

**LACERS**

LOS ANGELES CITY  
EMPLOYEES' RETIREMENT SYSTEM

**DISSOLUTION OF MARRIAGE  
INFORMATION GUIDE**

**JUNE 2001**

Prepared by

# LACERS

Los Angeles City Employees Retirement System  
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If you suffer from a disability that makes it difficult for you to do the following:

- Read LACERS bulletins, publications and forms.
- Communicate with the LACERS staff via phone or in-person.
- Complete LACERS forms.

We offer the following services to assist you when you call or visit LACERS:

- Sign Language Interpreting Services
- Telecommunications Device for the Deaf (TTY)
- Assistive listening devices (for the hard of hearing)
- Assistance in reading/completing forms

If have any questions or would like to request one of these services please telephone LACERS at 800-779-8328 or 888-349-3996 (TTY). To ensure availability, you are advised to make your request at least six working days prior to your needing services or your appointment here at LACERS.)

# INTRODUCTION

As a general rule, LACERS retirement benefits are only payable to members, their survivors and beneficiaries. However, California state law establishes an exception to this general rule in legal separation and dissolution of marriage actions. To the extent that the member earns LACERS benefits during the marriage before separation, the member's benefits are community property and subject to disposition by the court. The court may:

1. Award the entire interest in the member's benefits to the member (with an off-setting award of other property or a pay-off to the nonmember spouse).
2. Award the nonmember spouse part of the member's LACERS benefits:
  - a. as an "in-kind" division (the nonmember receives the court specified portion of the member's benefits) *or*
  - b. as a separate account pursuant to Los Angeles Administrative Code (LAAC) Sections 4.1066-4.1066.6 (the nonmember's rights in this account are limited to either a refund of contributions or, if the eligibility criteria are met, a separate account allowance based upon the member's compensation at the time of separation).

Attached to this guide you will find sample provisions for use in court orders, which provide for either an "in-kind" division of LACERS benefits or to establish a separate account. Also attached are copies of LAAC Sections 4.1066 et al (the separate account provisions) and LAAC Section 4.1067 (which provides an election for a nonmember to convert an eligible "in-kind" interest in the member's benefits into an actuarial equivalent annuity payable for the nonmember's lifetime).

At such time as a member applies to retire, the member must provide proof of the termination of any prior marriages before benefits can be paid. If LACERS has no notice of any claim by a current or former spouse, then all benefits will be paid to the member until such time as a claim is received. If LACERS is on written notice that a current or former spouse has claimed an interest in the member's benefits with the plan, then funds will be withheld to protect the nonmember's claimed interest until an order is received disposing of the community interest in the member's benefits.

When a dissolution of marriage or legal separation action is filed, the nonmember spouse may want to file a community property claim with LACERS (to protect that spouse's interest) or either party may want to join LACERS as a party in the pending action. Such claims or joinder documents should be sent to the following address:

## LACERS

Los Angeles City Employees Retirement System  
360 East Second Street, 2<sup>nd</sup> Floor  
Los Angeles, California 90012-4207

1-800-779-8328 or  
213-473-7200

If the dissolution or separation action is filed in a California court, LACERS cannot make payment from a member's benefits to a nonmember unless LACERS has been joined in the case and ordered by the court to make payment directly to the nonmember. If an out of state action is involved, check with LACERS as the procedures differ.

*This guide is intended to provide you with basic information and answers to commonly asked questions about retirement benefits and dissolution of marriage. Of course, the guide cannot provide answers to every question you may have or cover all the issues. If after reading this guide and attachments, you have questions, please do not hesitate to contact us. You may wish to request a copy of the Summary Plan Description as it contains important information about your LACERS benefits.*

## IMPORTANT QUESTIONS AND ANSWERS YOU NEED TO KNOW

### **My spouse is a plan member, and we're getting a divorce. What can I do to protect my interest in the retirement?**

If you were married to a LACERS member while he/she worked for the City, you have an interest in your spouse's retirement, which needs to be disposed of in the court order dividing up your community property.

To protect your interest in the plan, you must notify LACERS in writing that you are claiming your community property interest in the member's LACERS' benefits. In the event the member is (or will be) receiving any benefits and you want your share withheld, then you need to notify the plan of your date of marriage and separation, and request that your share be withheld and not paid to the member. Be sure to include

your spouse's name and social security number and mail your community property claim to:

LACERS  
360 East Second Street, 2<sup>nd</sup> Floor  
Los Angeles, California 90012-4207

**If I send you such a claim letter, does this mean I can be paid my share of any refund of contributions or retirement benefits?**

No. The plan must be made a party in your dissolution or legal separation case if it is filed in any California Superior Court. You can obtain the necessary forms from the court to do this—these are called joinder forms. You or your attorney need to complete these forms, file them with the court, and serve them on the plan. Once LACERS receives these documents, the Retirement Benefits Section of the Los Angeles City Attorney's Office will respond to the joinder.

LACERS cannot make any payments to you until the plan has been joined and served with a certified copy of an order which (a) awards you an interest in the plan, and (b) authorizes LACERS to make payments to you. (See the LACERS sample plan provisions for further information.)

**Is there any reason not to file a joinder on the plan?**

If the nonmember will not be getting any of the member's LACERS benefits, there is no need to join the plan. For instance, if both parties have pension plans and each party will be awarded the entire interest in his/her plan, LACERS does not need to be joined. Likewise, if the member will be receiving all the interest in his/her plan due to a buy-out, LACERS need not be joined.

**If the parties reconcile, how can the joinder on LACERS be released?**

If the parties reconcile after the plan is joined and decide they want to stay married, they may file a request for a dismissal of the case with the court. (This can only be done, however, before the final judgment of dissolution has been entered.) A copy of this order must be given to LACERS so that the plan knows the case has been dismissed.

**Do you have a sample Domestic Relations Order?**

LACERS has provided sample dissolution of marriage provisions in the back of this guide. The sample provisions are provided strictly as an example of provisions that comply with the plan. The parties are not required to use these provisions. Upon

request, the Retirement Benefits Section of the Los Angeles City Attorney's Office will review and comment on draft orders dividing the LACERS community interest prior to entry, but LACERS does not "sign off" on the actual order itself.

LACERS is not subject to the federal Employee Retirement Income Security Act (ERISA), which requires a plan to provide a "Qualified Domestic Relations Order" (QDRO). Also, unlike for an ERISA plan, there is no need to get a separate order entered just to divide the LACERS pension. The provisions dividing the LACERS pension can be included in the same judgment that disposes of all the other community property. Orders using ERISA type language should be avoided, as they are not appropriate to LACERS.

### **Is it necessary to have a subpoena issued to obtain member information?**

No. The plan will respond to written information requests from the member, the member's spouse, or either of their attorneys nearly the same as a subpoena. If a subpoena is issued, the plan will seek to respond with member information in letterform rather than supplying actual business records.

### **How do I request member information?**

If the member or the member's spouse requests information, we ask that the request be in writing, indicate the member's name and social security number, and be signed. Requests from an attorney should supply the same information, but also be on letterhead and indicate which party is represented. If an attorney is representing you, please discuss what information is necessary with your attorney before requesting information on your behalf. If you are representing yourself, be sure to read the information contained in this guide before requesting information.

### **Can the nonmember spouse receive a lump sum payment of the value of the retirement?**

The only way in which a lump sum can be paid is when a refund of contributions is an option. Then all that is paid from LACERS is the contributions that the member paid in from the member's salary, plus the interest on these contributions. This may not reflect the true value of the member's benefits since it does not include any compensation paid for by the City.

Contributions can be paid to the nonmember spouse only when:

- a) A member leaves City service and requests a refund of contributions. The nonmember spouse can be paid his/her share, but only if LACERS has been joined and served with an order entitling the nonmember to a share of this refund. In this situation, neither the member nor the spouse will receive any benefits paid for by the City. They will only get back the contributions the

member paid from the member's salary plus interest earned on these contributions.

- b) The member is still employed, but LACERS has been joined in a dissolution or legal separate action and the court has entered a judgment entitling the nonmember spouse to a separate account pursuant to Los Angeles Administrative Code Sections 4.1066 – 4.1066.6. In this situation, the nonmember can elect to receive a refund of the nonmember's share of the contributions. This amount does not include any benefits paid for by the City, but only a refund of contributions paid by the member, plus interest on these contributions.

### **How are pension rights disposed of in dissolution proceedings?**

There are three basic ways in which pension rights under LACERS are disposed of in dissolution proceedings. These are:

- a) The member takes all of the LACERS pension benefits and the nonmember takes other community property of equivalent value or is bought out by the member. LACERS does not need to be joined in this situation. The member should give LACERS a copy of the order to establish that the pension is entirely his/her separate property.
- b) The court makes an "in-kind" division of the community interest in the pension. Typically the nonmember is given one-half of the community interest which is usually established using the time rule formula: member's marital service divided by member's total service. Marital service includes all periods of City employment during the marriage before separation and, depending upon the order, may also include purchased service time. Total service includes all periods of the member's City employment plus any purchased service time. If the nonmember is given an "in-kind" interest in the member's pension for the member's lifetime and, if applicable, in the pension of the member's surviving spouse/ domestic partner for said surviving spouse's/domestic partner's lifetime, *and if the nonmember's rights do not revert to the member or the member's surviving spouse/domestic partner upon the nonmember's death (i.e., the nonmember can designate a beneficiary for the nonmember's interest)*, then the nonmember has the following options:
  - 1. The non-member may elect to convert his/her "in-kind" interest in the member's and, if applicable, the spouse's/partner's benefits into a life annuity payable for the nonmember's lifetime as provided in Los Angeles Administrative Code Section 4.1067. *This election does not have to be mentioned in the court order, but does have to be timely made.* If this election is chosen, the nonmember is guaranteed a benefit for his/her lifetime and does not risk losing benefits if the member and/or member's spouse/partner die before him/her. Upon the nonmember's death, all

payments from LACERS cease and there is no right to any refund of contributions.

2. The nonmember may take his/her benefits under the court order “in kind”, i.e., the nonmember will be paid his/her share of the member’s pension for the member’s lifetime and, if applicable, his/her share of the member’s surviving spouse/domestic partner pension for the surviving spouse’s/domestic partner’s lifetime. If the nonmember outlives both of these people, the nonmember will cease to get benefits from LACERS. If the nonmember dies before benefits cease to these people, then the nonmember’s share would pass as provided in the court order. Under these circumstances, typically, the share would go to the non-member’s designated beneficiary, or heirs, unless the nonmember gives up this right and the court order provides that nonmember’s interest reverts to the member or the member’s surviving spouse/domestic partner upon the nonmember’s death.
- c) The court can enter an order establishing separate accounts as provided in Los Angeles Administrative Code Section 4.1066 – 1066.6. This type of order limits the nonmember’s rights to two possible options:
1. The nonmember can receive a refund of contributions. Once contributions are refunded, however, the nonmember relinquishes any right to use the service credit to receive a monthly benefit in the future.
  2. The nonmember may become eligible to receive a separate account allowance, payable for the nonmember’s lifetime, if the conditions of these provisions are met. However, this allowance will be based upon a formula using the member’s compensation as of the date of separation, rather than at the time the allowance becomes payable.

**If the nonmember takes a separate account and receives a refund of contributions, can the member repay LACERS and restore his/her service credit?**

Yes, if you are an active member. When the nonmember spouse takes a refund of contributions, the member can receive full credit for the period of time represented by these funds by redepositing these funds together with any accumulated interest these funds would have earned if not refunded. Members can arrange to restore contributions with interest at 8% through payroll deduction or with a lump sum payment.

**Why doesn’t the member’s account balance reflect the value of the interest in the plan?**

The reason that the member's account balance is not the value of the interest in the plan is that the LACERS plan is a *defined benefit plan*. The amount that a member receives as a monthly payment in retirement is based on a service credit formula that does not depend on the member's contributions and interest. The monthly benefit is the product of the *retirement service credit* multiplied by the member's *final compensation* multiplied by the retirement factor. (Refer to page 7 of the *Summary Plan Description*)

If an actuary did a valuation of a member's interest in the plan, the number would typically be much greater than the member's contributions and interest. This reflects the fact that the employer's contribution to the plan is not attributed individually to the member's account. Another way of looking at it is that the value of the plan is really "tied up in the service credit."

### **What if the nonmember spouse wants to receive a benefit payable for his/her lifetime?**

The only way benefits can be paid for the nonmember's lifetime is if the nonmember receives his/her benefits from LACERS as a life annuity. The amount the nonmember receives as a life annuity is based upon an actuarial adjustment, which takes into consideration the nonmember's age so that the plan's liability remains unchanged. There are only two ways a nonmember may get a life annuity:

- 1) If the nonmember was awarded an "in-kind" interest that qualifies under LAAC Section 4.1067, the nonmember may elect to receive a life annuity in lieu of in-kind payments.
- 2) If the nonmember was awarded a separate account under LAAC Sections 4.1066-4.1066.6, the nonmember may be able to receive a separate account allowance that is paid monthly for the nonmember's lifetime.

### **What are the pros and cons of the nonmember electing a life annuity under LAAC Section 4.1067?**

Electing this life annuity means that the nonmember spouse will receive his/her amount regardless of the death of the member. Because of the actuarial adjustment that is made, the monthly amount the nonmember receives as a life annuity may be less (if the nonmember is younger than the member) or more (if the nonmember is older than the member) than the nonmember would receive as his/her in-kind share of the member's benefits. The greater the age difference, the greater the reduction or increase in the monthly annuity amount.

If an annuity for life election is not made, the nonmember's portion of the member's allowance terminates when the member dies. If the member leaves a surviving spouse/domestic partner who is eligible for a survivorship allowance from LACERS, the nonmember would receive his/her interest in the survivorship allowance until the death of the survivor. If the nonmember dies before the member and/or the member's eligible

survivor, then the nonmember's interest in their allowances would normally pass to the nonmember's designated beneficiary or as otherwise provided in the court order.

### **Do I need an attorney?**

An attorney is not required in these matters. But since you have substantial property rights at stake, it is recommended that you seek legal advice. As a practical matter, most people hire an attorney not only to ensure that their rights are protected, but also to get all their legal paper work properly filed with the court. While the Retirement Benefits Division of the Los Angeles City Attorney's Office cannot act as your legal advisor, their office will review proposed orders and judgments to ensure such are not contrary to the plan. Their office also will accept service through the mail of joinder documents and copies of orders and judgments on behalf of LACERS.

### **For Retired Members**

**The member is already retired. If the nonmember spouse sends a claim letter requesting withholding, will the plan start holding part of the existing monthly allowance that the member is already receiving?**

Yes. The nonmember's share can be withheld upon the nonmember's written request, but it cannot be paid to the nonmember until LACERS is joined and served with an order authorizing payment to the nonmember. This results in the money being unavailable to both spouses. This could be a problem if deductions from the pension are going to pay for the house, car, etc. For instance, if there is not enough money to cover the credit union deduction, nothing is paid to the credit union, and loans could go into default.

**Don't we have to get a divorce in order for the nonmember spouse to be paid a share of the member's allowance?**

No. The nonmember may be paid directly his/her part of the member's allowance after an order is entered in either a dissolution of marriage or a legal separation case. If the member is already retired and the nonmember spouse is eligible for a continuance-to-spouse benefit in the event of the member's death, the parties may want to consider legally separating, rather than seeking a final dissolution of marriage. If the couple legally separate, they still remain married, so the eligibility for the continuance-to-spouse benefit can be retained. But there is no health coverage provided through LACERS for the legally separated spouse until the death of the member.

**What are factors to consider in deciding whether to file for a legal separation versus a dissolution of marriage?**

The continuance to spouse is a benefit that is lost if your marriage is terminated.

Once your marriage ends, this leaves the nonmember with no pension benefits in the event the member dies first (unless the nonmember has elected to take a life annuity pursuant to Los Angeles Administrative Code Section 4.1067). If neither party desires to remarry and a legal separation would be agreeable to both of you, the pension could be divided in the legal separation judgment so that each of you would get your share of the member's pension directly from LACERS. And, by getting a legal separation rather than a dissolution, the spouse would continue to be eligible for the continuance to spouse benefit, together with health benefits, if the member dies first. The legally separated spouse, however, is not eligible for health coverage through LACERS so long as the member is alive.

Neither the continuance to spouse benefit nor health benefits for the nonmember under the member's subsidy is possible once a dissolution of marriage is final.

**Can the nonmember spouse of a retired member request a separate account and get a separate account allowance?**

No. The separate account provisions only apply to active members. The only way a nonmember spouse of a retired member can receive an allowance payable for the nonmember's lifetime is to seek an "in-kind" division order that allows him/her to elect a life annuity as provided in LAAC Section 4.1067. Then, when the order is served on the plan and the nonmember requests direct payment, the nonmember spouse of the retiree must decide whether or not to elect an annuity for life.

**For Active Members**

**My attorney says I need to find out the "accrued pension benefit" or the value of the pension. Can you supply this figure?**

The plan cannot give you the accrued pension benefit or the value of the plan. A consulting actuary can perform an analysis that computes present worth value of the expected benefit payments with standard assumptions regarding expected retirement effective dates and longevity of the beneficiary.

Obtaining a valuation is not usually necessary unless a cash out or exchange of the pension for other community property is being considered—it is in these situations where a value is needed so that each spouse receives assets of equivalent value. If an in-kind division is anticipated, there is no need to "value" the plan if each individual takes one-half of the community interest.

**Can the nonmember spouse use the service credit awarded in a separate account order to receive a monthly benefit over the nonmember's lifetime?**

Yes, but only if the member has at least five years of service on the date of separation and if the nonmember timely requests a separate account allowance when the member

is eligible to receive a service retirement allowance. And keep in mind that the separate account allowance uses a formula based upon the member's compensation at the time of separation, not when the allowance is requested.

The nonmember may also be able to receive a monthly benefit payable over his/her own lifetime with the more ordinary in-kind division order provided the order qualifies as one in which the nonmember can elect a life annuity pursuant to LAAC Section 4.1067. This usually would provide a higher monthly benefit, but payments could not begin until after the member retires. See the answer to the next question for more information.

### **What is the difference between a separate account order and an in-kind division order?**

The separate account order allowance formula is based on the member's compensation at the date of separation while the in-kind division formula is based on the member's compensation at the time of retirement. The result is that the amount of the monthly benefit the nonmember receives with the separate account order is less than what the spouse would receive with a typical in-kind division order. Also, the separate account allowance is paid for the nonmember's lifetime, while the in-kind division may or may not be payable, in this manner, depending upon whether the nonmember elects to take a life annuity as provided in LAAC Section 4.1067.

The main advantage of a separate account is that, if the member is eligible to retire but is still working, the nonmember can start to get benefits before the member retires. Using this example wherein the separate account allowance can be claimed now, the final compensation payable to the nonmember spouse may not be that much less than that provided with an in-kind order provided that the date of separation is recent.

### **Is an in-kind split always divided 50:50?**

Not necessarily. Keep in mind that although a 50:50 in-kind split is the typical way that a pension is divided, this is not the only way. The pension interest can be divided in-kind other than 50:50. For instance, the member could be given 75% of the community interest in the pension with the nonmember getting 25% of the pension plus other community assets equalizing his/her share (car, house, etc.). It is up to the parties (or the court) to decide how the community interest in the pension is to be divided, not LACERS. But LACERS can provide you with information and answer your questions so that you can make an informed decision.

# LOS ANGELES ADMINISTRATIVE CODE

## SECTIONS 4.1066 et al & 4.1067

## Section 4.1066. Separate Account Option under Court Orders Dividing Community Property If Legal Separation or Dissolution Occurs Prior to the Member's Retirement.

When a court of competent jurisdiction orders the division of community property prior to the member's date of retirement, the court may order that the accumulated contributions plus regular interest and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the court order shall be deemed the separate property of the member, in which the nonmember shall have no further interest.

The nonmember who is awarded a separate account under this section shall be required to make an irrevocable election before the member retires to either receive a refund or separate account allowance as further defined below. If said election is not made, the nonmember will have been deemed to have chosen the refund of contributions.

### SECTION HISTORY

Added by Ord. No. 171,885, Eff. 1-8-98.

## Section 4.1066.1. Definitions.

**"Nonmember"** as used in this section means the spouse or former spouse of a member who, as a result of petitioning the court for the division of community property, has been awarded a separate account reflecting specific credited service and accumulated contributions.

**"Separate Account Allowance"** as used in this section means the monthly amount remitted to a nonmember based on the division of community property, by a court of competent jurisdiction, into a separate account reflecting specific credited service and accumulated contributions, actuarially reduced to provide an annuity for life.

**"Final monthly average compensation"**, for a nonmember only, is the monthly average of the member's highest consecutive twelve months of salary at the time of separation.

#### SECTION HISTORY

Added by Ord. No. 171,885, Eff. 1-8-98.

## Section 4.1066.2. Benefits Available to Nonmember Awarded a Separate Account.

### (a) Refunds of Contributions.

- (1) A nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions plus regular interest in the separate account of the nonmember. A nonmember who elects a refund of contributions is deemed to have permanently waived all rights in this system and all rights to any future retirement benefits pertaining to the service credit, accumulated contributions or both when the refund becomes effective. The nonmember may not cancel a refund once it has become effective nor may the nonmember redeposit a refund once it has been paid.
- (2) If at the time of separation the member does not have five (5) years of service credit in the System, the nonmember who has been awarded a separate account shall only receive a refund of the accumulated contributions and regular interest placed in the nonmember's account.

### (b) Separate Account Allowance.

- (1) A nonmember who is awarded a separate account shall have the right to a Separate Account Allowance paid monthly for life unless the nonmember has elected to receive or has received a refund of contributions. The Separate Account Allowance shall terminate upon the death of the nonmember.
- (2) A nonmember shall be entitled to receive a Separate Account Allowance upon approval of the Board of Administration if both of the following conditions are met:

- (i) On the date of separation the member had five (5) years of service credit in the System; and
    - (ii) The member is eligible to receive a service retirement allowance.
  - (3) The amount of the Separate Account Allowance shall be based on the service retirement formula in effect on the date of separation applicable to the service credited to the nonmember by the employer and the effective date of the nonmember's Separate Account Allowance, actuarially reduced to provide an annuity for life. The Separate Account Allowance shall be subject to all cost-of-living and discretionary increases.
  - (4) The Separate Account Allowance shall consist of a pension and a life annuity, the latter of which shall be derived from the nonmember's accumulated contributions.
- (c) **Election of Non member Benefits.**

The nonmember may make an irrevocable election, in writing, to receive the benefit provided under this section as either a refund of contributions or a Separate Account Allowance at any time after the entry of the court order and before the date the member's retirement is approved by the Board of Administration. If an election is not made prior to the date the member's retirement is approved by the Board of Administration, the nonmember shall be deemed to have elected a refund of contributions and his or her contributions, along with regular interest, will be refunded immediately.

A nonmember who elects a refund of contributions may request a refund of the contributions plus regular interest at the time the election is made or any time thereafter. A nonmember who elects a Separate Account Allowance may request the monthly allowance to begin at the time the election is made or at any time thereafter so long as the conditions set forth in subsection 1066.2 (b) have been met by the date the monthly allowance is to begin.

(d) **Benefits not Granted to Nonmember.**

A nonmember whose dissolution is final shall not be entitled to any disability retirement allowance, any basic death benefit, any special death benefit, any monthly allowance for survivors of a member or retired person, any insurance benefit, medical or dental subsidy, or retired member lump-sum death benefit. No survivor continuance allowance shall be payable to a survivor of a nonmember.

**SECTION HISTORY**

Added by Ord. No. 171,885, Eff. 1-8-98.

### Section 4.1066.3. Calculation of Member's Service Retirement Allowance.

Members whose retirement is divided under the provisions set forth above shall receive a monthly retirement allowance based on all service credit and his or her final monthly average compensation at the date of retirement provided under the provisions of this chapter, reduced by the value of the separate account whether paid as a refund of contributions or Separate Account Allowance.

#### SECTION HISTORY

Added by Ord. No. 171,885, Eff. 1-8-98.

### Section 4.1066.4. Calculation of Member's Disability Retirement Allowance.

Members whose retirement is divided under the provisions set forth above shall receive a monthly disability retirement allowance as provided for in Section 4.1055 except that the portion of accumulated contributions credited to the nonmember will be treated as missed deductions in the member account.

#### SECTION HISTORY

Added by Ord. No. 171,885, Eff. 1-8-98.

Amended by: Ord. No. 173,237, Eff. 6-19-00, Oper. 7-1-00.

### Sec 4.1066.5. Buy Back of Funds Allocated to Nonmember.

- (a) If a nonmember receives a refund of contributions and interest, the member may redeposit these funds together with any accumulated interest these funds would have earned if the refund had not occurred to the System subject to rules adopted by the Board of Administration, and receive full credit for the period of time represented by these funds.
- (b) If a nonmember elects to receive a Separate Account Allowance, the member may purchase service credit not to exceed the years of service credited to the nonmember. The purchase of this service credit shall be the full actuarial cost and subject to rules adopted by the Board of Administration.

#### SECTION HISTORY

Added by Ord. No. 171,885, Eff. 1-8-98.

## Section 4.1066.6. Duties and Responsibilities of the Board of Administration

The Board of Administration of the Los Angeles City Employees' Retirement System shall adopt rules to administer separate accounts ordered by a court of competent jurisdiction and shall formulate benefits applicable to these separate accounts in such a way that no additional actuarial liability is incurred either by the System or by the City.

### SECTION HISTORY

Added by Ord. No. 171,885, Eff. 1-8-98.

Amended by: Ord. No. 173,237, Eff. 6-19-00, Oper. 7-1-00.

## Sec 4.1067. Former Spouse Option to Receive an Annuity for Life.

When a court of competent jurisdiction does not order a separate account as specified in Section 4.1066, but instead awards the former spouse a portion of the retirement benefits payable to the member and to the member's surviving spouse, if any, the former spouse, in lieu of receiving his or her portion of these benefits payable based upon the lifetime of the member and/or surviving spouse, may instead make an irrevocable election to convert his or her interest in such retirement benefits into an actuarially equivalent life annuity payable for the lifetime of the former spouse. If the member has not yet retired, the former spouse must make this irrevocable election to receive a life annuity in writing prior to the date the Board of Administration approves the member's application for retirement. If the member has already retired, the election must be made at the time the former spouse requests direct payment of his or her community property portion of the retirement allowance. If this irrevocable election is not made prior to the applicable times specified herein, the former spouse will be deemed to have waived the right to elect to receive a life annuity.

### SECTION HISTORY

Added by Ordinance 171,885 Effective 1-8-98

# SAMPLE DISSOLUTION OF MARRIAGE PROVISIONS

## **SAMPLE DISSOLUTION OF MARRIAGE PROVISIONS LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM (LACERS)**

The Los Angeles City Employees' Retirement System (Plan) is established by the Los Angeles City Charter and Division 4 of the Los Angeles Administrative Code (LAAC). The Plan is not governed by ERISA, thus there is no need for a separate "qualified" order--the interest in the Plan may be disposed of as part of the disposition of all the community property. Two sets of sample provisions are provided:

(1) **IN-KIND DIVISION**. The first set of sample provisions are for a standard in-kind division of the community interest in the pension. [NOTE: Pursuant to recently enacted LAAC Section 4.1067, a non-member who is a former spouse and has been awarded an in-kind interest in the member's pension and, if applicable, in the pension of the member's surviving spouse, payable for the lifetime of the member and/or surviving spouse, may elect to convert this interest into an actuarially equivalent life annuity payable for the lifetime of the non-member. The election provided in Section 4.1067 does not need to be mentioned in the order, but the order must meet the statutory criteria and the election must be timely made. *Caveat*: Section 4.1067 is not applicable until the marriage is terminated. A separated non-member spouse cannot make this election, but remains eligible for benefits as a surviving spouse, in the event the member should die, until the marriage is terminated. Once the non-member becomes a former spouse, the Section 4.1067 election must be timely made or this option will be lost.]

(2) **SEPARATE ACCOUNT**. The second set of sample provisions are for use where the non-member is awarded a separate account as provided in LAAC Sections 4.1066-4.1066.6. [While a separate account provides a means by which the non-member may receive monies from the Plan prior to the member retiring, the non-member's rights are very restricted under these provisions. A separate account may be established for either a former spouse (dissolution of marriage) or current spouse (legal separation).]

**RE: IN-KIND DIVISION versus SEPARATE ACCOUNT**. Once a separate account is established by the Plan pursuant to a court order, the non-member no longer has any right to an in-kind division. However, where an in-kind division is ordered by the court and jurisdiction is retained, the court may modify the order to establish separate accounts in lieu of an in-kind division *prior to* the member's retirement.

These sample provisions are provided as examples of language that complies with the provisions of the Plan. By providing this document, the Plan is not providing legal advice to any party, but simply providing information so that each party can seek independent counsel should they wish to do so.

**NOTE: these sample provisions are NOT drafted for use in a "cash-out" division** in which the Court, rather than dividing the pension benefits, awards the entire community property interest in the pension benefits to the member with the non-member receiving other community property of an equivalent value. No suggested provisions are provided for this purpose, however, so long as the parties' marriage is not terminated (i.e. legal separation or decree of dissolution not yet issued), the non-member would continue to remain eligible for survivorship benefits in the event of the member's death provided that the eligibility requirements were satisfied during the marital period, notwithstanding that the entire community interest in the pension benefits was awarded to the member.

If you wish to obtain basic information as to years of service, pension entitlement, etc., please send written requests to the Los Angeles City Employees' Retirement System, 360 East Second Street, 2nd Floor, Los Angeles, CA 90012. Attorneys are requested to indicate whom you represent, the title of the case, and the case number.

If there are questions regarding the joinder of the Plan or any proposed provisions of an order, the Retirement Benefits Division of the Los Angeles City Attorney's Office, the legal advisors to the Plan, can be reached at: 360 East Second Street, Suite 600, Los Angeles, CA 90012; phone# (213) 485-4917 or FAX# (213) 485-8453. The City Attorney's Office will review drafts in advance to ensure the proposed order does not conflict with the Plan provisions and will provide the parties with a letter to that effect upon request.

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### **SAMPLE PROVISIONS FOR AN IN-KIND DIVISION**

The Court finds and orders:

1. That (*specify: Petitioner/Respondent*), hereafter Member, belongs to the Los Angeles City Employees' Retirement System (hereinafter the Plan) which has been joined as a claimant in this proceeding pursuant to California Family Code section 2060 et. seq.

*[If the Plan has not yet been joined, it should be joined in the name of Los Angeles City Employees' Retirement System.]*

2. That the community has acquired an interest in Member's entitlement from the Plan to the extent that Member made contributions to and earned service credit with the Plan during the parties' marriage prior to separation.

3. That Member and (*specify: Petitioner/Respondent*), hereafter Non-Member, married on \_\_\_\_\_ and separated on \_\_\_\_\_, which period of time is hereafter referred to as the Marital Period.

*[For ease of application and comprehension, the parties are identified as Member and Non-Member. Should both parties be Plan members, appropriate modifications should be made to these provisions, including identifying the parties throughout as Petitioner and Respondent.]*

**PARAGRAPH 4-- FIVE ALTERNATIVE PROVISIONS ARE PROVIDED BELOW.**  
*(Select only the version of paragraph 4 that is appropriate to the parties situation.)*

**(Alternative 1 of Paragraph 4. SELECT ONLY IF MEMBER IS RETIRED ON A SERVICE PENSION.)**

4. That Member is retired and currently receiving a service pension from the Plan.

**(Alternative 2 of Paragraph 4. SELECT ONLY IF MEMBER IS RETIRED ON A DISABILITY PENSION. AND WAS ELIGIBLE FOR A SERVICE PENSION AT THE TIME OF RETIREMENT )**

4. That Member is retired and currently receiving a disability pension from the Plan;  
that Member was eligible to retire on a service pension at the time of Member's retirement; that the community property interest in Member's disability pension shall be determined based upon Member's service pension entitlement; that the Board shall determine the community property interest in Member's service pension entitlement utilizing the formula contained in Paragraph 5 herein; that to the extent Member's disability pension exceeds Member's service pension entitlement, such is confirmed to Member as Member's separate property.

*[This provision bases the community interest upon the member's service pension entitlement. To the extent the disability pension exceeds the member's service pension, such is awarded to him/her as his/hers separate property. If the parties wish to obtain information concerning the member's service pension entitlement prior to this order being enter, such may be requested from the Plan. Also see the comments under Alternative 3 of Paragraph 4, below.]*

**( Alternative 3 of Paragraph 4. SELECT ONLY IF MEMBER IS RETIRED ON A DISABILITY PENSION, BUT WAS NOT ELIGIBLE TO RETIRE ON A SERVICE PENSION ON THE EFFECTIVE DATE OF HIS DISABILITY RETIREMENT. Based on these facts, if member had terminated employment, rather than taking a disability pension, member's right under the Plan would have been limited either to a refund of contributions or a right to receive a deferred service pension at some later time [normally upon reaching age 55].)**

*[COMMENTS: In re Marriage of Justice (1984) 157 Cal. App. 3d 82 discusses the extent of the community interest in disability benefits and, at page 88, states: "(T)he separate or community character of a 'disability' pension is not determined by its label, but by its primary function or objective once its recipient reaches normal retirement age." Prior to the Justice case, disability pensions were considered to be entirely the separate property of the member if the member took disability retirement prior to becoming eligible for service retirement, but the Justice case held there was a community interest in the member's disability pension to the extent that it was a substitute for a service pension once he reached normal retirement age, however, to the extent the disability pension exceeded what he would have received on a service pension, such excess benefits were the member's separate property. The Justice case involved a different City retirement system in which the disability pension entitlement is **never less** than the service pension entitlement and often exceeds it.*

*Under the Plan, however, disability retirement benefits may very well be **less** than what the member would be entitled to on a service pension once the member reaches retirement age--i.e. the disability pension determination utilizes a formula which gives the member approximately **.0143** of the Final Average Monthly Compensation per year of service (subject to certain adjustments and to a cap on benefits), while under the service pension calculation a member receives **.0216** of the Final Average Monthly Compensation per year of service (subject to reduction for early retirement). Because the Plan's disability calculations usually provide for a smaller pension payment than would be available to the member on a service pension, disability benefits usually are only granted to members who do not yet qualify for service retirement but are unable to continue working due to their disability. Further, once a member takes a disability pension, even if that member would have qualified for a larger service pension at some later time (normally the earliest age for retirement is age 55), the member cannot switch to the larger service pension upon attaining age 55 but is limited to continuing to receive the smaller disability pension. Thus, the analysis applied to the disability pension in the Justice case does not lend itself easily to disability pensions under the Plan; we are not aware of any case law which addresses how separate property versus community property interests are to be determined where the disability pension entitlement is **less** than the member would have received had the member waited and taken a service retirement at a later date. Since there is no case law clearly defining the community property interest in a member's disability pension on these facts, this issue needs to be resolved by agreement between the parties or by the court.*

*Upon request the Plan can provide information as to when the member, had he/she terminated employment without taking a disability retirement, would have first become eligible to take a deferred service pension and the amount of that entitlement; the Plan on request can also provide information concerning the amount of the community contributions to the Plan prior to retirement.]*

4. That member is retired and currently receiving a disability pension from the Plan; that Member was not eligible to retire on a service pension at the time of retirement on a disability pension, but had sufficient years of service when employment was terminated so that Member could have elected, instead of taking a disability retirement, to wait and take a deferred service pension at some later time; .... [NOTE: The parties should draft a provision consistent with their agreement or the court's determination, based upon the facts of the case, as to the extent, if any, of the community interest in the disability pension; possible provisions which may be appropriate could include:]

*Alternative Provision A--For use only if the retired member has already reached an age where he/she would be eligible to take a deferred service pension but for his/her disability retirement.*

...that it is found that the time when Member could have first elected, but for Member's disability retirement, to take a deferred service pension has passed; that the

Plan is directed to determine what Member would now be receiving if Member had elected to take a deferred service retirement on the earliest possible eligible date (“Current Theoretical Deferred Service Pension Allowance” or CTDSPA); that if the Plan determines the current amount of Member’s disability pension would equal or exceed the CTDSPA, then the Plan is to determine the community interest in the disability pension by applying the formula set forth in Paragraph 5 herein to the Member’s CTDSPA, rather than to Member’s service pension entitlement; that one-half of the community property interest as so determined is awarded to Non-Member as Non-Member’s separate property and the balance of the disability pension is awarded to Member as Member’s separate property; provided that if the Plan determines the CTDSPA is more than Member is currently receiving as a disability pension, then... (**select one** of the following alternatives:

.....that such disability pension is found to be Member’s separate property, subject to Non-Member’s right to be reimbursed from Member’s disability pension for Non-Member’s one-half of the community contributions, including interest; that the Plan is hereby ordered to determine the amount of the community contributions and interest attributable to the Marital Period, as specified in Paragraph 3 herein, and to pay from Member’s disability pension, in an amount not to exceed (*specify: percentage [i.e 25%] or dollar figure [i.e.\$200]*) of each monthly payment, to Non-Member a sum that will reimburse Non-Member for Non-Member’s one-half of the community contributions and interest, which sum is awarded to Non-Member as Non-Member’s separate property; that except for this payment, Non-Member has no interest in Member’s disability pension nor in any survivorship benefits payable by the Plan on account of Member’s death.  
**OR**

...the community interest in the disability pension is to be determined by utilizing the amount of the disability pension in the formula set forth in Paragraph 5 below; that one-half of the community interest as so determined is awarded to Non-Member as Non-Member’s separate property. **OR**

*...[draft whatever provision is agreed to by the parties or ordered by the court--it is suggested that this provision be reviewed by the Plan’s attorneys prior to entry of the order].)*

*Alternative Provision B--For use only if the member has **not** yet reached an age where he/she would be eligible to take a deferred service pension but for his/her disability retirement.*

...that it is found that the time when Member could first elect, but for Member’s disability retirement, to take a deferred service pension (“Earliest Date of Deferred Service Retirement” or EDDSR) has not yet been reached; that until the EDDSR is reached, the Member’s disability pension is awarded to Member as Member’s separate property; that the Plan is ordered to determine the EDDSR and, no later than 90 days after being served with this order as provided in Paragraph 12, shall notify both parties of that date; that the Plan is further ordered to determine what Member would receive

had Member, instead of taking a disability retirement, retired on a deferred service pension effective on the EDDSR, which amount is referred to as the “Theoretical Deferred Service Pension Allowance” (TDSPA); that if the Plan determines the amount of Member’s disability allowance on the EDDSR would equal or exceed the amount of Member’s TDSPA on that same date, then the Plan is to determine the community interest in the disability pension by applying the formula set forth in Paragraph 5 herein to Member’s TDSPA, rather than to Member’s service pension entitlement; that one-half of the community property interest as so determined is awarded to Non-Member as Non-Member’s separate property, commencing on the EDDSR, and the balance of the disability pension is awarded to Member as Member’s separate property; provided that if the Plan determines the TDSPA on the EDDSR to be more than the amount of Member’s disability pension on the same date, then... (***select one of the following alternatives:***

.....such disability pension is found to be Member’s separate property, subject to Non-Member’s right to be reimbursed from Member’s disability pension for Non-Member’s one-half of the community contributions, including interest; that the Plan is hereby ordered to determine the amount of the community contributions and interest attributable to the Marital Period, as specified in Paragraph 3 herein, and to pay from Member’s disability pension, in an amount not to exceed (*specify: percentage [i.e 25%] or dollar figure [i.e.\$200]*) of each monthly payment, to Non-Member a sum that will reimburse Non-Member for Non-Member’s one-half of the community contributions and interest, which sum is awarded to Non-Member as Non-Member’s separate property; that except for this payment, Non-Member has no interest in Member’s disability pension nor in any survivorship benefits payable by the Plan on account of Member’s death.  
**OR**

...the community interest in the disability pension is to be determined by utilizing the amount of the Member’s disability pension on the EDDSR in the formula set forth in Paragraph 5 below; that one-half of the community interest as so determined is awarded to Non-Member as his/her separate property commencing on the EDDSR. **OR**

....*[draft whatever provision is agreed to by the parties or ordered by the court--it is suggested that this provision be reviewed by the Plan’s attorneys prior to entry of the order].)*

*Alternative Provision C--Where the community interest in the disability pension is based upon the amount of the community contributions.*

...that such disability pension is found to be Member’s separate property, subject to Non-Member’s right to be reimbursed from Member’s disability pension for Non-Member’s one-half of the community contributions, including interest; that the Plan is hereby ordered to determine the amount of the community contributions and interest attributable to the Marital Period, as specified in Paragraph 3 herein, and to pay from Member’s disability pension, in an amount not to exceed (*specify: percentage [i.e 25%]*)

or dollar figure [i.e. \$200]) of each monthly payment, to Non-Member a sum that will reimburse Non-Member for Non-Member's one-half of the community contributions and interest, which sum is awarded to Non-Member as Non-Member's separate property; that except for this payment, Non-Member has no interest in Member's disability pension nor in any survivorship benefits payable by the Plan on account of Member's death.

*[If this alternative is selected, then the following paragraphs of the sample provisions should be deleted as not applicable: 5, 6, 7, 8, 9, and 10.]*

**(Alternative 4 of Paragraph 4. SELECT ONLY IF MEMBER IS AN ACTIVE EMPLOYEE.)**

4. That Member is currently an active member of the Plan:

(a) that in the event Member retires on a service pension, the community interest in such benefits shall be established utilizing the formula set forth in paragraph 5 below;

(b) that in the event Member has become eligible for retirement on a service pension, but elects to retire instead on a disability pension, then the community interest in the disability benefits shall be determined utilizing Member's service pension entitlement as of the date of the disability retirement in the formula set forth in paragraph 5 below and the Plan is directed to make this determination; further, should Member exercise any election with regard to the disability pension, then the Plan shall apply the same election to Member's service pension entitlement for purposes of determining the community interest herein.

*[Comment: This provision bases the community interest upon the member's service pension entitlement. If the member elects to take a lesser disability allowance in order to provide a larger continuance to a qualified survivor, this same election would be applied to the member's service pension entitlement; this would give the non-member his/her share of the community interest in both pensions so long as the order contains paragraph 8, below, which awards the non-member's share of the community interest in any survivorship allowance to the non-member. Should non-member waive his/her community interest in the survivorship allowance, then this provision would need to be modified to provide that non-member's community interest in the disability pension is to be based upon the member's unmodified service pension entitlement, rather than the reduced pension elected by member in order to provide a larger survivorship continuance.]*

(c) [SELECT ONE OF THE FOLLOWING ALTERNATIVE SUB-SECTIONS.

Select the alternative that the parties agree or the court orders should be applicable in the event the member retires on a disability pension prior to becoming eligible for service retirement.]

*(First alternative (c)). Select if this resolution is acceptable to the parties or ordered by the court. This alternative requires the parties to obtain a further court order determining the extent of the community interest, if any, in the disability pension at the point that member would have become eligible for a deferred service retirement. See comments under Alternative 3 of Paragraph 4.)*

(c) that in the event Member retires on a disability pension prior to becoming eligible for retirement on a service pension, it is hereby found that such disability pension is entirely Member's separate property until the date upon which Member would have first become eligible to receive a deferred service retirement ("Earliest Date of Deferred Service Retirement" or EDDSR); that the Plan determine the EDDSR not later than 90 days after the date Member's disability pension is approved and notify both parties of such date; that the parties shall thereafter obtain a modified court order determining the community interest, if any, in the disability pension either pursuant to stipulation or as a result of a hearing before the court; that pending court resolution of this issue, the Claimant shall withhold from Member's disability pension, commencing on the EDDSR, one-half of the sum determined by applying the formula in Paragraph 5 herein to the disability pension until served with the modified order resolving this issue; that the court herein expressly reserves jurisdiction to determine and divide the community property interest, if any, in Member's disability pension entitlement commencing on the EDDSR.

*(Other alternative provisions: If the parties do not wish to reserve jurisdiction to determine this issue at such time as it becomes germane and the relevant facts are known, see the comments and the sample provisions set forth under Alternative 3 of Paragraph 4 which may be adapted for use here. The legal advisors to the Plan can, upon request, review the draft of this provision prior to entry and advise if any problems are noted.)*

*[End of Alternative 4 of Paragraph 4; Alternative 5 of Paragraph 4 follows.]*

**(Alternative 5 of Paragraph 4 --SELECT ONLY IF MEMBER IS NOT CURRENTLY EMPLOYED AND NOT RECEIVING A PENSION.)**

4. That Member is a former City employee with at least five years of service in the Plan who has left his/her contributions on deposit with the Plan, is not currently receiving benefits from the Plan, but retains the right to receive either a refund of contributions or to take a deferred service retirement at some future date; ... (See alternatives and comments below.)

*(Alternative A--Select where non-member is to receive an in-kind division of the member's service pension, with no right to a refund of contributions except as provided in paragraph 7.)*

...that at such time as Member retires on a service pension, the community interest in such benefits shall be established utilizing the formula set forth in paragraph 5 below; that should Member ever return to City employment and subsequently retire on a disability pension, rather than a service pension, the court expressly reserves jurisdiction to determine the extent of the community interest in said disability pension at that time.

*(Comment: Should the member ever return to City employment, this alternative would allow the non-member to participate in any service pension increases related to member's salary increases after his/her return to work. However, non-member would not receive any payment of money from the Plan until either the contributions are refunded [which would be governed by paragraph 7] or the member applies for retirement benefits. The remote possibility that the member would return to employment and subsequently take a disability pension is covered by a reservation of jurisdiction.)*

*(Alternative B--The parties may wish, rather than doing an in-kind division of the pension rights in this situation, to establish separate accounts as provided in Los Angeles City Administrative Code Sections 4.1066-4.1066.6. A separate account provides a means by which the non-member may receive monies from the Plan prior to the member getting a refund of contributions or retiring, but the non-member's rights are very restricted and include only the right to receive either a refund of contributions or, where eligibility exists, a separate account allowance (which is based on the member's compensation at the date of separation) payable for the non-member's lifetime. Separate accounts are only available by court order, must be established prior to the date the member's retirement is approved by the Plan, and limit non-member's rights to those provided in Sections 4.1066-4.1066.6. If the parties desire to use this alternative, the suggested provisions for a separate account should be used, rather than the in-kind division provisions; see pages 14 to 15.)*

#### **[END OF VARIOUS ALTERNATIVES FOR PARAGRAPH 4]**

5. That the community interest in Member's entitlement to a service pension from the Plan shall be determined by dividing the years of service used in computing Member's service pension entitlement that are attributable to the Marital Period (Marital Service) by the total years of service used in computing Member's service pension entitlement (Total Service); the resultant percentage then shall be multiplied by the amount of Member's service pension entitlement, including any cost of living increases, to arrive at the community interest therein:

MARITAL SERVICE DIVIDED BY TOTAL SERVICE  
TIMES MEMBER'S SERVICE PENSION ENTITLEMENT  
EQUALS COMMUNITY INTEREST

***[OPTIONAL PROVISION TO BE INCLUDED IN PARAGRAPH 5 WHEN MEMBER IS ELIGIBLE TO PURCHASE OR HAS PURCHASED ADDITIONAL SERVICE TIME.***

*Select one of the following:]*

*(Alternative 1) That the Plan in making this computation shall include as Marital Service any periods of service time purchased by the Member which are includable in Member's Total Service to the extent that such time falls within the Marital Period without regard to the source of the funds used to purchase said time. [Note: If the cost of this purchase has not already been paid for with community property funds and the parties are to split the cost, add the following: "that to the extent Member purchases service time with Member's separate property funds and such time is included as Marital Service, then Non-Member is hereby ordered to reimburse Member for one-half of the cost of the Marital Service so purchased, which payment obligation shall run solely between Non-Member and Member and not involve the Plan, except that the Plan shall, upon request, provide the parties with the purchase cost for the purchased Marital Service time." This clause may be modified in accord with the parties' agreement so long as the Plan is not made responsible for collecting funds from Non-Member.]*

*(Alternative 2) That the Plan shall not include any of Member's purchased service as Marital Service in the above formula, notwithstanding that such time may fall within the Marital Period, since it is hereby found that Non-Member has waived the right to purchase Non-Member's one-half of the purchased service community time; that, accordingly, the right to purchase all the community property service time is awarded to Member as Member's separate property.*

*(Alternative 3) [Insert any other provision agreed to by parties and/or ordered by court.]*

***[NOTE: This optional provision is included because the Plan needs to know what purchased service time is to be included as Marital Service in the time rule formula. The Plan allows the member to purchase service time under a number of provisions: LAAC 4.1051 (past City service and redeposit of withdrawn contributions) and LAAC 4.1052.1 and 4.1052.2 (buy back provisions for service with other governmental entities and of specified leaves from the City). While the Plan can, upon request, determine the cost for purchasing such service time, it is up to the parties to arrange between themselves for any reimbursement which may be in order in the event separate property funds have been used to purchase Marital Period service time; this optional provision can be modified accordingly. The above alternatives do not take into consideration the fact that community property funds may have been used to purchase service time which does not fall within the Marital Period. In this situation, upon request the Plan can determine the purchase cost for any specified period of service time, but it is up to the parties to arrange between themselves for any reimbursement to which the community may be entitled and to modify this order accordingly.]***

6. That one-half of the community interest in Member's service pension entitlement, as determined above, including any applicable cost of living adjustments, is hereby awarded to Non-Member as Non-Member's separate property.

7. That in the event Member's contributions are refunded or should Member die leaving no survivor eligible to receive a retirement allowance from the Plan, than the Plan is ordered to apply the time rule formula set forth in paragraph 5 above to the contributions and interest on deposit in Member's account in order to determine the community interest therein; that one-half of said community interest is awarded to Non-Member as Non-Member's separate property.

8. That in the event Member dies leaving a surviving spouse or domestic partner who qualifies for survivor benefits from the Plan, the Plan is ordered to apply the time rule formula set forth in paragraph 5 above to the survivorship benefits in order to determine the community interest therein; that one-half of said community interest is awarded to Non-Member as Non-Member's separate property, including cost of living increases attributable thereto.

*[Comment: Pursuant to LAAC 4.1067, if a non-member is granted this interest, non-member may elect to convert his/her interest in the survivorship pension into a life annuity payable for non-member's lifetime provided that non-member's interest in the survivorship pension does not terminate upon non-member's death--see paragraph 10 below.]*

*Caveat: This provision would not be applicable in a legal separation where non-member remains eligible as the surviving spouse in the event of member's death, however the parties may wish to include this provision in case the legal separation is converted to a dissolution at some future time.]*

9. That in the event Member dies leaving any person(s) other than a surviving spouse or domestic partner who qualifies for survivor benefits from the Plan, ...(select one of the alternative provisions set forth below.)

*[Note: Persons to whom survivorship benefits may be paid under the Plan include: an eligible surviving spouse, qualified domestic partner, designated beneficiary, minor child/children, or dependent parent/parents.]*

*(Alternative A)*

....that because the nature of these benefits is unknown at present, as the right to such benefits will only arise upon the happening of events in the future and is contingent upon Member being survived by persons who have to meet specified qualifications, the Court expressly reserves jurisdiction to determine and divide the community interest, if any, in such survivorship benefits at such time as the right to such benefits arises and further orders that the Plan shall withhold,

pending a Court determination, the amount Non-Member alleges constitutes Non-Member's community property share.

*(Alternative B)*

... the Plan is ordered to apply the time rule formula set forth in paragraph 5 above to the survivorship benefits in order to determine the community interest therein; that one-half of said community interest, including cost of living increases attributable thereto, is awarded to Non-Member as Non-Member's separate property.

*[Comment: Alternative B is provided for the parties to use if the parties agree or the court determines, pursuant to Family Code Section 2610, that (1) there is a community interest in these benefits (we are unaware of any cases that address whether Section 2610 is meant to include survivor benefits payable to designated beneficiaries, minor children, or dependent parents), (2) such interest should be determined using the time rule formula, (3) one-half of such interest therein is to be awarded to non-member, and (4) the non-member's interest survives non-member's death.]*

*(Alternative C)*

*...(To be drafted by the parties if a determination other than those set forth in either Alternative A or B is reached--i.e. some cases have suggested the community interest in survivorship benefits might best be awarded to the member, with an offsetting award of other community property to the non-member.)*

10. That in the event of Non-Member's death, Non-Member's separate property interest established herein shall... *(select one of the alternative provisions set forth below.)*

*[Comment: In light of California Family Code section 2610 and In re Marriage of Powers (1990) 218 Cal. App. 3d 626, where the court allowed the ex-wife's estate to claim her share of the benefits following the ex-husband's retirement even though ex-wife predeceased ex-husband, it is recommended that the order include a provision that addresses the disposition of the non-member's community property interest in the event that the non-member predeceases member. Absent such a provision, a further court order to clarify the Plan's payment obligations upon non-member's death may be needed.]*

*(Alternative A)*

...pass pursuant to Non-Member's beneficiary designation on file with the Plan or, if none, pass pursuant to Non-Member's will or, should Non-Member leave no will, pass by intestate succession.

*[This provision is consistent with Family Code Section 2610 and the Powers case. The non-member must possess this interest in order to be able to elect a life annuity payable for the non-member's lifetime pursuant to LAAC Section 4.1067.]*

(Alternative B)

...revert back to the Member or, with regard to the survivorship pension, to the Member's survivor.

*[This alternative is provided due to the cases which suggest that the community interest in the survivorship benefits be given to the member with an offsetting award of other community property to the non-member. However, if this provision is used and the non-member's interest in the member's pension and, if applicable, in the survivorship pension terminates upon non-member's death, **non-member may not elect to receive a life annuity payable for non-member's lifetime pursuant to LAAC Section 4.1067.**]*

(Alternative C)

*...(insert provision agree to by parties and/or ordered by court, taking into consideration the comments made above re: LAAC Section 4.1067. **If the order specifies by name** who is to take non-member's share upon non-member's death, **this can only be changed by a modification of the court order.**)*

11. That, except for the community interest in the Plan awarded to Non-Member as Non-Member's separate property herein, the remainder of Member's interest in the Plan is awarded to Member as Member's separate property.

*[NOTE: If this sample provision is used, the parties should be certain that non-member has been awarded, as his/her separate property, all community interests to which non-member is entitled as any community interest inadvertently omitted will be awarded to member pursuant to this provision. AS AN ALTERNATIVE TO USING THIS SAMPLE PROVISION, THE ORDER COULD BE MODIFIED TO SPECIFICALLY AWARD TO MEMBER ALL COMMUNITY INTERESTS THAT ARE DETERMINED TO BE MEMBER'S SEPARATE PROPERTY; this alternative would require appropriate revisions to all pertinent provisions and the parties would need to be careful that certain benefits are not unintentionally omitted, creating questions down the road as to the respective rights of the parties therein--i.e. whether such are member's separate property or undisposed of community property interests.]*

12. That Non-Member is ordered to keep the Plan advised in writing as to Non-Member's current address at all times; that the Plan's obligations under this order to notify Non-Member shall be satisfied by the Plan sending notice to Non-Member at the latest address provided to the Plan by Non-Member without regard to whether or not such notice is actually received by Non-Member.

13. That the Board is hereby ordered to pay directly to Non-Member his/her entitlement, if any, pursuant to this order at such time as benefits or any other sums are payable under the terms of the Plan, provided that this order shall not be enforceable against the Plan until 30 days after a certified copy of this order has been served upon the Plan as provided in California Family Code section 2073.

*[COMMENTS:*

*a) Where a member is eligible to retire, but has not yet done so, the Plan cannot authorize payment of benefits to the non-member except pursuant to the authority of LAAC sections 4.1066-1066.6 (separate account provisions). Otherwise, the non-member is limited to seeking payment from the member pursuant to the authority of In re Marriage of Gillmore. (1981) 29 Cal. 3d 418 until such time as the member actually retires and benefits become payable from the Plan.*

*b) Do not include provisions in the order requiring the Plan to make direct deposit of monthly benefits to a financial institution. The Plan has procedures by which payees can authorize direct deposits if so desired; direct deposits cannot be made without the payee supplying specific documentation to the Plan.*

*c) Should there be an outstanding spousal, child, or family support wage assignment order at the time benefits become payable, the Plan must comply with the terms of such order unless otherwise instructed by court order.*

*d) The inclusion of the parties' social security numbers is not mandatory, but may be helpful to the Plan in locating former spouses and/or beneficiaries or in distinguishing between persons with similar names.]*

14. That the Plan shall not be required to provide any type or form of benefit, or any option, not otherwise provided for under the Plan.

[COMMENTS:

(a) *The non-member's community interest cannot be paid by way of a lump-sum payment except where either a refund of contributions is involved or the court has ordered the establishment of separate accounts pursuant to LAAC sections 4.1066-4,1066.6.*

(b) *An ex-spouse cannot be deemed a surviving spouse for purposes of a surviving spouse pension. Once the dissolution of marriage is final, the non-member no longer qualifies as the surviving spouse of the member. See In re Marriage of Cramer (1993) 20 Cal. App. 4th 73.]*

15. That in accordance with California Family Code sections 2550 and 2610, the Court expressly reserves jurisdiction over any and all benefits and payments which are due or may be due to the parties under the Plan.

**[END OF SAMPLE PROVISIONS FOR AN IN-KIND DIVISION]**

**SAMPLE PROVISIONS FOR A SEPARATE ACCOUNT ORDER**  
**(LACERS)**

**NOTE:** Separate accounts can only be established by court order pursuant to the authority of LAAC Sections 4.1066-4.1066.6. It is not necessary to recite all the code provisions in the order, but **both parties should be familiar with the provisions of LAAC Sections 4.1066-4.1066.6** which govern the parties' rights when separate accounts are established. In particular, the non-member should be fully aware that **the non-member's rights in a separate account are limited to either:**

- a refund of contributions (which can be triggered by various factors in addition to a request from the non-member) **or**

- a separate account allowance (based upon the member's compensation at the time of separation) payable for the non-member's lifetime, **but only if** the non-member has not elected a refund of contributions and **both conditions** of LAAC Section 4.1066.2(b)(2) are satisfied: (1) the member had to have 5 years of service credit on the date of separation and (2) **the member must be eligible to receive a service retirement allowance** when the separate account allowance is approved by the Plan.

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The Court finds and orders:

1. That (*specify: Petitioner/Respondent*), hereafter Member, belongs to the City Employees' Retirement System of the City of Los Angeles (hereinafter the Plan) which has been joined as a claimant in this proceeding.

2. That the community has acquired an interest in Member's entitlement from the Plan to the extent that Member made contributions to and earned service credit with the Plan during the parties' marriage prior to separation.

3. That Member and (*specify: Petitioner/Respondent*), hereafter Non-Member, married on \_\_\_\_\_ and separated on \_\_\_\_\_, which period of time is hereafter referred to as the Marital Period.

4. That Member is currently an active member of the Plan.

5. That in order to effectuate an equal division of the community interest in the Plan, Claimant Plan is hereby ordered to divide the accumulated contributions plus regular interest and the service credit attributable to periods of service during the Marital Period, as defined in Paragraph 3 above, into two separate and distinct accounts in the name of the Member and Non-Member, respectively, pursuant to the authority of Los Angeles Administrative Code (LAAC) Section. 4.1066.

6. That Non-Member is awarded, as Non-Member's separate property, the separate account established in Non-Member's name pursuant to paragraph 5 above, which account constitutes Non-Member's one-half of the community interest in the Plan, provided that the Plan's obligations to Non-Member and the Non-Member's rights in Non-Member's separate account are limited to those set forth in LAAC Sections 4.1066 through 4.1066.6.

7. That, except for the community interest in the Plan awarded to Non-Member herein, the remainder of Member's interest in the Plan is awarded to Member as Member's separate property.

8. That Non-Member is ordered to keep the Plan advised in writing as to Non-Member's current address at all times; that the Plan's obligations to notify Non-Member shall be satisfied by the Plan sending notice to Non-Member at the latest address provided to the Plan by Non-Member without regard to whether or not such notice is actually received by Non-Member.

9. That in the event Member applies to retire prior to Non-Member making an irrevocable election of benefits, at least 30 days prior to the date Member's retirement is approved by the Plan's Board of Administration the Plan shall give Non-Member notice of the elections available to Non-Member pursuant to LAAC Section 4.1066.2 (i.e. a refund of contributions or, if the qualifications are met, a separate account allowance).

**[END OF SAMPLE PROVISIONS FOR A SEPARATE ACCOUNT ORDER]**

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If there are questions concerning either set of sample provisions, the Retirement Benefits Division of the Los Angeles City Attorney's Office, the legal advisors to the Plan, can be reached at: 360 East Second Street, Suite 600, Los Angeles, CA 90012; phone # (213) 485-4917 or FAX# (213) 485-8453.