Community Property Guidelines

THIS BOOKLET CONTAINS INFORMATION FOR:

MEMBERS – TO ASSIST MEMBERS WITH THE DIVISION OF COMMUNITY PROPERTY INTEREST IN BENEFITS PROVIDED BY THE CITY OF FRESNO RETIREMENT SYSTEMS

ATTORNEYS - TO USE AS A BASIS FOR A DOMESTIC RELATIONS ORDER

City of Fresno Retirement Systems

Community Property Guidelines

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This summary booklet provides disclosure of the terms and conditions of City of Fresno Retirement Systems membership, retirement, and disability benefits available to members. It is designed to give you this information as simply and accurately as possible as of the date of issuance of this booklet. City of Fresno Retirement Systems is governed by the Fresno Municipal Code as it has been adopted and implemented. If there is any inconsistency between this booklet and the governing law, the law will govern. Decisions relating to the plan will be made after reference to the statutes and any resolutions, and policies governing administration of City of Fresno Retirement Systems as they exist at the same time of the decisions.

PURPOSE

This booklet has been compiled in an effort to assist members and their attorneys with the division of a community property interest in benefits provided by the City of Fresno Retirement Systems. Information has been included for attorneys, which may be used as a basis for a Domestic Relations Order (DRO) that will comply with the provisions of the Fresno Municipal Code. All options contained in the community property provisions of the Fresno Municipal Code are designed to be cost neutral to the systems. Under no circumstance may the combined payments to the divorcing parties be more than the benefits that would have been payable to the member and spouse had no divorce occurred.

Sample DROs may be obtained by contacting our office. These sample orders are not required to be used by the divorcing parties. They are simply guidelines intended to provide reasonable flexibility to the parties while facilitating the drafting of a DRO which can be implemented by the Retirement Systems Administrator. To avoid incurring unnecessary attorney fees and time delays, you are encouraged to submit draft orders to the Retirement Office for staff review.

Staff of the retirement systems is not authorized to provide legal or financial advice. You are encouraged to obtain competent legal and financial advice from a professional of your choice at your expense.

If you are divorcing after electing the Deferred Retirement Option Program (DROP,) the amount in your DROP account may be community property, as well. For further information regarding the implications involved in a divorce where a DROP account exists, please contact the Retirement Office to speak with a counselor.

IMPORTANT INFORMATION FOR ATTORNEYS

The City of Fresno Retirement Systems must be joined as a party to the proceedings in order for the System to comply with any DRO.

All DROs must include the last known mailing address, date of birth and Social Security number of the former spouse in order for our office to properly administer the order.

The legal name of the retirement system for all sworn safety members is **City of Fresno Fire and Police Retirement System.** This system has two tiers:

Tier 1 includes those who became members of the system before August 27, 1990 and is governed by sections 2-1701 through 2-1745 of the Fresno Municipal Code.

Tier 2 includes those who became members of the system after August 27, 1990 and is governed by sections 2-1701A through 2-1744A of the Fresno Municipal Code.

The legal name of the retirement system for all employees *other than sworn safety members* is **City of Fresno Employees Retirement System.** This system is governed by sections 2-1801 through 2-1853 of the Fresno Municipal Code.

The systems are governmental plans and therefore not subject to the Employee Retirement Income Security Act of 1974 (ERISA) or the Retirement Equity Act of 1984.

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TERMS

Throughout this booklet, the following terms shall apply:

*A **MEMBER** shall mean the City of Fresno employee whose retirement benefits are being split by a divorce action.*

*A **FORMER SPOUSE** shall mean the divorced spouse of the member.*

*A **DATE OF SEPARATION** shall mean the date determined by the court and set forth in the DRO that the parties conduct reflected a complete and final break in the marital relationship.*

The two methods set forth in the Municipal Code for dividing benefits are the *Separate Account Option* and the *Combined Account Option*. In this booklet, we have described in general terms, the advantages and disadvantages of each option.

The following descriptions assume that the divorce takes place before retirement. Dissolution after retirement is discussed on page 10 of this booklet.

All divorces finalized before June 24, 1994 are under the Combined Account Option. Parties wishing to convert to a Separate Account would have to amend the original court order to provide for the Separate Account Option.

SEPARATE ACCOUNT OPTION

This option separates the retirement benefit into two separate and distinct accounts. The Separate Account option allows the former spouse some control over his/her share of the members benefit.

Advantages of the Separate Account

The former spouse does not have to rely on the status of the member to determine when benefits will be paid. The former spouse has two options that may be chosen after the final, filed order is received by the Retirement Office.

If the member is vested as of the date of separation, the former spouse may elect to remain in the Plan and collect a lifetime retirement benefit when both the member and the former spouse are of retirement age, regardless of whether the member retires or not.

The former spouse may elect to receive a refund of his/her share of contributions and interest. However, if a refund is elected, the former spouse is not entitled to any further benefits from the plan.

The former spouse may name a beneficiary to receive his/her share of benefits should death occur before beginning receipt of retirement benefits.

If the member dies before retiring, the former spouse still receives a lifetime, monthly benefit based upon the community property portion of the members account.

Disadvantages of the Separate Account

The former spouse will not share in any increased value of the members account due to promotions, however, cost of living increases will apply.

If the member has not completed five or more years of service (ten years if a member of Tier 1 Fire and Police system) as of the date of separation, the former spouses only option is to receive a refund of his/her share of contributions and interest. No further benefits are payable from the plan.

If the member chooses to enter the City of Fresno's DROP program after separation, the former spouse will not be eligible to participate in the program.

COMBINED ACCOUNT OPTION

This option allows the former spouse to receive benefits only when the Member begins to receive benefits.

Advantages of the Combined Account

The former spouse shares in all increases in the members retirement benefit due to promotions.

The former spouse may name a beneficiary to receive his/her share of benefits should death occur before beginning receipt of their retirement benefits.

Should the Member choose to enter the City of Fresno's DROP program after separation, the former spouses community property piece of the benefit will be placed in a separate DROP account.

Disadvantages of the Combined Account

The former spouse has no control over the timing of receipt of benefits. Benefits will not begin until the Member chooses to retire from service.

The former spouse cannot request a refund of his/her share of accumulated contributions and interest.

If the Member dies before retiring, the former spouse is only entitled to the community property share of the death benefit..

DIVORCE AFTER RETIREMENT

If a divorce occurs after retirement, the Separate Account is not an available option. If the Member chose the Unmodified Allowance or Option 1 at the time of retirement, the retired Member continues to receive his/her percentage of the community property portion of the benefit for his/her lifetime. The Member may also name a new beneficiary for any remaining Option 1 balance. The former spouses portion will be actuarially adjusted for his/her lifetime.

If, on the other hand, the Member chose Option 2 or Option 3 upon retirement, the choice is irrevocable. The former spouses percentage of the community property portion of the Members benefit will normally be actuarially adjusted for his/her lifetime and paid to the former spouse for life.

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