



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 15

MEETING DATE: December 18, 2019

SUBJECT: Amendments to Dissolution of Marriage Documents Policy

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board adopt certain amendments to the Dissolution of Marriage Documents Policy to address a recurring scenario involving divorced members. Specifically, the proposed amendments describe steps that staff may take when a divorced member applies for retirement but presents dissolution documents that are silent about SCERS benefits.

PURPOSE

This item supports the 2019-20 Strategic Management Plan goals regarding stakeholder relations by promoting transparent policies and communications to members about roles and responsibilities.

DISCUSSION

Article 8.4 of the County Employees Retirement Law of 1937 (CERL) governs the division of community property interests of a member's retirement benefits in SCERS after a marital dissolution or legal separation. If SCERS is served with a joinder (or court order) in a marital dissolution or legal separation of a member, then SCERS must ascertain the community property interests of the non-member spouse as directed by a subsequent court order.

SCERS is unable to complete the calculation of retirement benefits if the member's marital dissolution or legal separation is pending, and so the member cannot be retired until SCERS receives the necessary marriage dissolution documents.

In May 2019, the Board adopted a policy to affirm the type of marital dissolution documents SCERS will accept to complete a member's retirement application. Staff recommends amending the policy to reflect practices that staff has developed in response to the following recurring scenario:

- A member seeks to retire or to withdraw retirement contributions;

- The member reveals that he/she was married for some period of time during county employment but is now divorced;
- As a result, staff becomes aware that a non-member ex-spouse has a potential community property interest in the member's SCERS account;
- The member has produced dissolution-related legal documents (e.g., a court judgment or a marital settlement agreement), but they do not include a joinder or qualified domestic relations order, and do not clearly address the disposition of SCERS assets; and
- Notwithstanding the documents, the member claims that he/she has reached a verbal agreement with the non-member ex-spouse that the SCERS assets are to be the member's separate property.

Under this scenario, staff is faced with competing responsibilities. On the one hand, in the absence of a joinder and qualified domestic relations order, the member spouse is the only person with a legal right to the account assets. On the other hand, SCERS is a fiduciary of the accounts assets and, as such, should take steps to ensure that potential interest-holders are not improperly deprived. At the same time, SCERS lacks the resources to conduct an independent fact investigation or an interview of the non-member ex-spouse in all such situations.

The proposed amendments reflect an approach that staff has developed to balance these various demands. Specifically, the proposed amendments emphasize the importance of obtaining a joinder and a qualified domestic relations order if a non-member spouse intends to assert a claim to SCERS assets or benefits. At the same time, the proposed amendments make clear that SCERS always retains discretion to obtain assurances that the member is making accurate representations, and that the non-member ex-spouse is not being unfairly deprived of property rights. Such assurances might include a signed declaration from the member regarding any oral agreements with the non-member ex-spouse, as well as a signed waiver of rights from the non-member ex-spouse. SCERS may, under some circumstances, accept a signed declaration from the member that his/her ex-spouse is unreachable and unavailable to sign a waiver.

ATTACHMENTS

- Redlined version of policy with proposed amendments
- Clean version of policy with proposed amendments

Prepared by:

/S/

Stephen Lau
General Counsel

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



DISSOLUTION OF MARRIAGE DOCUMENTS POLICY

PURPOSE

The purpose of this policy is to obtain the necessary dissolution of marriage documents for purposes of filing a completed retirement application.

POLICY

An application for service retirement must be complete before a member may retire and receive retirement benefits. A complete application for service retirement benefits includes any marriage dissolution documents in any pending marital dissolution or legal separation action before the courts. If a joinder or other court order has been served on SCERS, or if the member states that a marital dissolution or legal separation with the non-member spouse is pending, then the member may submit a pending or incomplete application for service retirement, but the application will not be deemed complete until necessary marriage dissolution documents are received by SCERS.

A member who files an incomplete service retirement application has six (6) months to perfect or complete the application by submitting the necessary marriage dissolution documents. If the retirement application is not made complete within six (6) months of the initial filing, then application will be canceled, and the member will have to file a new application. If the member files a subsequent application for retirement, the effective date of retirement must be a future date and cannot be retroactive to the proposed effective retirement date in the prior incomplete retirement application.

The member may request in writing to the SCERS Chief Executive for a 60-day extension before the expiration of the 6-month grace period described above. No further extensions of the grace period will be granted after expiration of the 60-day extension. However the member may appeal to the Board of Retirement for a further extension pursuant to Sections E, F, and G of the Appeal of SCERS' Administrative Decisions Policy.

APPLICATION

— Through notification in the retirement application materials, as well as inquiry from SCERS staff, SCERS is given notice of a prior dissolved marriage (divorce).

1. —

1. SCERS staff will request in writing (via written letter or email) the dissolution documents. The necessary marriage dissolution documents include, but are not limited to, any one or combination of the following:

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- Judgment of Dissolution (court order dissolving the marriage).
- Joinder (court order including SCERS in the underlying dissolution case).
- Domestic Relations Order (DRO) setting forth how SCERS is to administer the benefit between the member and ex-spouse.
- Marital Settlement Agreement that sets forth the terms of the divorce — child support, spouse support, community property, debts, property, etc.
- Declaration from the member and signed waiver from the non-member spouse if the non-member spouse waives his/her community property interest.

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— The written notice will inform the member that the retirement cannot be completed without receipt, review, and approval of the necessary documents.

2. staff will request in writing (via written letter or email) the dissolution documents. The written request will inform the member that the retirement process cannot be completed without receipt, review, and approval of the necessary documents. The necessary dissolution documents include, but are not limited to, any one or a combination of the following:

- Judgment of Dissolution (court order dissolving the marriage);
- Joinder (court order including SCERS in the underlying dissolution case);
- Domestic Relations Order (DRO) setting forth how SCERS is to administer the benefit between the member and ex-spouse; or
- Marital Settlement Agreement that sets forth the terms of the divorce – child support, spouse support, community property, debts, property, etc.

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In any dissolution proceeding in which the non-member spouse intends to claim a community property interest in assets or benefits from a SCERS account, the parties should obtain a joinder and DRO from the court. In the absence of a joinder and DRO, the non-member spouse runs the risk that SCERS may administer such assets and benefits as the member's sole and separate property.

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3. Even in the absence of a joinder and DRO, however, if the potential community property interest in the assets or benefits is substantial, and if the available dissolution documents do not clearly deem such assets or benefits the separate property of the member, SCERS may, in its discretion, take steps to inquire into the rights of the non-member spouse before disbursing assets or benefits. Specifically, SCERS may (without limitation) require the member to:

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- Sign a declaration stating that the member and non-member spouse have previously agreed the account assets or benefits are to be the member's sole and separate property;
- Sign a statement indemnifying SCERS from any loss or liability should the non-member spouse later assert an interest to account assets or benefits;
- Obtain the non-member spouse's signature on a written waiver of interest in the account assets or benefits;
- Sign a declaration stating that the member has no means of contacting the non-member spouse; or

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- Sign any other declaration explaining why it is legal, fair, and equitable that SCERS should administer the account assets or benefits as member's sole and separate property.

All of the above shall be considered dissolution documents necessary to the processing of the retirement application.

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2.4. If no documents have been received within five (5) months, SCERS will send written notice to the applicant stating that the application will be canceled unless the necessary ~~the~~ divorce documents are received within 6-months of the initial application, and the applicant will also be advised that a written request can be made to the Chief Executive for an additional 60-days.

3.5. A 60-day written request for extension will be automatically granted.

4.6. If no documents have been received after the 60-day extension, SCERS will notify the applicant in writing that the retirement application is canceled and that the member may appeal this decision within 30 days to the Board of Retirement pursuant to Sections E, F, and G of the Board Appeal of SCERS' Administrative Decisions Policy.

BACKGROUND

Article 8.4 of the County Employees Retirement Law of 1937 (CERL) governs the division of community property interests of a member's retirement benefits in SCERS after a marital dissolution or legal separation. If SCERS is properly served with a joinder in a marital dissolution or legal separation of a member, then SCERS must ascertain the community property interests of the non-member spouse as directed by a subsequent court order. SCERS is unable to complete the calculation of retirement benefits if the member's marital dissolution or legal separation is pending, and so the member cannot be retired until SCERS receives the necessary marriage dissolution documents.

RESPONSIBILITIES

Executive Owner: ~~Chief Benefits Officer~~ General Counsel

POLICY HISTORY

Date	Description
<u>12-18-2019</u>	<u>Staff recommended Board approve amendments to policy.</u>
05-15-2019	Board adopted policy.

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