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San Bernardino County Employees'  
Retirement Association

POLICY NO. 010  
Committee: Admin Committee  
Policy Category: Benefits

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Approved.

By: \_\_\_\_\_  
Chair of the Board

**Subject: PAYMENT OF BENEFITS IN RELATION TO COMMUNITY PROPERTY LAW**

### PAYMENT OF BENEFITS IN RELATION TO COMMUNITY PROPERTY LAW

#### Background

California is a community property state. In California, all property acquired during a marriage or registered domestic partnership is community property, except for ~~each partner's separate~~ property owned by a spouse or partner prior to the marriage or domestic partnership or property obtained by means not relevant to this policy. A SBCERA member's accumulated contributions and retirement allowance are subject to division under the community property laws of the State of California; if such benefits were acquired during a marriage or domestic partnership.

This policy ensures that the member is fully informed of the steps necessary, in the event there is a division of the member's retirement, ~~in order~~ for the member to receive his or her retirement benefit without delay, while protecting SBCERA against possible liability for improper payment of benefits or disposition of funds.

#### Notice of a Dissolution, Legal Separation, or Termination of Domestic Partnership

In the event a member has divorced, legally separated, or terminated a domestic partnership during his or her membership with SBCERA, then, prior to retirement, wishes to change of beneficiary, or a request for a refund of accumulated contributions, the member shall submit for review a copy of a court filed Judgment or State filed Notice of Termination of Domestic Partnership, including any attached agreement addressing property issues, specifically the member's SBCERA retirement account.

Chief Counsel or designee shall review the Judgment or Notice of Termination, including attachments to determine whether it makes an effective disposition of the SBCERA account, or whether further action is needed, including but not limited to: a) a joinder and Domestic Relations Order (DRO); b) a modification of the Judgment to provide for a final disposition of the SBCERA account other than through a DRO; or c) a liability release from the member, if in the opinion of counsel such release is sufficient to protect against any claim of improper payments by SBCERA in light of ambiguities in the Judgment.

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In no event will SBCERA pay out funds prior to the receipt and review of the Judgment or Notice of Termination. SBCERA will notify the member in writing regarding the aforementioned review.

#### SBCERA Joined as an Employee Benefit Plan

If SBCERA is joined to a dissolution or legal separation action as an Employee Benefit Plan, and thereafter pays out benefits to the member, SBCERA does so at its peril and may be liable to the non-member spouse for benefits that should have been paid to the non-member. —SBCERA will notify the member in writing of the joinder and the consequences thereof.

#### Payment of Benefits Before Retirement

If SBCERA receives a joinder in a dissolution or legal separation action involving a member, the member's account will be flagged. SBCERA will not pay out retirement benefits, until the dissolution or legal separation action is resolved. Resolution of a dissolution or legal separation action shall mean one of the following:

1. A judgment whereby the court addresses property issues, specifically a member's SBCERA retirement account and the disposition of such property. In the event, the court divides the member's SBCERA retirement, the member will need to submit to SBCERA a proposed Domestic Relations Order for review and approval. In the alternative, if the ~~court Judgment clearly~~ awards the SBCERA retirement account to the member as his or her sole and separate property, ~~then the member will release SBCERA from the joinder~~SBCERA will release the flag on the member's account, note the Joinder as "inactive," and allow the member to make changes, including changing beneficiary designations, withdrawal, or retirement, to her or his account without interference or permission from the non-member former spouse or domestic partner. Determination of whether the Judgment clearly awards the accoutaccount to the member is in the sole discretion of the SBCERA Chief Counsel or designee.
2. A Domestic Relations Order setting forth the legal terms and requirements for the division of the community property interest in the member's retirement awarded to the nonmember spouse.
3. A court order whereby the nonmember spouse or domestic partner waives his or her interest in the member's SBCERA retirement.

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If SBCERA becomes aware of a dissolution or legal separation proceeding other than through the formal service of a joinder, SBCERA shall contact the member in writing to inform the member of the requirements of this policy and the steps the member may take to ensure the timely payment of benefits or refund.

SBCERA will not pay out partial benefits with a temporary court order, unless the member is retired and the order meets the necessary guidelines for SBCERA to administer the benefits to the member and non-member spouse.

#### **Payment of Benefits After Retirement**

If SBCERA receives a joinder in a dissolution or legal separation action involving a retired member and the retired member is already receiving retirement benefits, SBCERA will continue to pay full benefits to the retired member unless SBCERA also receives a Notice of Adverse Interest pursuant to Family Code section 755 from the non-member spouse. The Notice of Adverse Interest must identify the amount of benefit the non-member spouse is claiming and the formula for dividing community property used to calculate this amount. However, SBCERA will not pay the calculated interest to the non-member spouse until SBCERA is joined as an Employee Benefit Plan and SBCERA receives a conformed copy of a Domestic Relations Order that meets SBCERA's guidelines.