

# Divorce and Your PERA Retirement Benefits

This brochure is designed to provide PERA members, their spouses, and attorneys with information about the division of PERA retirement benefits in divorce proceedings in New Mexico. The information in this brochure should not be considered legal advice. Since each divorce proceeding is unique, each party in a divorce should consult with his or her own attorney.

## **What kind of a retirement plan is provided by the New Mexico Public Employees Retirement Association (PERA)?**

PERA is a qualified defined benefit public pension plan covered under Section 401(a) of the Internal Revenue Code (IRC). The PERA retirement plan is a “governmental plan” for the purposes of 29 USC Section 1002, and is exempt from the provisions of the federal Employee Retirement Income Security Act of 1974 and the Retirement Equity Act of 1984. The Public Employees Retirement Act, NMSA 1978, Section 10-11-1, et seq. and Title 2, Section 80 of the New Mexico Administrative Code contain the actual language governing the plan.

In a defined benefit plan, retirement benefits are paid based on a formula that considers age, service credit and final average salary. Your account balance does not determine your future monthly retirement benefits. This is different from a defined contribution plan (like a 401(k)) which is valued by your total account balance.

## **What happens to my retirement benefits if I get divorced?**

New Mexico is a community property law state. Your PERA retirement benefits are generally considered community property, subject to valuation and division in a divorce. A court may order that your former spouse, called a co-payee, receive a portion of your retirement benefits. This division can only be administered if the court order is received and approved by PERA’s Office of General Counsel.

## **Does this mean that the court can order a transfer of some of my retirement account balance to my former spouse?**

A co-payee may only receive a lump sum payment from a PERA account if you terminate employment with all PERA-affiliated public employers and request a refund of your accumulated member contributions. If you do not terminate employment, a co-payee may receive his or her share of your PERA account only when you retire.

**As a member of PERA, do I need to have an Order Dividing PERA Retirement Benefits as part of my divorce?**

No. Depending on your particular financial situation and the circumstances of your divorce settlement, you may be able to address the division of your retirement benefits in another way, such as dividing other property so you retain sole ownership of your retirement account. You should discuss this possibility with your attorney.

**Can PERA determine the present value of my future retirement benefits?**

No. PERA can provide you with a monthly history of your account balance. For computation of the present value of your retirement benefits, you should consult an actuary, accountant, or other financial professional.

**Can my retirement account information be disclosed to someone else?**

To protect your privacy, New Mexico law prohibits the disclosure of any information from a PERA member's file except for the following:

- Applicable coverage plans.
- Amounts of retirement plan contributions made by members and affiliated public employers.
- Pension amounts paid.
- Names and addresses of PERA members or retirees requested for election purposes by candidates for election to the retirement board.

In order to access any additional information from your PERA file, your spouse, ex-spouse or your respective attorney(s) must present PERA with your written prior release and consent in a form prescribed by PERA. A form release is available from PERA.

**I plan to receive a monthly retirement benefit. Can the court order that a lump sum payment be paid to a co-payee when I retire?**

No. At the time a monthly payment (pension) becomes payable to you, the co-payee will also receive a monthly payment. The duration of payments to the co-payee depends on the terms of your order dividing and which form of payment option you elect. If you elect Option A, the co-payee will receive payments during your life. If you elect Options B or C, the co-payee will receive payments over the life of the survivor beneficiary. If you elect Options B or C and designate the co-payee as your survivor beneficiary, payments will be made over the life of the co-payee.

**Does this mean that the co-payee can receive a part of my monthly benefit?**

Yes. The percentage of the community property interest paid to a co-payee will reduce your monthly benefit.

**How will this amount be determined?**

The amount will be determined either by agreement of the parties or by a judge's decision in a divorce proceeding. The court may order that a certain percentage or dollar amount of the accrued benefits as of the date of divorce be paid to the co-payee.

**Can my co-payee receive PERA retirement benefits before I do?**

No. The co-payee can only receive benefits when benefits become payable to the member. Benefits are only payable when a member either meets the requirements to retire and applies for a pension, or when a member terminates employment with a PERA-affiliated public employer and requests a refund of member contributions. If the member is already retired, benefits to the co-payee will begin following receipt of a court-endorsed order dividing benefits.

**If I remarry, when I retire will I still be eligible to elect form of payment options B or C, designating my current spouse as my survivor beneficiary?**

It depends. If an Order Dividing PERA Retirement Benefits specifies that a member will elect a specific form of payment and, if applicable, designate a specific survivor beneficiary, a member must comply with the terms of the Order. However, if an Order does not address the election of a specific form of payment, a member is free to elect any form of payment and designate any survivor beneficiary at the time the member retires.

**As an active member with an Order Dividing PERA Retirement Benefits on file with PERA, what happens if the co-payee or I die?**

It depends on the language of the Order Dividing PERA Retirement Benefits. Ordinarily, if the co-payee dies before payments begin, the co-payee's community property interest in the gross pension or contributions will be paid to the co-payee's estate. If the member dies prior to retirement and a survivor pension is payable, the co-payee would receive his or her share of the pension. If no survivor pension is payable, the co-payee would receive his or her share of a refund of accumulated member contributions.

**As a co-payee receiving a monthly benefit from PERA, will I be eligible to receive cost-of-living increases?**

It depends on the language of the Order Dividing PERA Retirement Benefits. Ordinarily, any benefit enhancements provided by New Mexico law would apply to the co-payee's portion of the benefit payment.

**As a co-payee, will I pay income tax on the benefits I receive from PERA?**

Yes. Federal and state income tax will be due on the taxable portion of your benefit. A small portion of your benefit may be non-taxable if the member paid in previously-taxed contributions. Upon your request, PERA can withhold federal and New Mexico state income tax from your benefit, although such withholding is not required. Each January, retirees and their co-payees will receive a 1099-R tax form.

**Do I have to obtain pre-approval from PERA of an Order Dividing PERA Retirement Benefits before the judge signs the order?**

No. However, PERA rules do require written approval by PERA's Office of General Counsel before a court-endorsed Order Dividing Retirement Benefits will be administered. The Office of General Counsel will provide a model order with instructions, upon request. The Office is also available to assist parties in preparing orders and will, upon request, pre-approve proposed orders prior to submission to the court. If PERA receives an order signed by a judge which does not comply with New Mexico law or PERA rules, the parties must return to court to modify the order.

**May an Order Dividing PERA Retirement Benefits be modified once it is approved?**

Yes. However, it would take another court order signed by a judge to allow any modifications. In addition, after the first pension payment is made, certain modifications are barred by New Mexico law.

**Can I obtain a valid Order Dividing PERA Retirement Benefits for PERA through an out-of-state divorce?**

Yes, provided all New Mexico requirements for a valid Order are met.

**How does my attorney or my former spouse's attorney prepare an Order Dividing PERA Retirement Benefits?**

Either party may request a copy of PERA's model order with instructions. This information is also available online at PERA's website ([www.state.nm.us/pera](http://www.state.nm.us/pera)). Since pension benefits are often one of a marital community's most valuable

assets, this information will allow both parties to be fully aware of the options available when preparing such an order.

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This brochure is a summary of New Mexico statutes and PERA rules and is not intended to provide complete information concerning **Orders Dividing PERA Retirement Benefits**. More detailed information may be obtained by contacting:

Office of General Counsel  
Public Employees Retirement Association  
P.O. Box 2123  
Santa Fe, NM 87504  
Voice: 505-827-4768  
Toll free: 1-800-342-3422  
Fax: 505-827-1236

<http://www.state.nm.us/pera/home.htm>

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