

**SUBPART L. APPLICABILITY OF CERTAIN
LEGAL DETERMINATIONS**

§291. Community property interest

A. Notwithstanding any other provision of law to the contrary, any benefit or a return of employee contributions shall be subject to a temporary restraining order or injunction issued by a court in connection with an action which would result in a termination of the community property regime or partition of community assets and liabilities after such termination, which order or injunction involves a member or retiree of a state or statewide retirement system and his/her spouse or former spouse, and provides that community assets not be disbursed, disposed of, alienated, or otherwise incumbered, but only after a certified copy of such order or judgment is received by the retirement system.

B. Notwithstanding any other provision of law to the contrary, any benefit or a return of employee contributions shall be subject to a court order issued by a court upon or after termination of a community property regime, which order recognizes the community interest of a spouse or former spouse of a member or retiree of the retirement system and provides that a benefit or a return of employee contributions be divided by the retirement system with the spouse or former spouse, but only after a certified copy of such order has been received by the retirement system and has been determined by the retirement system to be in compliance with applicable laws, rules, and regulations governing the retirement system.

C. Repealed by Acts 1995, No. 592, §2, eff. July 1, 1995.

D. In connection with Subsection B of this Section, each state or statewide retirement system may promulgate rules establishing requirements with which a court order must comply.

E. In those instances in which no certified copy of an injunction, temporary restraining order, or court order for division of a benefit or a return of employee contributions has been received and/or approved as required by this Section, a state or statewide retirement system shall pay the entire amount of any benefit or return of employee contributions to the member, retiree, designated beneficiary, survivor benefit recipient, or the estate of a deceased member and payment so made shall constitute a release of all accrued rights of every kind and nature against the retirement system, including but not limited to community property rights of a spouse or former spouse and any rights of an heir or legatee of such spouse or former spouse.

F. In those instances in which the spouse or former spouse with whom a retirement system is to divide a benefit or a return of employee contributions under the provisions of this Section dies, the retirement system shall pay the entire amount of the benefit or return of employee contributions to the member, retiree, designated beneficiary, survivor benefit recipient, or the estate of a deceased member and payment so made shall constitute a release of all accrued rights of every kind and nature against the retirement system including but not limited to any rights of an heir or legatee of the spouse or former spouse.

G. A state or statewide retirement system shall not pay any funds to any persons until such funds normally become payable as provided by the laws governing the retirement system.

Acts 1989, No. 67, §1; Redesignated from R.S. 42:720.40 by Acts 1991, No. 74, §3, eff. June 25, 1991; Acts 1993, No. 723, §1, eff. July 1, 1993; Acts 1995, No. 592, §§1, 2, eff. July 1, 1995; Acts 2012, No. 479, §1, eff. Dec. 10, 2012.

FIREFIGHTERS' RETIREMENT SYSTEM COMMUNITY PROPERTY INFORMATION

Under Louisiana's community property law, an ex-spouse may be entitled to receive a portion of your retirement benefit. Louisiana courts have ruled that retirement benefits are community property. This means that one-half of the benefits that accrue during the existence of a marriage belong to each spouse. Those benefits that accrue before or after marriage belong to the member or retiree only.

A member is incorrect who believes they have "escaped" by going through a divorce and division of community property without addressing FRS benefits. Former spouses can and have obtained court orders recognizing their community property interest in a member's retirement benefit years after the retiree started drawing a benefit. A court order can entitle the former spouse up to one-half of the retiree's benefit.

Common Scenarios: Three scenarios are common after a member divorces:

- 1) The former spouse gives up his/her interest in the member's FRS account, most often in exchange for a similar waiver or some other part of the community property.
- 2) The parties either do not obtain a community property settlement or do not specifically address retirement benefits.
- 3) The former spouse is given a share of the member's retirement in accordance with the formula developed in the case *Sims v. Sims*, 358 So.2d 919 (La. 1978), which works this way:

Sims v. Sims Formula:

$$\frac{\text{Service credit accrued or purchased during existence of community property (marriage)}}{\text{Total service credit at the time of retirement}} \times \frac{1}{2}$$

x Retirement benefit or lump sum payment (Refund)

For instance, if a member was married for 19 years and has 19 years of creditable service with FRS, then was divorced and retired with a total of 30 years of service credit and whose monthly benefit was \$1,000.00, the portion of his retirement that would go to his ex-spouse would be calculated in this manner:

$$\frac{19}{30} \times \frac{1}{2} \times \$1,000.00 = \$316.67 \text{ monthly or } 31.67\% \text{ of any benefit payable to the member/retiree}$$

This formula (or other similar formulas) is used by courts to split a monthly benefit, refund of accumulated contributions, initial lump-sum benefit, DROP payment, disability benefit, COLA's or any other retirement benefit. A *Sims* benefit division will continue after the death of a retiree, only, if he or she has selected options 2, 3, 4, 4-2, or 4-3, which pays a monthly benefit to a beneficiary whom is not his or her former spouse.

Page 2.

Some divorced couples enter into a community property settlement but fail to specifically mention FRS benefits in their community property. A former spouse can later secure a division of benefits, even if the settlement document has a clause stating that the parties gave up all further claims against each other.

Conclusion:

FRS members and retirees who are divorced or are in the process of getting divorced are urged to obtain a Community Property Settlement or a Qualified Domestic Relations Order (QDRO) that specifically addresses his/her FRS' benefit. This should be done as soon as practical, thus avoiding a more serious financial burden in the future. An attorney can provide advice more specific to your individual situation. Ask your attorney to contact FRS prior to submitting any order affecting your retirement benefit to a court, so that the system can determine if it meets the requirements of all pertinent laws affecting FRS.

FRS Mailing Address: PO Box 94095, Capital Station
Baton Rouge, LA 70804-9095

FRS Phone: (225) 925-4060

FRS Fax: (225) 925-4062

PROPOSED CLAUSES FOR COURT ORDER

I.

IT IS ORDERED, ADJUDGED AND DECREED that this Court finds the parties in the above captioned matter were married to each other on ____ (1) ____, (year), and were subsequently divorced; that a community property regime existed during the marriage of the aforesaid parties, which regime was terminated effective ____ (2) ____, (year); and that this Court has jurisdiction of this action and these parties and is the proper Court to render this Order.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court finds that, during the existence of the aforesaid marriage, ____ (3) ____, whose social security number is ____ (4) ____, and whose mailing address is ____ (5) ____, was a member of Firefighters' Retirement System ("FRS"), thereby establishing a community property interest in funds or benefits that may become payable by FRS as a result of that membership.

III.

Alternative Clause 1:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ____ (6) ____, whose social security number is ____ (7) ____, and whose mailing address is ____ (8) ____, shall receive ____ (9) % of any funds or benefits that may become payable by FRS to ____ (3) ____, his/her survivor(s) or his/her beneficiary(ies).

Alternative Clause 2:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ____ (6) ____, whose social security number is ____ (7) ____, and whose mailing address is ____ (8) ____, shall receive a percentage of any funds or benefits that may become payable by FRS to ____ (3) ____, his/her survivor(s) or his/her beneficiary(ies), this percentage to be calculated as follows:

One half (1/2) of a fraction, the numerator of which is the number of years of service credit earned or purchased by ____ (3) ____, during the existence of the aforesaid community property regime, to-wit, from ____ (1) ____, until ____ (2) ____, and the denominator of which is the total number of years of service credit ____ (3) ____, has with FRS as of the date funds or benefits become payable.

Alternative Clause 3: (To be used when former spouse rescinds rights to retirement benefits)

Proposed clause for paragraph III and you would not use Paragraph IV, V, and VI:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ____ (6) ____, whose social security number is ____ (7) ____, and whose mailing address is ____ (8) ____, does for good and valuable consideration hereby knowingly, voluntarily, and permanently forfeit and waive any right or interest to any funds or benefits that may become payable by FRS to ____ (3) ____, his/her survivor(s) or his/her beneficiary(ies).

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that FRS divide any funds or benefits that may become payable by it to __ (3) __, his/her survivor(s) or his/her beneficiary(ies), with __ (6) __, and that FRS pay the aforesaid percentage of such funds or benefits to __ (6) __, at his/her above address, or such other address as __ (6) __, may advise FRS in writing in accordance with the following paragraph.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that __ (6) __ shall provide FRS with a certified copy of this Order within thirty (30) days after it is signed by the undersigned judge, and that __ (6) __ shall inform FRS in writing of all future changes of mailing address within thirty (30) days after such change becomes effective.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, if __ (6) __ predeceases __ (3) __, all funds or benefits shall revert to __ (3) __, his/her survivor(s) or his/her beneficiary(ies).

FOOTNOTES:

- (1) Date of Marriage
- (2) Date Community Property Regime Terminated.
- (3) Name of Member of Firefighters' Retirement System.
- (4) Social Security Number of Member of Firefighters' Retirement System.
- (5) Current Mailing Address of Member of Firefighters' Retirement System.
- (6) Name of Former Spouse of Member of Firefighters' Retirement System.
- (7) Social Security Number of Former Spouse of Member of Firefighters' Retirement System.
- (8) Current Mailing Address of Former Spouse of Member of Firefighters' Retirement System.
- (9) Community Interest of Former Spouse in FRS's Member's Retirement Expressed as a percentage.

[CASE CAPTION]

DOMESTIC RELATIONS ORDER
(Firefighters’ Retirement System)

*** Parties should put introductory language here***

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. This Court finds the parties in the above captioned matter were married to each other on _____, and were subsequently divorced on _____; and that a community property regime existed during the marriage of the aforesaid parties, which regime was terminated effective _____; and that this Court has jurisdiction over this action and these parties and is the proper Court to render this Order.

II. Member Information:

Name: (Member)	
Address:	
For privacy purposes, the Member’s date of birth and social security number will be provided in an addendum to the Plan Administrator with a certified copy of this Order.	

III. Former Spouse Information:

Name: (Former Spouse)	
Address:	
For privacy purposes, the Former Spouse’s date of birth and social security number will be provided in an addendum to the Plan Administrator with a certified copy of this Order.	

IV. The Plan name is Firefighters’ Retirement System (“FRS”), which is a statewide retirement system established and governed by Louisiana statutory law including, but not limited to, La. R.S. 11:2251 *et seq.* This Court finds that during the existence of the aforesaid marriage, Member became a member of, and participant in, the FRS on the following date: _____.

V. The community of acquets and gains that previously existed between the parties acquired an interest in the funds and/or benefits accrued through FRS during the period of _____ through _____.

- VI. Former Spouse shall receive _____% of any funds or benefits that may become payable by FRS to Member, his survivor(s) or beneficiary(ies).
- VII. The FRS shall divide any funds or benefits that may become payable by it to Member, his survivor(s) or beneficiary(ies), with Former Spouse in accordance with the above percentage and shall pay the aforesaid percentage of such funds or benefits directly to Former Spouse at her above address, or such other address Former Spouse may provide to FRS in writing in accordance with the following paragraph.
- VIII. Former Spouse shall provide FRS with a certified copy of this order within thirty (30) days after it is signed and Former Spouse shall inform FRS in writing of all future changes of mailing address within thirty (30) days after such change of address becomes effective.
- IX. If Former Spouse predeceases Member either prior to or after his commencement of benefits, all funds or benefits shall revert to Member, his survivor(s) or his beneficiary(ies) in accordance with La. R.S. 11:291 (F).
- X. The Former Spouse shall be treated as the distributee of any distribution or payments made to the Former Spouse under the terms of this Order, and as such, will be required to pay any local, state or federal income taxes on such distribution.
- XI. This Court shall retain jurisdiction with respect to this Order as necessary to enforce it, interpret it and to maintain its qualified status and the original intent of the Court and the parties expressed herein. Should any portion of this Order be rendered invalid, illegal, unconstitutional, or otherwise incapable of enforcement, or should any of the procedural matters herein ordered need to be adjusted to accomplish the objectives of this Order, the Court reserves jurisdiction to make such adjustments as necessary in order to effectuate the intent of the parties and the Court as manifested herein. If any provision of this Order is inapplicable, it shall be ignored and it shall not affect the validity of the other provisions or of the Order itself. This reservation of jurisdiction shall be liberally construed to effectuate the provisions of this Order and to resolve any disputes that may arise among(st) the parties and/or the FRS concerning benefit payments or any other aspect of this Order.
- XII. The interpretation and implementation of this Order shall: (1) not result in the sum of benefits paid to the Member, Former Spouse and/or any other person being in excess of the

benefits the FRS and/or its Board of Trustees would pay in the absence of this Order; (2) not result in the FRS and/or its Board of Trustees paying any benefit sooner than it would in the absence of this Order; and, (3) be consistent with the actuarial soundness provisions contained in La. Const. Art. X, § 29(E).

XIII. The parties’ signatures on this Order indicate that: (1) they have read this Order and understand it; (2) they freely and voluntarily agree to the terms of this Order (3) they have had the opportunity to consult with their respective attorneys in regard to this Order; and, (4) all issues raised have been addressed and resolved on the terms set forth herein.

THUS, RENDERED AND SIGNED at _____, Louisiana,
this _____ day of _____, 202__.

JUDGE