



## Community Property Guide:

A Handbook for Drafting Court Orders Affecting LACERA Members



## Introduction

The Los Angeles County Employees Retirement Association (LACERA) provides this brochure to assist counsel of LACERA members involved in a dissolution of marriage, legal separation, or termination of a domestic partnership. Parties to such actions who choose to represent themselves (in pro per or pro se) may also utilize the information presented herein.

When drafting an order relating to the division of LACERA retirement benefits, you may seek guidance from the County Employees Retirement Law of 1937 (CERL), Government Code Section 31450, et seq., which was established to provide retirement benefits to certain county employees in the State of California. To assist you in the preparation of such an order, **sample language that may be included in a domestic relations order to direct the division of a member's retirement allowance is provided.**

(Sample language for orders may also be viewed online in the Benefits section of [lacera.com](http://lacera.com).) These samples are not legal advice and counsel to the parties should not rely on them as dispositive of

the legal issues that may arise. An order may vary from these examples and still be acceptable. Counsel for the parties are urged to work together to **prepare a proposed order for submission to LACERA for review**, so the waiting period associated with the filing of a motion on behalf of LACERA to modify or rescind the order may be avoided.

**Note:** The member's former spouse or domestic partner or legally separated spouse is designated as non-member in this brochure.

*The material herein is offered for informational purposes only and is not intended to constitute legal advice.*

*Although we have made every effort to accurately summarize applicable law, this brochure may not be used to estop LACERA, nor may any provision of this brochure be read as contradicting case law or statute.*

*Members: For specific advice regarding your personal situation, consult an attorney; LACERA does not give legal advice.*

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## About Community Property

In California, community property laws serve as the method for defining the ownership of property acquired during a marriage. California law defines community property as any asset acquired or income earned by a married person while living with his or her spouse.

To the extent a married person accumulates an interest in a pension (such as LACERA's) during the marriage, the pension is considered community property and subject to division in a dissolution of marriage. It should be noted that references to dissolution of marriage contained herein also apply to termination of a domestic partnership.

## LACERA at a Glance

Membership in LACERA includes all permanent employees of Los Angeles County or outside Districts, who work three-quarter time or more.<sup>1</sup> Operating pursuant to CERL, LACERA is an independent government entity, separate and distinct from the County of Los Angeles.

LACERA is a governmental plan and is therefore exempt from the provisions of the Employee Retirement Income Security Act (ERISA) that relate to a Qualified Domestic Relations Order (QDRO).<sup>2</sup> (A QDRO is a court order directing the payment of retirement benefits to a divorcing spouse.) Additionally, LACERA is a defined benefit plan and cannot comply with certain features commonly contained in QDROs.

For example:

- LACERA is statutorily prohibited from making any payments under the plan until the member retires or terminates County employment pursuant to 26 Code of Federal Regulations 1.401-1(b)(1)(i).
- A member's retirement account cannot be divided into a separate account for a non-member because Government Code § 31685 has not been adopted by Los Angeles County.

<sup>1</sup>Government Code §31625.

<sup>2</sup>29 U.S.C. § 1002(32) and § 1003(b)(1).

## Contributions

Members of LACERA Retirement Plans A, B, C, and D make semimonthly contributions through payroll deductions which are credited to their respective member accounts. Member contributions accrue interest at a rate determined by LACERA's Boards. LACERA Retirement Plan E is a non-contributory plan.<sup>1</sup> Members do not contribute to it. The County of Los Angeles (employer) makes cash contributions to each Plan. These employer contributions are not credited to individual member

accounts; rather, they are deposited with LACERA. Employer contributions are invested to provide lifetime monthly benefits for all members in all Plans and are not refundable.

<sup>1</sup>Govt. Code § 31487(c).

## Service Credit

Service credit is the accumulated period of time (years and partial years) during which a member receives creditable compensation for service as a member of LACERA. A member's service credit is one of the factors used to determine eligibility for benefits.

## Obtaining Information on Member Accounts

LACERA mails each member an Annual Benefit Statement, which notifies the member of his or her accumulated service credit, contributions, and credited interest. Members may also view their Annual Benefit Statements online on My LACERA, the secure, members-only section of lacera.com.

A member may request information about his or her account by sending a written request to LACERA. Pursuant to Government Code § 31532, any person other than the member may request information about a member's account by providing *either* of the following:

- Written authorization to release information, signed and dated by the member within the last 30 days prior to the request or specifically valid for a longer period. The written request must specify the information needed.
- Subpoena. Upon receipt of a subpoena which includes a Notice to Consumer, LACERA is required to provide the requested information. The subpoena must include a \$15 check for witness fees. LACERA will accept service of the subpoena by personal service only, delivered to:

LACERA Custodian of Records  
6th Floor Mail Room  
Gateway Plaza  
300 North Lake Avenue  
Pasadena, CA 91101

Other discovery methods, such as Inspection and Production Demands for Documents or Interrogatories, shall be accepted by LACERA. When requesting information from LACERA, submit your request in writing and provide the following:

- Member's full name, including middle initial
- Member's current address
- Member's employee number

## Release of Confidential Information

Upon receipt of a member's written request/authorization or subpoena or other discovery method, LACERA will provide the requested information, which may include the member's current statement of account, and/or a statement of account as of the time of marriage and/or the date specified as the separation date. If such dates are not specified, a current statement of account of the member's service credit and member accumulated contributions will be provided.

If data on LACERA Retirement Option 2, 3, or 4 is requested, the named beneficiary's birthday and the projected date of retirement must be included. See Retirement Options (Optional Retirement Allowances) on page 7.

## Joinder Requirements

A joinder is a legal document that joins multiple parties in a legal proceeding in which they share similar rights or liabilities. Pursuant to Family Code § 2060, LACERA must be joined as a claimant pension plan in any California dissolution of marriage action involving disposition of LACERA funds and/or benefits. LACERA is willing to be joined by stipulation of the parties. The joinder puts LACERA on notice of a pending dissolution action and gives the court jurisdiction over LACERA. The filing of joinder documents, however, does not provide the required direction to LACERA as to *disposition* of community interests. The relief sought by the parties may be incorporated into a court order (sometimes referred to as a QDRO, although in matters pertaining to LACERA, it is referred to as a Domestic Relations Order or DRO) that will provide specific direction to LACERA for disposition of community interests.

## Proceedings Outside the State of California

No joinder is required for dissolution proceedings occurring outside the state of California. However, LACERA requires written Notice of Adverse Interest of the non-member in the member's retirement benefits. LACERA requires the member to sign a **certified** copy of the out-of-state order; such orders must include a waiver of liability.

## Effect of Joinder

Joining LACERA in a dissolution action will not affect retirement benefits currently being paid to its retired members. Any disposition of community funds pending a Notice of Final Entry of Judgment of Dissolution, Legal Separation, or Termination of Domestic Partnership is the responsibility of the member during the dissolution process. LACERA will accept an interim court

order that permits a member to retire and receive his or her approximate community property share of the benefit, while LACERA holds the non-member's portion until an order is issued and the action is final.

Upon receipt of a joinder or Notice of Adverse Interest, a hold is placed on an active member's account. This remains in place until the member retires, even if a conformed court order is on file with LACERA. A joinder will prevent payment of a member's benefit or a refund of the accumulated contributions and interest. A non-member has the right to file a community property claim (joinder or Notice of Adverse Interest) on a member's LACERA retirement benefit at any time.

However, payment cannot be made to the non-member until the member:

- Terminates employment; or
- Resigns and elects to receive a refund; or
- Retires and receives a monthly retirement benefit; or
- Is approved to receive a disability benefit and meets eligibility criteria for a service retirement

## Court Orders

LACERA will comply with the provisions of any court order to the extent allowed for and provided by the Government Code and California case law. The court cannot order LACERA to pay a benefit that is not provided for, or that is contrary to, the statutory provisions of CERL or case law. After the judgment is final or the partnership is terminated, LACERA will implement a court order as to division of retirement benefits within 30 days of the date the court order is received by LACERA or at the time the member retires. LACERA will not issue retroactive payments to a non-member if the order was received after the member is retired and receiving his or her monthly allowance.

All court orders must provide the following information regarding the member and non-member:

- The date of marriage or domestic partnership
- The date of separation
- The date of dissolution of marriage or legal separation or the date of termination of domestic partnership

The following information regarding the non-member should **not** be included in the court order, but **must** be provided in a separate letter:

- Current mailing address
- Birth date
- Social Security number

A court order must provide a mode of division; e.g., the time rule formula establishes a specific percentage of the member's monthly allowance or a dollar figure to be applied to the

member's monthly benefit. (See *In re Marriage of Brown* (1976) 15 C.3d 838 and *In re Marriage of Judd* (1977) 68 Cal.App.3d 515.) If a percentage or dollar figure is selected, cost-of-living adjustments must be addressed.

LACERA must be provided with a conformed (certified for out-of-state) copy of a court order that disposes of the community property interest in a member's benefits. LACERA will not process any pending benefit application until it receives the court order. A court order that requires LACERA to recognize a community property interest or to act in any way must specifically refer to the Los Angeles County Employees Retirement Association or LACERA.

## County Replacement Benefit Plan Pursuant to IRC § 415(b)

Internal Revenue Code § 415(b) limits the amount an individual can receive from a tax-qualified defined benefit plan each year. Certain highly compensated LACERA members may be subject to § 415(b) limits. (LACERA Retirement Plan A is exempt from § 415(b) limits.)

However, LACERA benefits are promised under CERL, which imposes no such limits. To offset the portion of any promised benefit that exceeds § 415(b) limits, Los Angeles County has established a separately administered and separately funded benefit plan known as the Replacement Benefit Plan (RB Plan).

### Disposition of RB Plan Benefits

The RB Plan must be joined as a separate claimant pension plan in any California dissolution of marriage action involving disposition of RB Plan funds and/or benefits. Joinders must specifically refer to the Los Angeles County Replacement Benefit Plan. The RB Plan will accept service of the joinder by personal service only, delivered to:

Auditor-Controller/Countywide Payroll Division  
500 W. Temple Street, Suite 505  
Los Angeles, CA 90012  
Attn: Gregg Iverson/Replacement Benefit Plan

## Service Retirement Eligibility

Members of Safety Plan A or B are eligible for a service retirement at age 50 with at least 10 years of County (or combined County and reciprocal system) service credit **or** when they have accrued at least 20 years of County (or combined County and reciprocal system) service regardless of age. General members of Plans A, B, C, and D are eligible for a service retirement at age 50 with at least 10 years of County (or combined County and reciprocal system) service credit **or** when they have accrued at least 30 years of County (**or** combined

County and reciprocal system) service regardless of age **or** at age 70, regardless of years of service credit.

Members of Plan E are eligible for a service retirement at age 55 with at least 10 years of County (or combined County and reciprocal system) service credit **or** at age 70 regardless of how many years they worked.

## Retirement Options (Optional Retirement Allowances)

CERL Article 11, entitled Optional Retirement Allowances, establishes a series of alternatives to the Unmodified Retirement Allowance. These various alternatives (as well as the Unmodified Option) referenced herein and in other LACERA materials, are known as Retirement Options.

Retirement Options provide a format for determining how retirement and survivor benefits are paid. Whereas the Unmodified Option and Unmodified+Plus Options limit beneficiaries to an eligible surviving spouse or domestic partner (or absent a surviving spouse or domestic partner, to eligible minor children), the other Options offer flexibility in beneficiary designation. The other Options (excluding Option 1) allow a member to redistribute his or her retirement allowance over both the member's life and the life of a named beneficiary. Option 4 allows a member to name multiple beneficiaries and distribute survivor benefits among them. Named beneficiaries may include non-members. A member's allowance does not increase upon the death of a named beneficiary, unless so stated in a court order.

To provide a continuing allowance to a non-member who cannot be designated as a surviving spouse pursuant to *In re Marriage of Cramer* (1993) 20 Cal.App.4th 73, a member may be ordered to elect a Retirement Option (also known as a joint and survivor annuity) other than the Unmodified or Unmodified+Plus Option.<sup>1</sup> The Option will be selected to provide a lifetime benefit to a designated beneficiary **if the member predeceases the Option beneficiary after retirement**. The member's retirement allowance will be actuarially reduced to fund the survivor benefit, which will be paid only in the event the member predeceases the designated beneficiary. The amount of the actuarial reduction depends on the life expectancy of the designated beneficiary and the Option selected. The beneficiary must be designated **at the time of retirement** and cannot be changed after the first retirement payment is made.<sup>2</sup> All benefits cease upon the death of the named beneficiary.

<sup>1</sup>Family Code § 2610(a)(2).

<sup>2</sup>Government Code § 31760.

**Structure of Retirement Options 1-4**

- **Option 1 (Government Code § 31761):** If the member dies prior to receiving the contributions he or she paid into the retirement fund, Option 1 provides a single lump-sum payment (remaining balance of member’s accumulated contributions) to any named beneficiary. It does **not** provide a monthly survivor allowance. (*Not available to Plan E members.*)
- **Option 2 (Government Code § 31762):** Provides one named beneficiary with 100 percent of the member’s benefit, calculated on the date of death.
- **Option 3 (Government Code § 31763):** Provides one named beneficiary with 50 percent of the member’s benefit, calculated on the date of death.
- **Option 4 (Government Code § 31764):** Provides a customized lifetime benefit to one or more named beneficiaries via either a set monthly income or a fixed percentage of the member’s monthly allowance. The cost of customizing a benefit under Option 4 may be shared between the retired member and the non-member or the court may require one party to bear the cost.

**Considerations When Electing Option 2, 3, or 4**

If a member elects Option 2 or 3 and names a non-member as the beneficiary at the time of retirement, no survivor benefit will

be payable to an eligible surviving spouse under Government Code § 31760.1. It should be further noted that a surviving spouse who is not a named beneficiary is not eligible for LACERA-administered survivor health care.

If a member elects Option 4 and names an eligible surviving spouse as beneficiary, that individual is eligible for LACERA-administered survivor health care. This applies regardless of whether additional beneficiaries are also named.

*(See How Divorce Affects Eligibility for Survivor Health Care on lacera.com. The topic appears in the Benefits section, on pages entitled Dissolution of Marriage, under Active Member and Retired Member, respectively.)*

**Time Rule Formula**

The time rule formula (a.k.a. Brown formula) commonly used to divide community property benefits provides for the non-member to receive a portion of the member’s retirement benefits based on the formula illustrated in this section. For this purpose, the court order should contain the parties’ date of marriage or domestic partnership and date of separation:

- **Formula:** Number of months of LACERA service (from the date of marriage or domestic partnership to the date of separation) subject to community property, divided by

EXAMPLE 1: TIME RULE FORMULA	
Calculating Months of LACERA Service Subject to Community Property	
LACERA membership date	January 1, 1970
Date of marriage or domestic partnership	January 1, 1980
Date of separation	January 1, 1990
Months of LACERA service subject to community property	10 years = 120 months*
Calculating Non-member’s Portion of LACERA Benefit	
Months of LACERA service subject to community property	10 years = 120 months
LACERA retirement date	January 1, 1995
Total months of LACERA service at time of retirement	25 years = 300 months*
Months of LACERA service subject to community property divided by total months of LACERA service	120 ÷ 300 = .40
Above result multiplied by 50%	.40 X 50% = 20%
Spouse’s portion of member’s monthly LACERA allowance	20%

\*Assumes LACERA membership has been continuous.

**EXAMPLE 2: ILLUSTRATION OF TIME RULE FORMULA USING FIGURES FROM EXAMPLE 1**

$$\frac{1980 \text{ to } 1990}{1970 \text{ to } 1995} = \frac{10}{25} = \frac{120}{300} = 0.40 \times 50\% = 20\%$$

Non-member’s portion of member’s monthly LACERA allowance = 20%

total months of LACERA service accrued at time of the member's retirement, multiplied by 50 percent equals the percentage of the member's allowance to which the non-member is entitled.

## Considerations Prior to Filing a Court Order

The following facts should be carefully considered prior to any court order being issued. It should be noted that any service credit and/or accumulated contributions and interest not specifically awarded in the court order shall be deemed the property of the member.

- **Refund of Contributions and Interest.** If the member terminates employment with Los Angeles County and elects to receive a refund of his/her accumulated contributions, the non-member will receive a refund of his or her community property share in those contributions, based upon the formula provided by the court order.
- **Retirement with a Monthly Benefit.** If the member elects to retire, or is approved to receive a disability retirement, and receives a monthly benefit, the non-member will receive a portion of the monthly benefit, if so ordered by the court. The amount will be based upon the court order and will continue until the death of the member.
- **Disability Retirement Limitations.** Distribution of a retirement allowance due to a disability retirement may occur before or after a member is eligible for a service retirement.
  - **If the member has less than five years of service credit, he or she will never be eligible for a service retirement.** All benefits remain the separate property of the disabled member unless the court orders a division.
  - **If the member is not currently eligible for a service retirement, but is eligible for a deferred service retirement.** All benefits remain the separate property of the member until such time as the member would have been eligible for a deferred service retirement allowance had he or she not been disabled. Only the portion of the allowance attributable to the disability is the member's separate property.
- **Member Predeceases Non-member before or after Retirement and Leaves an Eligible Surviving Spouse.** If the member dies and leaves an eligible surviving spouse or domestic partner, a portion of the survivor's allowance is payable to the non-member. The non-member's share will terminate upon the death of the surviving spouse or domestic partner. (*See In re Marriage of Carnall (1989) 216 Cal.App.3d 1010.*)
- **Member Predeceases Non-Member after Retirement with No Eligible Surviving Spouse.** Pursuant to *In re Marriage of Cramer (1993) 20 Cal.App.4th 73*, a former spouse (or domestic partner) who survives a member is not considered an eligible surviving spouse/partner; only a spouse/partner who is married (or who has a valid domestic partnership certificate) at the time of the member's death is an eligible surviving spouse/partner.<sup>1</sup> Therefore, upon the death of the member, the non-member is no longer entitled to a monthly community property benefit, **unless at the time of retirement the member had elected a Retirement Option which provides for the non-member to receive a monthly lifetime retirement allowance.** To guarantee the non-member a lifetime monthly benefit, a court order must specifically order the member to elect a Retirement Option which names the non-member as beneficiary. If such a Retirement Option is selected, language may be included to preclude the member from being penalized for such a selection.
- **Member with Minor Children and No Eligible Surviving Spouse Predeceases Non-Member.** Pursuant to Government Code § 31781.1, upon the death of a member who leaves no eligible surviving spouse but leaves a minor child(ren), the rights of the minor child(ren) are superior to and supersede the rights and claims of any other beneficiary including a non-member.
- **Non-member Predeceases Member.** If the non-member predeceases the member, one of the following shall occur:
  - If the disposition of assets upon dissolution predated January 1987, all benefits automatically revert back to the member or the member's eligible surviving spouse or partner.<sup>2</sup>
  - If the parties agree and the court order so states, all benefits may revert back to the member.
  - The non-member may name a beneficiary to receive the benefit.<sup>3</sup> The non-member should submit a completed Beneficiary Designation for Ex-Spouse (Non-member) form to LACERA. (This Form is available on the Brochures & Forms page of [lacera.com](http://lacera.com) or by calling 1-800-786-6464.)

<sup>1</sup> Additional requirements apply; see Glossary on page 10.

<sup>2</sup> Former Civil Code § 4800.8 effective January 1, 1987 abolished the terminable interest rule.

<sup>3</sup> Government Code § 31458.3.

## Tax Information

Federal and California statutes require income tax withholding on distributions from pension plans and annuities. Income tax will be withheld from the taxable portion of the recipient's benefit unless action not to have taxes withheld is taken. If taxes are not withheld or an insufficient amount is withheld, the

recipient may be required to make estimated tax payments. Generally, withholding or estimated tax payments or the total of both must cover at least 90 percent of the individual's total tax liability for the current year. Failure to meet the 90 percent limit could subject that person to penalties.

To exercise tax withholding options, an individual must have federal and state tax withholding instructions on file with LACERA. LACERA's WE-4P/DE-4P tax form is available on the Brochures & Forms page of lacera.com; it can also be obtained by calling 1-800-786-6464. Absent this form, LACERA will withhold income tax on benefit payments as if the recipient were married and claiming three dependents. Recipients must also complete

and submit this form to request a change in their current income tax withholding status.

## Sample Language for Court Orders

Sample language for orders in matters affecting the following categories of members is provided:

1. Active member of Plan A, B, C, D
2. Active Plan E member
3. Member retired for service
4. Member retired for disability, not eligible for service retirement
5. Member retired for disability, eligible for service retirement

## Glossary of Terms

**Beneficiary:** Any person or entity receiving or entitled to receive an allowance and payment because of the disability or death of a LACERA member.

**Board of Investments:** The body with exclusive control over the investment of the retirement fund.

**Board of Retirement:** The body responsible for the overall management of the retirement system (except as otherwise delegated to the Board of Investments).

**Certified Copy of Court Order:** A copy of the conformed court order that includes an attestation of authenticity by the Court Clerk.

**Conformed Copy of Court Order:** A copy of the court order approved by the Court, signed by the Judge, and date stamped by the Court Clerk.

**Continuing Survivor Benefits:** Amounts payable monthly to eligible survivors of members.

**County Employees Retirement Law of 1937 (CERL):** § 31450, et seq. of the Government Code; controls the services provided by LACERA.

**Credited Interest:** Interest credited to members' accumulated contributions at a rate set by the Board of Investments.

**Credited Service:** Service for which required contributions have been paid by the employee and/or the employer.

**Defined Benefit:** The benefit provided through LACERA as set forth in Government Code § 31450 et seq.

**Disability Allowance:** The monthly amount payable to a member who has been granted a disability retirement by the Board of Retirement.

**Effective Date:** The date upon which the benefit becomes payable.

**Eligible Surviving Domestic Partner:** A person who is in a registered domestic partnership with a member for a continuous period beginning at least twelve months prior to retirement and at the death of the member.

**Eligible Surviving Spouse:** A person who is married to a member for a continuous period beginning at least twelve months prior to retirement and at the death of the member.

**Joinder:** The joining of LACERA as a party to a dissolution action; such action authorizes LACERA to enforce a court order dividing LACERA benefits.

**Lump-Sum Death Benefit:** The amount payable upon the death of a retired LACERA member.

**Member:** Any person, unless excluded under other provisions, who has performed creditable service as defined by CERL, earned creditable compensation for that service, and has not received a refund for that service.

**Non-member:** The former spouse or domestic partner of a member who has been awarded an interest in the member's account.

**Option Beneficiary:** A person designated to receive an actuarially-reduced retirement allowance upon a member's death.

**Refund:** A lump-sum return of the member's accumulated retirement contributions and interest.

**Retirement:** A change in member status from active or inactive (deferred) to retired.

**Retirement Allowance:** The amount payable monthly to a retired member or an Option beneficiary.

**Time Rule Formula:** A method of calculation to determine the percentage of a member's allowance that shall be paid to a non-member.



# Community Property Guide:

Sample Language for Court Orders Affecting LACERA Members

# SAMPLE LANGUAGE FOR ORDER No. 1: ACTIVE LACERA MEMBER, PLAN A, B, C, D

Date

Name of Attorney  
Name of Law Firm  
Address  
City, State, Zip

**Re:** Marriage of [last name of client] (both spouses' first names)

**Case No.:** XX 000000

Dear Attorney:

In response to your request, I am writing to provide you with information to assist you in dealing with the Los Angeles County Employees Retirement Association (**LACERA**). Additional information, including our Summary Plan Description books, can be found online at lacera.com. If you do not have access to the Internet, you may contact LACERA at 1-800-786-6464 to request a book.

LACERA operates pursuant to the County Employees Retirement Law of 1937, Government Code section 31450 et seq. It is an independent government entity, separate and distinct from the County of Los Angeles. LACERA is a "governmental plan," and is therefore **exempt** from the provisions of ERISA that relate to a Qualified Domestic Relations Order (**QDRO**). (See 29 U.S.C. §§ 1002(32) and 1003(b)(1).)

LACERA requires the retirement association to be joined in any pending **California** dissolution action before benefits are paid. However, LACERA is willing to be joined by stipulation of the parties. Upon receipt of a Joinder or Notice of Adverse Interest, LACERA will place a legal hold on the member's account. This will ensure no funds will be paid absent receipt of a conformed court order setting forth the division of benefits. In addition, LACERA requires a conformed copy of the final judgment of dissolution.

**Pursuant to Government Code section 31532, individual records of members are confidential and may be released only upon the written authorization of the member, by a subpoena, or by regularly accepted discovery procedures.** Include a \$15.00 check payable to LACERA when requesting information by a subpoena.

LACERA requires certified copies of out-of-state court orders.

As a defined benefit plan, LACERA cannot comply with some features commonly contained in QDROs. For example: (1) LACERA is statutorily prohibited from making any payments under the plan until the member actually retires, and (2) the retirement account cannot be divided into separate accounts for member and non-member.

Additionally, a former spouse may not be designated as a surviving spouse pursuant to *In re Marriage of Cramer* (1993) 20 Cal.App.4th 73. An eligible surviving spouse is one to whom the member has been married prior to retirement. To provide a continuing allowance to a former spouse, a member may be ordered to elect an "optional settlement" (also known as a "joint and survivor annuity") in lieu of the Unmodified Retirement Allowance. An optional settlement will provide a lifetime benefit to a designated beneficiary if the member dies before the beneficiary. The member's retirement allowance will be actuarially reduced to fund the survivor benefit, which will be paid only if the member predeceases the designated beneficiary. The amount of the actuarial reduction depends on the life expectancy of the designated beneficiary and the option selected. The beneficiary must be designated at the time of retirement and cannot thereafter be changed. All benefits will cease upon the death of the beneficiary. The most common options are Optional Settlement 2 (Gov. Code § 31762), Optional Settlement 3 (Gov. Code § 31763) and Optional Settlement 4 (Gov. Code § 31764). If a member elects one of the optional settlements upon retirement, no survivor benefit will be payable to a surviving spouse under Government Code section 31760.1. **Although available, LACERA does not require election of an optional settlement retirement allowance.**

On March 1, 2005, LACERA adopted Government Code section 31760.5 – Unmodified Plus Retirement Allowance Option – which provides eligible survivors with a continuing benefit of up to 100 percent of the member's monthly retirement allowance. Under this

option, the member can customize the percentage [between 66 and 100 percent for Plans A, B, C, and D; between 56 and 100 for Plan E] of his or her monthly allowance the eligible survivor(s) will receive upon the member's death. The increased survivor allowance is paid through an actuarially equivalent reduction in the member's allowance. The member's benefit is reduced by only enough to cover the increased survivor's allowance.

The member's lifetime monthly allowance will be reduced to provide an increased survivor's allowance. This reduction will also result in a reduction to the non-member's portion while the member is alive. However, because the Unmodified Plus Retirement Allowance will result in an increased benefit to the member's surviving spouse, pursuant to *In re Marriage of Carnall (1989) 216 Cal.App.3d 1010*, the non-member will also benefit in the increase.

Pursuant to Government Code section 31781.1, upon the death of a member who leaves no eligible surviving spouse, but leaves a minor child(ren), the rights of the minor child(ren) are superior to and supersede the rights and claims of any other beneficiary.

When fashioning an order relating to the division of LACERA retirement benefits, you should seek guidance from the County Employees Retirement Law of 1937. To assist you in the preparation of such an order, I have enclosed sample language that might be included in a domestic relations order to direct the division of a member's retirement allowance **should the member select the Unmodified Retirement Option**. This example is not legal advice and counsel to the parties should not rely on the sample language as dispositive of legal issues that may arise. An order may vary from this example and still be acceptable. I urge counsel to work together to **prepare a proposed order for submission to LACERA for review** so the waiting period associated with the filing of a motion on behalf of LACERA to modify or rescind the order may be avoided.

If you have questions, please call me at (626) 564-2344.

Sincerely,

LACERA Legal Analyst

Enclosure

c: Opposing counsel

SAMPLE LANGUAGE FOR ORDERS

1. The Los Angeles County Employees Retirement Association, (hereinafter called LACERA), was joined as a claimant employee pension benefit plan on [date] pursuant to Family Code § 2060 et seq. LACERA is a governmental plan and is therefore exempt from the provisions of the Employee Retirement Income Security Act that relate to Qualified Domestic Relations Orders.
2. The Judgment of Dissolution of Marriage became final on [date].
3. After final dissolution of marriage, LACERA is ordered to pay directly to [non-member] upon the retirement of [member], a percentage of the retirement allowance otherwise payable to [member] calculated by a formula as follows:

**Number of months of LACERA service between [date of marriage] and [date of separation] ÷ months of service in LACERA SYSTEM at time of retirement of [member] x 50% x retirement allowance payable to [member].**

Non-member's allocated monthly benefit	=	$\frac{\text{No. months LACERA service between marriage date \& separation date}}{\text{No. months LACERA service at retirement of member}}$	X	50%	X	Member's service retirement allowance
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To the extent the [member] receives a disability retirement benefit, the community property interest in the [member's] disability retirement benefit shall not exceed the amount that would otherwise be payable as a service retirement allowance. Any amount in excess of the service allowance amount is and remains the [member's] sole and separate property. [Non-member's] community share of [member's] retirement allowance shall terminate upon the death of [member].

4. In the event LACERA inadvertently or otherwise pays to any party (including a qualified surviving spouse or other beneficiary) any benefits assigned to another party under this or a subsequent order, the party receiving such excess benefits shall be deemed a constructive trustee of said amounts.
5. If any return of accumulated contributions becomes payable as the result of the death of [member], [non-member] is entitled to [his/her] community property share of the accumulated contributions. [Member] hereby names [non-member] as beneficiary for the community property share of the accumulated contributions.
6. If [member] withdraws his/her accumulated contributions, [non-member] shall be entitled to receive, at the time [member] receives his/her accumulated contributions, [non-member's] community property share of the accumulated contributions. [Member] hereby names [non-member] as beneficiary for the community property share of the accumulated contributions.
7. If [member] leaves an eligible surviving spouse<sup>1</sup> a portion of the survivor's allowance as described in Paragraph 3 herein is payable to [non-member]. Benefits paid to the non-member are based on the benefit election made by the eligible surviving spouse. [Non-member's] share shall terminate upon the death of the surviving spouse. (*See In re Marriage of Carnall (1989) 216 Cal.App.3d 1010.*) [Non-member] recognizes the right to any portion of the survivor's allowance shall be based on the lifetime of the eligible surviving spouse.
8. If [non-member] predeceases [member], any benefits otherwise payable to [non-member] by LACERA, including benefits paid to a surviving spouse, shall be paid to [non-member's.] designated beneficiaries, or if none, to [non-member's] estate.
9. In the event survivorship allowances or survivorship benefits not herein described become payable by LACERA at the death of [member], the Court reserves jurisdiction to make appropriate orders under these circumstances, to the extent allowable under existing law at that time.
10. [Non-member] is ordered to keep his/her current address and proof of Social Security number on file with LACERA. [In a separate letter, provide the non-member's Social Security number, current address and birth date.]
11. In the event LACERA does not approve the form of this Order, each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to LACERA.
12. Nothing contained in this Order shall be construed to require LACERA:
  - (a) To provide to [non-member] any type or form of benefit or any option not otherwise available to [member] under the Plan;
  - (b) To pay any benefits to [non-member] which are required to be paid to another non-member spouse under court order;
  - (c) To make any payments in any manner that will result in an increase in the amount of benefits provided by the Plan.
13. The Court reserves jurisdiction to enforce, revise, modify, or amend this Order, provided neither this Order nor any subsequent revision, modification, or amendment shall require LACERA to provide any form or amount of benefits not otherwise provided by LACERA.

<sup>1</sup>The non-member is not an eligible surviving spouse pursuant to *In re Marriage of Cramer (1993) 20 Cal.App.4th 73*. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement.

**[If joining LACERA by stipulation, include a signature line for LACERA: "Approved as to Form and Content; Date and Signature line for Attorney for LACERA"]**

# SAMPLE LANGUAGE FOR ORDER No. 2:

## ACTIVE LACERA MEMBER, PLAN E

Date

Name of Attorney  
Name of Law Firm  
Address  
City, State, Zip

**Re:** Marriage of [last name of client] (both spouses' first names)

**Case No.:** XX 000000

Dear Attorney:

In response to your request, I am writing to provide you with information to assist you in dealing with the Los Angeles County Employees Retirement Association (**LACERA**). Additional information, including our Summary Plan Description books, can be found online at lacera.com. If you do not have access to the Internet, you may contact LACERA at 1-800-786-6464 to request a book.

LACERA operates pursuant to the County Employees Retirement Law of 1937, Government Code section 31450 et seq. It is an independent government entity, separate and distinct from the County of Los Angeles. LACERA is a "governmental plan," and is therefore **exempt** from the provisions of ERISA that relate to a Qualified Domestic Relations Order (**QDRO**). (See 29 U.S.C. §§ 1002(32) and 1003(b)(1).)

LACERA requires the retirement association to be joined in any pending **California** dissolution action before benefits are paid. However, LACERA is willing to be joined by stipulation of the parties. Upon receipt of a Joinder or Notice of Adverse Interest, LACERA will place a legal hold on the member's account. This will ensure no funds will be paid absent receipt of a conformed court order setting forth the division of benefits. In addition, LACERA requires a conformed copy of the final judgment of dissolution.

Please note, as a defined benefit plan LACERA cannot comply with some features commonly contained in QDROs. For example: (1) LACERA is statutorily prohibited from making any payments under the plan until the member actually retires, and (2) the retirement account cannot be divided into separate accounts for a member and non-member.

Additionally, a former spouse may not be designated as a surviving spouse pursuant to *In re Marriage of Cramer (1993) 20 Cal.App.4th 73*. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement. To provide a continuing allowance to a former spouse, a member may be ordered to elect an "optional settlement" (also known as a "joint and survivor annuity") in lieu of the unmodified retirement allowance. An optional settlement will provide a lifetime benefit to a designated beneficiary if the member dies before the beneficiary. The member's retirement allowance will be actuarially reduced to fund the survivor benefit, which will be paid only if the member predeceases the designated beneficiary. The amount of the actuarial reduction depends on the life expectancy of the designated beneficiary and the Retirement Option selected. The beneficiary must be designated at the time of retirement and cannot thereafter be changed. All benefits will cease upon the death of the beneficiary. The most common Options are Optional Settlement 2 (Gov. Code § 31762), Optional Settlement 3 (Gov. Code § 31763), and Optional Settlement 4 (Gov. Code § 31764). If a member elects one of the optional settlements upon retirement, no survivor benefit will be payable to a surviving spouse under Government Code section 31760.1. **Although available, LACERA does not require election of an optional settlement retirement allowance.**

When fashioning an order relating to the division of LACERA retirement benefits, you should seek guidance from the County Employees Retirement Law of 1937. To assist you in the preparation of such an order, I have enclosed sample language that might be included in a domestic relations order to direct the division of a member's retirement allowance **should the member select the Unmodified Retirement Option**. This example is not legal advice and counsel to the parties should not rely on the sample language as dispositive of legal issues that may arise. An order may vary from this example and still be acceptable. I urge counsel to work together to **prepare a proposed order for submission to LACERA for review** so the waiting period associated with the filing of a motion on behalf of LACERA to modify or rescind the order may be avoided.

On March 1, 2005, LACERA adopted Government Code section 31760.5 – Unmodified Plus Retirement Allowance Option – which provides eligible survivors with a continuing benefit of up to 100 percent of the member’s monthly retirement allowance. Under this option, the member can customize the percentage [between 66 and 100 percent for Plans A, B, C, and D; between 56 and 100 for Plan E] of his or her monthly allowance the eligible survivor(s) will receive upon the member’s death. The increased survivor allowance is paid through an actuarially equivalent reduction in the member’s allowance. The member’s benefit is reduced by only enough to cover the increased survivor’s allowance.

The member’s lifetime monthly allowance will be reduced to provide an increased survivor’s allowance. This reduction will also result in a reduction to the non-member’s portion while the member is alive. However, because the Unmodified Plus Retirement Allowance will result in an increased benefit to the member’s surviving spouse, pursuant to *In re Marriage of Carnall (1989) 216 Cal.App.3d 1010*, the non-member will also benefit in the increase.

**Pursuant to Government Code section 31532, individual records of members are confidential and may be released only upon the written authorization of the member, by a subpoena or by regularly accepted discovery procedures.** Include a \$15.00 check payable to LACERA when requesting information by a subpoena.

LACERA requires certified copies of out-of-state court orders.

Pursuant to Government Code section 31781.1, upon the death of a member who leaves no eligible surviving spouse but leaves a minor child(ren), the rights of the minor child(ren) are superior to and supersede the rights and claims of any other beneficiary.

I trust the above information serves to assist you in preparing an order. If you require further assistance, please call me at (626) 564-2344.

Sincerely,

LACERA Legal Analyst

Enclosure

c: Opposing counsel

### SAMPLE LANGUAGE FOR ORDERS

1. The Los Angeles County Employees Retirement Association, (hereinafter called LACERA), was joined as a claimant employee pension benefit plan on [date] pursuant to Family Code § 2060 et seq. LACERA is a governmental plan and is therefore exempt from the provisions of the Employee Retirement Income Security Act that relate to Qualified Domestic Relations Orders.
2. The Judgment of Dissolution of Marriage became final on [date].
3. After final dissolution of marriage, LACERA is ordered to pay directly to [non-member] upon the retirement of [member], a percentage of the retirement allowance otherwise payable to [member] calculated by a formula as follows:

**Number of months of LACERA service between [date of marriage] and [date of separation] ÷ months of service in LACERA SYSTEM at time of retirement of [member] x 50% x retirement allowance payable to [member].**

Non-member’s allocated monthly benefit	=	$\frac{\text{No. months LACERA service between marriage date \& separation date}}{\text{No. months LACERA service at retirement of member}}$	X	50%	X	Member’s service retirement allowance
--	---	--	---	-----	---	---------------------------------------

[Non-member’s] community share of [member’s] retirement allowance shall terminate upon the death of [member].

4. In the event LACERA inadvertently or otherwise pays to any party (including a qualified surviving spouse or other beneficiary) any benefits assigned to another party under this or a subsequent order, the party receiving such excess benefits shall be deemed a constructive trustee of said amounts.
5. If [member] leaves an eligible surviving spouse<sup>1</sup>, a portion of the survivor's allowance as described in Paragraph 3 herein is payable to [non-member]. Benefits paid to the non-member are based on the election made by the eligible surviving spouse. [Non-member's] share shall terminate upon the death of the surviving spouse. (*See In re Marriage of Carnall (1989) 216 Cal. App.3d 1010.*) [Non-member] recognizes the right to any portion of the survivor's allowance shall be based on the lifetime of the eligible surviving spouse.
6. If [non-member] predeceases [member], any benefits otherwise payable to [non-member] by LACERA, including benefits paid to a surviving spouse, shall be paid to [non-member's] designated beneficiaries, or if none, to [non-member's] estate.
7. [Non-member] is ordered to keep his/her current address and proof of Social Security number on file with LACERA. [In a separate letter, provide the non-member's Social Security number, current address and birth date.]
8. In the event LACERA does not approve the form of this Order, each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to LACERA.
9. Nothing contained in this Order shall be construed to require LACERA:
  - (a) To provide to [non-member] any type or form of benefit or any option not otherwise available to [member] under the Plan;
  - (b) To pay any benefits to [non-member] which are required to be paid to another non-member spouse under court order;
  - (c) To make payments in any manner that will result in an increase in the amount of benefits provided by the Plan.
10. The Court reserves jurisdiction to enforce, revise, modify, or amend this Order, provided neither this Order nor any subsequent revision, modification, or amendment shall require LACERA to provide any form or amount of benefits not otherwise provided by LACERA.

<sup>1</sup>The non-member is not an eligible surviving spouse pursuant to *In re Marriage of Cramer (1993) 20 Cal.App.4th 73*. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement.

**[If joining LACERA by stipulation, include a signature line for LACERA: "Approved as to Form and Content; Date and Signature Line for Attorney for LACERA"]**

# SAMPLE LANGUAGE FOR ORDER No. 3: LACERA MEMBER RETIRED FOR SERVICE

Date

Name of Attorney  
Name of Law Firm  
Address  
City, State, Zip

**Re:** Marriage of [last name of client] (both spouses' first names)

**Case No.:** XX 000000

Dear Attorney:

In response to your request, I am providing you with information to assist you in dealing with the Los Angeles County Employees Retirement Association (**LACERA**). Additional information, including our Summary Plan Description books, can be found online at lacera.com. If you do not have access to the Internet, you may contact LACERA at 1-800-786-6464 to request a book.

LACERA operates pursuant to the County Employees Retirement Law of 1937, Government Code section 31450 et seq. It is an independent government entity, separate and distinct from the County of Los Angeles. LACERA is a "governmental plan," and is therefore **exempt** from the provisions of ERISA that relate to a Qualified Domestic Relations Order (**QDRO**). (See 29 U.S.C. §§ 1002(32) and 1003(b)(1).)

LACERA requires the retirement association to be joined in any pending **California** dissolution action before benefits are paid. However, LACERA is willing to be joined by stipulation of the parties. In addition, LACERA requires a conformed copy of the final judgment of dissolution. If the member is presently receiving a retirement allowance, the full allowance will continue to be paid to the member until a court order is received setting forth the division of the member's retirement allowance and final judgment of dissolution has been entered. Pursuant to Family Code section 2073(a), LACERA has thirty days in which to comply with a court order.

Please note, as a defined benefit plan LACERA cannot comply with some features commonly contained in QDROs. For example, the retirement account cannot be divided into separate accounts for a member and non-member.

Additionally, a former spouse may not be designated as a surviving spouse pursuant to *In re Marriage of Cramer* (1993) 20 Cal.App.4th 73. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement.

When fashioning an order relating to the division of LACERA retirement benefits, you should seek guidance from the County Employees Retirement Law of 1937. To assist you in the preparation of such an order, I have enclosed sample language that might be included in a domestic relations order to direct the division of a member's retirement allowance. This example is not legal advice and counsel to the parties should not rely on the sample language as dispositive of legal issues that may arise. An order may vary from this example and still be acceptable. I urge counsel to work together to **prepare a proposed order for submission to LACERA for review** so the waiting period associated with the filing of a motion on behalf of LACERA to modify or rescind the order may be avoided.

On March 1, 2005, LACERA adopted Government Code section 31760.5 – Unmodified Plus Retirement Allowance Option – which provides eligible survivors with a continuing benefit of up to 100 percent of the member's monthly retirement allowance. Under this option, the member can customize the percentage [between 66 and 100 percent for Plans A, B, C, and D; between 56 and 100 for Plan E] of his or her monthly allowance that the eligible survivor(s) will receive upon the member's death. The increased survivor allowance is paid through an actuarially equivalent reduction in the member's allowance. The member's benefit is reduced by only enough to cover the increased survivor's allowance.

The member's lifetime monthly allowance will be reduced to provide an increased survivor's allowance. This reduction will also result in a reduction to the non-member's portion while the member is alive. However, because the Unmodified Plus Retirement Allowance will result in an increased benefit to the member's surviving spouse, pursuant to *In re Marriage of Carnall* (1989) 216 Cal.App.3d 1010, the non-member will also benefit in the increase.

Pursuant to Government Code section 31532, individual records of members are confidential and may be released only upon the written authorization of the member, by a subpoena or by regularly accepted discovery procedures. Include a \$15.00 check payable to LACERA when requesting information by a subpoena.

LACERA requires certified copies of out-of-state court orders.

Pursuant to Government Code section 31781.1, upon the death of a member who leaves no eligible surviving spouse, but leaves a minor child(ren), the rights of the minor child(ren) are superior to and supersede the rights and claims of any other beneficiary.

I trust the above information serves to assist you in preparing an order. If you require further assistance, please feel free to contact me at (626) 564-2344.

Sincerely,

LACERA Legal Analyst

Enclosure

c: Opposing counsel

### SAMPLE LANGUAGE FOR ORDERS

1. The Los Angeles County Employees Retirement Association, (hereinafter called LACERA), was joined as a claimant employee pension benefit plan on [date] pursuant to Family Code § 2060 et seq. LACERA is a governmental plan and is therefore exempt from the provisions of the Employee Retirement Income Security Act that relate to Qualified Domestic Relations Orders.
2. The Judgment of Dissolution of Marriage became final on [date].
3. After final dissolution of marriage, LACERA is ordered to pay directly to [non-member], a percentage of the retirement allowance otherwise payable to [member] calculated by a formula as follows:

**Number of months of LACERA service between [date of marriage] and [date of separation] ÷ months of service in LACERA SYSTEM at time of retirement of [member] x 50% x retirement allowance payable to [member].**

$$\begin{array}{rcccl} \text{Non-member's} & & \text{No. months LACERA} & & \\ \text{allocated monthly} & = & \text{service between marriage} & & \text{Member's service} \\ \text{benefit} & & \frac{\text{date \& separation date}}{\text{No. months LACERA}} & \times & \text{retirement} \\ & & \text{service at retirement} & 50\% & \text{allowance} \\ & & \text{of member} & & \end{array}$$

- [Non-member's] community share of [member's] retirement allowance shall terminate upon the death of [member].
4. In the event LACERA inadvertently or otherwise pays to any party (including a qualified surviving spouse or other beneficiary) any benefits assigned to another party under this or a subsequent order, the party receiving such excess benefits shall be deemed a constructive trustee of said amounts.
  5. If [member] leaves an eligible surviving spouse<sup>1</sup>, a portion of the survivor's allowance as described in Paragraph 3 herein is payable to [non-member]. Benefits paid to the non-member are based on the election made by the eligible surviving spouse. [Non-member's] share shall terminate upon the death of the surviving spouse. (See *In re Marriage of Carnall* (1989) 216 Cal. App.3d 1010.) [Non-member] recognizes the right to any portion of the survivor's allowance shall be based on the lifetime of the eligible surviving spouse.
  6. If [non-member] predeceases [member], any benefits otherwise payable to [non-member] by LACERA, including benefits paid to a surviving spouse, shall be paid to [non-member's] designated beneficiaries, or if none, to [non-member's] estate.

<sup>1</sup>The non-member is not an eligible surviving spouse pursuant to *In re Marriage of Cramer* (1993) 20 Cal.App.4th 73. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement.

7. In the event survivorship allowances or survivorship benefits not herein described become payable by LACERA at the death of [member], the Court reserves jurisdiction to make appropriate orders under these circumstances to the extent allowable under existing law at that time.
8. [Non-member] is ordered to keep his/her current address and proof of Social Security number on file with LACERA. [In a separate letter, provide non-member's Social Security number, current address, and birth date.]
9. In the event LACERA does not approve the form of this Order, each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to LACERA.
10. Nothing contained in this Order shall be construed to require LACERA:
  - (a) To provide to [non-member] any type or form of benefit or any option not otherwise available to [member] under the Plan;
  - (b) To pay any benefits to [non-member] which are required to be paid to another non-member spouse under court order;
  - (c) To make any payments in any manner that will result in an increase in the amount of benefits provided by the Plan.
11. The Court reserves jurisdiction to enforce, revise, modify, or amend this Order, provided neither this Order nor any subsequent revision, modification, or amendment shall require LACERA to provide any form or amount of benefits not otherwise provided by LACERA.

**[If joining LACERA by stipulation, include a signature line for LACERA: "Approved as to Form and Content; Date and Signature Line for Attorney for LACERA"]**

# SAMPLE LANGUAGE FOR ORDER No. 4: LACERA MEMBER RETIRED FOR DISABILITY, NOT ELIGIBLE FOR SERVICE RETIREMENT

Date

Name of Attorney  
Name of Law Firm  
Address  
City, State, Zip

**Re:** Marriage of [last name of client] (both spouses' first names)  
**Case No.:** XX 000000

Dear Attorney:

In response to your request, I am writing to provide you with information to assist you in dealing with the Los Angeles County Employees Retirement Association (**LACERA**). Additional information, including our Summary Plan Description books, can be found online at lacera.com. If you do not have access to the Internet, you may contact LACERA at 1-800-786-6464 to request a book.

LACERA operates pursuant to the County Employees Retirement Law of 1937, Government Code section 31450 et seq. It is an independent government entity, separate and distinct from the County of Los Angeles. LACERA is a "governmental plan," and is therefore **exempt** from the provisions of ERISA that relate to a Qualified Domestic Relations Order (**QDRO**). (See 29 U.S.C. §§ 1002(32) and 1003(b)(1).)

LACERA requires the retirement association to be joined in any pending **California** dissolution action before benefits are paid. However, LACERA is willing to be joined by stipulation of the parties. In addition, LACERA requires a conformed copy of the final judgment of dissolution. If the member is presently receiving a disability retirement allowance and is not eligible for a service retirement, the full disability allowance will continue to be paid to the member. When the member is first eligible for service retirement had the member not become disabled, LACERA will effectuate the terms of a court order that sets forth the division of the member's service retirement allowance.

Please note, as a defined benefit plan LACERA cannot comply with some features commonly contained in QDROs. For example: (1) LACERA is statutorily prohibited from making any payments under the plan until the member is eligible for service retirement, and (2) the retirement account cannot be divided into separate accounts for the member and non-member.

Additionally, a former spouse may not be designated as a surviving spouse pursuant to *In re Marriage of Cramer* (1993) 20 Cal.App.4th 73. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement.

When fashioning an order relating to the division of LACERA retirement benefits, you should seek guidance from the County Employees Retirement Law of 1937. To assist you in the preparation of such an order, I have enclosed sample language that might be included in a domestic relations order to direct the division of a member's retirement allowance **should the member select the Unmodified Retirement Option**. This example is not legal advice and counsel to the parties should not rely on the sample language as dispositive of legal issues that may arise. An order may vary from this example and still be acceptable. I urge counsel to work together to **prepare a proposed order for submission to LACERA for review** so the waiting period associated with the filing of a motion on behalf of LACERA to modify or rescind the order may be avoided.

On March 1, 2005, LACERA adopted Government Code section 31760.5 – Unmodified Plus Retirement Allowance Option – which provides eligible survivors with a continuing benefit of up to 100 percent of the member's monthly retirement allowance. Under this option, the member can customize the percentage [between 66 and 100 percent for Plans A, B, C, and D; between 56 and 100 for Plan E] of his or her monthly allowance the eligible survivor(s) will receive upon the member's death. The increased survivor allowance is paid through an actuarially equivalent reduction in the member's allowance. The member's benefit is reduced by only enough to cover the increased survivor's allowance.

The member's lifetime monthly allowance will be reduced to provide an increased survivor's allowance. This reduction will also result in a reduction to the non-member's portion while the member is alive. However, because the Unmodified Plus Retirement Allowance will result in an increased benefit to the member's surviving spouse, pursuant to *In re Marriage of Carnall (1989) 216 Cal.App.3d 1010*, the non-member will also benefit in the increase.

**Pursuant to Government Code section 31532, individual records of members are confidential and may be released only upon the written authorization of the member, by a subpoena or by regularly accepted discovery procedures.** Include a \$15.00 check payable to LACERA when requesting information by a subpoena.

LACERA requires certified copies of out-of-state court orders.

Pursuant to Government Code section 31781.1, upon the death of a member who leaves no eligible surviving spouse, but leaves a minor child(ren), the rights of the minor child(ren) are superior to and supersede the rights and claims of any other beneficiary.

I trust the above information serves to assist you in preparing an order. If you require further assistance, please feel free to contact me at (626) 564-2344.

LACERA Legal Analyst

Enclosure

c: Opposing counsel

### SAMPLE LANGUAGE FOR ORDERS

1. The Los Angeles County Employees Retirement Association, (hereinafter called LACERA), was joined as a claimant employee pension benefit plan on [date] pursuant to Family Code § 2060 et seq. LACERA is a governmental plan and is therefore exempt from the provisions of the Employee Retirement Income Security Act that relate to Qualified Domestic Relations Orders.
2. The Judgment of Dissolution of Marriage became final on [date].
3. After final dissolution of marriage, LACERA is ordered to pay directly to [non-member] upon [date], the first date [member] is eligible for a service retirement, a percentage of the service retirement allowance otherwise payable to [member] calculated by a formula as follows:

**Number of months of LACERA service between [date of marriage] and [date of separation] ÷ months of service in LACERA SYSTEM at time of retirement of [member] x 50% x retirement allowance payable to [member].**

Non-member's allocated monthly benefit	=	$\frac{\text{No. months LACERA service between marriage date \& separation date}}{\text{No. months LACERA service at retirement of member}}$	X	50%	X	Member's service retirement allowance
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- [Non-member's] community property share of [member's] retirement allowance shall terminate upon the death of [member].
4. In the event LACERA inadvertently or otherwise pays to any party (including a qualified surviving spouse or other beneficiary) any benefits assigned to another party under this or a subsequent order, the party receiving such excess benefits shall be deemed a constructive trustee of said amount.
  5. If any return of accumulated contributions becomes payable as the result of the death of [member], [non-member] is entitled to [his,her] community property share of the accumulated contributions. [Member] hereby names [non-member] as beneficiary for the community property share of the accumulated contributions.

6. If [member] leaves an eligible surviving spouse<sup>1</sup>, a portion of the survivor's allowance as described in Paragraph 3 herein is payable to [non-member]. Benefits paid to the non-member are based on the election made by the eligible surviving spouse. [Non-member's] share shall terminate upon the death of the surviving spouse. (*See In re Marriage of Carnall (1989) 216 Cal. App.3d 1010.*) [Non-member] recognizes the right to any portion of the survivor's allowance shall be based on the lifetime of the eligible surviving spouse.
7. If [non-member] predeceases [member], any benefits otherwise payable to [non-member] by LACERA, including benefits paid to a surviving spouse, shall be paid to the [non-member's] designated beneficiaries, or if none, to [non-member's] estate.
8. [Non-member] is ordered to keep his/her current address and proof of Social Security number on file with LACERA. [In a separate letter, provide non-member's Social Security number, current address and birth date.]
9. In the event LACERA does not approve the form of this Order, each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to LACERA.
10. Nothing contained in this Order shall be construed to require LACERA:
  - (a) To provide to [non-member] any type or form of benefit or any option not otherwise available to [member] under the Plan;
  - (b) To pay any benefits to [non-member] which are required to be paid to another non-member spouse under court order;
  - (c) To make any payments in any manner that will result in an increase in the amount of benefits provided by the Plan.
11. The Court reserves jurisdiction to enforce, revise, modify or amend this Order, provided neither this Order nor any subsequent revision, modification, or amendment shall require LACERA to provide any form or amount of benefits not otherwise provided by LACERA.

<sup>1</sup>The non-member is not an eligible surviving spouse pursuant to *In re Marriage of Cramer (1993) 20 Cal.App.4th 73*. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement.

**[If joining LACERA by stipulation, include a signature line for LACERA: "Approved as to Form and Content; Date and Signature Line for Attorney for LACERA"]**

# SAMPLE LANGUAGE FOR ORDER No. 5: LACERA MEMBER RETIRED FOR DISABILITY, ELIGIBLE FOR SERVICE RETIREMENT

Date

Name of Attorney  
Name of Law Firm  
Address  
City, State, Zip

**Re:** Marriage of [last name of client] (both spouses' first names)

**Case No.:** XX 000000

Dear Attorney:

In response to your request, I am writing to provide you with information to assist you in dealing with the Los Angeles County Employees Retirement Association (**LACERA**). Additional information, including our Summary Plan Description books, can be found online at lacera.com. If you do not have access to the Internet, you may contact LACERA at 1-800-786-6464 to request a book.

LACERA operates pursuant to the County Employees Retirement Law of 1937, Government Code section 31450 et seq. It is an independent government entity, separate and distinct from the County of Los Angeles. LACERA is a "governmental plan," and is therefore **exempt** from the provisions of ERISA that relate to a Qualified Domestic Relations Order (**QDRO**). (See 29 U.S.C. §§ 1002(32) and 1003(b)(1).)

LACERA requires the retirement association to be joined in any pending **California** dissolution action before benefits are paid. However, LACERA is willing to be joined by stipulation of the parties. In addition, LACERA requires a conformed copy of the final judgment of dissolution. If the member is presently receiving a retirement allowance, the full allowance will continue to be paid to the member until a court order is received setting forth the division of the member's retirement allowance. Pursuant to Family Code section 2073(a), LACERA has thirty days in which to comply with a court order.

Please note, as a defined benefit plan LACERA cannot comply with some features commonly contained in QDROs. For example: (1) LACERA is statutorily prohibited from making any payments under the plan until the member actually retires, and (2) the retirement account cannot be divided into separate accounts for the member and non-member.

Additionally, a former spouse may not be designated as a surviving spouse pursuant to *In re Marriage of Cramer* (1993) 20 Cal.App.4th 73. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement.

When fashioning an order relating to the division of LACERA retirement benefits, you should seek guidance from the County Employees Retirement Law of 1937. To assist you in the preparation of such an order, I have enclosed sample language that might be included in a domestic relations order to direct the division of a member's retirement allowance. This example is not legal advice and counsel to the parties should not rely on the sample language as dispositive of legal issues that may arise. An order may vary from this example and still be acceptable. I urge counsel to work together to **prepare a proposed order for submission to LACERA for review** so the waiting period associated with the filing of a motion on behalf of LACERA to modify or rescind the order may be avoided.

On March 1, 2005, LACERA adopted Government Code section 31760.5 – Unmodified Plus Retirement Allowance Option – which provides eligible survivors with a continuing benefit of up to 100 percent of the member's monthly retirement allowance. Under this option, the member can customize the percentage [between 66 and 100 percent for Plans A, B, C, and D; between 56 and 100 for Plan E] of his or her monthly allowance the eligible survivor(s) will receive upon the member's death. The increased survivor allowance is paid through an actuarially equivalent reduction in the member's allowance. The member's benefit is reduced by only enough to cover the increased survivor's allowance.

The member's lifetime monthly allowance will be reduced to provide an increased survivor's allowance. This reduction will also result in a reduction to the non-member's portion while the member is alive. However, because the Unmodified Plus Retirement Allowance

will result in an increased benefit to the member's surviving spouse, pursuant to *In re Marriage of Carnall (1989) 216 Cal.App.3d 1010*, the non-member will also benefit in the increase.

**Pursuant to Government Code section 31532, individual records of members are confidential and may be released only upon the written authorization of the member, by a subpoena or by regularly accepted discovery procedures.** Include a \$15.00 check payable to LACERA when requesting information by a subpoena.

LACERA requires certified copies of out-of-state court orders.

Pursuant to Government Code section 31781.1, upon the death of a member who leaves no eligible surviving spouse, but leaves a minor child(ren), the rights of the minor child(ren) are superior to and supersede the rights and claims of any other beneficiary.

I trust the above information serves to assist you in preparing an order. If you require further assistance, please feel free to contact me at (626) 564-2344.

Sincerely,

LACERA Legal Analyst

Enclosure

c: Opposing counsel

**SAMPLE LANGUAGE FOR ORDERS**

1. The Los Angeles County Employees Retirement Association, (hereinafter called LACERA), was joined as a claimant employee pension benefit plan on [date] pursuant to Family Code § 2060 et seq. LACERA is a governmental plan and is therefore exempt from the provisions of the Employee Retirement Income Security Act that relate to Qualified Domestic Relations Orders.
2. The Judgment of Dissolution of Marriage became final on [date].
3. [Member] is receiving a disability retirement allowance, but is eligible for a service retirement allowance. [Non-member] is eligible to receive a community portion of the service retirement allowance. After final dissolution of marriage, LACERA is ordered to pay directly to [non-member] upon the retirement of [member], a percentage of the service retirement allowance otherwise payable to [member] calculated by a formula as follows:

**Number of months of LACERA service between [date of marriage] and [date of separation] ÷ months of service in LACERA SYSTEM at time of retirement of [member] x 50% x retirement allowance payable to [member].**

Non-member's allocated monthly benefit	=	No. months LACERA service between marriage	X	50%	X	Member's service retirement allowance
		<u>date &amp; separation date</u>				
		No. months LACERA service at retirement of member				

- [Non-member's] community share of [member's] retirement allowance shall terminate upon the death of the [member].
4. In the event LACERA inadvertently or otherwise pays to any party (including a qualified surviving spouse or other beneficiary) any benefits assigned to another party under this or a subsequent order, the party receiving such excess benefits shall be deemed a constructive trustee of said amounts.

5. If any return of accumulated contributions becomes payable as the result of the death of [member], [non-member] is entitled to [his,her] community property share of the accumulated contributions. [Member] hereby names [non-member] as beneficiary for the community property share of the accumulated contributions.
6. If [member] leaves an eligible surviving spouse<sup>1</sup>, a portion of the survivor's allowance as described in Paragraph 3 herein is payable to [non-member]. Benefits paid to the non-member are based on the election made by the eligible surviving spouse. [Non-member's] share shall terminate upon the death of the surviving spouse. (See *In re Marriage of Carnall (1989) 216 Cal. App.3d 1010.*) [Non-member] recognizes the right to any portion of the survivor's allowance shall be based on the lifetime of the eligible surviving spouse.
7. If [non-member] predeceases [member], any benefits otherwise payable to [non-member] by LACERA, including benefits paid to a surviving spouse, shall be paid to [non-member's] designated beneficiaries, or if none, to [non-member's] estate.
8. [Non-member] is ordered to keep his/her current address and proof of Social Security number on file with LACERA. [In a separate letter, provide non-member's Social Security number, current address and birth date.]
9. In the event LACERA does not approve the form of this Order, each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to LACERA.
10. Nothing contained in this Order shall be construed to require LACERA:
  - (a) To provide to [non-member] any type or form of benefit or any option not otherwise available to [member] under the Plan;
  - (b) To pay any benefits to [non-member] which are required to be paid to another non-member spouse under court order;
  - (c) To make any payments in any manner that will result in an increase in the amount of benefits provided by the Plan.
11. The Court reserves jurisdiction to enforce, revise, modify, or amend this Order, provided neither this Order nor any subsequent revision, modification, or amendment shall require LACERA to provide any form or amount of benefits not otherwise provided by LACERA.

<sup>1</sup>The non-member is not an eligible surviving spouse pursuant to *In re Marriage of Cramer (1993) 20 Cal.App.4th 73*. An eligible surviving spouse is a spouse to whom the member has been married prior to retirement.

**[If joining LACERA by stipulation, include a signature line for LACERA: "Approved as to Form and Content; Date and Signature Line for Attorney for LACERA"]**





## Community Property Guide:

Sample Language for Court Orders Affecting LACERA Members



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