



VCERA

VENTURA COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

Divorce & Your VCERA Benefits

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Community Property

This booklet is intended to assist VCERA members in understanding a divorce's impact on their future retirement benefits. 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 marital 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 their *community property interest*.

VCERA cannot give legal advice concerning such matters, so you may choose to hire legal counsel to assist with your divorce proceedings. In this publication, information regarding marriage also applies to California state-registered domestic partnerships and domestic partnerships registered in states whose statutes provide rights and obligations similar to California law. Information regarding spouses and divorce also applies to registered domestic partners and dissolution of registered domestic partnerships, respectively.

Required Documentation

- Judgment of Dissolution (with attached MSA if applicable)
- Domestic Relations Order (DRO)

In a marital dissolution proceeding, the Court will issue a Judgment that divides the community property assets. The Judgment may be issued by the Court after an evidentiary hearing or may incorporate the terms of a Marital Settlement Agreement (MSA), which sets forth the terms of a divorce, including division of community assets. The Judgment must make a disposition of a member's VCERA account or benefits if accrued during any period of the marriage. If the Judgment/MSA is silent as to division of the community property interest in the member's VCERA account, it will be deemed an omitted asset, and the parties may need to return to Court for further orders.

A Domestic Relations Order (DRO) is necessary to enable VCERA to pay benefits directly to a former spouse and provides detailed direction to VCERA on how to divide the member's retirement account or benefits. Ideally, the couple signs a stipulated (agreed-upon) DRO that carries out the terms of their Judgment/MSA, but ultimately the DRO alone will determine VCERA's actions. A court-filed Judgment and DRO must be received before VCERA will pay any benefits.

A DRO is not needed if your MSA states 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 account.

Separate Account

Under the separate account option,¹ a percentage (typically 50%) of the accumulated member contributions and service credit accrued during the marriage is transferred to the former spouse's account. If the active member is vested (i.e., has 5 years of service credit) in VCERA as of the date of Judgment of Dissolution or Legal Separation, the former spouse may have some of the same rights as a 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 active member is not vested in VCERA as of the date of Judgment of Dissolution or Legal Separation, the former spouse does not have the right to file for retirement and must withdraw their contributions and interest. The withdrawal is neither mandatory nor discretionary if the shared benefit option is elected instead of the separate account option. The fixed supplemental benefit is also divided as outlined in the Community Property Division Policy.

If the former spouse files for retirement, the monthly benefit will be based on their age at retirement and transferred service credit as well as the member's final average compensation at the time of the former spouse's retirement. 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, they will irrevocably waive all rights to a lifetime VCERA benefit. If this occurs, the member has five years to optionally redeposit the funds in VCERA to restore the lost service credit, however any elected redeposits must be paid in full prior to the member's retirement date.

Most 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.

Shared Benefit

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

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 and fixed supplemental benefit, although the Court may approve a different percentage. Also, the former spouse's benefit is payable only during the lifetime of the member (and the member's eligible beneficiary, if applicable). When the member and their beneficiary die, the former spouse's benefit ends. If the member's benefit is eligible for cost of living increases (COLA), both the member and the former spouse will receive a COLA on their share of the benefit.

¹ Pursuant to Government Code section 31685, et seq and Family Code section 2610.

Model DROs

VCERA offers multiple model DROs for members and attorneys to use. **Appendix D** contains sample language for separate/segregated accounts. **Appendix E** contains sample language for a shared benefit. Although the model DROs satisfy most situations, they can be edited to accommodate specific scenarios, such as when a member makes a service credit purchase or applies for a service-connected disability retirement. If either situation applies to you, or if you would like “pro per” or electronic versions of the model DROs, please contact VCERA.

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 approval, VCERA has 30 days after service of the DRO to file a motion to set it aside or modify it as necessary to conform to VCERA’s governing laws. The legal requirement to “join” VCERA to a divorce action can be satisfied if VCERA’s General Counsel signs a stipulated DRO, thereby indicating VCERA’s consent to be bound by the terms of the DRO.

IMPORTANT: The member’s status as active or retired may affect which type of DRO the parties use. Additionally, the member’s status as vested or non-vested as of the date of Judgment of Dissolution or Legal Separation date may determine which retirement choices are available under the “separate account” option. See **Appendices A, B & C** for flowcharts that illustrate these alternatives.

VCERA Response to Divorce Notice

First, VCERA must determine if there is community property to be divided. If 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 conformed (file-stamped) 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.

Retired members: Notwithstanding the receipt of a joinder pleading or notice of adverse interest from a former spouse, VCERA will continue to pay your monthly benefit until your DRO is on file, unless VCERA receives an interim court order or stipulation that requires some or all of the benefit to be withheld, pending issuance of the DRO. Upon receipt, VCERA will calculate each party’s portion of the shared benefit and prospectively issue payments to each party.

Governing Law

VCERA is governed by the County Employees' Retirement Law of 1937 (CERL). The division of VCERA benefits is specifically governed by Article 8.4 of CERL, commencing with section 31685, and Family Code section 2610. A copy of Government Code Article 8.4 and Family Code section 2610 are contained in **Appendix F**.

Important Tips

- A divorcing couple may bypass the DRO process if their Judgment/Marital Settlement Agreement states that the VCERA account has been awarded as the member's "sole and separate property."
- The assets earned by a member before the date of marriage and after the date of separation are the member's separate property.
- If a former spouse is awarded a separate account, they may elect a retirement option that provides a lifetime continuance to an eligible beneficiary, provided the member was vested at the time of Judgment of Dissolution or Marital Separation.
- Members and former spouses are encouraged to keep their beneficiary designations up to date to ensure accurate and timely payment of death benefits.
- VCERA does not administer your 457 and 401(k) plans. Those plans are administered by the Ventura County Deferred Compensation Plan. Contact the Deferred Compensation representative at (805) 654-2620 with questions about the impact of divorce on 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, please contact VCERA at (805) 339-4250 to discuss your situation, the model DRO that will best meet your needs, and whether your draft Judgment/MSA contains clear language about your VCERA account.

Final Considerations

A divorce can be a long, complex and emotional process. Overlooking a critical step when preparing your DRO could jeopardize any retirement benefits to which you may be entitled. Here are some important considerations as you navigate divorce proceedings:

- At your request, VCERA can perform a “Community Property valuation” that provides the service credit and dollar value of the VCERA assets accrued during your community property period. The valuation also shows your earliest available retirement date and estimated monthly benefit amounts.
- You can either prepare your own DRO or hire an external attorney to represent you. VCERA offers model DROs for each scenario. See Appendices D & E for attorney- prepared DROs. Contact VCERA if you want to prepare your own DRO (“in proper”).
- A modified DRO may be required if you were awarded a service-connected disability retirement from VCERA. Contact VCERA for model DRO language.
- A modified DRO may be required if you made a service credit purchase in the past or might do so in the future. Contact VCERA for more information.
- A Legal Separation may be treated differently than a Marital Dissolution. Under a legal separation, the nonmember spouse may still be entitled to a continuance benefit following the death of the member.
- VCERA will not file the DRO for you. Once VCERA’s General Counsel has reviewed and signed a stipulation for DRO, it is *your* responsibility to file it with the Court.
- After your DRO has been stamped as filed by the Court and returned to you, the conformed copy must be submitted to VCERA. Soon after, VCERA will mail a letter to both parties showing the respective community property interests, such as service credit and contributions in each account.
- Upon dissolution of marriage, the beneficiary designation of your former spouse made prior to the dissolution is automatically revoked. A new Beneficiary Designation Form must be completed as soon as possible. However, you may name a former spouse as a beneficiary, provided the new form is signed after the date of dissolution. If a new form is not completed, any death benefits due will be paid to your contingent beneficiary(ies) or, if there is none, to your estate.

If you have further questions about VCERA’s divorce process or document requirements, please contact a Benefits Specialist at (805) 339-4250. VCERA cannot provide legal advice.

If there is any discrepancy between the County Employees’ Retirement Law of 1937, Family Code 2610, the VCERA Policy Regarding the Division of Community Property Interest, and the content of this publication, the law shall prevail. The material contained in this guide is for informational purposes only and does not constitute legal advice.

Revised 3/4/2025

Member Community Property Checklist

Notify VCERA

VCERA can provide you with information regarding the procedure for resolving community property claims, options for your VCERA account, and required documentation. Additionally, VCERA can supply a Community Property Valuation documenting the service credit and accumulated contributions you earned during the community property period.

Obtain Judgment from the Court

Provide VCERA with a copy of the complete Judgment, including any associated documents such as a Marital Separation Agreement. After the Judgment has been made, a DRO will need to be drafted. A DRO is not needed if the judgment states that the VCERA account has been awarded as the member's sole and separate property.

Provide VCERA with Draft DRO

Because the DRO will direct how VCERA pays benefits, it is critical that it conforms to the laws governing VCERA. VCERA can provide DRO templates to assist you in your court filing. Please submit a draft DRO for VCERA's General Counsel to review and sign before you file the DRO with the Court.

File DRO with the Court

Once VCERA's General Counsel has reviewed and signed your draft DRO, it is your responsibility to file it with the Court. VCERA can provide filing instructions upon request.

Submit Conformed DRO to VCERA

After your DRO has been stamped as filed by the Court and returned to you, the conformed copy must be submitted to VCERA. Soon after, VCERA will mail a letter to both parties showing the respective community property interests. Your former spouse will be mailed additional documentation required for VCERA to disburse their awarded benefit.

Update Beneficiary Designation

Upon dissolution of marriage, the beneficiary designation of your former spouse made prior to the dissolution is automatically revoked. A new Beneficiary Designation Form must be completed as soon as possible. However, you may name a former spouse as a beneficiary, provided the new form is signed after the date of dissolution. If a new form is not completed, any death benefits due will be paid to your contingent beneficiary(ies) or, if there is none, to your estate.

Appendices

Community Property Division Flowcharts & Model DROs

Appendix A

COMMUNITY PROPERTY DIVISION FLOWCHART for NON-VESTED ACTIVE & DEFERRED MEMBERS



Judge signs DRO splitting Member's VCERA account into separate accounts: one for Member, one for Nonmember



MEMBER'S PROPERTY

Includes community property portion of service and contributions and separate property

YOU CAN:

- Continue to work
- Terminate, then refund or rollover
- Defer retirement until eligible to retire*

Member has 5 years to redeposit funds to restore service

MEMBER BECOMES VESTED**

YOU CAN:

- Continue to work
- Terminate, then refund or rollover
- Defer retirement until eligible to retire
- Retire if eligible**

IF MEMBER DIES BEFORE RETIREMENT:
Pre-retirement death benefit paid to beneficiary

MEMBER RETIRES

MEMBER DIES:
Benefit continues to eligible beneficiary, if applicable

When Member and continuance beneficiary (if applicable) die,
BENEFIT ENDS



NONMEMBER'S PROPERTY

Includes community property portion of service and contributions transferred from Member's account

Nonmember is not eligible for pension benefit because Member does not have enough service (i.e., is not vested**) as of the date of Judgment of Dissolution or Legal Separation

Mandatory Refund

- * Age 70 if member is not vested
- Legacy:** Age 50 and 10 years of service
- Legacy (General):** 30 years of service
- Legacy (Safety):** 20 years of service
- PEPRA (General):** Age 52 and 5 years of service
- PEPRA (Safety):** Age 50 and 5 years of service

** VCERA members become "vested" after attaining five years of retirement service credit. Vesting can be achieved through employment as a VCERA member, eligible service purchases and reciprocal service.

Appendix B

COMMUNITY PROPERTY DIVISION FLOWCHART for VESTED ACTIVE & DEFERRED MEMBERS



Judge signs DRO splitting Member's VCERA account into separate accounts: one for Member, one for Nonmember



MEMBER'S PROPERTY

Includes community property portion of service and contributions and separate property

Member remains vested

YOU CAN:

- Continue to work
- Terminate, then refund or rollover
- Defer retirement until eligible to retire
- Retire if eligible*

Member has 5 years to redeposit funds to restore service

If not yet retired, Member can redeposit funds to restore service

IF MEMBER DIES BEFORE RETIREMENT:
Pre-retirement death benefit paid to beneficiary

MEMBER RETIRES

MEMBER DIES:
Benefit continues to eligible beneficiary, if applicable

When Member and continuance beneficiary (if applicable) die, **BENEFIT ENDS**



*Age 70, regardless of service

Legacy: Age 50 and 10 years of service

Legacy (General): 30 years of service

Legacy (Safety): 20 years of service

PEPRA (General): Age 52 and 5 years of service

PEPRA (Safety): Age 50 and 5 years of service

NONMEMBER'S PROPERTY

Includes community property portion of service and contributions transferred from Member's account

YOU CAN:

- Refund or rollover
- Defer retirement until eligible to retire
- Retire if eligible**

IF NON-MEMBER DIES BEFORE RETIREMENT:
Contributions paid to beneficiary

If Non-member retires before Member:

- Nonmember can choose retirement option that provides lifetime continuance to beneficiary If Nonmember retires before member, benefit based on Nonmember's age and service Member's final compensation as of that date If Nonmember retires on or after Member's retirement date, benefit based on Nonmember's age and service and Member's final average compensation at retirement

When Non-member and continuance beneficiary (if applicable) die, **BENEFIT ENDS**

NON-MEMBER DIES:
Benefit continues to eligible beneficiary, if applicable



** Non-member can retire when Member has sufficient years of service to retire and when Member or Non-member reaches minimum age

Appendix C

COMMUNITY PROPERTY DIVISION FLOWCHART for RETIRED MEMBERS

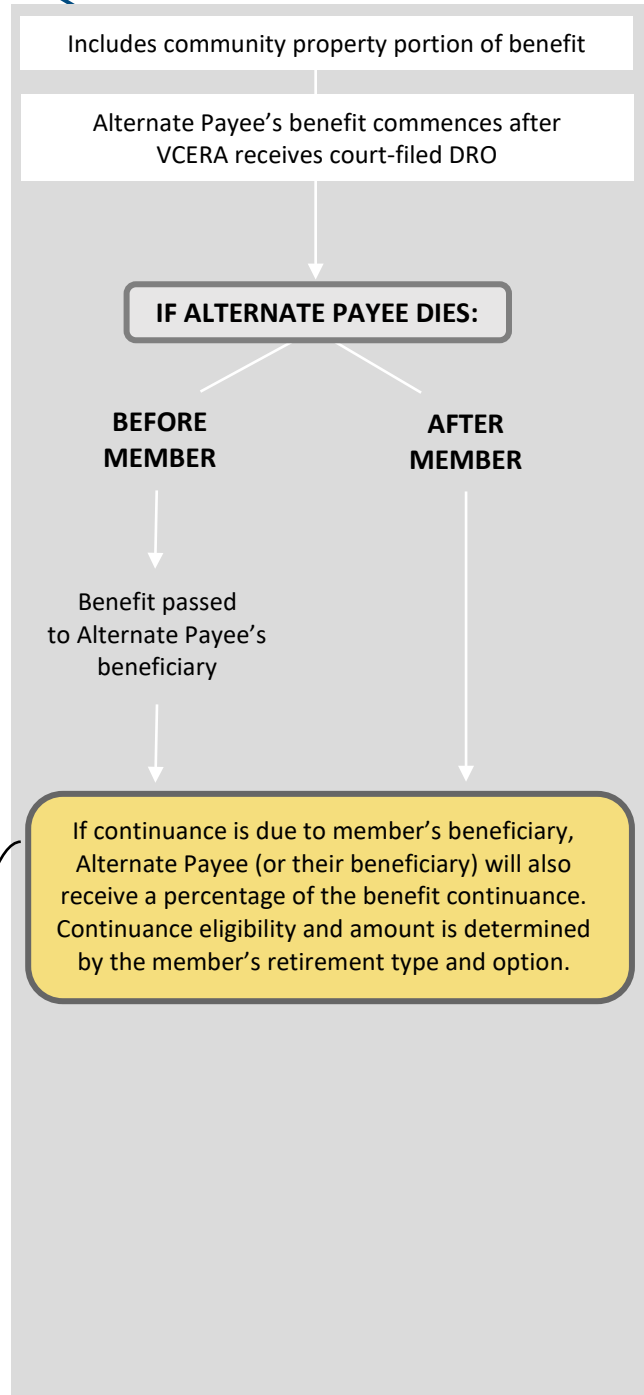
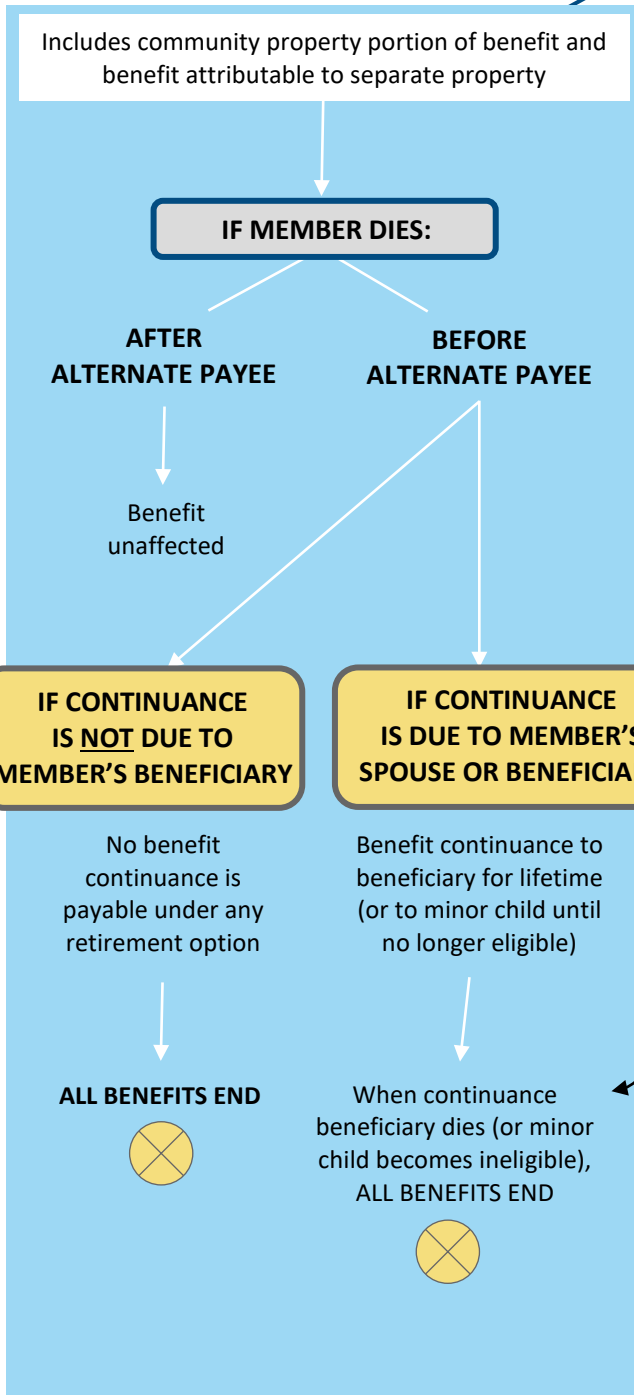


Judge signs DRO directing community property division of benefit. VCERA divides Member's retirement benefit with Alternate Payee (former spouse).



MEMBER'S BENEFIT

ALTERNATE PAYEE'S BENEFIT



Appendix D: Separate/Segregated Accounts

1 [Name of Counsel], [State Bar No.]
2 [Address:]

3 [Tel:]

4 [Fax:]

5 [E-Mail:]

6 Attorney for [Petitioner/Respondent]

7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

9
10 In Re the Marriage of:

NO. _____

11 _____,

12 Petitioner,

13 and

14 _____,

15 Respondent.

STIPULATED DOMESTIC
RELATIONS ORDER RE
DIVISION AND DISTRIBUTION
OF RETIREMENT BENEFITS

16
17 Claimant: VENTURA COUNTY
18 EMPLOYEES'
19 RETIREMENT
ASSOCIATION

20 Petitioner, _____ and Respondent,

21 _____, and the Ventura County Employees'

22 Retirement Association ("VCERA") hereby stipulate as follows:

23 **RECITALS**

24 1. Petitioner and Respondent were married to each other on _____.
25 They separated on _____, and this court entered a judgment of dissolution
26 of marriage in the action on _____.
27
28

1 5. In light of section 31685.5, subdivision (b), of the Government Code and
2 notwithstanding any other provision of this Order, if the Member does not have five
3 years of accumulated service credit as of the date of dissolution or legal separation, the
4 Nonmember shall receive a refund of the accumulated retirement contributions and any
5 interest that has been credited to such contributions which have been transferred to the
6 Nonmember's account as soon as administratively practicable following the date an
7 account was established for the Nonmember pursuant to paragraph 4 of this Order.

8 6. From and after the date that the Administrator has divided the Member's
9 accumulated retirement contributions and service credit pursuant to paragraph four of
10 this Order, the Nonmember shall be entitled to all applicable rights permitted under
11 section 31685, subdivision (c), of the Government Code, including:

12 (a) The right to a retirement allowance, subject to the provisions of
13 sections 31685, subdivision (d), 31685.5, 31685.6, 31685.7, 31685.8, 31685.9, 31685.95,
14 and 31685.96 of the Government Code.

15 (b) The right to a refund of accumulated retirement contributions, subject to the
16 provisions of section 31685.2 of the Government Code.

17 (c) The right to redeposit accumulated contributions that are eligible for redeposit
18 by the Member, subject to the provisions of section 31685.3 of the Government Code.

19 (d) The right to purchase service credit that is eligible for purchase by the
20 Member, subject to the provisions of section 31685.4 of the Government Code.

21 (e) The right to designate a beneficiary to receive his or her accumulated
22 contributions and any interest that has been credited to such contributions where death
23 occurs prior to retirement.

24 (f) The right to designate a beneficiary for any portion of the Nonmember's
25 VCERA interest which is payable at the time of his or her death.

26 7. If the Nonmember fails to designate a beneficiary pursuant to paragraph 6(e)
27 or 6(f) of this Order or the designated beneficiary does not survive the Nonmember, any
28 portion of the Nonmember's VCERA Interest which is payable at the time of his or her

1 death shall be paid in accordance with section 31458.2 of the Government Code, or in the
2 absence of a surviving spouse, to the estate of the Nonmember or otherwise according to
3 the laws of intestate succession.

4 8. The Nonmember's VCERA Interest will be increased by all applicable
5 interest, cost-of-living or other similar increases, but only to the extent permitted under
6 the '37 Act and the Bylaws of VCERA.

7 9. The Member and the Nonmember shall be responsible for, and pay, any taxes
8 due in connection with his or her receipt of distributions from VCERA.

9 10. The Member and Nonmember shall be responsible for filing a Designation of
10 Beneficiary form with the Administrator.

11 11. **Member's Name**. For the purpose of making any benefit payments provided
12 by the terms of this Order or providing any notice required by the terms of this Order,
13 Member's full name, current mailing address, telephone number and date of birth are as
14 follows:

15 Name: _____

16 Address: _____

17 _____

18 Telephone No. _____

19 Date of Birth: _____

20 12. **Nonmember's Name**. For the purpose of making any benefit payments
21 provided by the terms of this Order or providing any notice required by the terms of this
22 Order, Nonmember's full name, current mailing address, telephone number and date of
23 birth are as follows:

24 Name: _____

25 Address: _____

26 _____

27 Telephone No. _____

28 Date of Birth: _____

1 13. Notice of change of address or telephone number shall be made in writing to
2 VCERA, addressed as follows, or as the Administrator may specify in a written notice to
3 Member and Nonmember:

4 Ventura County Employees' Retirement Association
5 1190 South Victoria Avenue, Suite 200
6 Ventura, California 93003-6572

7 14. The Member and the Nonmember shall each provide to Claimant his/her
8 social security number, upon request, as may be necessary to administer this Order. The
9 Member and the Nonmember shall also sign all forms, letters and other documents as
10 required to effectuate the distribution(s) described herein and the intent of this Order.

11 15. The Nonmember, the Nonmember's agents and attorneys are authorized to
12 receive any and all information concerning the Member's benefits until such time as the
13 Nonmember has received the Nonmember's VCERA Interest.

14 16. Notwithstanding any other provision of this Order, the Order shall not be
15 construed as to require VCERA:

16 (a) To provide any form of benefit or any option not otherwise provided
17 under the '37 Act and the Bylaws of VCERA;

18 (b) To provide increased benefits (as determined based on actuarial value)
19 not available to the Member;

20 (c) To provide benefits to the Nonmember which are required to be paid to
21 another Nonmember under another order previously entered by a court of competent
22 jurisdiction and acceptable under the '37 Act;

23 (d) To provide payment to the Nonmember of benefits forfeited by the
24 Member; or

25 (e) To change the benefit election of the Member once the Member has
26 retired.

27 17. It is further ORDERED that the Member shall act as constructive trustee of
28 any benefits assigned to the Nonmember under this Order which may be paid to or

1 received by the Member. The Member, as trustee, shall promptly pay or transmit any
2 such benefits to the Nonmember at the Nonmember's last known address. It is also
3 ORDERED that the Nonmember shall act as constructive trustee of any benefits assigned
4 to the Member under this Order which may be paid to or received by the Nonmember.
5 The Nonmember, as trustee, shall promptly pay or transmit any such benefits to the
6 Member at the Member's last known address.

7 18. This Order shall be administered and interpreted in conformity with
8 the '37 Act and the Bylaws of VCERA and other applicable law. If the '37 Act and the
9 Bylaws of VCERA are amended, then the Member and the Nonmember shall
10 immediately take the steps necessary to amend this Order to comply with any such
11 amendments, changes and/or modifications, or, if permissible under any such change,
12 amendment, or modification to the '37 Act and the Bylaws of VCERA, the Administrator
13 may treat this Order as acceptable. The Member and the Nonmember shall be responsible
14 for any of the costs and/or expenses associated with such amendment.

15 19. The Member, the Nonmember, the Administrator, and the court intend that
16 this Order meet all requirements of a domestic relations order under the '37 Act and the
17 Bylaws of VCERA and other laws of the State of California, and the court shall reserve
18 jurisdiction to modify this Order and to resolve any disputes that may arise among the
19 parties and the Administrator concerning benefit payments or any other aspect of this
20 Order. If any portion of this Order is rendered invalid or otherwise unenforceable, the
21 court reserves jurisdiction to make an appropriate adjustment to effectuate the intent of

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1 the parties. Any future fees, taxes, and/or penalties will be assessed against the parties
2 who then have an interest payable from VCERA.

3 **IT IS SO STIPULATED:**

4 Dated: _____
5 [Name]
6 Petitioner

7 Dated: _____
8 Counsel for Petitioner

9 Dated: _____
10 [Name]
11 Respondent

12 Dated: _____
13 Counsel for Respondent

14 Approved as to form and content:

15
16 Dated: _____
17 LORI A. NEMIROFF
18 General Counsel
19 Attorney for Ventura County Employees'
20 Retirement Association

21 -----
22 **ORDER**

23 The parties having stipulated thereto and good cause appearing therefor,
24 IT IS SO ORDERED.

25 Dated: _____
26 JUDGE OF THE SUPERIOR COURT

1 administered by Claimant. His/her full name, last known mailing address and date of
2 birth are:

3 Name: _____

4 Address: _____

5 _____

6 Telephone No. _____

7 Date of Birth: _____

8 B. By virtue of his/her marriage to Member, [Petitioner/Respondent],
9 also referred to as "Nonmember," has a community property interest in such retirement
10 benefits. His/her full name, last known mailing address and date of birth are:

11 Name: _____

12 Address: _____

13 _____

14 Telephone No. _____

15 Date of Birth: _____

16 C. Member and Nonmember shall each provide to Claimant his/her
17 social security number upon request as may be necessary to administer this order.

18 D. Any notices required to be given by Claimant shall be deemed to
19 have been delivered if sent to the current mailing address, as updated by each party, by
20 United States Postal Service, First Class postage prepaid.

21 E. Member and Nonmember shall each keep Claimant advised at all
22 times of his/her current mailing address. At such time as Member shall apply for pension
23 and/or retirement benefits from Claimant, Claimant shall immediately so notify
24 Nonmember.

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2. DETERMINATION OF COMMUNITY PROPERTY INTEREST:

A. Member and Nonmember were married to each other on _____ . They separated on _____ , and this court entered a judgment of dissolution of marriage in the action on _____ . To the extent that Member’s retirement benefits under VCERA were earned during his/her marriage to Nonmember, said benefits are acknowledged to be community property.

B. The community property interest in said benefits equals the product of (a) Member’s service retirement benefits accrued to the date of his/her retirement under the County Employees’ Retirement Law of 1937 (hereinafter the “’37 Act”) (Gov. Code, § 31450 et seq.), as amended, as adopted by the County of Ventura and as administered by Claimant, and (b) a fraction, the numerator being the number of months of marriage while employed by the County of Ventura and/or any other entity that participates in the retirement plan administered by Claimant and a member of Claimant, and the denominator of which is the total number of months of Member’s said membership, as reflected by his/her calculated service retirement benefit.

C. The court shall, in this pending proceeding, award 50 percent (50%) of the community property interest, as calculated above, to Nonmember and the balance to Member.

3. CALCULATION AND PAYMENT OF COMMUNITY PROPERTY INTEREST IN COST-OF-LIVING ADJUSTMENTS:

To the extent that there are any cost-of-living adjustments (hereinafter “COLA”) made by Claimant to Member’s pension and retirement benefits, each such COLA, if any, shall be allocated between Member and Nonmember in the same percentage as they share in Member’s pension and retirement benefits.

4. MEMBER’S SEPARATE PROPERTY INTERESTS:

The portion of the retirement benefit remaining after the community interest is determined, as above, is confirmed as Member’s separate property, and is not

///

1 subject to disposition herein. This amount shall be paid directly to Member by Claimant
2 at such time as retirement benefits are otherwise payable to Member.

3 **5. PAYMENT BY CLAIMANT OF DIVIDED RETIREMENT**

4 **BENEFITS:**

5 CHOOSE ONE OR MODIFY AS DESIRED:

6 A. [For use when Member has not yet applied for retirement benefits:
7 At such time as Claimant begins to duly distribute Member's subject retirement benefits,
8 Claimant, or its successor, upon the written request of Nonmember, and as conditioned
9 below, shall pay directly to Nonmember his/her 50 percent (50%) of the community
10 property interest as defined above.

11 OR

12 [For use when Member is receiving monthly retirement benefits: Member is
13 currently receiving monthly retirement benefits from Claimant. As soon as practicable
14 after receipt of this Order, Claimant shall pay directly to Nonmember his/her 50 percent
15 (50%) of the community property interest as defined above.

16 B. In the event that Member is eligible to make, and does make, any
17 optional retirement benefit election which results in a lesser monthly retirement benefit
18 payment than that which is provided by the unmodified allowance payable under
19 Government Code section 31760.1, such reduction shall be chargeable solely to
20 Member's portion of the payment and shall not serve to reduce the amount awarded to
21 Nonmember.

22 **6. PAYMENT TO BENEFICIARY OF NONMEMBER:**

23 In the event that Nonmember dies before Member spouse, Nonmember
24 hereby designates as the beneficiary of his/her share of the community interest in the
25 retirement benefit the following person(s) (social security number(s) to be provided to
26 Claimant upon request):

27 Name(s) _____

28 ///

1 This beneficiary designation may be changed by Nonmember at any time by filing with
2 Claimant such documents as may be required to effectuate such change.

3 **7. CALCULATION AND PAYMENT OF COMMUNITY INTEREST**
4 **IN DEATH BENEFITS:**

5 To the extent that there are any death benefits payable on account of Member's
6 death pursuant to the provisions of the '37 Act, as amended, as adopted by the County of
7 Ventura, and as administered by Claimant, the community interest in those benefits shall
8 be determined in the same manner for calculating the community interest in monthly
9 retirement benefits, as provided in Paragraph 2B, herein. One-half (1/2) of the
10 community interest in any death benefit as so determined is payable directly to
11 Nonmember by Claimant. Claimant shall be under no obligation to make a payment of
12 such death benefits to any person until and unless the exact amount owing to
13 Nonmember and to any other person is determined either by (a) this court in a duly
14 entered order, or (b) Nonmember and the personal representative of Member, or, if none,
15 Member's beneficiary, in a signed writing furnished to Claimant. The remaining portion
16 of the death benefit, after payment to the Nonmember of said interest, shall be payable
17 directly to Member's designated beneficiary, or according to law.

18 **8. RESERVATION OF RIGHTS TO CLAIMANT:**

19 Nothing in this stipulation shall obligate Claimant to perform any act or to fail to
20 take action in a manner which conflicts with the '37 Act, as amended, as adopted by the
21 County of Ventura, and as administered by Claimant, including, without limitation,
22 action affecting the continuation of retirement benefit payments. Petitioner and
23 Respondent shall, however, retain the right to petition the Board of Retirement of
24 Claimant to challenge any action taken by Claimant which adversely affects the
25 retirement benefits being divided by this stipulation.

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1 **9. PAYMENT BY EACH PARTY OF RESPECTIVE TAX**

2 **OBLIGATION:**

3 Member and Nonmember shall each pay, and indemnify and hold the other free
4 and harmless from, any and all federal, state and local income taxes, penalties, interest,
5 and/or any other charges, if any, related to the benefits such party received under this
6 stipulation. Each party shall make information available to the other, and Member
7 hereby authorizes Claimant to release such information to Nonmember so that each party
8 may determine the taxable and nontaxable portions of any benefit paid by virtue of this
9 stipulation. In addition, Member and Nonmember shall execute and deliver to Claimant,
10 on request of Claimant, any and all documents necessary, including appropriate
11 withholding documents, as may be required by Claimant.

12 **10. CONSTRUCTIVE TRUST:**

13 It is further ORDERED that the Member shall act as constructive trustee of
14 any benefits assigned to the Nonmember under this Order which may be paid to or
15 received by the Member. The Member, as trustee, shall promptly pay or transmit any
16 such benefits to the Nonmember at the Nonmember's last known address. It is also
17 ORDERED that the Nonmember shall act as constructive trustee of any benefits assigned
18 to the Member under this Order which may be paid to or received by the Nonmember.
19 The Nonmember, as trustee, shall promptly pay or transmit any such benefits to the
20 Member at the Member's last known address.

21 **11. RESERVATION OF JURISDICTION:**

22 A. The court shall, in this pending proceeding for dissolution of
23 marriage, expressly reserve jurisdiction over the disposition of the retirement benefits
24 earned by virtue of Member's employment with the County of Ventura and/or any other
25 entity that participates in the retirement plan administered by Claimant and to make all
26 necessary and appropriate orders regarding those benefits pursuant to applicable law.

27 B. Member, Nonmember, and Claimant shall each have the right to
28 petition this court for exercise of such reserved jurisdiction at any time.

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12. EXECUTION:

Each party shall execute and deliver any and all documents, papers, and things as the other party may require to give full effect to this order.

IT IS SO STIPULATED:

Dated: _____
[Name]
Petitioner [Member/Nonmember]

Dated: _____
Counsel for Petitioner

Dated: _____
[Name]
Respondent [Member/Nonmember]

Dated: _____
Counsel for Respondent

Approved as to form and content:

Dated: _____
LORI A. NEMIROFF
General Counsel
Attorney for Ventura County Employees'
Retirement Association

ORDER

The parties having stipulated thereto and good cause appearing therefor,
IT IS SO ORDERED.

Dated: _____
JUDGE OF THE SUPERIOR COURT

Appendix F: Excerpts from Applicable Statutes

Government Code

ARTICLE 8.4. COMMUNITY PROPERTY

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 31685.5. Nonmember's retirement; conditions

A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

(a) The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member.

(b) On the date of retirement, the member had sufficient credited service to retire for service, notwithstanding any service credit awarded to the nonmember.

§ 31685.6. Effective date of retirement; accrual of retirement allowance

Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's

application as the effective date of retirement, or the day following the date of court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board.

§ 31685.7. Final compensation; retirement dates of nonmember and member

(a) If the nonmember retires before the member retires, "final compensation" means the highest average annual compensation earnable by the member during the three consecutive years, or one year where applicable, prior to the date the nonmember retires. The nonmember may designate an earlier period to be used where the time period of the nonmember's marriage to the member and membership correspond.

(b) If the member has retired before the nonmember, the "final compensation" for the nonmember shall be the final compensation used in calculating the member's retirement.

(c) Upon receipt of an application for retirement by the member, the board shall notify the nonmember that his or her final compensation will not increase any further and shall identify which options are available to the nonmember and the impact thereof.

§ 31685.8. Service retirement formula; service credited to nonmember

A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

§ 31685.9. Disability of member

If a member becomes disabled, the combined benefit payments to both the member and nonmember shall not exceed the amount that would otherwise be paid to the member alone.

§ 31685.95. Retirement plan payments resulting in increased benefits; actuarial economic and demographic assumptions and values

(a) Under no circumstances shall a retirement plan be required to make payments in any manner that will result in an increase in the amount of benefits provided under the plan.

(b) All benefits determined pursuant to Part 5 (commencing with Section 2610) of Division 7 of the Family Code and this article shall be determined on the basis of the actuarial economic and demographic assumptions and values prescribed by the board of the affected retirement plan.

§ 31685.96. Age factors

(a) The age factor applicable to the nonmember shall be based on the age of the nonmember at the time of his or her retirement.

(b) The board shall adopt age factors as recommended by the actuary.

§ 31685.96. Operation of article; resolution by county

This article shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this article applicable in the county.

Family Code

§ 2610. Retirement plans; orders to ensure benefits

(a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

- (1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550.
- (2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.
- (3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:
 - (A) Article 2 (commencing with Section 21290) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.
 - (B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.
 - (C) Article 8.4 (commencing with Section

31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.

(E) Chapter 15 (commencing with Section 27400) of Part 14 of the Education Code.

(4) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

- (1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.
 - (2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.
- (c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).