

Memorandum

Date: March 14, 2012

To: Board of Retirement

From: Marilyn Leedom, Chief Executive Officer
Kurt Schneider, Deputy Chief Executive Officer
Karen Levy, General Counsel

Subject: Designation of More Than One Person To Receive Benefits
Under Optional Settlement 4 – Govt. Code Section 31764



Issue Presented

From time to time, CCCERA members who wish to elect an optional settlement rather than an unmodified retirement allowance request to designate more than one person as their beneficiary to receive benefits after the member's death. A question arose recently regarding whether the retirement system may continue to allow members to designate more than one person as their beneficiary for optional settlements, and what steps need to be taken to allow such designations.

Brief Answer

The County Employees Retirement Law of 1937 ("CERL") allows the designation of more than one person as a beneficiary for optional settlements under Government Code Section 31764 entitled "Optional Settlement 4." Optional Settlement 4 offers a reduced benefit to the member (i.e., lower than an unmodified allowance would pay the member) for the member's lifetime, and thereafter, benefits to more than one designated persons. A member's beneficiary designation under section 31764 must not, "in the opinion of the board and the actuary, place any additional burden upon the retirement system." The Board may, therefore, accept the designation of more than one person as a beneficiary under Optional Settlement 4, so long as certain conditions are met, as set forth fully in this memorandum and the "Optional Settlement 4 Policy" enclosed herewith for the Board's consideration.

Analysis

The CERL allows members to retire with an "unmodified" retirement benefit, which is the maximum benefit available to the member and a 60% continuance to the surviving spouse or minor children to be paid after the member's death. (Section 31760.2.) In lieu of the "unmodified" allowance, the CERL allows members to elect one of four "optional settlement" benefits which provide a reduced benefit to the member for the member's lifetime, and a higher benefit to a designated person upon the member's death. (Sections 31761-31764.) The "optional settlement" must be the actuarial equivalent of the member's "unmodified" allowance at the time of retirement. (Section 31760.)

One of the four “optional settlement” provisions, titled “Optional Settlement 4,” allows the designation of more than one person to receive benefits after the member’s death. (Section 31764.) Optional Settlement 4 provides:

Optional settlement 4 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and thereafter to have other benefits as are approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the persons, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

The designation shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

(Government Code § 31764) (emphasis added.)

This provision authorizes the Retirement Board to accept a member’s designation of more than one person under Optional Settlement 4, provided the following conditions are met:

1. The election must be made by the member in writing;
2. The designated persons must each have an “insurable interest”¹ in the member’s life;
3. The total benefits to be paid pursuant to the election must be the actuarial equivalent of an unmodified retirement allowance, as required by Government Code Section 31760;
4. The designation must not, in the opinion of the board and the actuary, place any additional burden upon the retirement system. To that end, the system has determined after consulting with the Segal Company about the cost of these calculations, that the administrative cost of determining the amount and qualifications of designations of more than one person under optional settlements is \$500 for each such request; and
5. The amount paid to a member’s beneficiary (or beneficiaries) may not exceed the maximum prescribed by Section 401(a)(9)(G) of the Internal Revenue Code, as set forth in Section 5.E of the Board of Retirement Policy on Internal Revenue Code Compliance, adopted on December 8, 2010.

So long as the requirements set forth above are met, the CERL authorizes the designation of more than one person to receive an allowance after the member’s death under “Optional Settlement 4.”

¹ “Insurance Interest” means an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of that person’s death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or law. All four optional settlement provisions in the CERL require that the designated beneficiary be a person with an insurable interest in the member’s life. (See Govt. Code §§ 31761; 31762; 31763 and 31764.)

Conclusion

The CERL allows the designation of more than one person to receive an allowance after the member's death under "Optional Settlement 4." So long as the requirements set forth in the CERL are met, the retirement system must accept these designations. Enclosed for the Board's consideration is a policy setting forth guidelines and procedures for the implementation of Optional Settlement 4 in accordance with the requirements set forth in the CERL, authorizing staff to accept these designations as long as the CERL requirements are met.

It should be noted that CCCERA may not allow any future requests for designations of more than one person under optional settlements unless each designation meets the requirements set forth in the CERL.