

Chapter 16: Community Property & Divorce

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Frequently Asked Questions

Overview

This chapter discusses some of the legal documents a member may need to submit during the retirement process. All legal documents submitted to LASERS must be certified copies. If members have questions regarding documentation, please advise them to contact the LASERS Legal Department.

Community Property and Divorce

Louisiana is a community property state. All property and debts acquired during marriage are typically split equally, unless the spouses have a legally binding agreement or are subject to a court ruling to the contrary. Retirement benefits, including DROP or IBO funds received or accumulated during marriage, are considered community property. Any contributions made during marriage will also be viewed as community property by a Louisiana court and may be subject to division. Members should be aware that a former spouse could be entitled to a portion of their retirement benefit according to that spouse's community property interest.

NOTE: State law requires that a legally acceptable court order be on file before any community property assets are divided. This court order will dictate how retirement benefits will be divided between the member and the former spouse. If such an order is not presented to LASERS, then the retiree, not LASERS, will be held responsible for any payment of funds due a former spouse. Sample court orders that meet the requirements of the laws governing LASERS are available upon request.

Prenuptial Agreements

State law allows spouses to elect to continue under the separate property regime they had as unmarried persons under limited circumstances. If the member has a marriage contract, marital agreement, or other prenuptial agreement, then the member must provide a certified copy of the document to LASERS. The member must also provide a notarized affidavit, [Married Members with Separate Property Agreements](#), affirming the continuing existence of this agreement. The affidavit should be submitted to LASERS no sooner than 90 days prior to the member's date of retirement.

Remarriage

Members who have been married multiple times may have their retirement benefits divided among multiple former spouses. Please refer to the *Community Property and Divorce* section of this chapter.

Spousal Consent

Spousal consent will be required upon retirement or entry into DROP if any of the following situations apply:

- A member selects a retirement option which does not provide a monthly benefit to his or her spouse of at least 50 percent of the benefit
- A member names a retirement beneficiary other than his or her spouse
- A member does not name his or her spouse as a beneficiary for at least 50 percent of the DROP or IBO account

In any of the above situations, [Form 04-04: Spousal Consent](#) must be signed by the member's spouse in the presence of a Notary Public, notarized, and a certified copy must be submitted to LASERS.

Spousal Consent is **not** required when:

- An agreement or court judgment to maintain separate property exists
- A Judgment of Divorce has been granted
- An interdiction or court order appointing a guardian or curator for the spouse exists (in which case the guardian or curator must give consent)
- The member was abandoned by the spouse

Spousal Abandonment

If a member who has been abandoned by his or her spouse is making a selection in which spousal consent is normally required, then in lieu of [Form 04-04: Spousal Consent](#), the member must submit a certified copy of a court order to LASERS declaring that his or her spouse is an absentee or has abandoned the member. If the member has not obtained a court order, then a combination of the following documents may be accepted instead:

- A notarized affidavit attesting to the fact that the member has been abandoned and has taken steps to locate the spouse (the methods used to locate the spouse should be detailed in the affidavit)
- A certificate from a local newspaper certifying that a legal notice has been run for three days requesting information on the whereabouts of the spouse

Common Law Marriages

Louisiana does not recognize common law marriages. A member is not required to divide benefits unless he or she was legally married.

Assignment or Garnishment of Pension

Retirement benefits or refunds of accumulated contributions paid to a LASERS member, former member, or retiree are generally exempt from garnishment or court-ordered assignment except in the case of a felony conviction, to pay child support, or to satisfy a court-ordered community property division ordering child support.

Requesting the Return of Legal Documents

Members may request the return of any legal document(s) by submitting [Form MSD50: Request for Return of Legal Documents Submitted to LASERS](#). The form should be completed in its entirety and the member must indicate the date on which the document(s) were submitted to LASERS. Only the individual who submitted a legal document may request its return. LASERS retains physical copies of member records for 90 days, per the LASERS Records Retention Policy, and cannot guarantee return of documents beyond that time period.



Members may request the return of legal documents by submitting [Form MSD50: Request for Return of Legal Documents Submitted to LASERS](#).

Frequently Asked Questions

1. Does a member need to have each former spouse sign [Form 04-04: Spousal Consent](#)?

No. Only a member's current spouse needs to give spousal consent if applicable.

2. What happens if a member does not list his or her spouse as beneficiary and/or does not select an option that leaves his or her spouse at least 50 percent of his or her benefit and the spouse is unwilling to give consent?

The member's retirement option will be changed to Option 3 and the member's spouse will be designated as the beneficiary.

Reference Material

APPLICABLE FORMS

- [04-04: Spousal Consent](#)
- [Legal: Married Members with Separate Property Agreements](#)
- [MSD50: Request for Return of Legal Documents Submitted to LASERS](#)

APPLICABLE LAWS & RULES

(Note: this list is not exhaustive)

- [La. R.S. 11:291](#) Community Property
- [La. R.S. 11:292](#) Child Support
- [La. R.S. 11:405](#) Garnishments
- [LAC 58.1.2901](#) Spousal Consent
- [LAC 58.1.2903](#) Spousal Consent
- [LAC 58.1.4113](#) Spousal Consent

APPLICABLE CHAPTER IN MEMBER'S GUIDE TO RETIREMENT

- [Chapter 20: Community Property and Divorce](#)