



## **DOMESTIC RELATIONS ORDER**

### **Frequently Asked Questions (FAQ)**

#### **1. What is a Domestic Relations Order (DRO)?**

A DRO is a court order containing certain information and legal requirements that identify your former spouse's interest in your retirement benefit. The DRO directs SBCERA to pay benefits to your former spouse.

#### **2. Do I need to file any other document with the Court prior to submitting the DRO to SBCERA?**

Yes. SBCERA cannot accept or review a DRO until you have filed a Joinder with the Court and it has been served on SBCERA. Upon doing so, the DRO should be submitted to SBCERA for review prior to submitting it to the Court.

#### **3. What is a Joinder?**

A Joinder is a legal document joining SBCERA as a third party to your divorce proceedings. It must be served on SBCERA before preparing a DRO. The Joinder notifies SBCERA that your former spouse is claiming a right to a portion of your retirement benefits. Once SBCERA has been joined to your divorce, generally SBCERA cannot make any benefit payments or distributions to anyone until a DRO has been received.

#### **4. Why do I need to have a DRO?**

Without a DRO, SBCERA cannot legally make any payments to your former spouse. In addition, if SBCERA has been served with a Joinder, SBCERA cannot make any distributions of your retirement benefit to you or your former spouse.

#### **5. Do I need to file the DRO with the Court?**

Yes, the DRO must be filed with the Court. SBCERA cannot implement a DRO until it has been filed with the Court and signed by the judge.

## **6. Does SBCERA need to approve the DRO before I file it with the Court?**

Yes, SBCERA should approve the DRO before you file it with the Court. By submitting a proposed copy of your DRO to SBCERA for review, you can ensure all general legal requirements and required language and/or provisions are included to prevent unnecessary delays and multiple court orders.

If SBCERA identifies any changes that need to be made to the DRO, you will be notified in writing. The same will occur if SBCERA does not identify any changes. The DRO should continue to be submitted to SBCERA until it has been approved. Once SBCERA has approved the proposed DRO, it can be filed with the Court.

## **7. Does my former spouse have to sign the DRO?**

A DRO is an agreement between you and your former spouse. Therefore, your former spouse must sign the DRO. The DRO must also be signed by the judge.

## **8. Once I file the DRO with the Court, when do I need to submit the DRO to SBCERA?**

Once the DRO is filed with the Court, submit it immediately to SBCERA. Most importantly, the DRO must be delivered to SBCERA before retiring or refunding; otherwise, SBCERA will be unable to make any distribution of your retirement benefit to you or your former spouse.

## **9. What requirements must a DRO contain?**

Although every DRO may be different, the basic requirements that a DRO should contain are:

- The name and last known mailing address of the Member and former spouse.
- The date of marriage and the date of separation.
- The calculation for the former spouse's dollar amount or share of the Member's retirement benefits.
- A selected retirement option.

## **10. What cannot be included in a DRO?**

- The DRO must not grant the former spouse any type or form of benefit, or any option that would not otherwise be available to the member under SBCERA.
- The DRO must not provide the former spouse increased benefits (as determined on actuarial value) not available to the member.

- The DRO must not order payment of any benefit to the former spouse that is already required to be paid to another former spouse under a different court order.
- The DRO must not provide payment to the former spouse of benefits forfeited by the Member.
- The DRO must not change the benefit selections of the Member once the Member has retired.

**11. Does the DRO need to specify which retirement option the Member must select at the time of retirement?**

Yes. The DRO must include the retirement option the Member is to select at the time of retirement that provides for a continuance to the former spouse and/or an eligible surviving spouse.

**12. What are the different retirement options that can be incorporated into the DRO to provide for a continuance?**

There are four different retirement options that you can incorporate into the DRO to provide for a continuance:

1. **Unmodified Option** – provides for a 60% continuance to an eligible surviving spouse. The former spouse may be entitled to a portion of a surviving spouse's continuance. However, if the unmodified option was selected by the Member at retirement, but prior to the member's divorce then the spouse named as the beneficiary at the time of retirement, which is now the former spouse, will no longer qualify for the unmodified continuance. This is pursuant to Government Code section 31760.1 or for death benefits under Government Code sections 31765, 31765.1, or 31786.
2. **Option 2** – provides for a 100% continuance to the nominated beneficiary (i.e. former spouse).
3. **Option 3** – provides for a 50% continuance to the nominated beneficiary (i.e. former spouse).
4. **Option 4** – provides for various continuances to multiple beneficiaries, such as the former spouse and/or an eligible surviving spouse. Typically, the continuance is based on the calculation of a share of the benefit payable to the former spouse.

*Note:* Depending on the option selected, the Member or former spouse may receive a reduced benefit. Please consult with a Retirement Specialist for more information about the retirement options.

**13. Does the DRO need to address any pre-retirement death benefits?**

Yes, the DRO needs to address pre-retirement death benefits. The DRO should provide instructions to SBCERA regarding how to pay out various death benefits if the Member dies during active employment.

**14. Does the DRO provide for SBCERA to create separate retirement accounts for the Member and former spouse?**

No, SBCERA is unable to create separate accounts for the Member and former spouse.

**15. I am an active member, who is eligible to retire, and a joinder has been filed with the Court and served on SBCERA. I am already paying my former spouse his/her interest in my retirement as part of the property settlement agreement. Do I still need to file a DRO and submit it to SBCERA?**

Yes. In the event that you retire, since a joinder has been served on SBCERA, you must file a DRO. SBCERA will be unable to make any distribution of your retirement benefits to you or your former spouse without the DRO unless the Joinder is released by the Court.

**16. I am retired and subsequently went through a divorce. Do I need to file a DRO and submit it to SBCERA?**

In this situation, the need for a DRO is dependent on the division of property as determined by the Court in your property settlement agreement (dissolution judgment). If the Court awarded your former spouse an interest in your retirement, then yes, you must file a Joinder and DRO and submit it to SBCERA, even though you are retired. However, if the Court did not award an interest in your retirement to your former spouse, then you do not need to file a Joinder and a DRO.

**17. Does SBCERA have sample DROs that I can use?**

Yes, SBCERA offers various sample DROs to assist you in the development of an acceptable order. You can find them on our Web site at [www.SBCERA.org](http://www.SBCERA.org) ([click here](#)) or you can request samples by mail or phone by calling (909) 885-7980 or toll free (877) 722-3721. The disposition of retirement benefits in DRO

proceedings involve complex marital and tax issues. Therefore, SBCERA encourages you to seek competent legal counsel to assist you with any of these issues.

#### **Disclaimer**

*This FAQ Sheet was drafted by the SBCERA staff in order to help members understand pension issues surrounding domestic relations orders. Every effort has been made to ensure the accuracy of the information offered. However, you should not rely solely on the information contained herein. In the event of any discrepancy between the information contained in this FAQ and state and federal law, the state and federal law will govern.*

*SBCERA's staff is unable to address specific legal questions. If you have legal questions about your power of attorney or executing one, then you should consult competent legal counsel.*