



# Board Agenda Item 36

DATE: February 26, 2019

TO: Board of Supervisors

SUBMITTED BY: Fresno County Employees' Retirement Association

SUBJECT: Adopt Government Code § 31458.4 Allowing Designation of Beneficiaries

RECOMMENDED ACTION(S):

**Adopt a Resolution (1) making Government Code § 31458.4 applicable in Fresno County, allowing a Fresno County Retirement Association ("FCERA") member's ex-spouse ("alternate payee") who is receiving or is entitled to receive payments from FCERA pursuant to a court order dividing the community property interest in the FCERA member's retirement allowance to designate one or more beneficiaries to receive those payments following the death of the alternate payee, and (2) directing the Clerk of the Board of Supervisors to transmit a certified copy of the adopted Resolution to the FCERA Board of Retirement and FCERA.**

The FCERA Board of Retirement has requested your Board to adopt Government Code § 31458.4 to enable ex-spouses of FCERA members (who are benefit recipients, and who are entitled to a share of the FCERA members' community property under a marital settlement agreement or qualified domestic relations order), also called "alternate payees", to designate one or more beneficiaries. This agenda item allows the alternate payee to make a designation of one or more beneficiaries that may be different from what is provided under California law through the alternate payee's estate (or to provide for the payment if there is no estate created under probate). Currently, without adoption of § 31458.4, the remaining benefits due are paid to the alternate payee's estate.

FISCAL IMPACT:

There are no fiscal or financial impacts from adoption of Government Code § 31458.4.

DISCUSSION:

If §31458.4 is adopted, an alternate payee, due benefits from FCERA, may name one or more beneficiaries to receive any remaining benefit due the alternate payee, upon the alternate payee's death. Absent adoption of §31458.4, the remaining benefits due are paid to the estate of the alternate payee.

The estate might not necessarily provide the same distribution to beneficiaries as an alternate payee's designation under §31458.4.

This agenda item allows the alternate payee to make a designation of one or more beneficiaries that may be different from what is provided under California law through the alternate payee's estate (or to provide for the payment if there is no estate created under probate).

Government Code §31458.4, which was adopted in 1996, is shown below for your reference:

(a) A member's ex-spouse who is receiving or is entitled to receive payments from the system, including a portion of the surviving spouse's allowance, pursuant to an order of the court dividing the community property interest in the member's retirement allowance may designate one or more beneficiaries who shall receive those payments following the death of the ex-spouse. If there is no designated beneficiary, payment shall be made to the estate of the ex-spouse. Those payments shall terminate upon the death of the member or the surviving spouse.

(b) This section shall not be operative in any county until the board of supervisors, by resolution, makes this section applicable in the county.

FCERA requests your Board's adoption of Government Code § 31458.4 because FCERA believes that it typically would reduce the burden on the beneficiary/family of the ex-spouse decedent and improve service by facilitating processing by FCERA staff of benefits due.

FCERA has had instances where the beneficiaries and their distributions would not be in dispute, and it was unable to pay a beneficiary directly and required the beneficiary to establish a probate estate for the decedent (alternate payee).

FCERA notes that beneficiaries utilizing an attorney to assist with an unnecessary probate process results in added costs to the beneficiaries.

FCERA believes adoption of § 31458.4 may save on interest paid by FCERA due to the elimination of delays in making payments to undisputed beneficiaries that result when an unnecessary probate estate must be established.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Resolution

CAO ANALYST:

Debbie Paolinelli