

Divorce and Your Benefits

How Divorce or Legal Separation Affects Your SamCERA Benefits

FOR ALL ACTIVE, INACTIVE AND RETIRED MEMBERS



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IMPORTANT: Your SamCERA account is subject to California community property law, so if you had a divorce or legal separation while you were a member of SamCERA, or if you are filing a dissolution of marriage or domestic partnership, you must contact SamCERA regarding your retirement benefits.

SamCERA

100 Marine Parkway, Suite 125
Redwood Shores, CA 94065

Hours: Monday - Thursday, 7 am - 6 pm

Phone: (650) 599-1234

Toll-free: (800) 339-0761

Email: samcera@samcera.org

Your SamCERA benefits are governed by the County Employees Retirement Law of 1937; therefore, any discrepancies between the law and the information in this booklet will be resolved in accordance with the law.

The material contained in this guide is for informational purposes only and does not constitute legal advice.

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INTRODUCTION: HOW TO USE THIS GUIDE

This guide is designed to help SamCERA members and their spouses or domestic partners navigate the divorce, legal separation, and dissolution process. If you had a divorce or legal separation while a member of SamCERA, or you are filing a dissolution of marriage or domestic partnership, you must contact SamCERA regarding your retirement benefits. Our benefits staff will help you get organized.

We recommend that all parties involved seek legal counsel.

DIVORCE AND SAMCERA BENEFITS: SEVEN THINGS YOU NEED TO KNOW

The information in this guide generally applies to judgments for either dissolution of marriage or legal separation. For ease of use, both are referred to as “divorce”. If you are getting a legal separation in lieu of a dissolution of marriage, contact SamCERA for more information. The term “divorce” will also apply to a termination of a registered domestic partnership.

1

The contributions you made and the retirement benefits you earned during your marriage are

community property. SamCERA benefits earned as a result of employment between the date of marriage and the date of separation are community property, belonging equally to the member and the member’s ex-spouse (“nonmember”).

2

The contributions you made and the retirement benefits earned before your marriage or after your separation are separate property.

Any SamCERA benefits earned as a result of employment before the date of marriage or after the date of separation are the member’s separate property.

3

SamCERA must receive and approve the Court order before any benefits can be paid.

No member can complete the retirement process, or withdraw contributions, if the member has gotten a divorce during employment, or has a pending divorce proceeding, until SamCERA receives and approves a Court order regarding the community interest of SamCERA benefits.

4

SamCERA must be joined in the proceeding.

SamCERA must be joined in the divorce proceedings for the Court to make an order as to the division of the SamCERA benefits. If the retirement benefits will not be divided, but rather

awarded solely to the member, then SamCERA does not need to be joined. The Court order or marriage settlement agreement attached to the order must clearly state that the community interest in the SamCERA account is awarded solely to the member.

5

SamCERA has model court orders you can use for dividing SamCERA benefits.

SamCERA has created model orders for active, inactive and retired members to use. Members and nonmembers should review and discuss the orders with their attorneys. See the section on *Model Orders* for more information.

6

A Pre-Retirement Member’s Account Is Split into Two Separate Accounts.

When the member has not yet retired, SamCERA can be ordered to divide the member’s contributions, earnings, and service credit into two separate accounts, one for the member and one for the nonmember. Depending upon whether the member is vested or not at the time of judgment of dissolution/legal separation, the nonmember may have several of the same rights that a member has, including, but not limited to, a monthly pension.

7

A Retired Member’s Monthly Pension Benefit is Shared.

If a member has already retired, SamCERA cannot be ordered to divide the account, but can be ordered to split each monthly retirement benefit payment into two separate payments, based on the parties’ respective shares of the benefit. The nonmember should understand that terminating their marriage will terminate the nonmember’s rights, if any, to payments upon the death of the member unless the member selected a “modified option” at the time of retirement. Contact SamCERA to confirm which option was taken.

OTHER IMPORTANT INFORMATION

Domestic Partnerships

The information in this guide regarding divorce and SamCERA benefits also applies to the dissolution of domestic partnerships registered with the Secretary of State. For a dissolution of domestic partnership, the date of registration is substituted for the date of marriage.

Effects of Dissolution on Beneficiary Designation

It is important to review your SamCERA beneficiary designation following a dissolution of marriage. The designation of a spouse as a beneficiary (termination of marital status) is automatically canceled by a dissolution of marriage which occurs after January 1, 2002, pursuant to Probate Code section 5600. A change of beneficiary form can be found on SamCERA website.

Governing Law

SamCERA is not subject to ERISA (Employee Retirement Income Security Act). SamCERA is governed by the County Employees Retirement Law ("CERL") of 1937 contained in the Government Code. The division of SamCERA benefits is specifically governed by Article 8.4 of CERL, commencing with section 31685 and Family Code section 2610. A copy of Government Code Article 8.4 and Family Code section 2610 are contained in the *Appendix*.

457 Deferred Compensation Account

SamCERA does not administer San Mateo County's 457 deferred compensation plan. Questions regarding the division of that account should be directed to the Employee Benefits Division of the County's Human Resources Department.

MODEL ORDERS

SamCERA has model court orders you can use for dividing SamCERA benefits. SamCERA has created model orders for active, inactive and retired members to use. Members and nonmembers should review and discuss the orders with their attorneys. In most cases, the parties use these model orders without making any modifications to them.

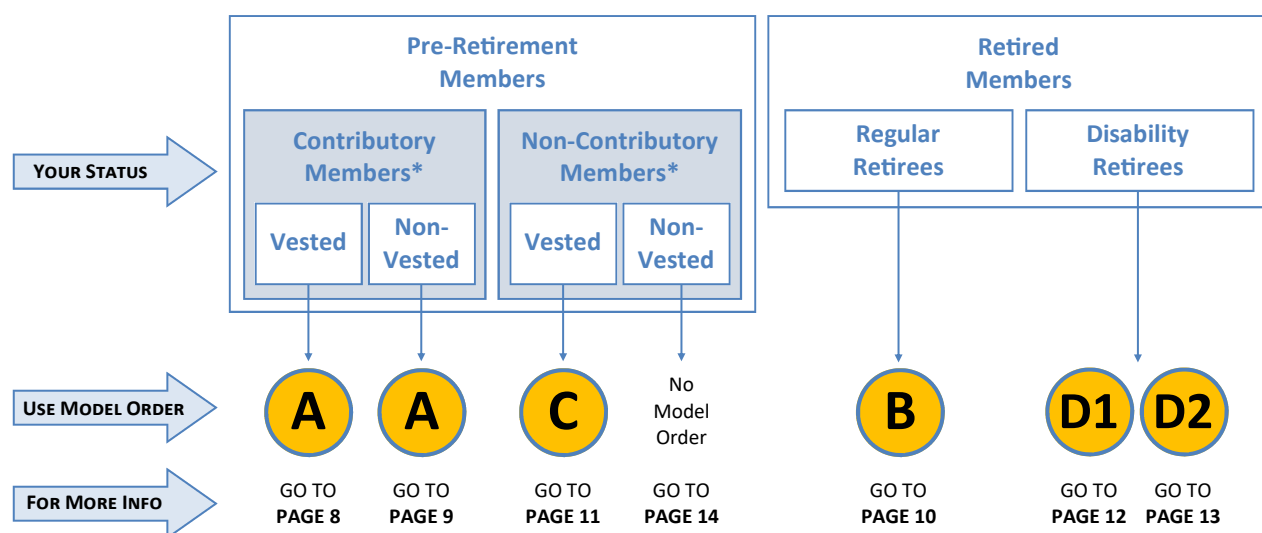
Which model order should you use?

It will depend on whether you are in a contributory or noncontributory plan; whether or not you are retired; whether or not you are vested; and whether or not you are receiving a disability benefit. It does not matter whether you are a Safety or General plan member. *Retired members who are getting a legal separation (and not a dissolution of marriage) should contact SamCERA for a special Model Order B or D.*

- Pre-retirement members in contributory plans (Plans 1, 2, 4, 5, 6 or 7). Use **Model Order A**.
- Retired members who are receiving a regular service retirement. Use **Model Order B**.
- Active or inactive members who are vested (10 years of service credit) in noncontributory Plan 3. Use **Model Order C**.
- Retired members receiving a disability retirement. Use **Model Order D1 or D2**. *Contact SamCERA regarding which model order to use.*

Model Orders can be found on the SamCERA website: www.samcera.gov

QUICK REFERENCE FOR APPENDIX A: WHICH MODEL ORDER DO YOU USE?



*Vested Members

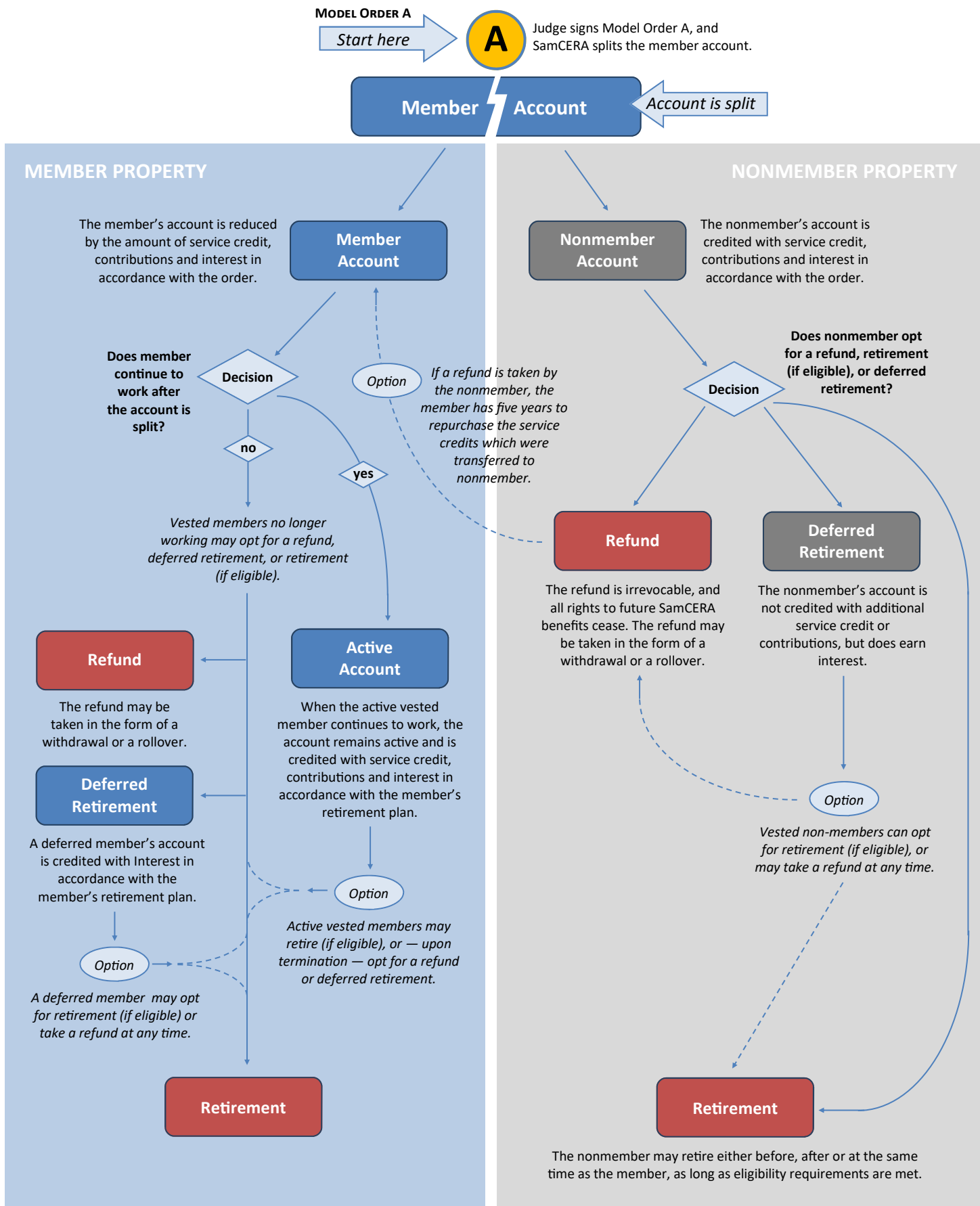
Vested members are those with more than 5 years service credit (10,400 hours) for contributory plan members, and 10 years service credit (20,800 hours) for non-contributory plan members. Members with reciprocity may use service from qualified systems to satisfy the vesting eligibility.



Appendix A: Divorce Scenarios

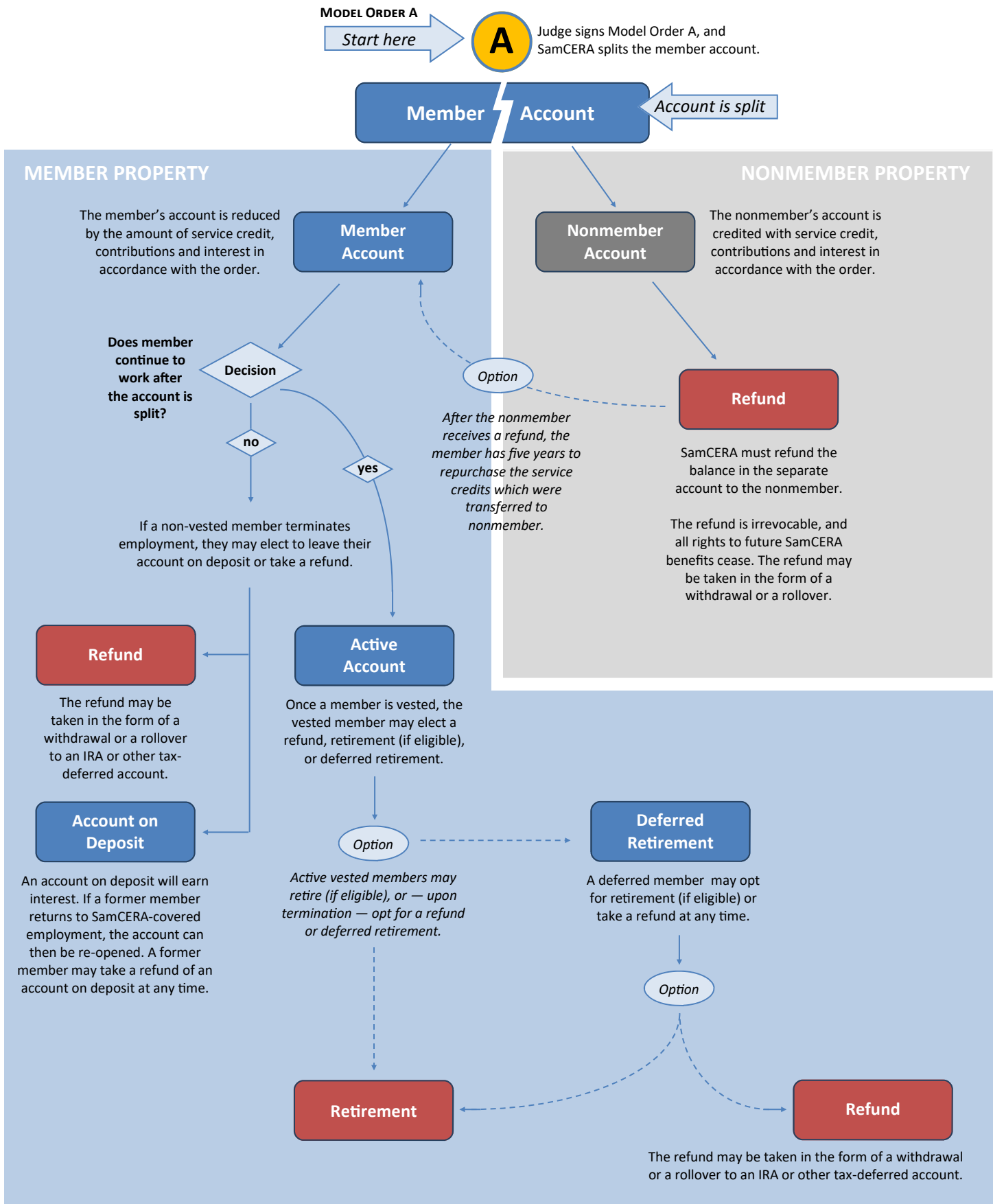
PRE-RETIREMENT CONTRIBUTORY PLAN VESTED MEMBERS: MODEL ORDER A

If you are divorced or filing a dissolution of marriage or domestic partnership, you will need to get a court order to split the member account.
Your SamCERA benefits will be divided into two separate accounts in accordance with the order.



PRE-RETIREMENT CONTRIBUTORY PLAN NON-VESTED MEMBERS: MODEL ORDER A

If you are divorced or filing a dissolution of marriage or domestic partnership, you will need to get a court order to split the member account. **Your SamCERA benefits will be divided into two separate accounts in accordance with the order.**



MEMBERS WHO DIVORCE AFTER REGULAR SERVICE RETIREMENT: MODEL ORDER B

If you are divorced or filing a dissolution of marriage or domestic partnership, you will need to get a court order to split the member benefit. **Your SamCERA benefits will be divided in accordance with the order.** *If you are getting a legal separation, contact SamCERA.*

MODEL ORDER B

Start here



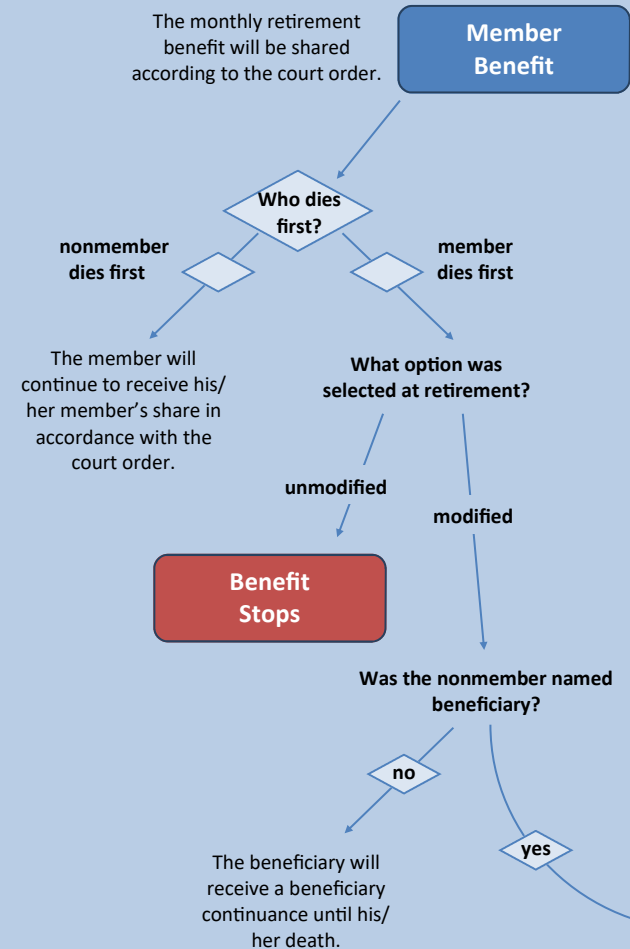
Judge signs Model Order B, and SamCERA splits the member benefit.

Member

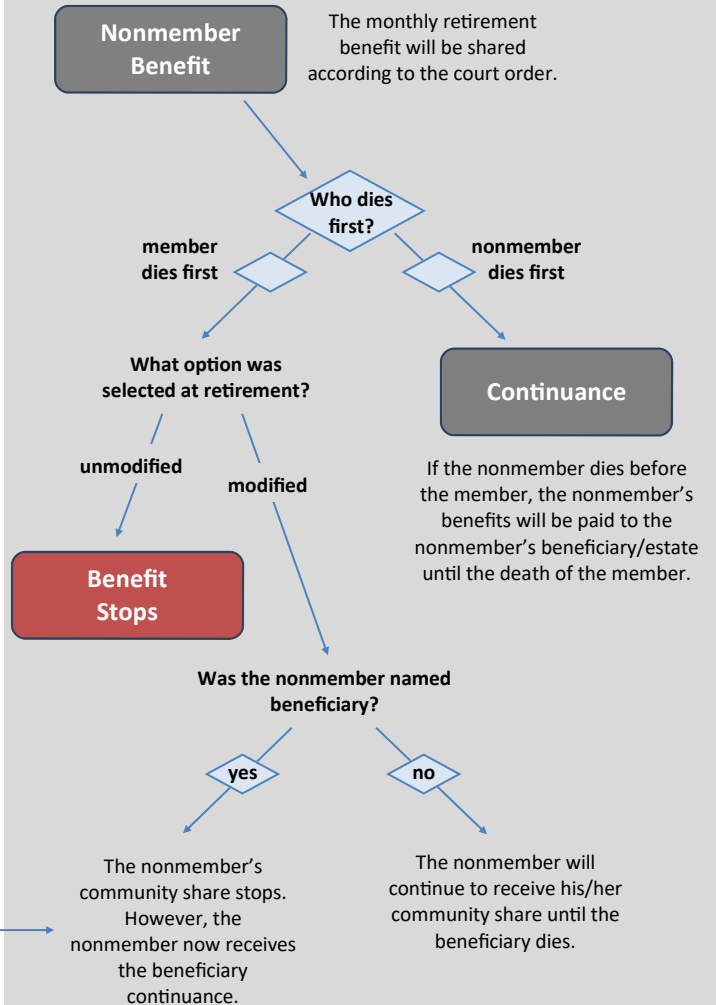
Benefit

Benefit is shared

MEMBER PROPERTY

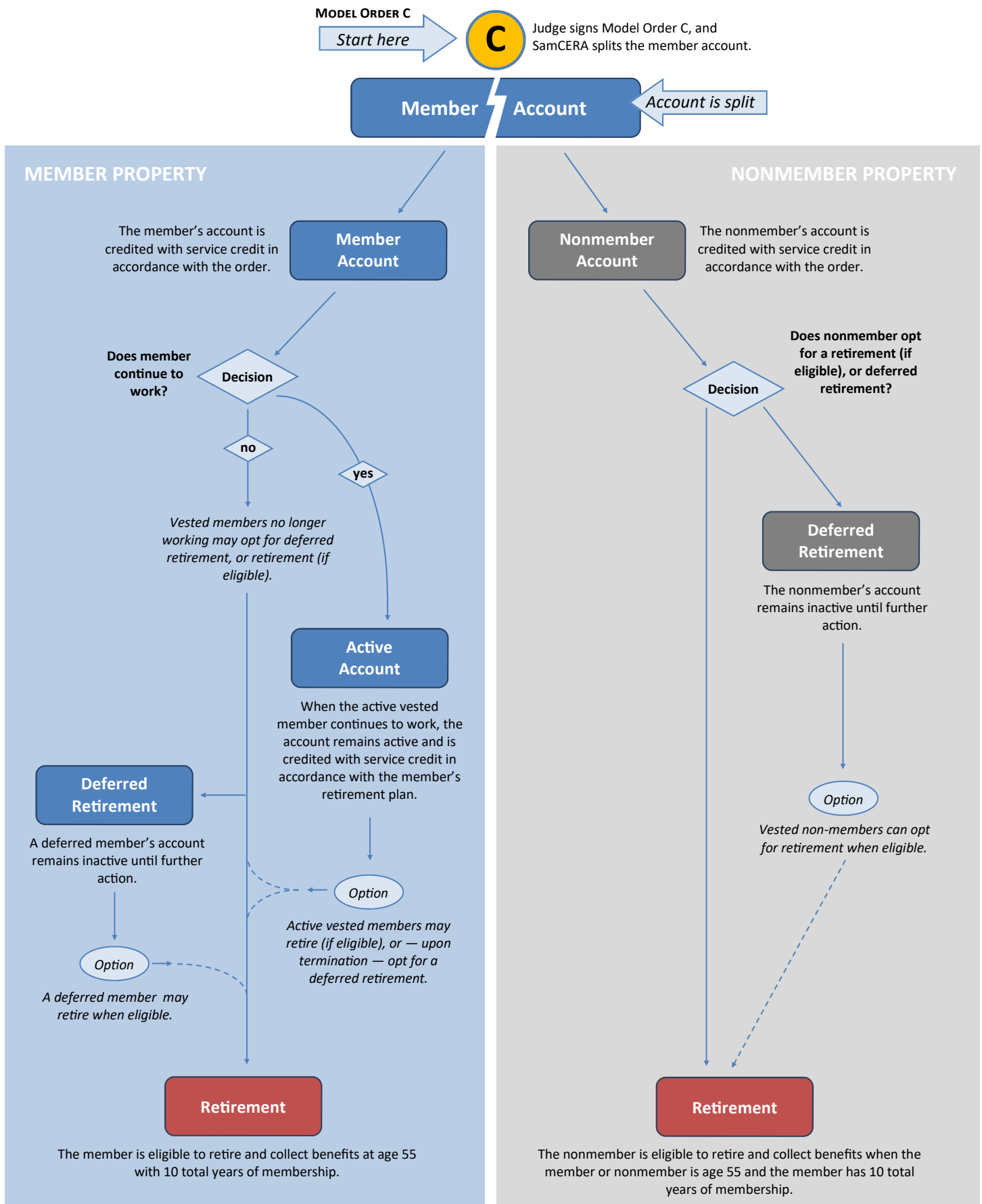


NONMEMBER PROPERTY



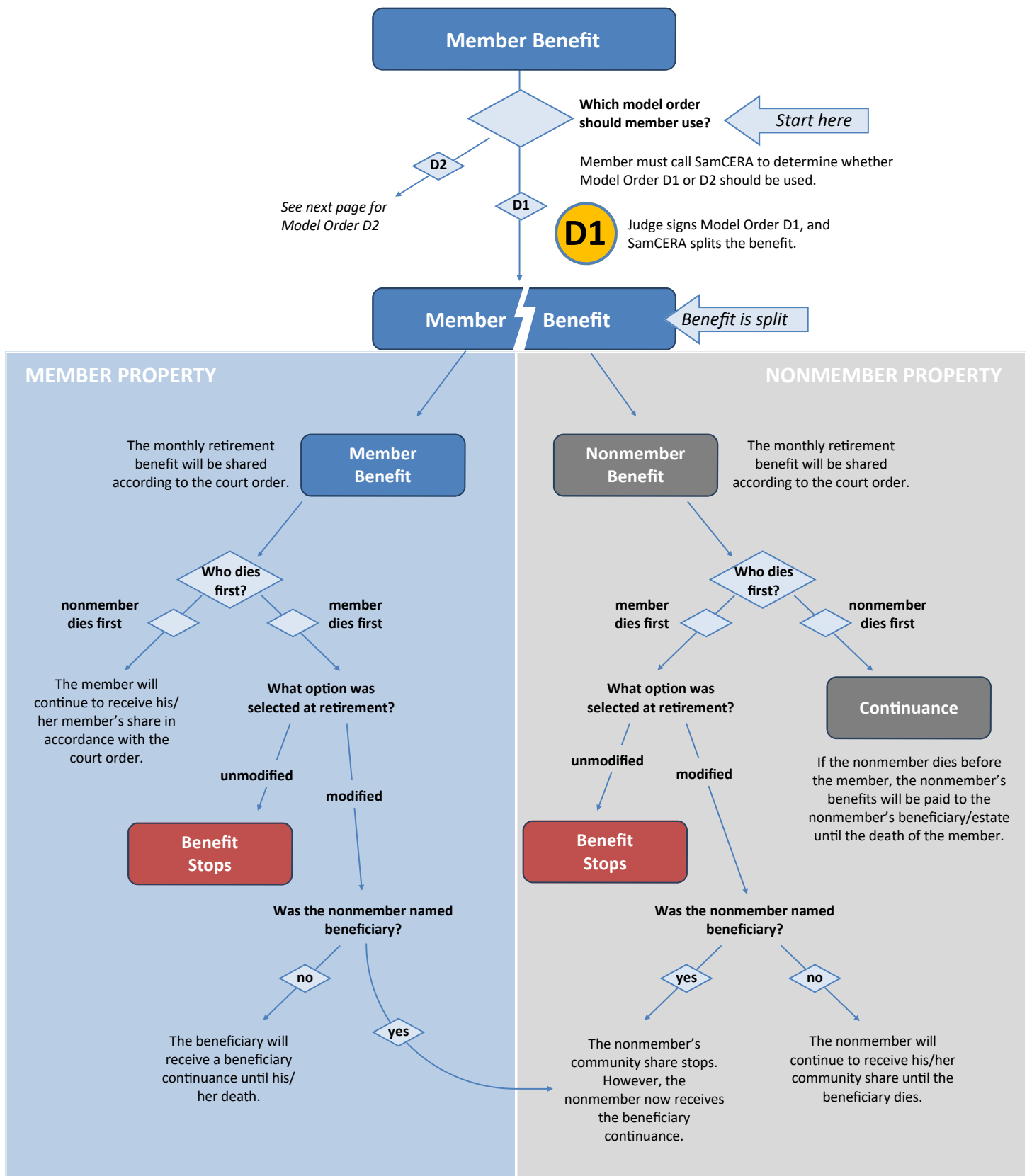
NON-CONTRIBUTORY PLAN ACTIVE VESTED MEMBERS: MODEL ORDER C

If you are divorced or filing a dissolution of marriage or domestic partnership, you will need to get a court order to split the member account. Your SamCERA benefits will be divided into two separate accounts in accordance with the order.



MEMBERS WHO DIVORCE AFTER A DISABILITY RETIREMENT: MODEL ORDER D1

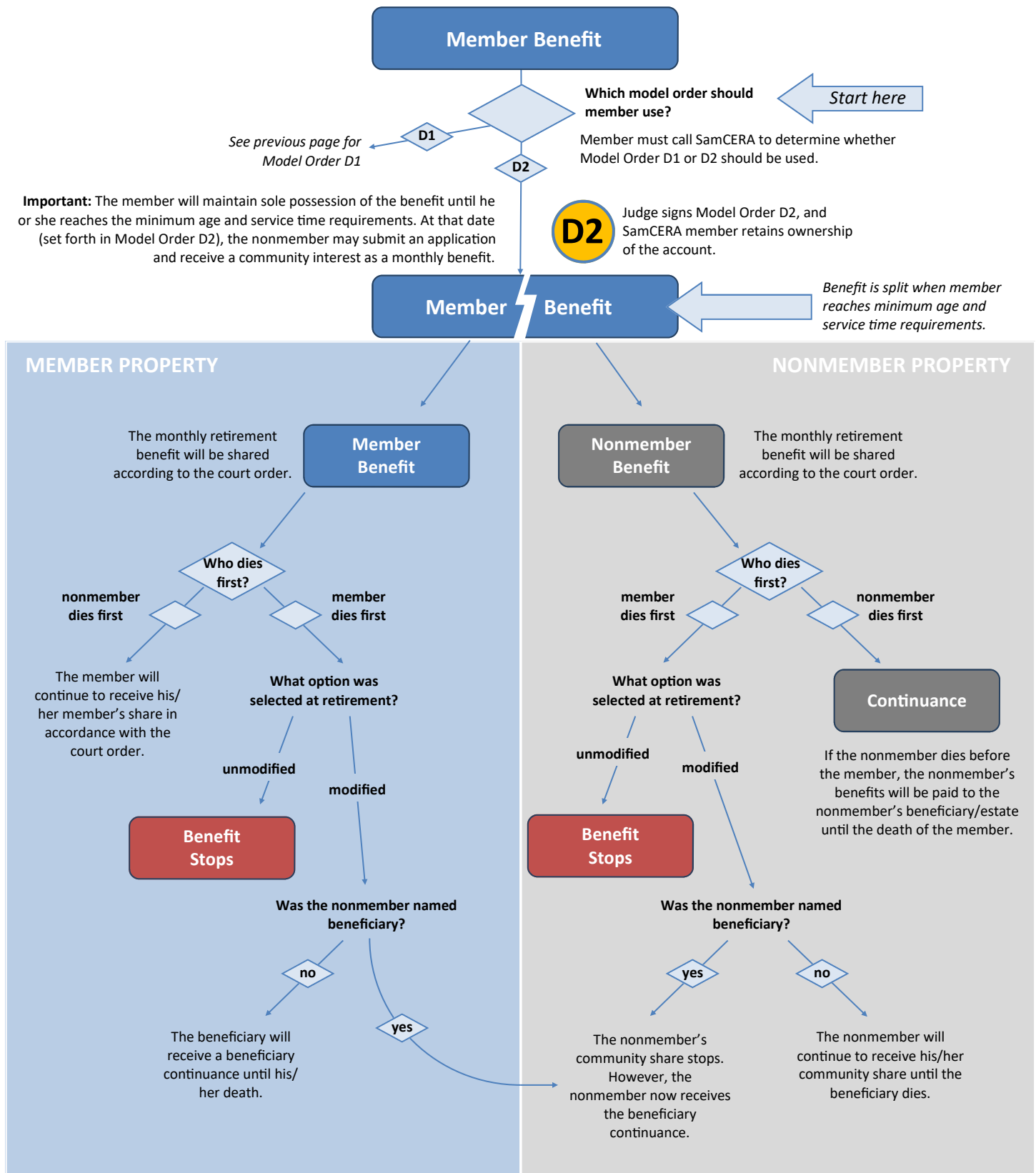
If you are divorced or filing a dissolution of marriage or domestic partnership, you will need to get a court order to split the member benefit. **Your SamCERA benefits will be divided in accordance with the order.** *If you are getting a legal separation, contact SamCERA.*



Because disability retirement benefits are calculated differently than other retirement benefits, disability retirement benefits are not split in the same manner as other retirement benefits. Contact SamCERA for more details.

MEMBERS WHO DIVORCE AFTER A DISABILITY RETIREMENT: MODEL ORDER D2

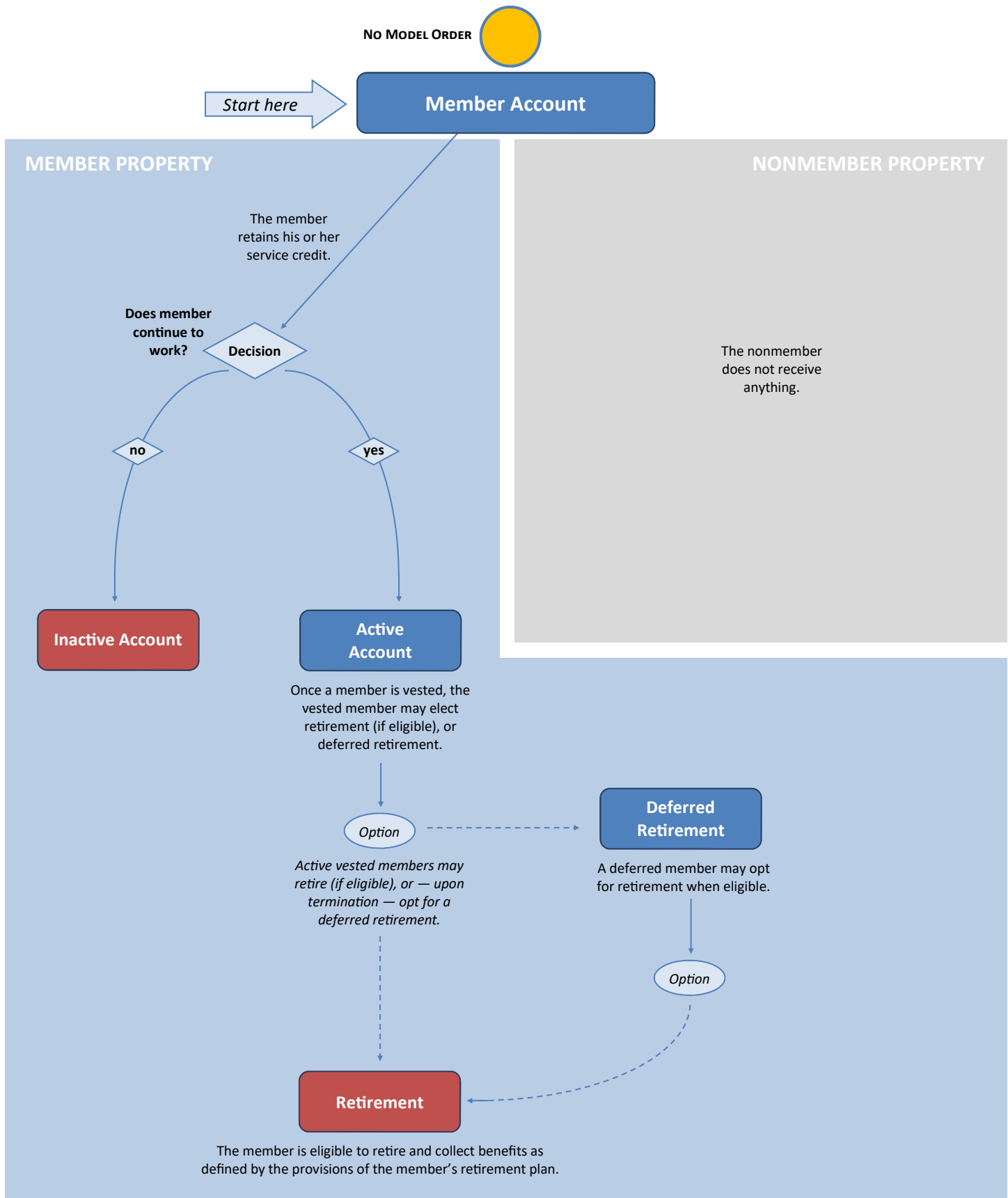
If you are divorced or filing a dissolution of marriage or domestic partnership, you will need to get a court order to split the member benefit. **Your SamCERA benefits will be divided in accordance with the order.** *If you are getting a legal separation, contact SamCERA.*



Because disability retirement benefits are calculated differently than other retirement benefits, disability retirement benefits are not split in the same manner as other retirement benefits. Contact SamCERA for more details.

NON-VESTED NON-CONTRIBUTORY PLAN MEMBERS: NO MODEL ORDER

In the event of a divorce or dissolution proceeding, a non-vested, non-contributory SamCERA account is not divided between the member and the non-member because there are no contributions to divide. The member will retain his or her service credit, and **there is no model order to use for this scenario.**





Appendix B: Excerpts From Applicable Statutes



Government Code

ARTICLE 8.4. COMMUNITY PROPERTY

§ 31685. Legal separation or marriage dissolution; date of separation; separation of member and nonmember accounts; nonmember's rights

(a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

- (1) The right to a retirement allowance.
- (2) The right to a refund of accumulated retirement contributions.
- (3) The right to redeposit accumulated

contributions that are eligible for redeposit by the member.

(4) The right to purchase service credit that is eligible for purchase by the member.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

§ 31685.1. Nonmember

“Nonmember,” as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.

§ 31685.2. Nonmember awarded separate account; right to refund; application; effective date; waiver

(a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.

(b) The nonmember shall file an application on a form provided by the system to obtain the refund.

(c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.

(d) The nonmember is deemed to have permanently waived all rights in the system

and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective.

(e) The nonmember may not cancel a refund once it has become effective.

(f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.

(g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.

(h) If the nonmember receives a refund under this section, the member may elect to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

§ 31685.3. Nonmember's redeposit of accumulated contributions and interest previously refunded to member; court determination; member's rights

(a) The nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the member in accordance with the determination of the court required by

Section 31685.

(b) The nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to the court-determined nonmember share of any previously refunded accumulated contributions and interest whether or not the nonmember elects to redeposit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before redeposit is completed. However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) Any redeposit by the nonmember shall be made by lump sum before retirement.

§ 31685.4. Service credit; nonmember's right to purchase community property share; court determination; member's rights

(a) The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 31685.

(b) The nonmember may purchase only that

service credit that the court has determined to be the community property share of the nonmember spouse.

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to the court-determined nonmember share of the service credit whether or not the nonmember elects to purchase the service credit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before the service credit is purchased. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

§ 31685.5. Nonmember's retirement; conditions

A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

(a) The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member.

(b) On the date of retirement, the member had sufficient credited service to retire for service, notwithstanding any service credit awarded to the nonmember.

§ 31685.6. Effective date of retirement; accrual of retirement allowance

Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's

application as the effective date of retirement, or the day following the date of court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board.

§ 31685.7. Final compensation; retirement dates of nonmember and member

(a) If the nonmember retires before the member retires, "final compensation" means the highest average annual compensation earnable by the member during the three consecutive years, or one year where applicable, prior to the date the nonmember retires. The nonmember may designate an earlier period to be used where the time period of the nonmember's marriage to the member and membership correspond.

(b) If the member has retired before the nonmember, the "final compensation" for the nonmember shall be the final compensation used in calculating the member's retirement.

(c) Upon receipt of an application for retirement by the member, the board shall notify the nonmember that his or her final compensation will not increase any further and shall identify which options are available to the nonmember and the impact thereof.

§ 31685.8. Service retirement formula; service credited to nonmember

A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

§ 31685.9. Disability of member

If a member becomes disabled, the combined benefit payments to both the member and nonmember shall not exceed the amount that would otherwise be paid to the member alone.

§ 31685.95. Retirement plan payments resulting in increased benefits; actuarial economic and demographic assumptions and values

- (a) Under no circumstances shall a retirement plan be required to make payments in any manner that will result in an increase in the amount of benefits provided under the plan.
- (b) All benefits determined pursuant to Part 5 (commencing with Section 2610) of Division 7 of the Family Code and this article shall be determined on the basis of the actuarial economic and demographic assumptions and values prescribed by the board of the affected retirement plan.

§ 31685.96. Age factors

- (a) The age factor applicable to the nonmember shall be based on the age of the nonmember at the time of his or her retirement.
- (b) The board shall adopt age factors as recommended by the actuary.

§ 31685.96. Operation of article; resolution by county

This article shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this article applicable in the county.

Family Code

§ 2610. Retirement plans; orders to ensure benefits

(a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

- (1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550.
- (2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.
- (3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:
 - (A) Article 2 (commencing with Section 21290) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.
 - (B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.
 - (C) Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.
 - (D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.
 - (E) Chapter 15 (commencing with Section 27400) of Part 14 of the Education Code.
- (4) Order a retirement plan to make pay-

ments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).