

The Marriage of Green: Are Funds Used to Purchase Premarital Retirement Credits and the Benefit from that Purchase Community Property?

Some fortunate employees are given the option of purchasing additional retirement credits for years of service rendered to another employer. The added retirement benefits for exercising such options are oftentimes far more substantial than the cost of purchasing the additional credits, and thus, is a very appealing offer for many employees. However, when people divorce, they may be surprised as to what their rights are when they or their spouses have exercised this valuable right.

The *Marriage of Green* case which dealt with this issue was decided this year. *The Marriage of Green* provides that retirement credits attributable to employment by a spouse prior to marriage are that spouse's separate property, and remain that spouse's separate property even if community funds are used to purchase those additional years of service. In such case, the community may be entitled to reimbursement only for the funds used to purchase the retirement credits and the community is not entitled to any interest in the actual added benefit of the purchase.

In *Marriage of Green*, Husband served in the military prior to his marriage. At the time he married Wife, Husband was employed as a firefighter and participated in the California Public Employees' Retirement System (CalPERS) Plan. Husband was given the option of purchasing an additional four years' retirement credits in his CalPERS Plan for his years of military service rendered prior to marriage. After Husband married Wife, Husband chose to exercise his option of purchasing four years' of additional retirement credits for his premarital military service, choosing to pay for the purchase of the credits via an installment plan, under which twice monthly payroll deductions were made from Husband's paycheck. At the time the Parties separated, \$11,462.56 of community funds had been used to pay for the purchase of the premarital retirement credits. The added value to Husband's CalPERS Plan of the additional retirement credits far outweighed the cost of purchasing the credit.

At trial, the court held that the purchased service credit was Husband's separate property, found that the community was entitled only to reimbursement for its payments towards the acquisition of the service credits, and ordered Husband to pay Wife one-half of the community funds used for the purchase, plus 6% interest. The community was not otherwise given any interest in the four years of additional service purchased by Husband.

Wife successfully appealed and the Court of Appeal concluded that "because the military service credit was purchased with community funds during the parties' marriage, it was community property." Thus, it determined that Wife was entitled to one-half of the increased benefit resulting from the purchase of the four years of additional retirement credit.

Thereafter, Husband appealed and the California Supreme Court ultimately agreed with Husband and the trial court and reversed the Court of Appeal. The California Supreme Court reiterated the principal that whether pension and retirement benefits are characterized as separate property or community property is determined in accordance with the employee spouse's marital status at the time the services are rendered. Thus, despite the fact that the four years' worth of additional service were purchased partly with community funds and were purchased during the marriage, the Court found that the four years' worth of purchased retirement credit for Husband's premarital military service was *entirely Husband's separate property*. The Court then went on to find that the trial court had properly exercised its discretion in limiting the community to reimbursement only for its contributions towards the purchase of the retirement credit, plus interest. The community (and Wife) were not entitled to any of the increased benefits attributable to the four years of additional service credit purchased with community funds.