

## Party Awarded 100% of a Plan

### SOURCES & AUTHORITIES

Equalization & Offset: Unless the parties agree otherwise, the court “shall...divide the community estate of the parties equally.” *Family Code §2550*. However, the court has discretion to determine the precise method by which the community estate is equally divided. Pursuant to *Family Code §2601*, the court may award a community asset to one party in order to effect a “substantially equal division of the community estate.”

Valuation: In determining whether it is appropriate to award a party the entire community property interest in a retirement benefit, it is vital that the benefit has been properly valued so that the community estate is equally divided. *Family Code §2552* allows the court to value an asset as of the date of trial or, upon notice and good cause shown, as of another date after separation.

For a defined contribution plan or an IRA, in general the value reflected on a plan statement is the value of the account as of the date shown. But it is important to remember that this value could reflect commingled community and separate property contributions which must be calculated. See “Methods of calculating separate property” in the defined contribution and/or IRA sections for more information. Even if both parties have defined contribution plans of relatively equal value, their plans will likely have different features, including different investment choices available and different fees charged to plan Participants, so offsetting them may not be a true apples-to-apples comparison.

For a defined benefit plan, accurate valuation is more complex. Part of the value of this type of benefit is the consistency of the guaranteed stream of income in retirement. For a traditional pension plan, the proper way to value the community interest is with a present-day actuarial valuation conducted by an expert or technology tool. The valuation will consider the Participant’s estimated monthly benefit, their health status, cost-of-living allowances, estimated age of Participant at benefit commencement, and other factors to arrive at a total value of the community’s interest in the plan. In most cases, this is done when the parties wish to offset the pension against another plan or some other asset, such as the former family residence.

Pensions are extremely complex assets and are unlike any other community property. For example, consider a matter where Wife keeps the house (fair market value \$1 million) and Husband keeps the pension (present-day actuarial valuation of \$1 million). For Husband's pension, when he dies, his pension payments stop due to plan features and/or elections he made at retirement. Shortly after divorce, Husband dies. His \$1 million asset's payment stream has ended, but Wife continues to live in and benefit from the \$1 million home. This results in a significant windfall to the Wife, which is a risk the parties may not entirely understand during their bargaining.

Some public pension plans like the California Public Employees Retirement System (CalPERS) will release an “Annual Member’s Statement” that seems to reflect a total value. Contrary to the statement’s

appearance, it does **NOT** show the true value of a CalPERS pension. Most public employees contribute to their pensions, and the Annual Member's Statement reflects only the value of the *employee's* contributions. The employer's contributions are not reflected on the statement at all, and are usually much higher than the employee's contributions. For safety members (e.g., police officers), the employer contributions can be *twenty times greater* than the employee contributions. CalPERS utilizes the image of a "CalPERS buck" to explain the source of pension payments. Based on a 20-year average ending June 30, 2024, for every dollar CalPERS pays in pensions, 55 cents comes from investment earnings, 34 cents comes from employer contributions, and only 11 cents comes from employee contributions. Utilizing the Annual Member's Statement reflecting only employee contributions can lead to a tremendous undervaluing of this kind of pension.