



Divorce & Your VCERA Benefits

If there is any discrepancy between the County Employees' Retirement Law of 1937 and the content of this publication, the law shall prevail. The material contained in this guide is for informational purposes only and does not constitute legal advice.



VCERA
VENTURA COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

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COMMUNITY PROPERTY

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

VCERA cannot give legal advice concerning such matters, so you may choose to hire legal counsel to assist with your divorce proceedings. In this publication, information regarding marriage, spouse and divorce also applies to registered domestic partnerships, registered domestic partners and dissolution of registered domestic partnerships, respectively.

REQUIRED DOCUMENTATION

A Marital Settlement Agreement (MSA) sets forth the terms of a divorce, including division of community assets such as a member's VCERA account or benefits if accrued during any period of the marriage. If an MSA is reached, it will be incorporated into a Judgment, and serves as verification to VCERA that the divorce is final. If the MSA is silent as to division of the community property interest in the member's VCERA account, it will be deemed an omitted asset and the parties will need to return to Court for further orders.

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

A DRO is not needed if your MSA states that the VCERA account has been awarded as the member's *sole and separate property* or that the former spouse waives all interest in the account.

SEPARATE ACCOUNT

Under the separate account option,¹ an agreed-upon percentage of the accumulated member contributions and service credit accrued during the marriage is transferred to the former spouse's account. If the active member is vested (i.e., has 5 years of service credit) in VCERA as of the marital separation date, the former spouse may have some of the same rights as a member. For example, the former spouse may (a) file for retirement after age and service requirements are met or (b) withdraw contributions and interest transferred from the member's account.

¹ Pursuant to Government Code section 31685, et seq.



If the former spouse files for retirement, the monthly benefit will be based on his/her age at retirement and transferred service credit as well as the member's final average compensation. The benefit will be payable throughout the former spouse's lifetime and, depending on the retirement option elected, may continue to an eligible beneficiary after the former spouse dies.

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

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

SHARED BENEFIT

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

When the member retires, the former spouse usually receives a monthly benefit equal to the community property ("time rule") percentage of the member's benefit, although the Court may approve a different percentage. Also, the former spouse's benefit is payable only during the lifetime of the member (and his/her eligible beneficiary, if applicable). When the member and his/her beneficiary die, the former spouse's benefit ends.

MODEL DROs

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

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

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

VCERA RESPONSE TO DIVORCE NOTICE



First, VCERA must determine if there is community property to be divided. If the Judgment/MSA clearly awards the entire VCERA pension to the member, no further action is needed. However, if a community property division with a former spouse is required by the Court, VCERA will *not* take any action related to payment (e.g., retirement or refund) until a conformed DRO is on file. Depending on your membership status, VCERA's response will vary:

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

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

IMPORTANT TIPS

- A divorcing couple may bypass the DRO process if their Marital Settlement Agreement states either that 1) the VCERA account has been awarded as the member's "sole and separate property" or 2) the former spouse waives all interest in the VCERA account.
- The assets earned by a member before the date of marriage and after the date of separation are the member's separate property.
- If a former spouse is awarded a separate account, he/she may elect a retirement option that provides a lifetime continuance to an eligible beneficiary, provided the member was vested at the time of marital separation.
- Members and former spouses are encouraged to keep their beneficiary designations up-to-date to ensure accurate and timely payment of death benefits.
- VCERA does not administer your 457 and 401(k) plans. Those plans are administered by the Ventura County Deferred Compensation Plan. Contact the Deferred Compensation representative at (805) 654-2620 with questions about the impact of divorce on that community property asset.

The rules and procedures governing VCERA's divorce process are complex. Before making major decisions about the division of your retirement account, please contact VCERA at (805) 339-4250 to discuss your situation, the model DRO that will best meet your needs, and whether your draft Judgment/MSA contains clear language about your VCERA account.

FINAL CONSIDERATIONS

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



- At your request, VCERA can perform a “Community Property valuation” that provides the service credit and dollar value of the VCERA assets accrued during your community property period. The valuation also shows your earliest available retirement date and estimated monthly benefit amounts.
- You can either prepare your own DRO or hire an external attorney to represent you. VCERA offers model DROs for each scenario. See Appendices D & E for attorney-prepared DROs. Contact VCERA if you want to prepare your own DRO (“in pro per”).
- A modified DRO may be required if you were awarded a service-connected disability retirement from VCERA. Contact VCERA for model DRO language.
- A modified DRO may be required if you made a service purchase in the past or might do so in the future. Contact VCERA for more information.
- A legal separation may be treated differently than a marital dissolution.
- VCERA will not file the DRO for you. Once VCERA’s General Counsel has reviewed and signed your draft DRO, it is *your* responsibility to file it with the Court.
- After your DRO has been stamped by the Court and returned to you, the conformed copy must be submitted to VCERA. Soon after, VCERA will mail a letter to both parties showing the respective community property interests, such as service credit and contributions in each account.
- A member’s beneficiary designation is void after a divorce is final, so please complete and return a new Beneficiary Designation Form to VCERA as soon as possible. If VCERA does not have your updated beneficiary information on file when you die, any benefits will be paid instead to your estate.

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



APPENDICES

COMMUNITY PROPERTY DIVISION FLOWCHARTS & MODEL DROs

APPENDIX A

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



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



MEMBER'S PROPERTY

Includes community property portion of service and contributions and separate property

YOU CAN:

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

Member has 5 years to redeposit funds to restore service

MEMBER BECOMES VESTED

YOU CAN:

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

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

MEMBER RETIRES

MEMBER DIES:
Benefit continues to eligible beneficiary, if applicable

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



NONMEMBER'S PROPERTY

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

Nonmember is not eligible for pension benefit because Member does not have enough service (i.e., is not vested) as of marital separation date

Mandatory Refund

* Age 70 if member is not vested

** **Legacy:** Age 50 and 10 years of service
PEPRA (General): Age 52 and 5 years of service
PEPRA (Safety): Age 50 and 5 years of service

APPENDIX B

COMMUNITY PROPERTY DIVISION FLOWCHART for VESTED ACTIVE & DEFERRED MEMBERS



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

Member Account

MEMBER'S PROPERTY

Includes community property portion of service and contributions and separate property

Member remains vested

YOU CAN:

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

Member has 5 years to redeposit funds to restore service

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

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

MEMBER RETIRES

MEMBER DIES:
Benefit continues to eligible beneficiary, if applicable

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



* **Legacy:** Age 50 and 10 years of service, or age 70
PEPRA (General): Age 52 and 5 years of service, or age 70
PEPRA (Safety): Age 50 and 5 years of service, or age 70

NONMEMBER'S PROPERTY

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

YOU CAN:

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

IF NONMEMBER DIES BEFORE RETIREMENT:
Contributions paid to beneficiary

NONMEMBER RETIRES:

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

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

NONMEMBER DIES:
Benefit continues to eligible beneficiary, if applicable



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

APPENDIX C

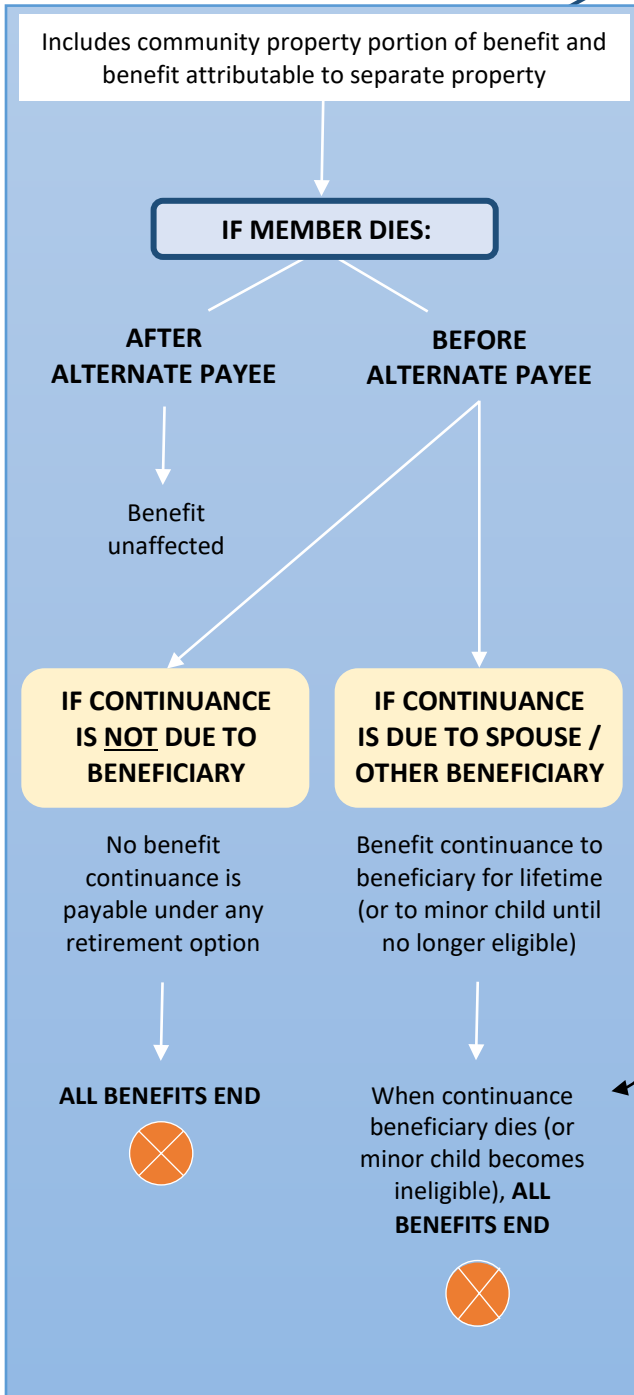
COMMUNITY PROPERTY DIVISION FLOWCHART for RETIRED MEMBERS



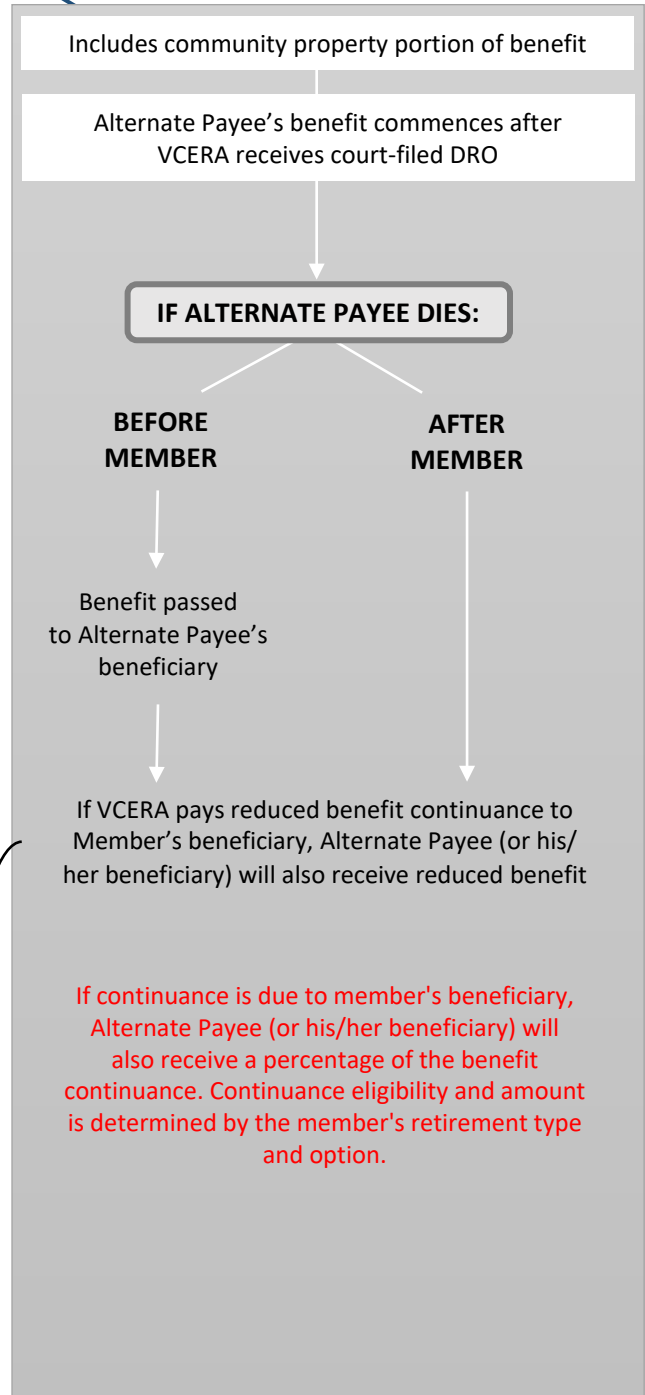
Judge signs DRO directing community property division of benefit. VCERA divides Member's retirement benefit with Alternate Payee (former spouse).



MEMBER'S BENEFIT



ALTERNATE PAYEE'S BENEFIT



APPENDIX B

COMMUNITY PROPERTY DIVISION FLOWCHART for VESTED ACTIVE & DEFERRED MEMBERS



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



MEMBER'S PROPERTY

Includes community property portion of service and contributions and separate property

Member remains vested

YOU CAN:

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

Member has 5 years to redeposit funds to restore service

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

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

MEMBER RETIRES

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Benefit continues to eligible beneficiary, if applicable

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



* **Legacy:** Age 50 and 10 years of service
PEPRA (General): Age 52 and 5 years of service
PEPRA (Safety): Age 50 and 5 years of service

NONMEMBER'S PROPERTY

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

YOU CAN:

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

IF NONMEMBER DIES BEFORE RETIREMENT:
Contributions paid to beneficiary

If Nonmember retires before Member:

- Benefit based on Nonmember's age and service and Member's final compensation as of that date
- Nonmember can choose retirement option that provides lifetime continuance to beneficiary

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

NONMEMBER DIES:
Benefit continues to eligible beneficiary, if applicable



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

APPENDIX D: SEPARATE/SEGREGATED ACCOUNTS

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

2 [Tel:]

3 [Fax:]

4 [E-Mail:]

5 Attorney for [Petitioner/Respondent]

6

7

8

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

9

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In Re the Marriage of:

) NO. _____

11

_____,

) STIPULATED DOMESTIC
) RELATIONS ORDER RE
) DIVISION AND DISTRIBUTION
) OF RETIREMENT BENEFITS

12

Petitioner,

13

and

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_____,

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Respondent.

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Claimant: VENTURA COUNTY
EMPLOYEES'
RETIREMENT
ASSOCIATION

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Petitioner, _____ and Respondent,

21

_____, and the Ventura County Employees'

22

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

23

RECITALS

24

1. Petitioner and Respondent were married to each other on _____.

25

They separated on _____, and this court entered a judgment of dissolution

26

of marriage in the action on _____.

27

28

1 2. This court has personal jurisdiction over both Petitioner and Respondent and
2 jurisdiction over the subject matter of this Order and the dissolution of marriage action.

3 3. VCERA was properly joined as a party to the Petitioner's and Respondent's
4 dissolution of marriage action pursuant to sections 2060 through 2065 of the
5 Family Code.

6 **STIPULATION**

7 This Order is acceptable under the County Employees Retirement Law of 1937
8 ("the '37 Act"), which is set forth at section 31450 et seq. of the Government Code.

9 **IT IS HEREBY ORDERED BY THE COURT THAT:**

10 1. This Order is entered pursuant to the Family Code.

11 2. [Petitioner or Respondent] ("Member") and [Petitioner or Respondent]
12 ("Nonmember") have acquired a community interest in the Member's retirement benefits
13 attributable to periods of service in VCERA from the date of marriage up to the date of
14 separation.

15 3. Pursuant to section 31685 of the Government Code, the court allocates and
16 awards to the Nonmember 50 percent of the accumulated retirement contributions and
17 service credit attributable to the Member's service in VCERA during the period from the
18 date of marriage up to the date of separation ("VCERA Interest") as the Nonmember's
19 sole and separate property. All accumulated retirement contributions and service credit
20 attributable to the Member's service in VCERA which are not awarded to the
21 Nonmember pursuant to this Order shall be the Member's sole and separate property.

22 4. Pursuant to section 31685 of the Government Code, the Administrator of
23 VCERA ("Administrator") shall divide the Member's accumulated retirement
24 contributions and service credit in accordance with paragraph three of this Order and
25 establish a separate and distinct account for the VCERA interest awarded to the
26 Nonmember as soon as administratively practicable after the Administrator determines
27 that this Order is acceptable under the '37 Act and the Bylaws of VCERA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Name: _____

16 Address: _____

17 _____

18 Telephone No. _____

19 Date of Birth: _____

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

24 Name: _____

25 Address: _____

26 _____

27 Telephone No. _____

28 Date of Birth: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **IT IS SO STIPULATED:**

4 Dated: _____
5 [Name]
6 Petitioner

7 Dated: _____
8 Counsel for Petitioner

9 Dated: _____
10 [Name]
11 Respondent

12 Dated: _____
13 Counsel for Respondent

14 Approved as to form and content:

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

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

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

25 Dated: _____
26 JUDGE OF THE SUPERIOR COURT

APPENDIX E: SHARED BENEFIT

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

3 [Tel:]
4 [Fax:]
5 [E-Mail:]

6 Attorney for [Petitioner/Respondent]

7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

10	In Re the Marriage of:)	No. _____
11	_____)	STIPULATION AND ORDER
12	Petitioner,)	RE: DIVISION AND DISTRIBUTION
13	and)	OF RETIREMENT BENEFITS
14	_____)	
15	Respondent.)	
16	_____)	
17	Claimant: VENTURA COUNTY)	
18	EMPLOYEES')	
19	RETIREMENT)	
20	ASSOCIATION)	

21 IT IS HEREBY STIPULATED AND AGREED that [Petitioner's/Respondent's]
22 retirement and pension rights based upon membership in the Ventura County Employees'
23 Retirement Association ("VCERA") are hereby divided in accordance with the following
24 terms and conditions:

25 **1. IDENTIFICATION OF PARTIES:**

26 A. The [Petitioner/Respondent], also referred to as "Member," has
27 earned retirement benefits administered by Claimant by virtue of his/her employment
28 with the County of Ventura and/or any other entity that participates in the retirement plan

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

3 Name: _____

4 Address: _____

5 _____

6 Telephone No. _____

7 Date of Birth: _____

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

11 Name: _____

12 Address: _____

13 _____

14 Telephone No. _____

15 Date of Birth: _____

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

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

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

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2. DETERMINATION OF COMMUNITY PROPERTY INTEREST:

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

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

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

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

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

4. MEMBER’S SEPARATE PROPERTY INTERESTS:

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

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

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

4 **BENEFITS:**

5 CHOOSE ONE OR MODIFY AS DESIRED:

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

11 OR

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

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

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

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

27 Name(s) _____

28 ///

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

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

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

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

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

26 ///

27 ///

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

2 **OBLIGATION:**

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

12 **10. CONSTRUCTIVE TRUST:**

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

21 **11. RESERVATION OF JURISDICTION:**

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

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

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12. EXECUTION:

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

IT IS SO STIPULATED:

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

Dated: _____
Counsel for Petitioner

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

Dated: _____
Counsel for Respondent

Approved as to form and content:

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

ORDER

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

Dated: _____
JUDGE OF THE SUPERIOR COURT