

SAMPLE DOMESTIC RELATIONS ORDER
Employees Retirement System Active, Separate Account

NOTE: *This sample order applies to divorcing parties, one of whom is an active member of the City of Fresno Employees' Retirement System, who have selected the separate account option.*

This sample order is merely to assist attorneys in preparing a domestic relations order. It is not warranted that this sample order is appropriate in each individual case. The parties should always consult with their own attorneys before using this sample order. You may, of course, use other language; however, any order must be consistent with the provisions of the Fresno Municipal Code. Please note that neither the City of Fresno Employees' Retirement Board nor its agents are permitted to provide legal advice to you.

The parties must fill in the blanks in paragraphs 3, 4, 5 and 9 before submitting this order to staff for review. Please contact Retirement staff for the information needed to complete paragraph 5 and 9. Please read this sample order in conjunction with the Retirement Systems' community property pamphlet. The System reserves the right to modify this order.

1. Intent. This order is intended to satisfy the requirements of Article 18 of Chapter 2 of the Fresno Municipal Code concerning domestic relations orders. The parties acknowledge that this order is not subject to the federal Employee Retirement Income Security Act of 1974 or to amendments to ERISA ("ERISA"), such as the Retirement Equity Act of 1984. This order is entered pursuant to the California Family Code.
2. Claimant. The name of the claimant to which this order applies is the City of Fresno Employees' Retirement System ("System"). The parties acknowledge that only the benefits provided by the System are affected by this Order, and that this Order cannot and does not create benefits or rights not provided by the System.
3. Names. The names, last known mailing addresses, and related information of the parties are as follows:

a. Employee (Member):

Name: _____

Address: _____

SSN: _____

Birth Date: _____

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b. Spouse (Non-Member):

Name: _____

Address: _____

SSN: _____

Birth Date: _____

4. Period of Marriage. It is agreed that the period of marriage was from the date of marriage specified below to the date of separation specified below:

a. Date of Marriage: _____

b. Date of Separation: _____

5. Separate Account Option. The parties hereby elect the separate account option under the System. The community portion of the Member's accumulated contributions and service credits shall be divided into two separate and distinct accounts as follows:

a. The Member's account shall be composed of accumulated contributions of \$ _____ and service credits of _____ years.

b. The Non-Member's account shall be composed of accumulated contributions of \$ _____ and service credits of _____ years.

The above division of the community interest represents _____% awarded to Member and _____% awarded to Non-Member.

6. Member's Rights in Separate Account. Subject to the division set forth in paragraph 5, the Member's rights in Member's separate account shall be as set forth in the Fresno Municipal Code determined as if the Member were

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never married to the Non-Member.

7. Non-Member's Rights in Separate Account.

a. Refund of accumulated contributions.

- i. The Non-Member shall have the right to a refund of the accumulated contributions in the Non-Member's separate account.
- ii. If, as of the date of separation, the Member did not possess sufficient credited service to retire for service, then the Non-Member's sole retirement benefit shall be a refund of the accumulated contributions allocated to the Non-Member's account.

b. Retirement of Non-Member.

- i. A Non-Member shall be deemed eligible for a retirement allowance only if both of the following are true: 1) the Member and Non-Member are each at least fifty five years of age and 2) at the date of separation, the Member possessed sufficient credited service to retire for service.
- ii. If the Non-Member is eligible for a retirement allowance, the amount of the allowance payable to the Non-Member shall be determined by the average compensation, as defined in Fresno Municipal Code Section 2-1801(g)(2), by the Member during the period of marriage.
- iii. If the Non-Member is eligible for a retirement allowance, the Non-Member shall have the right to elect an option under Fresno Municipal Code Section 2-1841 and designate a beneficiary with respect to the Non-Member's separate account.
- iv. For purposes of applying the benefit formula of Fresno Municipal Code Section 2-1833 for determining the amount of any retirement allowance payable to the Non-Member, the age of the Non-Member shall be used.

8. Non-Member's rights in the Post Retirement Supplemental Benefit ("PRSB"). The PRSB will be divided in the same

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manner and ratio as defined in paragraph 5 above. The parties acknowledge that the PRSB is not a guaranteed benefit and may increase, decrease, or be eliminated. This paragraph applies only if the Non-Member has not withdrawn his or her contributions.

9. Deferred Retirement Option Program ("DROP"). The Member, as of the date of separation, possessed a balance of \$_____ in the Member's DROP account. The DROP account will be divided in the same manner and ratio as defined in paragraph 5 above.
10. Separate Property. Any retirement benefit or allowance, or any portion of a retirement benefit or allowance, that is not awarded in this order to the Non-Member shall be the sole and separate property of the Member.
11. Statutory Limits. In no event shall this order be interpreted to require claimant to:
- a. provide benefits with a greater actuarial value than it would otherwise pay, or
 - b. make payments to the Non-Member which are already required to be paid to another spouse under a prior order, or
 - c. provide any form of benefit or option not provided by the System.
12. Retention of Jurisdiction. The Member, the Non-Member, and the Court intend that this order meet all requirements of a domestic relations order under the Fresno Municipal Code and other applicable laws of the State of California, and the Court shall reserve jurisdiction to modify this order for the purpose of meeting or monitoring its implementation. The Court's reservation of jurisdiction shall be liberally construed to effect the provisions of this order and to resolve any disputes that may arise among the parties and the System concerning benefit payments or any other aspect of this order. If any portion of this order is rendered invalid, illegal, unconstitutional or otherwise unenforceable, the Court reserves jurisdiction to make an appropriate adjustment to effectuate the intent of the parties. Any future attorney fees or costs incurred with respect to future modifications or interpretation of this order will not be assessed against the System.