

A Guide to CalPERS
Community Property



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INTRODUCTION

In California, upon dissolution of a marriage or registered domestic partnership, or a legal separation, the California Public Employees' Retirement System (CalPERS) may divide a member's benefits in accordance with state law. The purpose of this publication is to provide you with information about CalPERS (also referred to as the System) and to assist you in drafting court orders applicable to CalPERS retirement benefits. You should not consider this publication as a substitute for legal advice, as by law, CalPERS cannot provide such advice.

About This Publication

This publication explains the impacts on CalPERS benefits caused by divorce or legal separation. It describes the methods CalPERS uses to divide community property and the procedures CalPERS uses for processing and implementing domestic relations orders that allocate and award a portion of a member's retirement benefits to a nonmember spouse.

In addition, this publication provides guidance to an attorney who may be assisting either party through the divorce process.

As a courtesy, we include sample court orders (see the accompanying Publication 38B titled *CalPERS Model Domestic Relations Orders*) and instructions for completing them. Use these as guidelines only. CalPERS cannot provide legal advice regarding any member's account. You or your nonmember spouse should consult with an attorney for advice pertaining to your individual situation.

While reading this material, keep in mind that CalPERS is governed by the Public Employees' Retirement Law (PERL). The statements in this guide are general. The PERL is complex and subject to change. If there is a conflict between the law and this publication, the law prevails.

How Divorce Affects CalPERS Retirement Benefits

California community property law considers retirement benefits earned during a marriage as an asset of the marriage that may be divided upon legal separation or dissolution of a marriage or registered domestic partnership. If the member divorces before receiving a retirement benefit, CalPERS may divide the account according to the "time rule formula" or "separation of account" method. If the member divorces while receiving a retirement or disability benefit, the court may divide the benefit according to the time rule or by specifying a flat dollar amount or a percentage.

A "nonmember spouse" is a member's spouse or former spouse, registered domestic partner or former registered domestic partner, who is awarded a community property interest in the member's retirement benefits with CalPERS. We use this term even when both spouses or domestic partners are CalPERS members.

CalPERS, as a governmental plan, is not subject to ERISA and will not accept an order that awards a nonmember rights under ERISA.

Plan Information

The plan administered by CalPERS is a “governmental plan” as defined in section 414(d) of the Internal Revenue Code of 1986. It is not subject to the provisions of section 414(p) of the Internal Revenue Code and section 206(d) of the Employee Retirement Security Act (ERISA), both of which govern “qualified domestic relations orders.” The terms of the plan are set forth in the California Public Employees’ Retirement Law (PERL), which you can find at section 20000, et seq., of the California Government Code.

The administrator of the plan is the CalPERS Board of Administration. The plan is a defined benefit plan in which most members contribute a percentage of their salary to the System. CalPERS separates member contributions into individual member accounts that members may withdraw, along with any accrued interest, upon permanent separation from CalPERS-covered employment. By withdrawing contributions, members give up their entitlement to a monthly retirement allowance. If they do not withdraw their monthly contributions, they may at retirement elect to receive an unmodified monthly allowance paid for the rest of their life. Alternatively, they may elect to reduce their allowance and receive one of the optional settlements. **Members’ contributions, if any, fund the “annuity” portion of any monthly allowance they elect.**

The employer also contributes a percentage of the member’s salary to the System, and may contract with CalPERS to provide other benefits as well, such as certain death benefits. Unlike member contributions, employer contributions are not separated into individual member accounts and they are not subject to withdrawal upon termination of CalPERS-covered employment. **Employer contributions fund the “pension” portion of the member’s monthly retirement allowance.** If a member chooses to withdraw their monthly contributions, they not only give up receiving a monthly retirement allowance, but they also give up the employer’s contributions made on their behalf.

The above description of the plan is a summary of how the plan operates. For a complete description of the plan, we recommend the parties and their counsel review the PERL and the appropriate member publication that relates to the membership category. The member publication summarizes the various benefits available to the member. You may download publications at www.calpers.ca.gov or ask us to mail you one by calling **888 CalPERS** (or **888-225-7377**).

Health Benefit Information

This section applies to members or retirees only if enrolled in a CalPERS-sponsored health plan under the Public Employees' Medical and Health Care Act (PEMHCA). The former spouse loses eligibility for health benefit coverage under the member's insurance at midnight the last day of the month in which the marriage terminated. A former spouse may, however, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), elect to continue coverage under the employer's group health plan at their own expense for a period of up to 36 months from the date coverage would otherwise be lost as a result of the divorce.

For more information regarding COBRA rights, please contact the employer if the member is currently employed under a PEMHCA agency. If the member has retired and has CalPERS-covered insurance, please contact:

Health Account Services
P.O. Box 942714
Sacramento, CA 94229-2714
888 CalPERS (or **888-225-7377**)

It is the member's responsibility to report to their personnel office a dissolution of marriage that results in the loss of insurance coverage for a nonmember spouse. If the member is retired, the member must report the dissolution of the marriage to CalPERS within 60 days of the date that the marriage terminated. Otherwise, the nonmember spouse will not be eligible for COBRA coverage.

If you are in a domestic partnership and need assistance regarding a division of your CalPERS pension due to the dissolution of a domestic partnership, please contact the Community Property Unit at **888 CalPERS** (or **888-225-7377**).

REGISTERED DOMESTIC PARTNERS

A Registered Domestic Partner is a person who has completed and filed a Declaration of Domestic Partnership with the California Secretary of State in accordance with Family Code section 298.

A Registered Domestic Partnership is created when partners of the same sex, or partners of opposite sexes where one partner is at least 62 years old, complete and file a Declaration of Domestic Partnership with the Secretary of State in accordance with Family Code section 298.5.

CalPERS benefits are considered community property under California law. Upon the dissolution or termination of a registered domestic partnership, the court may divide CalPERS benefits just as they would divide other assets and community property in the dissolution of marriage.

Tax Information for Domestic Partnerships

The federal government does not recognize domestic partners as “spouses” for federal tax purposes. If the nonmember domestic partner does not constitute a dependent under the federal income tax code, amounts awarded to the nonmember domestic partner may not actually be paid until the member experiences a distributable event (e.g., retirement or death), as defined for federal income tax purposes.

In addition, any distribution made to the domestic partner pursuant to a court order will be taxable to the member for federal income tax purposes. Also, a 10 percent excise tax may apply to the member if the nonmember domestic partner does not meet the federal income tax definition of a dependent and the distribution is otherwise considered an early distribution under the federal income tax code. We recommend that you consult with a tax advisor for further questions on tax issues.

NOTIFICATION OF A COMMUNITY PROPERTY CLAIM

When CalPERS receives written notification of a claim against a member's account, we will notify in writing both parties or their representatives.

This claim can be:

- A written claim letter
- Summons (Joinder)
- Proposed or Filed Order awarding a portion of the member's benefits to a former spouse or registered domestic partner

If you are an active or inactive member, CalPERS will release **no benefits**, including health or dental benefits, until we have received an acceptable filed order to resolve the claim.

If you are a retired member, CalPERS will continue to pay **one-half** of your retirement allowance until we have received an acceptable filed court order.

The party who placed the claim may notify CalPERS in writing asking us to continue to pay a retired member's full allowance. However, if full benefits continue, any benefit the court has awarded to the nonmember spouse will be paid on a prospective basis only after CalPERS has received and approved the filed court order.

Removing a Community Property Hold

Once CalPERS receives written notification of a claim against a member's account, we place a community property hold on the member's account. We cannot remove the hold until the community property issue is resolved.

If the hold was placed due to a Summons (Joinder), we require an acceptable filed order resolving the community property interest or a filed Request for Dismissal to remove the hold.

If the former spouse or domestic partner submitted a written claim letter, and later wishes to withdraw the claim, we require a notarized letter from the party who submitted the claim to remove the hold.

The legal process to divide CalPERS retirement benefits can be lengthy. We recommend that members resolve any open community property cases prior to submitting retirement applications.

Receipt of a Proposed or Draft Order

If CalPERS determines that the proposed order is acceptable, we will notify in writing all persons in the order and their representatives.

If the requesting party submits an original order requiring the signature of a CalPERS representative, CalPERS staff will sign the order and return it to the requesting party for filing with the court. **Note:** Although the model order provided in Publication 38B includes a signature block for CalPERS staff, we will sign the order only after both parties have signed.

If CalPERS finds that the order is not acceptable, we will notify all interested parties and include in the notification the reason why the order is not acceptable.

Receipt of a Filed Order

CalPERS will make a determination as to whether or not an order is acceptable within 30 days of receiving the order.

If the order is acceptable, we will follow the terms of the order as soon as possible from an administrative standpoint. We will notify all interested parties in writing that the order is acceptable.

If the order is not acceptable as written, we will notify all interested parties. We will require the parties to take any such action as is necessary to modify the order.

Additional Information

An order is acceptable to CalPERS when the order is written in such a way that it can be effectively administered pursuant to the terms of the PERL.

The order must be acceptable at the time benefit distributions to either party are to begin. The parties must advise CalPERS if the order has been amended after we have made our determination.

CalPERS will send all written communication with the member and nonmember spouse to the addresses provided in the court order or to the address maintained by CalPERS, unless we have received written notice of a change of address.

JOINDER OF CalPERS IN DISSOLUTION CASES OR LEGAL SEPARATIONS

Joinder is a legal term referring to the documents that, when filed with the court, join CalPERS as a party to the dissolution or legal separation.

A nonmember spouse has the right to file a community property claim against a member's CalPERS retirement benefits at any time. However, CalPERS cannot be legally bound to enforce a court order to divide a member's benefits unless we are made a party to the divorce action using the joinder process. If your divorce is filed outside the State of California, or out of the country, CalPERS does not need to be joined.

How to Obtain and File Joinder Documents

You can obtain joinder forms from the Superior Court Clerk's Office in your county or you can download them from the California Courts' website at www.courts.ca.gov. You can file the joinder forms yourself or you may want to hire an attorney or a paralegal service for guidance and advice pertaining to your individual situation. CalPERS cannot provide legal advice.

Effects of a Joinder on a Member's Account

As a result of the joinder, the court may order a community property hold to be placed on the member's CalPERS account, which may affect the member's benefits. If the member is receiving retirement or disability benefits, we will continue to pay one-half the allowance pending our receipt of an acceptable filed court order. A joinder allows CalPERS to provide information about the member's account to the former spouse or domestic partner and the attorneys representing the parties.

How to Remove the Community Property Hold Placed Due to Joinder

Once joined to a dissolution action, CalPERS cannot release the hold on a member's account until after receiving either:

- A filed Request for Dismissal of Joinder
- A filed order that specifically states that a community property interest does not exist
- An acceptable filed order that resolves the community property claim

Effect of a joinder on CalPERS members:

- If active, CalPERS will release no benefits
- If retired, CalPERS will hold one-half unless directed otherwise by the former spouse

REQUESTING INFORMATION ON A MEMBER'S ACCOUNT

By law, the contents of a member's retirement file are confidential, accessible only to the member or authorized representative. The member's spouse and/or attorney may obtain information if the request includes the member's written authorization or if CalPERS has been joined as a party to the dissolution. Any other person who requests information on a member's account must provide the following:

Subpoena Duces Tecum

Upon receipt of a subpoena duces tecum (an order to produce evidence), CalPERS will photocopy the contents of the member's file and complete the requested calculations. Pursuant to section 1563 of the California Evidence Code, CalPERS charges \$10 an hour in clerical costs, plus \$.10 per page copying costs. This amount represents actual costs we incur in locating and making the records available. CalPERS will accept service of subpoena by mail, if we are joined to the dissolution. If we are not joined, we require personal service of the subpoena at:

CalPERS Legal Office
400 P Street, 3rd Floor
Sacramento, CA 95814

Please be sure to include a Proof of Service and Notice to Consumer or your written, signed, and dated authorization to release information.

Include in all correspondence with CalPERS the member's full name, date of birth, or Social Security number or CalPERS ID.

Contributions and Service Credit

Upon receipt of a written request, CalPERS will provide the following information:

- A statement as to the member's accumulated contributions and interest for a specific period. If you do not request specific dates, CalPERS will provide a current statement. Due to the amount of time it takes employers to comply with payroll reporting requirements, a current statement may reflect contributions two to four months in arrears.
- A statement as to the member's years of service credit. Again, if you do not request a specific period, CalPERS will provide a current statement.
- A statement as to the member's classification (e.g., safety or miscellaneous member, state or local), and the applicable benefit formula.
- If the member is retired, a statement as to the option selected at retirement, the designated beneficiary, the amount of the gross monthly allowance, and the details of any death benefit payable.

Community Property Estimates

If you are within three years of your expected retirement date and CalPERS has received an acceptable court order for time rule division, you may request up to **two** time rule retirement estimates per year by completing a *Community Property Retirement Allowance Estimate Request* form and mailing it to the address on the form. You can find this form in the Forms & Publications Center at www.calpers.ca.gov.

A retirement estimate uses your most current CalPERS account information but does not include projections of salary increases, special compensation, or other job-related changes. When you eventually submit your retirement election application, you must specify a retirement option and designate a beneficiary. An estimate allows you to make informed retirement decisions and verify that our records properly reflect or match yours.

Information Not Provided

CalPERS will not provide the following types of information:

- Actuarial valuations of retirement benefits. Although a private actuary may provide a valuation of the pension plan, CalPERS will not accept an order that provides for payments of benefits not authorized by the Government Code.
- Employment data, salary, payroll, and earnings or personnel records. You must contact the employer directly for this information.

If a member is not yet retired, we will provide time rule retirement estimates once we have received an acceptable order.

HOW TO WAIVE INTEREST IN A MEMBER'S ACCOUNT

There are two ways to waive interest in a member's account:

- Waiver of Community Property
- Court Order Awarding Entire Interest to the Member

Waiver of Community Property

If a former spouse or domestic partner who has been awarded an interest in the member's CalPERS benefits later decides to waive forever that interest, they may request a *Community Property Release* form from the CalPERS Community Property Unit.

- The court must have awarded the former spouse a community interest in the CalPERS benefits.
- The form must be requested by the former spouse.
- The form must be signed and notarized.

Upon receipt of the original, properly executed release form, CalPERS will send a letter of acknowledgement to both parties, recognizing the account as the member's sole and separate property, and removing the community property hold, if any, from the account.

Court Order Awarding Entire Interest

The second way for a nonmember spouse to waive interest in a member's retirement account is to provide CalPERS with a court order that specifically awards all interest in the member's CalPERS benefits as the member's sole and separate property.

Upon receipt of the certified copy of the court order, CalPERS will send a letter of acknowledgement to both parties, recognizing the account as the member's sole and separate property, and removing the community property hold, if any, from the account.

CaIPERS COURT ORDER REQUIREMENTS

You must adhere to the following requirements to prepare an order that is acceptable for CalPERS to administer:

Member and Nonmember Spouse Information

A “nonmember spouse” is the member’s spouse or former spouse, or registered domestic partner or former registered domestic partner, who is awarded a community property interest in a member’s CalPERS retirement benefits. In this publication, we use this term even when both spouses or partners are CalPERS members.

All court orders must include the following information for both the member and the nonmember spouse:

- Date of marriage
- Date of separation
- Current mailing address
- Birth date
- Social Security number

Since filed court orders are public documents, you may provide in a separate document any personal identifying information such as birth date and Social Security number. Be aware, however, that not providing this information may delay processing of the case.

Method of Division

A court order must state how to split the member’s CalPERS retirement benefits, whether time rule or separation of accounts. If the member has retired, the court may order a specific percentage or dollar amount be paid to the nonmember from a CalPERS retirement benefit.

Copy of Court Order

CalPERS requires a complete original or copy of court documents that include the filing stamp of the court. Once CalPERS is made aware that a community property interest may exist, we will not process any pending benefit application until we receive the necessary complete copies of all court orders.

Referring to CalPERS

All court orders that require CalPERS to recognize a community property interest or to act in any way must specifically refer to the “California Public Employees’ Retirement System,” “PERS,” or “CalPERS.”

CalPERS member publications are available for download on the CalPERS website at www.calpers.ca.gov.

CalPERS does not provide any type of legal advice to members or nonmember spouses concerning the division of a member's account or the writing of court orders.

Additional Important Information Regarding Court Orders

The parties and their representing attorneys are responsible for determining what benefits a member is entitled to and how each method available for dividing the benefits will affect the benefits. The CalPERS member benefit publications provide a summary description of the benefits pertinent to each employment category. Some benefits described in the member publication may apply only if the member's employer has contracted with CalPERS to provide such benefits.

The parties and their representing attorneys are responsible for determining whether to omit certain language provided in the model orders or to add language to the court order to satisfy their intent. Regardless of the changes, the language cannot be contrary to the PERL.

CalPERS recommends that you submit proposed orders to the Community Property Unit for review prior to filing with the court. If a filed order is not administrable by CalPERS, or is contrary to the PERL, CalPERS will require a further court order that is acceptable.

METHODS OF DIVISION OF COMMUNITY PROPERTY

The PERL provides two methods of division for the community property interest of a CalPERS account:

Separation of account – this method can only be used for those members who are going through a divorce before they begin to receive a retirement benefit.

Time rule formula – this method can be used for those members who are going through a divorce before they begin receiving a retirement or disability benefit, or while receiving a retirement or disability benefit.

In addition to these two methods of division, the court order may state a flat dollar amount or a percentage be paid to the nonmember spouse from the monthly benefit once the member elects to receive a benefit.

Any elective service credit and/or accumulated contributions and interest that are not specifically addressed in the court order shall be deemed the property of the member.

Important Information Regarding Elective Service Credit

“Elective service credit” is any service credit that a member elects to purchase, such as:

- Military Service
- Service Prior to Membership
- Redeposit of Previously Refunded Contributions
- Additional Retirement Service Credit*

The court order must specifically address all community property, including any elective service credit. If the member elected and purchased any elective service credit during the marriage, even if earned prior to the marriage, we will consider it community property, unless the order directs us to exclude the purchased service.

If the member elected to purchase the service credit during the marriage, and only partially paid for it during the marriage period, we will pro-rate the purchase accordingly.

If the court order does not address elective service credit, any service purchased or redeposited after the date of marital separation will be treated as the member’s separate property for purposes of calculating the nonmember spouse’s “System Interest.”

Although the court may treat any additional service credit purchased as the member’s separate property, if the parties choose to divide the benefit by the time rule formula, the service credit purchase will usually result in an increased benefit amount, which CalPERS will use when applying the nonmember spouse’s “System Interest.”

The standard **separation of account** divides the service credit and associated contributions and interest earned during the marriage period. The nonmember’s portion is placed into a separate account.

The **time rule formula** is service credit earned during marriage divided by total service credit at the time of retirement, multiplied by 50 percent and then multiplied by the member’s retirement benefit.

*Legislation effective January 1, 2013, eliminated Additional Retirement Service Credit (ARSC) as an elective service credit. However, ARSC elected prior to this date is still subject to community property division.

MODEL A – SEPARATION OF ACCOUNT

The first method, separation of account, divides the member's contributions, interest, and service credit into two individual accounts based on a court order. Both parties then each have a separate and distinct account.

Once CalPERS has separated the account, the nonmember spouse no longer relies upon the member to determine when benefits become payable. The nonmember spouse may choose to receive a refund of the accumulated contributions while the member continues to work. Should the nonmember elect to refund, they have the right to withdraw, by direct refund or rollover, the contributions and interest credited to their nonmember account, plus interest earned at 6 percent per year through date of payment. The taxable portion of the benefit would be subject to 20 percent federal withholding, unless it is rolled over to an IRA. If the member was not vested on the date of dissolution or dies prior to reaching the minimum retirement age, the nonmember's only right would be to withdraw their contributions by a direct refund or rollover.

CalPERS members under State Miscellaneous/Industrial Second Tier did not make any contributions to CalPERS prior to July 1, 2013. In the case where State Second Tier members have made no contributions, no contributions are available for refund. A nonmember spouse could receive a monthly allowance, when eligible, but only if the member was vested on the date of the dissolution of marriage and once both parties reach the minimum retirement age. If the member dies prior to reaching the minimum age requirement, no monthly allowance will be payable.

If the member is vested on the date of dissolution, the nonmember spouse has the right to receive a monthly allowance from their own account, independent from the member's account, when both parties reach retirement age. The monthly allowance payable to the nonmember spouse is based on the service credited to their account, their age at the time of retirement, and the salary (final compensation) the member earned prior to the date of dissolution of the marriage.

If the nonmember spouse chooses to withdraw the contributions and interest credited to their account, the member has the right to purchase that service credit and redeposit those contributions, plus interest, to restore the service credit and contributions to the account. The member must make any such election to redeposit the contributions and service prior to retirement. If, however, the nonmember spouse chooses to leave the funds on deposit or if they elect to receive a monthly allowance, the member cannot purchase the contributions and service credit transferred to the nonmember spouse's account.

After a separation of accounts occurs, the benefits payable to the member at retirement or payable upon the member's death prior to retirement are based on the actual service credit and/or contributions remaining in the member's account.

Legislation effective January 1, 2013, stipulated that State Miscellaneous/Industrial Second Tier members contribute 1.5 percent as of July 1, 2013, with the rate possibly varying in the future according to actuarial valuation. State Second Tier members who are actively employed after July 1, 2013, have member contributions in their accounts.

Separation of Accounts Possible Benefit Increase (SAPBI)

Government Code section 21251.15 provides a calculation method for any member whose account was divided in accordance with Government Code section 21290 and who retires on or after January 1, 2004, if the nonmember:

- Qualifies to retire from the nonmember account, and
- Has not received a refund prior to the member's retirement date

The new calculation provides that a member's retirement allowance shall be equal to the difference between:

- The allowance that would have been payable to the member had the separation of the account not occurred, and
- The unmodified allowance payable to the nonmember, less an actuarial adjustment if the nonmember retired before the member

The nonmember spouse may be eligible for a prorated share of any benefit that may become payable under 21251.15 (Separation of Accounts Possible Benefit Increase, or SAPBI).

For more information, see Government Code section 21251.15, or contact the Community Property Unit.

Nonmember Spouse Rights and Benefits

Under the separation of accounts method, the nonmember spouse is entitled only to the rights and benefits explicitly set forth in the PERL in section 21290, et seq. These rights include:

- Either a monthly retirement benefit, or a refund of accumulated contributions
- Designation of a one-time lump-sum death benefit beneficiary for payment of accumulated contributions remaining in the account at the time of death of the nonmember spouse
- Right to redeposit nonmember share of contributions previously refunded to member
- Right to purchase nonmember share of service credit eligible for purchase by the member

Nonmember Retirement

Nonmember eligibility for retirement is governed by Government Code section 21295. Upon written application to the Board, nonmember spouses may retire and begin receiving a monthly allowance based on the service credited to their own account, their age at retirement, and the salary (final compensation) the member earned prior to the dissolution of marriage or domestic partnership if all of the following conditions are met:

- The nonmember and member have attained the minimum age prescribed by the member's service retirement formula.
- On the date of dissolution or legal separation, the member had sufficient service credit to qualify for a service retirement.

In lieu of a monthly allowance, a nonmember has the right to withdraw, by direct refund or rollover, the contributions and interest credited to their nonmember account, plus interest earned at 6 percent per year through date of payment. The taxable portion of the benefit would be subject to 20 percent federal withholding, unless it is rolled over to an IRA. If the member was not vested on the date of dissolution, the nonmember's only right would be to withdraw their contributions by a direct refund or rollover. This option is not available for domestic partners or same-sex spouses.

CalPERS members under State Miscellaneous/Industrial Second Tier did not make any contributions to CalPERS prior to July 1, 2013. In the case where State Second Tier members have made no contributions, no contributions are available for refund. The nonmember could receive a monthly allowance, when eligible, but only if the member was vested on the date of the dissolution of marriage or domestic partnership and once both parties attain minimum retirement age.

Important Information Regarding Domestic Partners Only

There are some restrictions under the separation of accounts method. The nonmember cannot receive a distribution from the nonmember account until the member separates from all CalPERS-covered employment, retires, refunds, or dies. A domestic partner cannot roll over funds. In addition, because the federal government does not recognize domestic partners as "spouses" for federal tax purposes, any distribution made to a nonmember pursuant to a domestic relations order will be taxable to the member for federal income tax purposes.

Once CalPERS completes the separation of accounts process, the nonmember spouse may retire when eligible by submitting a *Nonmember Service Retirement Election Application* to:

CalPERS Benefit Services Division
P.O. Box 942711
Sacramento, CA 94229-2716

Nonmember Refund

If a nonmember spouse chooses to withdraw the contributions and interest credited to their nonmember account pursuant to Government Code section 21292, the member has the right to purchase that service credit and redeposit those contributions, plus interest, to restore the service credit and contributions to the member's own account. The member must make the election to redeposit the contributions and service prior to retirement. If, however, the nonmember chooses to leave the funds on deposit or if the nonmember elects to receive a monthly allowance, the contributions and service credit transferred to the nonmember account cannot be purchased and redeposited by the member.

After a separation of account occurs, the benefits payable at retirement or payable upon the member's death prior to retirement will be based on the actual service credit and/or contributions remaining in the member's account.

Once CalPERS completes the separation of accounts process, the nonmember spouse may refund their nonmember account by submitting a *Nonmember Refund/Rollover Election Application* to:

CalPERS Benefit Services Division
P.O. Box 942711
Sacramento, CA 94229-2716

To obtain a copy of this application form, contact CalPERS at **888 CalPERS** (or **888-225-7377**).

MODELS B AND C – TIME RULE FORMULA

The time rule formula is commonly used in divorce cases to calculate the portion of the member's retirement benefits that the nonmember spouse is to receive. Members can use this formula before they begin to receive a retirement benefit or while receiving a retirement or disability benefit.

The court must specify the time rule formula in the judgment. The judgment should also contain the dates of marriage and separation of the parties.

The following is an example of the time rule formula:

Retirement Benefits	×	$\frac{\text{Member's creditedservice in theSystem from dateof marriage untildate of separation}}{\text{Member's totalcredited service inthe System}}$	×	50% =	Nonmember Spouse's System Interest
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The Model Orders section of this publication includes examples of acceptable sample language that might be incorporated into a court order.

Court Order Language Should Be Specific

When using the time rule formula to divide a benefit, it is very important that the language in the court order be specific regarding the following key elements:

- Member Dies Before Former Spouse
- Former Spouse Dies Before Member
- Court-Ordered Election of an Option
- Lump-Sum Death Benefit
- Payment By Separate Warrant

Read more about these key elements here. You can also find provisions for these elements in the Model Orders section of this publication.

Member Dies Before Former Spouse

The court order should be specific regarding what happens if the member should die before the nonmember spouse dies. If the member dies before the nonmember spouse, under the time rule formula the nonmember spouse's benefits terminate, unless the member elected an option providing the nonmember spouse a continuing benefit for their lifetime.

A member's reinstatement from retirement will affect a nonmember spouse. Once a member returns to active employment, there is no longer a benefit payable from CalPERS that we can divide. Parties should be aware that a member may be ordered to pay the former spouse directly while reinstated. Once a reinstated member re-retires, CalPERS will again divide the benefit, although a further order may be required.

Former Spouse Dies Before Member

The court order should be specific regarding what happens if the nonmember spouse dies before the member. If the nonmember dies before the member, but after CalPERS has paid benefits, the nonmember spouse's share will automatically continue to the nonmember's beneficiaries for the member's lifetime, unless the court specifically provides that the nonmember's share reverts to the member or in the event that the beneficiary designated by the nonmember disclaims their share. The former spouse must provide the name of the beneficiary(ies) in writing to CalPERS as soon as possible after the marriage dissolution.

Court-Ordered Election of an Option

The court order should be specific regarding an election of an option to determine whether the nonmember spouse's community property share terminates or continues after the member's death.

An option is a reduction of the highest benefit, which is referred to as the Unmodified Allowance, that provides a lump-sum payment or monthly benefit to one or more beneficiaries in the event of the member's death. The cost of the reduction depends on which option is applied in the settlement. Please review your pertinent member benefit publication for further information about options.

Both the member and nonmember spouse can share the cost of selecting an option settlement, or the court may require that only one party bear the cost of the selected option. For example, if the unmodified benefit is calculated to be \$500 per month, and the election of Option 4 for the nonmember spouse reduces the benefit to \$475 per month, the cost, \$25, may be applied against the member's portion of the retirement benefit, the nonmember spouse's share of the benefit, or both.

Lump-Sum Death Benefit

The court order should be specific regarding any lump-sum death benefits payable. The nonmember spouse is entitled to a community property share of any lump-sum amount payable upon the member's death. CalPERS calculates this amount using the method stated in the court order.

Payment by Separate Warrant

In the event that the court directs that the community property interest in the retirement benefit must be divided, the court order must specifically state whether CalPERS should pay the nonmember spouse "by separate warrant." Without such language in the court order, the member will be responsible for ensuring that the nonmember spouse receives proper payment.

METHODS OF DIVISION COMPARISON

This section presents a side-by-side comparison of the two different methods for dividing community property interest. This serves as a general overview only. CalPERS cannot recommend a method of division nor can we provide legal advice.

	Separation of Accounts	Time Rule
Availability	The member must be active, inactive, or not yet receiving a benefit of any kind.	The member can be active, inactive, or retired.
Award calculation	Amount awarded to the former spouse is typically 50 percent of the member's accumulated contributions, interest, and associated service credit earned during marriage period. Once CalPERS separates the account, we create an account for the nonmember spouse, from which the nonmember spouse may refund, or retire, once both parties attain the eligible age to retire. CalPERS calculates the nonmember's monthly benefit using the member's salary on the date of dissolution, the nonmember's age at the date of retirement, and the amount of service credit awarded to the nonmember spouse.	CalPERS calculates the service credit the member earned from the date of marriage to the date of separation and determines what percentage of the monthly benefit is community property and what percentage is payable to the former spouse. CalPERS calculates the benefit amount using the member's highest averaged final compensation over a 12-month or 36-month period as determined at retirement.

	Separation of Accounts	Time Rule
Availability of nonmember's share of member's account	A nonmember may refund their account as soon as it is created, or, if the member was vested on the date of dissolution, may choose to take a monthly payment from the account once both parties reach retirement age.	The nonmember's share of the member's account is unavailable until the member retires, refunds, or dies; the former spouse does not receive a separate account.
Impact of service credit and contributions	CalPERS removes service credit from the member's account and transfers it to the nonmember's account. If the nonmember chooses to refund prior to the member retirement, the member may redeposit those contributions and interest and restore the service credit to the account.	CalPERS does not remove service credit from the member's account.
Redeposit of service credit awarded to nonmember	The member may redeposit the contributions and service credit only if the nonmember spouse has refunded and the member elects the redeposit prior to retirement.	Since CalPERS did not remove service credit from the member's account, redeposit is not available with this method.

INSTRUCTIONS FOR PREPARING A DOMESTIC RELATIONS ORDER

The parties are responsible for preparing all court documents. CalPERS cannot assist in the preparation of court documents.

A Domestic Relations Order (DRO) or property settlement should address and dispose of all community property assets associated with the member's retirement benefits. CalPERS will review a proposed property settlement or filed DRO to determine whether it complies with the provisions of the PERL and does not violate Family Code sections 2610(b)(1) and (2). CalPERS is not obligated to alert the parties to additional benefits that were not disposed of or resolved by a property settlement or DRO. If an asset is not resolved, it may be necessary for the member and the former spouse or domestic partner, or beneficiaries or estate, to litigate that asset at the time it becomes payable. Please review the applicable member publication and consult with the member's employer to determine the benefits to which the member is entitled.

The following section contains step-by-step instructions for completing a DRO as well as model language to be used in preparing a DRO to divide CalPERS retirement benefits. These model orders demonstrate several methods of splitting CalPERS retirement benefits. You may want to obtain legal advice to determine which method is most appropriate for you.

Model Order Language

This section provides the sample language to use to prepare a property settlement or DRO. You can also refer to the sample model domestic relations orders A, B, and C that accompany this publication. Use of the model will expedite the process by which CalPERS determines whether the order is administrable and will ensure that the provisions of the order conform to the PERL.

Provisions of the model orders reflect California community property law and may need revision to accommodate other state domestic relations laws.

These model orders are not a substitute for reviewing the terms of the PERL and the member publication applicable to the member's employment category. Our intent is to provide a thorough sample order for both parties and attorneys to use to prepare an order specific to the member's account. The parties may agree to, or a court may order, other language, provided the order is consistent with the terms of the PERL and other applicable law.

The model contains three sample orders that demonstrate how to divide the community property interest in an employee benefit plan.

Applies	Model Order	Divides Benefits According To
Only to members who have not yet retired	Order A	Separation of Accounts method (see Government Code sections 21290–21298)
	Order B	Community share of benefits paid at retirement, refund, or death
Only to members who are retired	Order C	Community share of retirement allowance allocated to nonmember spouse

The methods are mutually exclusive: Use only one of the sample orders, A, B, or C, as part of the final property settlement or DRO.

General Information

The first full paragraph of the property settlement agreement or DRO should state the names of both the Petitioner and Respondent.

Relevant Information Regarding CalPERS:

- **Governing Law:** California Public Employees’ Retirement Law, section 20000, et seq., of the California Government Code
- **Administrator:** Board of Administration of the California Public Employees’ Retirement System (the System)
- **Address:** California Public Employees’ Retirement System
Benefit Services Division
Attn: Community Property Unit
P.O. Box 2056
Sacramento, CA 95812-2056
Telephone: 888 CalPERS (or 888-225-7377)
TTY: (877) 249-7442
Centralized Fax: (800) 959-6545*
- **Type of Plan:** Defined Benefit Plan

* Documents must be clearly marked as “Community Property.”

Typically, a DRO or property settlement has three sections: Recitals, Stipulation, and Order.

Recitals

Paragraph 1: Indicate the date of marriage or date of registration of domestic partnership, the date of separation, and the date the court entered a judgment of dissolution of marriage or domestic partnership (if applicable).

Paragraph 2: State that the court has personal jurisdiction over both the Petitioner and Respondent and the subject matter of the action.

Paragraph 3: State that the System was properly joined as a party to the action pursuant to sections 2060 through 2065 of the California Family Code (if applicable). If the System was not joined, do not include this paragraph.

Stipulation

A stipulation by the Respondent, the Petitioner, and the System that this domestic relations order is acceptable under the terms of the PERL and can be administered by the System. For more information, refer to the PERL and the applicable member publication.

Order

Paragraph 4: Provides that the domestic relations order was entered pursuant to the California Family Code. If this is not the appropriate citation for the order, please cite the applicable domestic relations law pursuant to which the order is to be entered.

The remaining portion of the DRO should describe the assets being divided and the method for the division. It should also provide all relevant information for CalPERS to process the ordered community property division.

Members Who Have Not Yet Retired: Order A or Order B

There are two methods by which the court can divide community property interest in retirement benefits prior to retirement, both of which are described below. It is the sole responsibility of the parties and their respective counsel to determine which method is in the parties' best interests.

Order A – Separation of Account

Division of Member's Accumulated Contributions and Service Credit by Separation of Account

An order made pursuant to sections 2610(a)(3) of the Family Code and Government Code sections 21290 through 21298 divides the community property interest in a member's pension prior to retirement by separating the service credit and member contributions accrued during the marriage or domestic partnership into two separate and distinct accounts. The accumulated contributions and service credit awarded to the nonmember are removed from the member's account and used to create a new account for the nonmember.

Please review Government Code sections 21290 through 21298 for rules governing nonmember accounts.

Paragraphs 5 through 10 of Order A illustrate this method of dividing the community property interest in a CalPERS pension:

Paragraph 5: States that the parties have a community interest in the member's pension plan and defines that interest as the member's accumulated retirement contributions and service credit attributable to periods of service in the System from the parties' date of marriage or registration of domestic partnership up to the date of their separation.

Paragraph 6: States that 50 percent* of the member's accumulated retirement contributions and service credit attributable to the marriage period is to be allocated and awarded to the nonmember as his or her "System Interest." Paragraph 6 also provides that any contributions and service credit not awarded to the nonmember shall be the sole and separate property of the member.

* The order may specify a community property allocation percentage higher or lower than 50 percent, provided that such percentage is acceptable to CalPERS and does not require CalPERS to make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

*Legislation effective January 1, 2013, eliminated Additional Retirement Service Credit (ARSC) as an elective service credit. However, ARSC elected prior to this date is still subject to community property division.

For more information on service credit purchase types, please consult the publication ***A Guide To Your CalPERS Service Credit Purchase Options.***

CalPERS **will not** accept an order entered pursuant to Family Code section 2610(a)(3) and in accordance with Government Code sections 21290 through 21298, which provides for either a specific dollar amount or specific years of service credit to be used to establish the nonmember's interest, or which attempts to divide only contributions without service credit.

Elective Service Credit – Model Order A

Elective service credit is service credit a member elects to purchase, such as:

- Redeposit of Withdrawn Contributions
- Military Service
- Service Prior to Membership
- Additional Retirement Service Credit*

All community property, including any elective service credit, must be specifically addressed in the court order.

Unless otherwise provided for in the order, any elective service credit and contributions will be divided according to when the service and contributions were credited and paid to the member's account.

For example, if the member earned military service credit prior to his or her marriage, but elected and paid for that service during the marriage or domestic partnership, CalPERS would divide the service and contributions proportionately to both the member and nonmember.

If elective service credit is not addressed in the court order, any service purchased or redeposited after the date of separation will be treated as the member's separate property.

Paragraph 7: In accordance with section 21290 of the Government Code, paragraph 7 provides that CalPERS shall establish separate accounts for the member and the nonmember for the interests awarded to each of them pursuant to paragraph 6 of the order.

Paragraph 8: Following the date that we establish separate accounts for the member and the nonmember, paragraph 8 provides that the nonmember shall be entitled to all rights permitted under section 21290(c) of the California Government Code, as summarized in paragraphs 8.a. through 8.e. We advise the parties and their respective counsel again to review the provisions of the

Government Code affecting the rights of the nonmember spouse with respect to his or her “System Interest.”

Paragraph 9: Illustrates how the parties may provide for the beneficiary payment of the nonmember’s interest if the nonmember should die prior to receiving his or her “System Interest.”

Paragraph 10: Provides, in accordance with section 21292(g) of the Government Code, that the nonmember will receive a refund of the nonmember’s accumulated contributions and any interest that has accrued to such contributions, as soon as administratively practicable, following the date we establish the nonmember account if the member did not meet the vesting requirements to retire as of the parties’ dissolution or legal separation.

Paragraph 11: **Supplemental Provisions:** Apply to orders A, B, and C. Please refer to pages 36 and 37 for instructions on paragraphs 11 through 21.

Order B – Time Rule Method (Active)

Division of Community Property Interest at the Time Benefits Become Payable to the Member

An order made pursuant to Family Code section 2610(a)(4) divides the community property interest in a member’s pension prior to retirement by ordering that the nonmember receive his or her community property interest at the time benefits become payable to the member, either upon the member’s retirement or termination of membership. Pursuant to Family Code sections 2610(a)(1) and (2), the court may also order the division of any benefits payable upon the death of the member and/or order the member to elect a survivor benefit annuity or other similar election for the benefit of the nonmember.

Under this division method, the nonmember’s “System Interest” can only be paid by CalPERS at the time benefits become payable and the member elects to retire. If the nonmember wishes to receive his or her community property interest from CalPERS prior to the time that the member elects to retire, the parties should consider the separation of accounts method as demonstrated through Model Order A. If the member chooses to reinstate after retirement, benefits are no longer payable to either member or former spouse until the member re-retires.

*Legislation effective January 1, 2013, eliminated Additional Retirement Service Credit (ARSC) as an elective service credit. However, ARSC elected prior to this date is still subject to community property division.

For more information on service credit purchase types, please consult the publication ***A Guide To Your CalPERS Service Credit Purchase Options.***

Elective Service Credit – Model Order B

Elective service credit is any service credit a member elects to purchase, such as:

- Redeposit of Withdrawn Contributions
- Military Service
- Service Prior to Membership
- Additional Retirement Service Credit*

All community property, including any elective service credit, must be specifically addressed in the court order.

Unless otherwise provided for in the order, any elective service credit and contributions will be divided according to when the service and contributions were credited and paid to the member's account.

For example, if the member earned military service credit prior to his or her marriage, but elected and paid for that service during the marriage or domestic partnership, CalPERS would divide the service and contributions proportionately to both the member and nonmember.

If elective service credit is not addressed in the court order, any service purchased or redeposited after the date of separation will be treated as the member's separate property for purposes of calculating the nonmember's "System Interest." Although any additional service credit may be treated as the member's separate property, the purchase of elective service credit will usually result in an increase in the benefit upon which the nonmember's "System Interest" is applied.

Paragraphs 5 through 10 of Order B illustrate this method of dividing a member's benefits:

Paragraph 5: States that the community has an interest in the member's retirement benefits and defines that interest as those retirement benefits attributable to the member's service in the System during the period from the parties' date of marriage or registration of domestic partnership up to the date of their separation.

Paragraph 6: Illustrates how the nonmember's share of the member's retirement benefits may be calculated. This is the usual, although not required, language encountered with this method for dividing a member's benefits and commonly is referred to as the "time rule." This benefit allocation formula is only an example. The parties may provide another method (or percentage) of allocating the member's retirement benefits provided the method is

consistent with the terms of the PERL and other applicable law. Paragraph 6 also illustrates how the parties may request that CalPERS divide all benefits payable pursuant to the formula provided in this order.

Benefits, for purposes of this order, include a refund of the member's accumulated retirement contributions, service retirement, disability retirement, industrial disability retirement, and/or any death benefits payable, as provided in paragraph 9a and 9b of the order.

Disability Retirement Benefits

California case law may exempt certain disability retirement benefits from community property considerations; thus, it is the parties' responsibility to determine the appropriate division of any disability or industrial disability pension and modify this order accordingly.

In this model, unless the parties modify the order to the contrary, the community property percentage will be applied to all benefits, including disability or industrial disability retirement allowances.

The parties may agree to provide for the division of only certain benefits or certain types of retirement and modify this paragraph to reflect agreements between the parties or to reflect case law appropriate to an individual case. CalPERS will comply with the provisions of any order to the extent provided in the Government Code. CalPERS cannot pay a benefit not provided for, or which is contrary to the PERL.

Paragraph 7: Requires the member, at retirement, to select optional settlement 4 and name the nonmember as the beneficiary to the extent of the nonmember's community property interest. The community property interest shall be determined by CalPERS at the time the member retires using the method described in paragraph 6. This method ensures the nonmember will receive a lifetime benefit equal to his or her community property interest. The cost for the reduction to the Option 4 will be taken from the nonmember's share unless the court order states otherwise.

The selection of Option 4 will not jeopardize the member's right to name another lifetime beneficiary for any remaining option portion. The member can make this request at the time of retirement. There are some plan limitations, which may affect the amount available to a second lifetime beneficiary under this option.

The election of an optional settlement can only be made by the member at the time of retirement. It is the member's responsibility to comply with the terms of an order that direct the member to elect a specific option and option beneficiary at the time the member retires.

The parties may agree to elect one of the other optional settlements available to the member at retirement, such as optional settlement 2, 2W, 3, or 3W. If the order specifies the member is to select one of these options at retirement and designate the nonmember, then the nonmember will be the only beneficiary to receive benefits at the member's death with respect to that benefit. The amount available to the nonmember under Option 2, 2W, 3, or 3W will be determined based on the combined ages of the member and beneficiary, not on the amount of the nonmember's "System Interest." The parties should carefully consider how this may affect future choices before selecting this method to provide a lifetime benefit to the nonmember. CalPERS cannot divide the benefit payable to a single beneficiary under one of these options after the member's death.

If the member is not required to provide the nonmember with a continuing monthly allowance, paragraph 7 may be deleted. If deleted, the nonmember's "System Interest" would be applied to the member's monthly retirement allowance, while living, and to the death benefits after retirement as provided in paragraph 9b.

Paragraph 7 is not applicable if the member dies prior to retirement as discussed in paragraph 9a or if the member terminates membership and receives a refund of his or her contributions and interest. In addition, paragraph 7 is not applicable if the nonmember predeceases the member prior to retirement.

Paragraph 8: Provides for the nonmember to receive his or her "System Interest" directly by separate warrant at the time the member receives benefits or as soon as administratively practicable following the member's death.

Paragraph 9: Illustrates how the parties may provide for the nonmember to receive a share of any benefits payable at the member's death.

Paragraph 9a: Specifically provides for the nonmember to receive his or her "System Interest" in any death benefit payable upon the death of a member prior to retirement. Unless the order provides otherwise, CalPERS will pay to the nonmember his or her "System Interest" from any benefit otherwise payable at the time of the member's death. This includes any lump sum or monthly allowance which may be payable by designation or by statute. Any choice regarding the type of benefit payable (lump sum or monthly) will belong to the person (or persons) determined to be entitled to those benefits.

The nonmember cannot be designated as a surviving spouse and is not eligible to receive a monthly allowance based on his or her life expectancy (see Government Code section 21624, et seq.).

The parties and their counsel should review the applicable member publication to determine which of the pre-retirement death benefits are applicable with respect to the member. The pre-retirement death benefits vary for a number of reasons, including the member's employment status, the employer's contract with CalPERS, whether the member is vested, and whether the member is legally married or has minor children at the time of death.

Paragraph 9b: Provides for the nonmember's "System Interest" in any lump-sum death benefit payable upon the death of the member after retirement. Paragraph 9b also provides for the nonmember to receive his or her "System Interest" in any monthly allowance payable after the death of the member, unless the nonmember is entitled to receive a monthly benefit for his or her own life based on the member's election and designation of the nonmember as a beneficiary under optional settlement 2, 2W, 3, 3W, or 4.

Pursuant to Government Code section 21490(b)(1) and California case law, CalPERS will divide any benefit payable upon the member's death and give the appropriate portion to the nonmember spouse according to the designated community property interest as provided in the DRO, including any monthly allowance, so long as those benefits are payable. Of course, if no benefits are payable after the member's death, there will be no benefits from which to pay the nonmember's "System Interest."

Upon divorce, a nonmember is not a "surviving spouse" for any purpose under the PERL.

The parties and their counsel should review the applicable member publication to determine which of the post-retirement death benefits are applicable to the member. Post-retirement death benefits vary for a number of reasons, including the member's election at retirement, the employer's contract with CalPERS, and whether the member has an eligible "surviving spouse or domestic partner" or minor children.

Paragraph 10: The DRO should address how the parties intend to allocate the nonmember's "System Interest" in the event the nonmember dies before the member. The nonmember may designate a beneficiary to receive the nonmember's "System Interest" in the member's monthly retirement allowance, any refund of contributions payable if the member terminates membership prior to retirement, or any pre-retirement death benefits payable if the member dies prior to retirement. If the parties elect to make such a provision, CalPERS must be provided with the beneficiary's name, current mailing address, and Social Security number. If the designated beneficiary predeceases the nonmember, any "System Interest" will be paid to the nonmember's next of kin as provided under Government Code section 21493.

If the parties agree, the nonmember's "System Interest" will revert back to the member in the event the nonmember predeceases the member, instead of continuing to the nonmember's beneficiary for the life of the member. Paragraph 10 will need to be changed to reflect this provision.

Paragraph 11: **Supplemental Provisions:** Apply to orders A, B, and C. Please refer to pages 36 and 37 for instructions on paragraphs 11 through 21.

Order C – Time Rule (Retired)

Retired Members Only

Order C illustrates the standard method for dividing the member's monthly retirement allowance between the member and the nonmember. This order also addresses how any death benefits are to be divided.

Dissolution of marriage or domestic partnership may affect a survivor continuance benefit payable after a member's death. Therefore, the parties should be informed if the survivor continuance is part of the option the member elected at retirement, or part of the death benefit payable at the death of the member. If you are unable to determine whether the survivor continuance benefit is applicable in your specific case, this information may be obtained from CalPERS. Please see page 10, "Requesting Information on a Member's Account," for instructions on how to obtain information from CalPERS.

The survivor continuance benefit provides a monthly allowance payable by statute to certain "eligible survivors." An eligible survivor, for purposes of the survivor continuance benefit, is defined under the PERL as a surviving spouse or surviving domestic partner who was married to or in a partnership with the member for a continuous period beginning at least one year prior to the member's effective retirement date and ending on the date of the member's death, or, in the case of a disability retirement, married to the member at the disability retirement date and continuously until the date of their death. If there is no eligible surviving spouse or surviving domestic partner, the benefit can be paid to the member's minor children.

Upon dissolution of marriage or domestic partnership, a nonmember ceases to be the "surviving spouse or partner" for purposes of the survivor continuance benefit and is no longer eligible to receive this benefit upon the member's death. A nonmember cannot be considered a "surviving spouse or partner" for any purpose under the PERL.

Paragraph 5: States that the community has an interest in the member's retirement benefits and defines that interest as those retirement benefits attributable to the service credit accrued by the member during the period from the parties' date of marriage or registration of domestic partnership up to the date of their separation, or retirement, whichever is earlier. A member ceases to accrue service credit at retirement.

Paragraph 6: Provides the amount of the monthly benefit currently paid to the member, the option elected, and the member's named beneficiary, if any. This information may be obtained from CalPERS. Please see page 10, "Requesting Information on a Member's Account," for instructions on how to obtain information from CalPERS.

If the nonmember was named as a beneficiary under optional settlement 2, 2W, 3, 3W, or 4, the member cannot change his or her beneficiary or his or her option unless the entire interest in the pension plan is awarded to the member as his or her sole and separate property.

Paragraph 7: Sets forth how the nonmember's share of the member's retirement benefits is to be calculated. The benefit allocation formula described in the model is only an example. The parties may, of course, provide another method (or percentage) of allocating the member's retirement benefits among the parties provided the method is consistent with the terms of the PERL and other applicable law.

Paragraph 8: Provides that benefit payments will commence to the nonmember by separate check as soon as administratively practicable following the date CalPERS determines that the order is acceptable.

Paragraph 9: The nonmember's "System Interest" in the member's monthly retirement allowance will cease to be payable upon the death of the member. Paragraph 9 provides for the nonmember to receive his or her "System Interest" in any lump-sum death benefit payable upon the death of the member after retirement. Paragraph 9 also provides for the nonmember to receive his or her "System Interest" in any monthly allowance payable after the death of the member, unless the nonmember is entitled to receive a monthly benefit for his or her own life based on the member's election and designation of the nonmember spouse as a beneficiary under optional settlement 2, 2W, 3, 3W, or 4.

CalPERS will divide any benefit payable after the member's death, including any monthly allowance, but only as long as those benefits are payable. Of course, if no benefits are payable after the member's death, there will be no benefits from which to pay the nonmember's "System Interest."

The parties and their counsel should review the member's election and beneficiary designation, and the applicable member publication to determine which of the post-retirement death benefits are applicable with respect to the member or whether this paragraph is applicable.

Paragraph 10: The DRO should address how the parties intend to allocate the nonmember's "System Interest" in the event the nonmember predeceases (dies before) the member. The nonmember may designate a beneficiary to receive the nonmember's "System Interest" in the member's monthly retirement allowance. If the parties elect to make such a provision, CalPERS must be provided with the beneficiary's name, current mailing address, and Social Security number. If the designated beneficiary predeceases the nonmember, any "System Interest" shall be paid to the nonmember's next of kin as provided under Government Code section 21493.

If the parties agree, the nonmember's "System Interest" will revert to the member in the event the nonmember predeceases the member, instead of continuing to the nonmember's beneficiary for the life of the member. Paragraph 10 will need to be changed to reflect this provision.

Supplemental Provisions: All Orders

The following provisions are commonly included in orders affecting a member's benefits. The parties and their counsel should review these provisions to determine whether such provisions are consistent with the parties' objectives.

Paragraph 11: Provides that the nonmember's "System Interest" in any monthly allowance will increase with any cost-of-living increase or other similar increases in accordance with the terms of the PERL.

Paragraph 12: Standard language in accordance with the terms of the Internal Revenue Code.

Paragraph 13: Indicate the member's full name, current mailing address, telephone number, Social Security number, and date of birth.*

Paragraph 14: Indicate the nonmember's full name, current mailing address, telephone number, Social Security number, and date of birth.*

Paragraph 15: Sets forth information about the administration of the System and the manner in which the nonmember is to communicate with the System.

Paragraph 16: Standard language in accordance with the terms of the PERL.

Paragraph 17: Provides that the System may provide the nonmember and/or his or her agents and attorneys with information regarding the member's benefits until such time as the nonmember has received his or her entire interest in the System.

Paragraph 18: Contains standard language in accordance with the terms of the PERL and other applicable law.

Paragraph 19: Designed to address the situation where alternate payee or participant receives funds to which the other is entitled under the order.

Paragraph 20: Provides for amending the order in the event subsequent changes to applicable law result in the order no longer being acceptable to the System. Paragraph 20 further provides that the nonmember and the member shall be responsible for any of the costs and/or expenses associated with any such amendment.

Paragraph 21: Provides for amending the court's continuing jurisdiction to modify the order in any and all necessary respects. **Important:** In the event such modification proves necessary or advisable, any related fees, taxes, and/or penalties will be assessed against the parties who then have an interest payable from the System.

* The member and nonmember's Social Security number, date of birth, and current mailing address must be provided to CalPERS. If this information is not included in the order because of security concerns, please provide it to CalPERS in a separate document at the time the order is submitted to CalPERS.

Signature block: The CalPERS model order includes a signature block for the approval of the order by CalPERS staff. CalPERS will sign the order only after it has been signed by both parties. Model orders that have been modified should be sent to CalPERS in draft form with a cover letter explaining which provisions were changed. Not all courts require our signature; however, some do. You should check with the court clerk in the county where the DRO will be filed to determine if our signature is required prior to filing.

FAQS

This section provides answers to some of the most frequently asked questions regarding community property laws and their impact on CalPERS benefits. If after reading these FAQs, you are still not able to find what you are looking for, please contact the Community Property Unit.

Benefits

How do I remove my former spouse as beneficiary? Doesn't this happen automatically when we divorce?

You may not be able to change your beneficiary if you have a community property hold on your account or until CalPERS receives legal documents that reveal whether a community property interest exists. Once we have reviewed the documents, we will provide you with a written response regarding the status of your account. If you are retired under Option 2, 2W, 3, or 3W, you may not change your option beneficiary unless you have been awarded the entire interest in your CalPERS benefits as your sole and separate property.

How much of my benefits is my former spouse entitled to receive?

Your former spouse is entitled to receive one-half of the benefits earned under CalPERS-covered employment during your marriage.

If I am a member and my former spouse is also a member and I receive a portion of my former spouse's account, can I combine the two accounts?

No, a nonmember account cannot be combined with your member account.

What is a Separation of Accounts?

The separation of accounts method (Model Order A) is used in dissolution cases to divide a member's account based on a court order. We create an account for the nonmember spouse and divide the contributions and interest, along with the corresponding service credit in your account. You and your nonmember spouse each have your own separate and distinct accounts. This method is available only to active members.

What is the time rule formula?

The time rule formula (Model Orders B and C) is used in dissolution cases to calculate the portion of your retirement benefits that your former spouse is to receive. The calculation is based on the service credited during the marriage period and the member's total credited service. This method is also known as the "Brown Division." Upon receipt of a filed acceptable order using this method, a percentage of the member's retirement, whether monthly or lump sum, is paid to the former spouse. This method is available to both active and retired members.

Which method is most advantageous for me?

We cannot recommend one method over the other; however, you may request contribution and service credit information, as well as retirement estimates (see pages 10-11).

When can my nonmember spouse begin receiving a share of benefits from my account?

That will depend on the type of order filed. CalPERS must receive a filed order and determine whether it is acceptable. If you have filed an order for a separation of accounts, your former spouse can refund as soon as we have established the nonmember account, or apply for a monthly benefit once both parties have reached the minimum retirement age. If you have filed a time rule order, your former spouse will receive benefits once they become payable.

What happens if either party dies prior to the community property issue being resolved?

The benefits will be held until CalPERS receives an acceptable court order that resolves the community property interest.

Can a court award my former registered domestic partner a portion of my CalPERS retirement benefits upon termination of the partnership?

Yes. CalPERS benefits are subject to division at dissolution of either marriage or registered domestic partnership under California Family Code, and are subject to the same procedures for filing and implementing court orders.

My divorce is final but we haven't filed the DROs yet. I am planning to retire in the next six months. What do I need to know?

If a community property hold has been placed on your account, CalPERS will not pay any benefits, including health or dental, until the hold is removed. An unresolved community property case may delay your first retirement warrant. You may need to pay your health and dental carriers directly in the meantime. The legal process to divide CalPERS retirement benefits can be lengthy. We recommend that members resolve any open community property cases prior to submitting retirement applications.

Contacting CalPERS

What is the best way to contact CalPERS to answer my community property questions?

You may contact us by telephone at 888 CalPERS (or 888-225-7377) or write to us at:

CalPERS
Benefit Services Division
Attn: Community Property Unit
P.O. Box 2056
Sacramento, CA 95812-2056

Court Orders

Can I send in a copy of my court order?

Yes. However, the copy must be complete, and filed orders should contain a legible filed stamp and the judge's signature.

Can I just send in the pages that have to do with my retirement benefits or do I have to send the whole thing?

You must provide us with the entire court order. We must review the entire order to ensure we make an informed determination regarding the community property interest.

My former spouse and I made a deal, where I get the house, and he gets the entire CalPERS benefit. Since we have worked it out between ourselves, why do we need a court order?

If you and your former spouse have resolved the community property interest, the final judgment of dissolution should award the entire interest in the CalPERS retirement benefits as the sole and separate interest of the party. In some cases, CalPERS cannot accept the award of a member's entire retirement benefit to a nonmember spouse. We must review the entire court order to determine if the order is acceptable under the PERL.

Do I need an attorney to prepare the court order?

Court orders are legal documents. Although it is not a requirement that an attorney prepare the court order, you may want to seek legal advice. CalPERS cannot provide legal advice. The model order language we provide is intended to be used as a guideline only.

Can you review my court order before it has been filed?

Yes. We prefer to review proposed orders to ensure acceptability prior to filing with the court.

GLOSSARY OF TERMS

A

Actuarial Valuation

The total actuarially determined value of retirement benefits that a member is expected to receive over the member's lifetime. This valuation is a type of appraisal that requires making economic and demographic assumptions in order to estimate future liabilities and growth of assets to meet those liabilities. CalPERS does not provide any actuarial services to its members.

B

Beneficiary

Any person or entity receiving or entitled to receive a benefit and payment because of the death of a CalPERS member or retired member.

Benefit

An amount payable to a retired member, disabled member, or beneficiary. A benefit can be paid monthly or in a lump sum.

C

Certified Copy

A certified copy is a document that has been filed with the court, signed by a judge, and embossed with the seal of the court.

Court-Ordered Option 4

A court may order a member to elect Option 4 and name a former spouse as a beneficiary of a continuing benefit for the former spouse's lifetime. The member or the former spouse may "pay" for this reduction, or share the cost.

D

Death Benefit

Any benefit payable at the member's death.

Defined Benefit

Retirement benefits are based on a formula using age, service credit, and final compensation.

Disability Retirement

Disability retirement benefits are benefits payable to members who can no longer perform their jobs due to illness or injury. They are based on the employer's contract with CalPERS.

F

Former Spouse

A “former spouse” is a member’s spouse or former spouse, or a member’s registered domestic partner or former registered domestic partner, who is or has been awarded a community property interest in the member’s retirement benefits.

I

Industrial Disability Retirement

Benefits payable to safety members or those members whose employer has contracted for industrial disability benefits, whose job-related injuries or illnesses resulted in a disability, making them unable to continue working.

J

Joinder

A document that when filed with the court, may include CalPERS as a party in the dissolution of a marriage or registered domestic partnership. Once joined, CalPERS is authorized to enforce an order dividing CalPERS benefits.

M

Member

A person who has creditable, qualifying service under CalPERS.

N

Nonmember Spouse

A “nonmember spouse” is a member’s spouse or former spouse, or a member’s registered domestic partner or former registered domestic partner, who is or has been awarded a community property interest in the member’s account and for whom a separate account has been established.

O

Option

An optional settlement allows a member to reduce actuarially their allowance in order to provide a lifetime benefit for a beneficiary.

Option Beneficiary

The option beneficiary is the person named at retirement to receive a continuing allowance after the member’s death.

P

Petitioner

A Petitioner is the party who files for the dissolution or legal separation.

Post-Retirement Survivor's Allowance (PRSA)

Also known as "survivor continuance," the PRSA benefit provides a monthly allowance payable to an eligible survivor, defined under the PERL as a surviving spouse or registered domestic partner, or if none, to the member's minor children or financially dependent parent. Upon dissolution, a former spouse or registered domestic partner is no longer eligible to receive this benefit.

R

Refund

A distribution of all accumulated contributions and interest on a member's or nonmember's account. A refund terminates any future benefits payable from CalPERS.

Registered Domestic Partner

A person who has filed a Declaration of Domestic Partnership with the California Secretary of State in accordance with Family Code section 298.

Registered Domestic Partnership

A Registered Domestic Partnership is created when partners of the same sex, or partners of the opposite sex where one partner is at least 62 years old, complete and file a Declaration of Domestic Partnership with the California Secretary of State in accordance with Family Code section 298.

Respondent

A Respondent is the party responding to the dissolution or legal separation action.

Retirement

A change in status from active or inactive membership to membership as a retired annuitant.

Retirement Benefits

A monthly benefit paid to a member after retirement.

S

Separation of Accounts

The separation of accounts method divides the accumulated contributions and corresponding service credit in a member's account into two individual accounts based upon a court order. The member and the nonmember would then each have their own individual account.

Service Credit

Service credit is the accumulated amount of time in years and partial years of CalPERS-covered service during which a member has received creditable compensation or has additionally elected service through the service credit purchasing process under retirement law. More information on service credit is available in the publication *A Guide To Your CalPERS Service Credit Purchase Options*.

Service Retirement

This term refers to "normal" retirement benefits.

Subpoena

A legal document that orders CalPERS to provide documents or information for a pending lawsuit.

Survivor

A family member defined by law as eligible to receive specific benefits after a member's death.

T

Time Rule Formula

A formula that determines what percentage of the member's benefit shall be paid to the former spouse or domestic partner. The formula is service credits earned during marriage divided by total service credit at the time of retirement, multiplied by 50 percent and then multiplied by the member's retirement benefit.

BECOME A MORE INFORMED MEMBER

CalPERS On-Line

Visit our website at www.calpers.ca.gov for information on all our benefits and services.

my|CalPERS

Log in at my.calpers.ca.gov to access real-time details and balances of your CalPERS accounts. With my|CalPERS you can:

- View, print, and save current and past statements.
- Select mailing preferences for your statements and newsletters.
- Confirm which dependents are covered on your health plan and what health plans are available in your area.
- Estimate your future retirement benefit and save the estimates to view later.
- Send and receive secure messages.
- Order and download free publications.
- Send account information to third parties, such as banks.
- Search for medical premium rates.
- Apply for service retirement.
- Change your beneficiary designation.

CalPERS Education Center

Whether you're in the early stages of your career or getting ready to retire, visit the CalPERS Education Center in my|CalPERS to:

- Take online classes that help you have a better understanding of your CalPERS benefits.
- Register for instructor-led classes at a location near you.
- Download class materials and access information about your current and past classes.
- Schedule a one-on-one appointment with a representative at your nearest CalPERS Regional Office.

Experience CalPERS Through Social Media

- Facebook: www.facebook.com/myCalPERS
- Twitter: www.twitter.com/CalPERS
- Instagram: www.instagram.com/CalPERS
- YouTube: www.youtube.com/CalPERSNetwork
- Google Plus: www.calpers.ca.gov/googleplus
- LinkedIn: www.linkedin.com/company/calpers

Reach Us by Phone

Call us toll free at **888 CalPERS** (or **888-225-7377**).
Monday through Friday, 8:00 a.m. to 5:00 p.m.
TTY: (877) 249-7442

Visit Your Nearest CalPERS Regional Office

Fresno Regional Office

10 River Park Place East, Suite 230
Fresno, CA 93720

Glendale Regional Office

Glendale Plaza
655 North Central Avenue, Suite 1400
Glendale, CA 91203

Orange Regional Office

500 North State College Boulevard, Suite 750
Orange, CA 92868

Sacramento Regional Office

Lincoln Plaza East
400 Q Street, Room 1820
Sacramento, CA 95811

San Bernardino Regional Office

650 East Hospitality Lane, Suite 330
San Bernardino, CA 92408

San Diego Regional Office

7676 Hazard Center Drive, Suite 350
San Diego, CA 92108

San Jose Regional Office

181 Metro Drive, Suite 520
San Jose, CA 95110

Walnut Creek Regional Office

Pacific Plaza
1340 Treat Boulevard, Suite 200
Walnut Creek, CA 94597

Visit the CalPERS website for directions to your local office.

Regional Office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m.

INFORMATION PRACTICES STATEMENT

The Information Practices Act of 1977 and the Federal Privacy Act of 1974 require the California Public Employees' Retirement System (CalPERS) to provide the following information to individuals who are asked to supply information to CalPERS. The information requested is collected pursuant to the Government Code (Sections 20000, et seq.) and will be used for administration of the CalPERS Board's duties under the California Public Employees' Retirement Law, the Social Security Act, and the Public Employees' Medical and Hospital Care Act, as the case may be. Submission of the requested information is mandatory. Failure to supply the information may result in the System being unable to perform its function regarding your status and eligibility for benefits. Portions of this information may be transferred to entities including, but not limited to, State and public agency employers, State Attorney General, Office of the State Controller, Franchise Tax Board, Internal Revenue Service, Workers' Compensation Appeals Board, State Compensation Insurance Fund, county district attorneys, Social Security Administration, beneficiaries of deceased members, physicians, insurance carriers, and various vendors who perform services on behalf of CalPERS. Disclosure to the aforementioned entities is done in strict accordance with current statutes regarding confidentiality.

You have the right to review your membership file maintained by the System. For questions concerning CalPERS information practices, please contact the Information Practices Act Coordinator, CalPERS, 400 Q Street, P.O. Box 942702, Sacramento, CA 94229-2702.

While reading this material, remember that we are governed by the Public Employees' Retirement Law and the Alternate Retirement Program provisions in the Government Code, together referred to as the Retirement Law. The statements in this publication are general. The Retirement Law is complex and subject to change. If there is a conflict between the law and this publication, any decisions will be based on the law and not this publication. If you have a question that is not answered by this general description, you may make a written request for advice regarding your specific situation directly to CalPERS.

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California Public Employees' Retirement System

400 Q Street
P.O. Box 942701
Sacramento, California 94229-2701

888 CalPERS (or **888-225-7377**)
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