeposit is completed. However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) Any redeposit by the nonmember shall be made by lump sum before retirement.

(Added by Stats. 1994, Ch. 670, Sec. 2)

§31685.4. Service credit; nonmember's right to purchase community property share; court determination; member's rights

(a) The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 31685.

(b) The nonmember may purchase only that service credit that the court has determined to be the community property share of the nonmember spouse.

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to the court-determined nonmember share of the service credit whether or not the nonmember elects to purchase the service credit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before the service credit is purchased. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(Added by Stats. 1994, Ch. 670, Sec. 2)