

**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
POLICY REGARDING DIVORCES AND DIVISIONS OF COMMUNITY PROPERTY**

**I. Purpose**

This policy provides the framework for how the Fresno County Employees' Retirement Association ("FCERA") handles matters pertaining to its members' dissolutions of marriage, terminations of domestic partnerships, and legal separations; for the purpose of this policy, each of these events is referred to as a "divorce."

FCERA is governed by the County Employees Retirement Law of 1937 (the "CERL"). The Board of Retirement intends this policy to comply with the CERL and all other provisions of State law governing divorce proceedings and divisions of community property, as well as case law interpreting the same. In forming this policy, the Board has relied on FCERA staff input and legal opinions provided to FCERA and the Board by counsel. In the event any provision of this policy conflicts with provisions of the CERL or other applicable laws, the CERL and applicable laws shall govern.

Additionally, the Board intends this policy to be a resource for FCERA members and their non-member spouses who are considering, undertaking, or have already completed, a divorce. This policy sets forth the procedures FCERA follows to administer retirement benefits that are the subject of a divorce proceeding. This policy, however, is not intended to be and is not legal advice. Members and non-member spouses should not construe anything contained herein as legal advice.

**FCERA cannot provide legal advice. If you are a member of FCERA or a non-member spouse dealing with a divorce, FCERA advises you to seek individual legal counsel.** FCERA highly recommends that all parties obtain their own legal assistance during the divorce process. The disposition of retirement benefits in divorce proceedings involves complex legal issues. Parties should not rely solely upon the information contained herein in reaching legal conclusions.

FCERA cannot tell you how to divide the retirement. However, sample Domestic Relations Orders ("DRO") provide methodologies and illustrate the issues that a DRO should address. Sample DROs are available on the FCERA website.

**II. Communication to Membership**

1. FCERA staff shall make all reasonable efforts to inform FCERA members of FCERA's divorce process. This will be done via New Hire Orientation, information on FCERA website, and mid-career & retirement seminars.

### **III. Community Property in California**

1. California is a community property state; as such, any retirement benefits earned by a member during their marriage period may be subject to division in a court of law.
2. If FCERA is notified of a divorce (per Section IV below) or of a claim by an interested party (per Section V below), FCERA staff will make all reasonable efforts to gather and/or request information pertaining to the matter that is necessary to the proper administration of retirement benefits.

### **IV. Notification of Divorce**

1. If FCERA is notified that divorce proceedings have or are occurring for a member, staff will make a notation in that member's account and FCERA will respond to the notification accordingly:
  - a) If provided divorce documents: FCERA will review the divorce document (e.g., pleading, stipulation, court order, etc.) to determine the effect of the document and to determine if it contains a division of property. After review, FCERA will provide a written response to the member.
  - b) If served with Joinder documents: FCERA staff will confirm that a party in the dissolution is a member of FCERA and, if so, forward the documents to FCERA's attorneys to file the necessary response documents with the court.
  - c) If given verbal notice: FCERA will ask for written confirmation that legal proceedings are underway or that they are in the process of being started. The notice must be provided by a party to the divorce proceedings or their authorized legal representatives.

### **V. Notice of an Interested Party**

1. If FCERA is notified in writing that a party is claiming an interest in a member's retirement benefits, FCERA will notify the member that FCERA received the notice and that one of the following actions will take place:
  - a) For active and deferred members: FCERA will put a hold on the member's account and not release any funds to the member or any interested party until all the necessary documents are on file (see below for necessary documents) or until the claim has been formally resolved.
  - b) For retired members: FCERA will reduce the member's gross benefit amount by 50% in the month following date of notice. The reduction will stay in place until all necessary documents are received (see below for necessary documents) or until the claim has been formally resolved.

## **VI. Necessary Documents**

1. Every divorce is unique and specific to the parties involved, so the documents FCERA will require to properly administer benefits may vary depending on the circumstances. The most common required documents are:
  - a) Judgment
  - b) Attachment to Judgment
  - c) Marital Settlement Agreement (MSA)
  - d) Stipulation after Order
  - e) Joinder documents
  - f) Domestic Relation Order (DRO).
2. FCERA will need all documents that have been filed with the Court pertaining to the divorce. Providing only the pages that pertain to retirement is not acceptable.
3. It is to the benefit of all parties that FCERA, when possible, review dissolution papers prior to being filed with the Court to ensure FCERA can administer the settlement provisions as drafted.

## **VII. Types of Determinations**

1. The types of determinations and information contained in court orders resulting from divorce proceedings varies. The following are the most common types of determinations FCERA receives:
  - a) Award or Confirmation of Retirement Benefits as Sole and Separate Property: These types of judgments (and/or the attachments to the judgment) clearly state that the member's retirement benefits with FCERA are awarded solely to the member or that the non-member ex-spouse waives his or her rights to the FCERA retirement benefits of the member.
  - b) Silent Judgment: These types of judgments: (i) do not mention retirement benefits with FCERA at all and (ii) do not reserve jurisdiction over the matter to the court. If FCERA receives a Silent Judgment, FCERA does not divide or place a hold on the member's retirement benefit, as the member's retirement benefit remains his or her sole and separate property.
  - c) Status-Only Judgment: These types of judgments reserve jurisdiction to the Court when there are outstanding issues that the court still needs to address. If the judgement does not mention the member's FCERA retirement benefit, FCERA cannot know if the member's retirement benefit is one of the outstanding issues for which the court reserved jurisdiction. In this instance, FCERA will need a judgment on reserved issues before any payment can be made on a member's account.

- d) Division of Property: Some judgments clearly state that a member's retirement benefits with FCERA are going to be divided. In cases such as this, parties generally are required to file additional documents with the court to complete the division process. In these instances, FCERA will have to be joined to the proceeding and the parties will have to obtain a domestic relations order ("DRO") or similar court order (see Section VII below regarding Division of Property).
- e) Additional Information Needed: Sometimes FCERA receives documents that are incomplete or otherwise do not contain the information FCERA needs to be able to administer the retirement benefit. This occurs when FCERA is provided incomplete divorce documents, pages are missing from the attachments, or when the judgment reserves jurisdiction over the case and does not specifically address the member's FCERA retirement benefit. In these situations, FCERA will ask the provider of the documents to submit the missing pages or provide the attachments to judgment. In cases where jurisdiction is reserved, the member may be required to go back to court to file additional documents that specifically address the member's FCERA retirement benefit.

#### **VIII. Division of Property**

1. When there is a division of a member's retirement benefits (e.g., a division of property), FCERA must be joined to the proceedings. Furthermore, additional documents will be required before division of property can occur. These documents include:
  - a) Joinder Documents: In order to join FCERA to the proceedings, one or both of the parties to the proceedings will need to join FCERA to the proceedings. This is accomplished by filing legal documents with the court that formally make FCERA a party to the divorce proceedings. The joinder process allows FCERA to properly address the case and allows FCERA to legally divide a member's retirement and pay it to another party. Joinder documents must be filed with the court and properly served upon FCERA in order for them to be enforceable.
  - b) Domestic Relations Order (DRO): A DRO gives the specific details that FCERA will need in order to properly divide the retirement benefits as the parties intend. It is recommended that a proposed DRO be provided to FCERA for review prior to it being submitted to the courts for filing. This allows FCERA to determine if the information in the DRO is written in a manner that the retirement association can implement and to make recommendations to any changes/corrections that need to be made in order for FCERA to administer the DRO as the court orders. If a court filed DRO is provided to FCERA that cannot be administered, then FCERA will notify the parties that the provided document is unacceptable and that they will need to file a new or amended DRO with the court that can be implemented.

- c) Implementation Letter: This is a document that is prepared by FCERA which breaks down and applies the information from the DRO to the member's account. This document includes the dollar amounts payable to each party, what happens when each party passes away, responsibilities of each party, and other pertinent information. This document is sent to both the member and the non-member spouse. The parties have seven days from receipt of the implementation letter to contest FCERA's understanding of the DRO. If FCERA is not contacted within the seven-day period, FCERA will proceed implementing the benefits according to its standard payroll process.
- 2. Article 8.4 of the CERL: Article 8.4 of the CERL has not been adopted by the Fresno County Board of Supervisors and is therefore inapplicable to FCERA. FCERA does not have separate accounts for a member and a nonmember spouse. A nonmember will not be able to receive payment until the member retires or requests a refund of contributions.

**IX. Out-of-State Judgments**

- 1. FCERA is not subject to the jurisdiction of out-of-state courts. If a member divorces in another state, in order for the out-of-state judgement to be binding on FCERA, the judgement must be domesticated in a California court.
- 2. Depending on the circumstances, a member can domesticate the out-of-state judgement using processes available under state law. FCERA advises members contemplating an out-of-state divorce to obtain legal counsel from an attorney familiar with California retirement and family law.
- 3. FCERA recommends that parties to ongoing out-of-state divorce proceedings provide, when possible, to FCERA a copy of any proposed agreement, stipulation, order, or other proposed divorce document between the parties, for FCERA's review before the document is filed with the court. Although FCERA cannot provide legal advice, FCERA staff may be able to tell parties whether or not a proposed out-of-state divorce document is likely to be administrable by FCERA and to help the parties understand FCERA's process for handling out-of-state divorce proceedings.

**X. Policy Review**

- 1. The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate. The Board of Retirement may modify this policy at any time by majority vote of the Board.

**XI. Policy History**

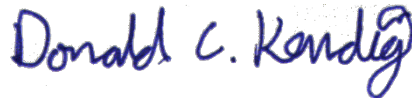
1. This policy was adopted by the Board on March 18, 2020.
2. This policy was reviewed and modified by the Board on March 18, 2020 and April 5, 2023.

**XII. Secretary's Certificate**

I, Donald C. Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

April 5, 2023

***Date of Action:***



***By: Retirement Administrator***