

SDCERS

San Diego City Employees' Retirement System

COMMUNITY PROPERTY HANDBOOK

Legal Services Division

Caution: The San Diego City Employees' Retirement System (SDCERS) provides this booklet as a courtesy to assist its Members and their spouses who are involved in a dissolution of marriage or legal separation. Neither SDCERS nor its agents are authorized to give legal advice to its Members or their spouses. Therefore, you should not rely upon this booklet to inform you of your rights and obligations or to make decisions affecting those rights and obligations. SDCERS recommends you contact your attorney for advice regarding your rights and obligations.

This booklet is meant as a guide only and not as a legal document or substitute for the law. The language used in this booklet is not intended to and does not create a contract or any other obligation between a Plan Sponsor, SDCERS and any Member or other person. The governing plan document adopted by the Member's employer governs the operations of SDCERS. Accordingly, if any information in this booklet conflicts with the plan document, the plan document must prevail.

INTRODUCTION

This handbook provides you with information concerning SDCERS' procedures for processing and implementing a Domestic Relations Order ("DRO") designed to allocate and award a portion of a Member's retirement benefits to the Member's Former Spouse.

Overview of SDCERS

The SDCERS Board of Administration administers "defined benefit" plans for employees of three Plan Sponsors: the City of San Diego (City), San Diego Unified Port District (Port) and San Diego County Regional Airport Authority (Airport Authority). Generally, each employee of a Plan Sponsor must contribute a percentage of his or her salary to their SDCERS retirement account. Plan Sponsors also make contributions to their plan. An employee who actively participates in and contributes to their SDCERS retirement account is a "Member" of SDCERS.

Member contributions are separated into individual accounts and may be withdrawn only if the Member's employment is terminated. Plan Sponsor contributions are not credited to individual Member accounts and are never refunded to the Member. When a Member retires, the benefit amount is based on a formula established by the relevant plan. If the Member leaves employment, and withdraws his or her contributions, the Member will not be entitled to a retirement allowance.

SDCERS is a governmental plan within the meaning of Internal Revenue Code section 414(d); exempt from both the Employee Retirement Income Security Act of 1974 (ERISA) and the majority of the Retirement Equity Act (REA). As a governmental plan, SDCERS is required to administer the plan in strict accordance with the plan document. For example, unlike ERISA-governed plans, the parties cannot stipulate in a DRO that the plan will treat the Former Spouse as a surviving spouse for the purpose of qualifying for a surviving spouse continuance benefit.

For the City, the statutes relevant to its Defined Benefit Plan are contained in Chapter II, Article 4, of the San Diego Municipal Code, and are available on the City's Website under "City Clerk," then "Documents" at: <http://www.sandiego.gov/city-clerk/>. Other plan documents, including those for the Port and Airport Authority, are available from SDCERS upon request.

A Note About California Community Property Law

California is a community property state. If the Member is or has been married at any time while he or she was contributing to SDCERS, the Member's spouse or Former Spouse has a community property interest in the Member's retirement benefits, unless there is a court order awarding the benefits to the Member as his or her separate property. The Member may not dispose of the Former Spouse's community property interest unless the Former Spouse expressly waives his or her interest.

If you are divorced or have ended a registered domestic partnership, you should review your Marital Settlement Agreement (MSA), Judgment, and/or court orders prior to withdrawing funds from SDCERS, entering DROP, or retiring. Failure to do so could cause you to violate a court order.

Other Savings and Retirement Plans

In addition to the defined benefit plans at SDCERS, there are other savings and retirement plans available to City, Port, and Airport Authority employees. For City employees, these include the Supplemental Pension Savings Plan ("SPSP"), the 401(k) Plan, and the Deferred Compensation Plan. All three are "defined contribution" plans that are separately administered by the City's Risk Management Department located at 1200 Third Avenue, Ninth Floor, San Diego, CA 92101, (619) 236-6600. You should address all communications regarding these plans to the Risk Management Department. For Airport Authority employees, these include a 457 Deferred Compensation plan as well as a Retiree-Funded Health Reimbursement Account (R-FHRA). For information regarding these plans, please visit <https://www.mymobilewalletcard.com/sdcraa/>. For Port employees, these include the 457 Plan, 401a Plan (employees hired on or after 1/1/10) and Health Plans (active and retiree). You should address all communications and questions regarding these plans to your Human Resources Department (619) 686-6315.

Communicating with SDCERS

All communications concerning the division of SDCERS retirement benefits should be addressed to the SDCERS Legal Services Division at 401 West "A" Street, Suite 800, San Diego, CA 92101, (619) 525-3600. Formal service of documents filed with a court should be addressed to the SDCERS Legal Services Division at the same address.

Requesting Member Information

Generally, the contents of a Member's retirement file are confidential. The Member, Former Spouse, and their respective attorneys do, however, have the ability to obtain information concerning the Member's retirement benefits to determine the parties' community property interests.

The Member, or his or her representative, may receive information regarding the Member's account or benefits by sending a written request to SDCERS. Any other person may request information by providing either of the following:

- (1) A written authorization to release information signed and dated by the Member, or
- (2) *A Deposition Subpoena for Production of Business Records*. Upon receipt of a subpoena, SDCERS will photocopy the contents of a Member's file. SDCERS charges per hour for clerical costs and per page for copying costs consistent with California Evidence Code section 1563(b)(1).

All requests for information should include enough identifying information (e.g. Member's name, date of birth, and social security number) to locate the Member's file.

Information SDCERS Will Provide

When SDCERS receives a written request or subpoena, SDCERS will provide a current statement of account, including the Member's service credit and accumulated contributions, the membership date, and refundable value. SDCERS will also provide a statement of the account as of the date of marriage and separation. If the Member has retired, SDCERS will identify the settlement option the Member selected at retirement, the designated beneficiary, the amount of the monthly allowance, and any payable death benefit.

SDCERS does not provide actuarial valuations of a Member's retirement benefits. In addition, SDCERS will not provide employment data, salary, payroll, or personnel records – this information must be obtained from the Member's employer.

Information on the Member Portal

If the Member has not retired, he or she can review their designated as their beneficiary, how much service credit they've obtained, run estimates for their retirement options, and review their current account balance with SDCERS.

If the Member has retired, the Member can review who they designated as their beneficiary for any and all death benefits available to them, and the amount of their monthly allowance.

DIVIDING THE COMMUNITY PROPERTY INTEREST

Notice of Adverse Interest

Pursuant to California Family Code section 755, a Former Spouse can make a written "Notice of Adverse Interest" to a Member's account. Once SDCERS receives the Notice of Adverse Interest, it will place a hold on the Member's account in the amount of the interest in dispute. If the Member is receiving a monthly retirement benefit and/or DROP annuity, SDCERS will set aside Former Spouse's estimated share of the benefits from each monthly payment. SDCERS will not make any payments to the Former Spouse unless and until SDCERS is joined in a dissolution action and receives a DRO instructing SDCERS to pay a portion of Member's benefits to the Former Spouse.

If the Member's Former Spouse or anyone acting on behalf of the Former Spouse (including the Member) provides SDCERS with written notice of the Former Spouse's claim to the Member's retirement benefits (often referred to as a "written notice of adverse interest"), SDCERS is obligated to withhold the disputed portion of the Member's benefits until SDCERS is joined to the proceedings and receives a DRO from the Court explaining how to divide the benefits between the Member and the Member's Former Spouse. In order to withhold those benefits pending receipt of a DRO, SDCERS may have to prevent the Member from withdrawing his or her contributions, selecting a retirement option, retiring, and/or entering DROP. These restrictions and the hold on the Member's account will remain in place until the Former Spouse withdraws his or her written notice of adverse interest or until SDCERS is joined to the proceedings and receives a DRO.

Joinder Requirement

Pursuant to Family Code section 2060, an order or judgment in a marriage dissolution proceeding is not enforceable against SDCERS unless SDCERS has been joined as a party to the proceeding.

The joinder puts SDCERS on notice of the dissolution action and makes SDCERS a claimant in that action. It does not, however, provide the direction necessary to allow SDCERS to divide the community property interest in the Member's retirement benefits. Accordingly, SDCERS will not distribute any funds to the Former Spouse without a joinder and a DRO.

If the Member is retired when SDCERS is served with a joinder, SDCERS will withhold Former Spouse's estimated share of the monthly retirement benefit and DROP annuity until either the joinder is dismissed or SDCERS receives a DRO.

Court Orders

Once SDCERS has been joined to the Member's dissolution of marriage action, it will comply with the DRO that divides the parties' interest in the Member's retirement benefits, provided the DRO conforms to the relevant plan document, gives specific direction as to how the benefit should be divided, and orders SDCERS to make direct payments to the Former Spouse. To assist the parties in preparing a DRO that is acceptable to SDCERS, SDCERS has drafted sample DROs that may be used as templates –for active Members, and for retired Members.

Parties are not required to use the sample DROs. Use of these DROs does, however, help ensure compliance with the plan. Moreover, the sample DROs detail many of the issues the parties should consider and address in their DRO. As an additional service, the SDCERS Legal Division staff will review the parties' proposed DRO before it is signed by the parties and filed with the Court and will assist the parties or their attorneys in complying with the relevant plan document. The sample DROs are available on our website or can be delivered via emailed upon request.

Dividing the Community Property Interest in the Member's Retirement Benefit

Under California law, retirement benefits are community property to the extent they are earned by the Member during marriage. Benefits earned before the marriage or after separation are generally the Member's separate property.

A common method used to divide the community property interest in a defined benefit plan is the "time rule formula" (also called the "*Brown* formula"). This method of division gives the Former Spouse a percentage of the Member's retirement benefits according to the following formula:

$$\frac{\text{service credit earned during marriage}}{\text{total years of service credit}} \times \frac{1}{2} = \text{percentage of Former Spouse's community property share}$$

Under the plan document, the Former Spouse's share of the benefits does not become payable until the Member actually retires and begins receiving monthly retirement benefits.

Payment of Benefits Before the Member has Retired

The plan document prohibits SDCERS from making payments to the Former Spouse before the Member retires and begins receiving retirement benefits. If the Member chooses to continue working after becoming eligible to retire, the Former Spouse may demand payment of his or her share without waiting for the Member to retire. See, *Marriage of Gillmore*, (1981) 29 Cal.3d 418. Under the terms of the plan document, however, the Member must make the payments to

the Former Spouse until the Member actually retires, at which point SDCERS will begin making the payments directly to the Former Spouse.

When a Former Spouse makes a “*Gillmore* election,” the Former Spouse gives up any future increased benefit resulting from a greater retirement benefit factor due to the Member’s older age at retirement, additional accrued service credit, and/or increased salary. However, the Former Spouse usually retains the right to receive cost of living adjustments.

If the Member leaves his or her employment and receives a refund of SDCERS contributions, SDCERS will pay the Former Spouse his or her share of the contributions pursuant to a DRO in an action to which SDCERS has been joined.

Addressing the Member’s DROP Account

Certain SDCERS Members may be eligible to participate in the Deferred Retirement Option Plan (“DROP”) as an additional way to accrue benefits. By electing to participate in DROP, the Member continues to work for a maximum of five years, while simultaneously earning a monthly retirement benefit that accrues in their DROP Participation Account until they exit DROP. The retirement benefits earned while the Member was in DROP may be paid either in a lump sum or as an annuity upon exiting DROP.

In calculating the retirement benefit, SDCERS treats the DROP Member as if he or she had retired on the date the Member entered DROP and credits the Member’s monthly benefit to his or her DROP Participation Account. In addition, the Member’s employer contributes an amount equal to 3.05% of the Member’s pay and the Member makes before-tax contributions of 3.05% of his or her pay to this account. COLA increases and any annual supplemental benefit due to the Member are also added to the account. All of the amounts in the account earn interest. For detailed information regarding DROP, please refer to San Diego Municipal Code section 24.1401 *et. seq.*, San Diego County Regional Airport Authority Retirement Plan and Trust section 1200 *et. seq.*, or San Diego Unified Port District Code section 1200 *et. seq.*

If, at the time of the parties’ dissolution, the Member is either in DROP or an active Member who may become eligible to enter DROP, the parties should address DROP in their DRO. Failure to address DROP in the DRO may delay DROP payments to the Member and/or Former Spouse. SDCERS’ sample DROs provide language addressing the division of a Member’s DROP account

Please note that SDCERS is not permitted to pay the Former Spouse his or her share of the Member’s DROP account until the Member exits DROP and actually retires.

Disability Retirement

California law exempts certain disability retirement benefits from community property. It is the parties' responsibility to determine the appropriate division of any potential disability pension and draft their DRO accordingly. A disability retirement does not convert to a service retirement. The parties must address a potential disability retirement in their DRO if the Member is not already retired.

The City, Port, and Airport provide both industrial (work-related) and non-industrial (not work-related) disability retirement benefits for eligible Members.

If approved, a disability retirement benefit is paid as a monthly benefit. The amount of the disability retirement benefit depends on whether or not the Member has been granted an Industrial or Non-Industrial disability retirement. The formula used to calculate the benefit may also vary depending on the plan sponsor and job classification. The Member will also receive the same annual cost of living adjustment (COLA) that he or she would have received if the Member was service retired. Please refer to the membership classification on the table below for a general description of how the disability retirement benefit would be calculated.

Membership Type	Non-Industrial Disability Retirement	Industrial Disability Retirement
City General Members	[The higher of] 33.33% of Final Compensation; OR 90% of 1/60th of your Final Compensation x Service Credit	50% of Final Compensation
City Safety Members	33.33% of Final Compensation; OR 90% of 1/50th of Final Compensation x Service Credit	50% of Final Compensation
Port General Members hired before 1/01/2009	33.33% of Final Compensation OR 90% of 1/60th of Final Compensation x Service Credit	33.33% of Final Compensation
Port Safety Members	33.33% of Final Compensation OR 90% of 1/50th of Final Compensation x Service Credit	50% of Final Compensation
Port Miscellaneous Members hired on or after 1/01/2009	11% of Final Compensation OR 30% of 1/160th of Final Compensation x Service Credit	11% of Final Compensation
Airport Members	33.33% of Final Compensation OR 90% of 1/60th of Final Compensation x Service Credit	33.33% of Final Compensation
Tax Implications	This benefit is 100% taxable.	50% of Final Compensation <u>may</u> be excludable from taxable retirement income.

NOTE: If the Member is eligible for a service retirement on the effective date of their disability retirement, the Member will receive the greater of the service retirement or disability retirement. Below is the vesting/eligibility requirements for a service retirement. A disability retirement does not convert into a service retirement upon attaining the vesting/eligibility requirements for a service retirement.

Plan Sponsor	Classification	Min. Age	Min. Service
City	General	55	20 years
		62	10 years
	Safety	50	20 years
		55	10 years
	Elected	Any Age	8 years*
55		4 years	
<i>*2% reduction for each year under 55</i>			
Port	General	55	20 years
		62	5 years
	Miscellaneous	55	20 years
		62	5 years
	Safety (hired before 1/1/10)	50	20 years
		55	5 years
	Safety (hired between 1/1/10 – 1/1/13)	Any Age	30 years
55		5 years	
Safety (hired on or after 1/1/13)	50	5 years	
Airport	General (hired before 1/1/13)	55	20 years
		62	5 years
	General (hired on or after 1/1/13)	52	5 years

Survivor Benefits

Upon retirement, a Member can designate a beneficiary to receive a survivor continuance benefit. If the Member elects to do so, the beneficiary is eligible for a continuance benefit upon the retired Member’s death. The parties should address survivor benefits in their DRO. The following information may be helpful in doing so.

Under the plan document, the Member may name only one beneficiary for a survivor benefit. Moreover, once a designation is made, it cannot be changed. Accordingly, if the dissolution takes place after the Member retires or enters DROP, the Member is prohibited from changing the retirement option or beneficiary he or she named for a survivor continuance at the time of retirement or entering DROP.

At retirement, the Member may select the “maximum benefit” or one of four separate settlement options. The maximum benefit (married) option provides the maximum monthly retirement benefit for the Member’s lifetime and a 50% continuance to the Member’s surviving spouse. For a Former Spouse to qualify for the surviving spouse continuance, the Member must have retired or entered DROP before September 19, 2008, the Member must have designated Former Spouse as the named beneficiary for the surviving spouse continuance, the Former Spouse must have been married to or, effective January 1, 2005, a registered Domestic Partner of the Member on the date the Member retired, and the Member must have selected the maximum benefit (married) option when he or she retired. For more information regarding this, please review SDCERS Board Rules Division 11.

Each Member makes surviving spouse contributions in addition to Normal Contributions. If the Member is not married at the time he or she retires or enters DROP and selects the maximum benefit (single), the Member may elect to receive a lump sum refund of the surviving spouse contributions. Alternatively, the Member may elect to have these contributions treated as voluntary additional contributions made to provide a larger monthly benefit.

If the Member and Former Spouse dissolve their marriage before the Member retires or enters DROP, the Member may provide a survivor benefit to the Former Spouse by selecting one of the four retirement options.

The DRO will need to address what will happen if the Member predeceases the Former Spouse. If the retired Member predeceases the Former Spouse, SDCERS will stop paying the Former Spouse a monthly community property benefit unless the Member designated the Former Spouse or another beneficiary to receive a survivor benefit. If the Member designated someone other than the Former Spouse as their beneficiary to receive a survivor benefit, SDCERS will continue paying the Former Spouse a percentage of the survivor benefit proportionate to the percentage of the Member’s retirement benefit he or she was receiving prior to the Member’s death as long as this is what is stated in the DRO.

Death Benefits

Below is a brief description of the death benefits provided by SDCERS. If the Member’s named beneficiary for these death benefits is someone other than the Former Spouse, the Former Spouse may still have a community property interest in the death benefits. The parties’ DRO must provide direction as to whether and to what extent the Former Spouse will be entitled to receive a death benefit should one become payable.

When the Member dies, SDCERS will pay one of the following death benefits:

Death While Eligible to Retire

If the Member dies before retiring or entering DROP, but while he or she is eligible to retire, and the Member's named beneficiary is the Member's surviving spouse (married to the Member at the time of death) or the Member had a minor child or children (under the age of 18 for City Members, 21 for Port and Airport Authority Members) at time of death, the surviving spouse or minor child/children will receive:

- (1) a monthly payment of one-half of the amount the Member would have received had he or she retired on the date of death, having selected the maximum benefit, and
- (2) an annuity that is the actuarial equivalent to the Member's accumulated additional contributions.

If the beneficiary is the Member's surviving spouse, the payments under subsection (1) will continue for his or her life. If the beneficiary is the Member's minor child or children, the payments will end once the children reach the age of 18 (or 21 for Port and Airport Authority Members).

Industrial Death Benefit

If the Member dies in the performance of duty as determined by the Workers' Compensation Appeals Board, his or her surviving spouse (married to the Member at the time of death) or minor children will receive a monthly allowance of 50% of the Member's final compensation, or 50% of the Member's final average salary for Port and Airport Authority Members. If the beneficiary is the Member's surviving spouse, the benefit will continue for his or her life. If the beneficiary is the Member's minor child or children, the payments will cease once the children reach the age of 18 (or 21 for Port and Airport Authority Members).

Active Death Benefit

If the Member dies before he or she is eligible to retire and is not eligible for the Industrial Death Benefit, the following death benefit is paid to the Member's named beneficiary:

- (1) an amount equal to 1/12th of the Member's final compensation, multiplied by the Member's years of service (not to exceed one half of the Member's final compensation), and
- (2) a return of the Member's retirement contributions, plus interest.

Death While in DROP

If a Member dies while participating in DROP, his or her named beneficiary will receive:

- (1) the Member's DROP account; and
- (2) \$2,000 death benefit;

However, these are two separate death benefits and the Member is able to name different beneficiaries for each. In addition, the beneficiary may be eligible for retiree health care, an industrial death benefit, and/or or a survivor continuance.

Death After Retirement

If the Member dies after he or she has retired, the Member's named beneficiary will receive \$2,000. Furthermore, the named beneficiary will receive any accrued but unpaid benefit (e.g., monthly benefit, Corbett, 13th Check). These benefits are in addition to any survivor benefit that may be payable.

If the Former Spouse Predeceases the Retired Member

The parties must address what happens to the Former Spouse's share of the Member's retirement benefit if he or she predeceases the Member.

HEALTH BENEFIT INFORMATION

A divorce may affect the health care coverage of a Former Spouse and dependents. However, DROs do not address healthcare coverage. For information regarding healthcare coverage and COBRA rights, please contact the SDCERS Health Insurance Analyst at (619) 525-3600.