



COMMUNITY PROPERTY DIVISION (CERL ARTICLE 8.4)

I. PURPOSE

The Board of Retirement (“Board”) of the Sonoma County Employees’ Retirement Association (“SCERA”) adopts this policy to explain and provide rules for division of community property interests in SCERA retirement benefits pursuant to Article 8.4 of the County Employees Retirement Law of 1937 (“CERL”) (Gov. Code §§ 31685-31685.96).

II. AUTHORITY

The County Employees Retirement Law of 1937 (Government Code §§ 31685-31685.96) provides for the establishment of separate accounts for members and nonmembers in the event of a divorce or legal separation. A “nonmember” is defined as “the spouse¹ 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.” (Gov. Code § 31685.1)

The Sonoma County Board of Supervisors, at the request and recommendation of the SCERA Board, resolved by majority vote on April 10, 2018 to make Article 8.4 applicable in the County of Sonoma as of that date. (Resolution 18-0126)

III. POLICY

General Information

CERL Article 8.4 provides an optional method for the division of community property interests in a member’s retirement account upon legal separation or dissolution of marriage. Article 8.4 allows a member account to be divided into two separate accounts upon order of the court. One of the accounts remains in the name of the member. The other account is in the name of the nonmember. The nonmember’s account is credited with the nonmember’s share of the community property interest in both the accumulated contributions and accrued service credit from the member’s account.

This policy applies only to division of member accounts pursuant to Article 8.4. (Gov. Code §§ 31685-31685.96) This policy and the adoption of Article 8.4 in the County of

¹ The term “spouse” as used in this policy includes state registered domestic partners. California law does not recognize common-law marriage. Therefore, common-law spouses will not be treated as spouses for the purposes of SCERA’s adoption of Article 8.4 and this policy.

Sonoma shall have no retroactive effect and shall have no application to any Domestic Relations Order ("DRO") previously filed with the court and implemented by SCERA.

Article 8.4 and this policy are only applicable to member accounts when the member is an active or deferred member of SCERA at the time the DRO is filed with the court.

Article 8.4 and this policy do not apply to members who are retired at the time the DRO is filed with the court.

Provisions Optional

Adoption of Article 8.4 is intended to provide parties with additional flexibility in drafting DROs. Members are not required to use the method of community property division set forth in Article 8.4. Family Code § 2610 (a)(3) states the court may order division of the community property interest in the member's SCERA retirement account pursuant to Article 8.4 upon agreement of the nonemployee spouse.

Joinder Required

SCERA must be joined in all dissolution and legal separation cases where the court issues a DRO. SCERA is not bound by a DRO until the court obtains jurisdiction over SCERA through a Joinder. (Fam. Code § 2060 (b))

Review and Approval of DRO Prior to Filing With Court

SCERA requires that a member, nonmember, or attorney submit a draft DRO to SCERA for review prior to filing the DRO with the court. If a DRO is filed with the court without SCERA's prior review and approval, SCERA may file a request to set aside or modify the DRO within 30 days of service of the DRO on SCERA. (Fam. Code § 2073) The DRO will not be effective until the court has resolved any issues with the DRO. The court is prohibited from imposing a DRO on SCERA that 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. (Fam. Code § 2610(b))

Confidentiality

Upon division of the member's account pursuant to DRO, each party will have sole control over the party's own account. Unless specifically provided by the DRO or necessary for SCERA to administer the terms of the DRO, member and nonmember accounts will be confidential with respect to inquiries from the other party. Information pertaining to member and nonmember accounts may be released upon SCERA's receipt of written authorization from the account holder or in response to a properly issued subpoena.

Vesting

A member who is vested at the time a DRO is issued will continue to be vested with SCERA even after the court ordered transfer of service credit to the account of the nonmember. For the purposes of this policy, a member is vested when he or she has sufficient service credit to elect deferred retirement under Gov. Code § 31700. This provision does not affect nonmember vesting as discussed below. Vesting in this policy does not equate to retirement eligibility.

Legal Representation

Neither the Board of Retirement nor SCERA staff can provide legal advice or assistance on this subject. The parties are advised to consult with a qualified attorney prior to entering into any agreement for division of benefits under Article 8.4 or any other provision of law.

Scenarios and Outcomes

The following scenarios summarize possible events and the related impact on member and nonmember accounts. These scenarios are meant to address the majority of situations, but they cannot anticipate every situation. In the event a case presents issues not covered in the following scenarios, SCERA staff will make a determination based on the facts of that individual case.

1. Member is vested in SCERA
 - a. Member's account – Member's service credit, contributions, and interest credited to the member's account are divided in accordance with the provisions of the DRO. The member remains vested in SCERA regardless of the amount of service credit remaining in the member's account after division. SCERA will request that the member designate one or more beneficiaries, and the member may elect the unmodified benefit or one of the other optional benefits set forth in CERL Article 11 upon retirement. For member retirement eligibility requirements, see Section 5 below.
 - b. Nonmember's account – SCERA will establish a separate account for the nonmember with service credit, contributions, and interest transferred from the member's account in accordance with the provisions of the DRO. SCERA will request that the nonmember designate one or more beneficiaries who will receive a lump sum payment of contributions and interest in the nonmember's account if the nonmember dies prior to the nonmember's retirement. The nonmember may request a refund of contributions and interest, commence receipt of a monthly retirement benefit if eligible under § 31685.5, or elect to

defer retirement until such time as the nonmember elects either a refund of contributions and interest or becomes eligible to receive a monthly retirement benefit. For nonmember retirement eligibility requirements, see Section 5. For nonmember benefit election options, see Sections 6 and 7 below.

2. Member is not vested in SCERA

- a. Member's account – Member's service credit, contributions, and interest credited to the member's account are divided in accordance with the provisions of the DRO. The member will become vested based on the combined service in both the member's and the nonmember's accounts. SCERA will request that the member designate one or more beneficiaries, and the member may elect the unmodified benefit or one of the other optional benefits set forth in CERL Article 11 upon retirement.
- b. Nonmember's account – SCERA will establish a separate account for the nonmember with service credit, contributions, and interest transferred from the member's account in accordance with the provisions of the DRO. The nonmember shall be paid a refund of the accumulated contributions and interest placed in the nonmember's account. (Gov. Code § 31685.2 (g)) The nonmember may rollover the refund as permitted by law.

3. Nonmember is paid a refund

- a. Member's account – SCERA will notify the member in writing that the member is eligible to redeposit contributions and interest refunded to the nonmember plus any interest accrued on the total amount refunded after the refund is paid to the nonmember. The member shall have five (5) years from the date the notice is received by the member to elect to purchase the service credited to the nonmember by redepositing contributions and interest. The SCERA Board will determine the manner and time period within which the redeposit of contributions and interest may be made. The interest rate will be the same as that charged by SCERA for other redeposits or service purchases.
- b. Nonmember's account – A refund to the nonmember, whether required because the member is not vested or at the election of the nonmember, is effective when SCERA deposits a warrant in the nonmember's favor in the U.S. mail or common carrier or electronically deposits the refund in an account designated by the nonmember. Upon the effective date of the refund, the nonmember permanently waives all rights to any future retirement benefits from SCERA. Nonmember may not redeposit contributions and interest that has been withdrawn and may not rescind the refund after the effective date.

4. Nonmember is not paid a refund (member is vested)
 - a. Member's account – No effect. The member may continue to accrue service credit in the member's account and retire based on accumulated service and contributions in the member's account when eligible.
 - b. Nonmember's account – Nonmember may elect a deferred retirement. Contributions on deposit will be credited with interest semiannually. Nonmember may rescind the deferred retirement election and elect to receive a refund of contributions and interest. Nonmember may receive a service retirement allowance if eligibility requirements are met. The nonmember's service retirement allowance shall be based on the service retirement formula applicable to the service credited to the nonmember.
5. Eligibility for service retirement
 - a. Member's account – The member will be eligible for service retirement upon meeting age and service requirements. The service eligibility requirement is met using the member's combined service before division of the account plus service credit accrued after division of the account.
 - b. Nonmember's account – Either the member or the nonmember must reach the minimum age prescribed by the service retirement formula applicable to the member, and on the date of the nonmember's retirement, the member must have sufficient service to qualify for service retirement, including service awarded to the nonmember in the account division.
6. Member retires before nonmember
 - a. 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, including service in the member's account after the account division, service credit accrued after the account division (separate property), and any other eligible service credit purchased by the member. Member may elect any retirement option and designate beneficiaries according to general service retirement rules.
 - b. Nonmember's account – SCERA will provide written notice of the member's retirement to the nonmember at the last known address of the nonmember. Nonmember may elect to begin receiving retirement benefits or defer retirement until such time as the nonmember chooses. Final compensation for the nonmember is set at the rate used to calculate the member's retirement

benefit regardless of when the nonmember begins receipt of retirement benefits. The retirement allowance of the nonmember shall be calculated pursuant to the benefit formula applicable to the member at the time the service in the nonmember's account was accrued and the age factor applicable to the nonmember on the nonmember's retirement date.

The nonmember shall elect an optional retirement allowance as provided in Gov. Code §§ 31761, 31762, 31763, or 31764.² The nonmember will be solely responsible for any reduction in benefit due to the election of an optional retirement allowance. The election of an optional retirement allowance is the only method by which the nonmember may provide a survivor continuance. The nonmember shall nominate a beneficiary or beneficiaries for receipt of a lump sum distribution of any remaining accumulated contributions in the nonmember's account at the time of the nonmember's death (Gov. Code § 31761) or survivor continuance (Gov. Code §§ 31762, 31763, and 31764).

7. Nonmember retires before member

- a. Member's account – No effect
- b. Nonmember's account – The nonmember's retirement benefit is calculated based on the member's final compensation calculated at the time of the nonmember's retirement, service credit received by the nonmember from the division of the member's account plus any additional eligible service credit purchased by the nonmember, and age factor based on the nonmember's age on the retirement effective date. The nonmember's retirement allowance shall be calculated pursuant to the benefit formula applicable to the member at the time the service in the nonmember's account was accrued.

The nonmember shall elect an optional retirement allowance as provided in Gov. Code §§ 31761, 31762, 31763, or 31764.³ The nonmember will be solely responsible for any reduction in benefit due to the election of an optional retirement allowance. The election of an optional retirement allowance is the only method by which the nonmember may provide a survivor continuance. The nonmember shall nominate a beneficiary or beneficiaries for receipt of a lump sum distribution of any remaining accumulated contributions in the nonmember's account at the time of the

² The nonmember is not eligible for the unmodified benefit because payment of the survivor continuance under the unmodified benefit may result in an increase in the amount of benefits available under the SCERA plan. (Gov. Code § 31685.95)

³ See footnote 2 above.

nonmember's death (Gov. Code § 31761) or survivor continuance (Gov. Code §§ 31762, 31763, and 31764).

8. Service credit purchases

- a. Member's account – Member may purchase service eligible for purchase subject to any limitations set forth in the DRO. The member may also purchase the nonmember's community property share if the nonmember dies without purchasing the service, or the nonmember receives a refund pursuant to Gov. Code § 31685.2. If the DRO does not specify, the member may purchase any eligible service. Purchase of service credit must be completed prior to the member's retirement and is subject to SCERA service purchase rules.
- b. Nonmember's account – Nonmember may purchase the community property share of any eligible service credit subject to any limitations set forth in the DRO. Payment for service credit purchases must be made in a lump sum prior to the date of the nonmember's retirement. If nonmember received a refund of contributions and interest when the member's account was divided, the nonmember is not eligible to purchase service credit.

9. Redeposit of contributions withdrawn prior to DRO

- a. Member's account – Member has the same options for service purchases as stated in number 8. a. above.
- b. Nonmember account – Nonmember has the same options for service purchases as stated in number 8. b. above.

10. Redeposit of contributions withdrawn after DRO

- a. Member account – Member may redeposit previously withdrawn contributions, plus applicable interest according to SCERA redeposit rules, to reinstate service credit. Member may also redeposit any contributions, plus interest, withdrawn by nonmember if the member elects to make such redeposit within five (5) years of receipt of notice from SCERA of nonmember's withdrawal.
- b. Nonmember account – Nonmember may not redeposit the nonmember's withdrawn contributions or redeposit contributions withdrawn by the member under any circumstances.

11. Member dies prior to retirement

- a. Member account – The member's beneficiary will be eligible to apply for death benefits. Death benefits will be awarded based on the service and contributions in the member's account at the time of the member's death.
- b. Nonmember account – SCERA will provide written notice of the member's death to the nonmember. Nonmember may apply for service retirement when eligible or withdraw contributions and interest.

12. Vested member terminates service

- a. Member account – Member may retire for service if eligible, elect to receive a refund of the member's contributions and interest, or elect a deferred retirement. Unless reciprocity is established, final average compensation is frozen at member's termination.
- b. Nonmember account – Nonmember may retire for service if eligible, elect to receive a refund of the nonmember's contributions and interest, or elect a deferred retirement. Unless the member establishes reciprocity, final average compensation is frozen at member's termination.

13. Member is granted a disability retirement but has not met age requirements for service retirement

- a. Member account – Member receives disability retirement amount calculated according to the type of disability retirement granted, service credit remaining in the member's account, and final average compensation.
- b. Nonmember account – Nonmember is not eligible to receive a retirement benefit until either the member or the nonmember reaches the minimum age prescribed by the service retirement formula applicable to the member while the member was in service. If the member is vested, the nonmember may withdraw the nonmember's contributions plus interest or defer retirement until age requirements are met.

Under no circumstances may the combined benefit payable to the member and nonmember exceed the disability benefit that would have been paid to the member alone had the DRO not been issued. After determination of the amount of the disability retirement being paid at the time the nonmember is eligible to receive a service retirement, the parties will be required to obtain a court order amending the DRO to allocate the percentage of the disability retirement benefit to be paid to each party.

14. Member is granted a disability retirement and meets the age requirements for a service retirement – After determination of the amount of the disability retirement,

the parties will be required to obtain a court order amending the DRO to allocate the percentage of the disability retirement benefit to be paid to each party. Under no circumstances may the combined benefit payable to the member and nonmember exceed the benefit that would have been paid to the member alone had the DRO not been issued.

IV. HISTORY

The Board adopted this policy on May 24, 2018.