


Divorce in The Military: Protect Your Financial Future



If you're going through a divorce, you're probably exhausted by the emotional upheaval and the day-to-day details of carving out a new, separate life. Separation when you or your spouse is a member of the military can pose special concerns, like division of military pensions or survivor benefits.



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One thing that's easily overlooked — or outright ignored — in the turmoil of divorce is what your financial picture will look like down the road. Some people just want out of their marriage as quickly as possible and don't consider the financial ramifications of their actions. But you need to slow down and look to the future.

No doubt, your financial life has been intertwined with your spouse's during your marriage. Perhaps financial struggles even contributed to the end of your marriage — that's not unusual. It is not always possible to completely sever the financial cord with your soon-to-be-ex-spouse, particularly when there are children involved. However, if it is at all possible to make a clean break when dividing the property and allocating the debts, do so.

Dependent Non-Military Spouses

If you are a non-military spouse, you probably rely on the entitlements and benefits provided through the military as a “dependent.” Even if you have a full-time job, you may have been able to get benefits such as health insurance and housing because your spouse is in the military.

These benefits are not necessarily lost merely because you divorce a military member. To better understand what laws may help you, you will want to contact an attorney through the military legal affairs office on base or a private attorney specializing in military issues.

Financial Support for Dependent Spouses

While each branch of the military — Army, Navy, Air Force and Marines — may have different requirements regarding support, all military members are generally encouraged to provide support for their spouses and dependent children when families split. For example, Marines who don't support their

dependents upon divorce may be demoted or discharged. Other branches may impose similar penalties.

To figure out how much money a non-military spouse should get, the following factors may be considered by a court:

- ▶ Any private (non-military) income or resources both spouses may have available
- ▶ Financial obligations of both spouses
- ▶ Salaries of both spouses
- ▶ Costs and expenses of daily living, such as food, groceries, laundry etc.

The Uniformed Services Former Spouses' Protection Act

Generally, if your ex was a military member you may be able to rely on the Uniformed Services Former Spouses' Protection Act (USFSPA) to help you to enforce final divorce decrees, dissolution, annulment, legal separation and court orders that were a part of any of these proceedings. This Act may protect you when the military spouse fails to pay court-ordered child support, alimony or retirement pay considered personal property.

Pay particular attention to the military pension. How a court views the military pension can be important to your financial future. If the court decides that the pension will be treated like any other asset or property that the two of you have acquired during your marriage, you will continue to receive the pension benefit even if you remarry.

But if the court considers the military pension to be a source that the military spouse can use to pay obligations like court-ordered alimony, your rights to receive the support would end if you remarry. This is an important area to explore with your attorney.

In order for the USFSPA to work for you, the state court that handled your divorce must have been careful to protect the military

member's rights if the member was on active duty during the divorce.

The Soldiers and Sailor's Civil Relief Act of 1940 ensures that the military member knows about the court action and has the opportunity to participate, even if the member is on active duty and is unavailable. (For more information about how the Soldiers and Sailor's Civil Relief Act protects military members, you may want to read the Myvesta publication entitled "In the Military and Having Financial Problems: How the Soldiers' and Sailors' Civil Relief Act Can Help You." This publication can be downloaded at Myvesta.org/pubs.)

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Additionally, for the USFSPA to help you to enforce a court order regarding the division of retirement pay as property, the marriage must have lasted for at least 10 years and the military member must have performed at least 10 years of creditable military service during the 10 years of marriage (the 10/10 rule). There are additional jurisdictional requirements that apply as well. The 10/10 rule and jurisdictional requirements do not apply if you are trying to enforce child support or alimony awards.

Under the Act, a former spouse may be able to receive up to 50 percent of a member's disposable retirement pay (gross retirement pay minus allowable deductions).

Where a military member has a wage garnishment to pay child support or alimony and also has been ordered to make other payments under the Act, up to 65 percent of the member's disposable retirement pay can be used to make these payments. Unless a court order states that payments will end earlier, your right to receive payments under the USFSPA will end when either you or the military member die.

If you wish to apply for payments under the USFSPA, you will probably need to complete an application and submit proof that you have a court order stating that you are entitled to receive payments.

In case the military member will not have enough income to pay the amount ordered (for example, if the member has multiple orders to pay) you may want to designate in what order you would like the awards to be paid. To explore this issue further, contact the military legal affairs office on base or an attorney who specializes in military law.

Survivor Benefit Plan (Sbp)

A Survivor Benefit Plan (SBP) is an annuity paid to survivors (spouses and dependent children) of military service members representing a portion of the military member's retirement pay. Generally, when you divorce a military spouse you are not eligible to be a beneficiary for an SBP unless:

- ▶ You got divorced after the military spouse became eligible to receive retirement pay, and
- ▶ Your military spouse specifically elected for you to receive "former spouse" SBP coverage within one year of the divorce, and
- ▶ You were originally a "spouse" beneficiary under SBP.

If the military spouse does not make a "former spouse election" within one year of the divorce, you will be out of luck. As a former spouse, you may want to try and make sure the military member makes the proper election within a year.

To avoid the headaches of wondering whether the military member acted correctly or at the

right time, former spouses have another alternative. If a military member has agreed to make the SBP election and the court approves the agreement, or if the court has ordered the SBP election to be made and the military member doesn't do it, the former spouse election may be deemed to have been made anyway.

For example, suppose your military spouse agreed to elect for you to receive SBP benefits in your marital settlement agreement but never got around to actually making the election. You may be able to request that the election be considered to have been made even though your spouse didn't do it so that you can receive SBP benefits.

Federal Health Benefits

As a former military spouse, you may rely heavily on receiving medical benefits through the military. To decide which spouses will continue to be eligible for medical benefits after divorce, the military looks at certain factors, including the length of time the couple has been married and the length of time the military member has served in the military. Your chances of continuing to receive benefits is greatest if you qualify as a 20/20/20 spouse meaning:

- ▶ your marriage has lasted for 20 years, and
- ▶ the military member has worked at least 20 years of creditable service toward retirement, and
- ▶ at least 20 years of this creditable military service was performed during the marriage.

If your marriage is considered a 20/20/20 marriage, you can expect to be entitled to commissary, theater, exchange and medical benefits until you remarry.

However, if you are covered by your employer's health plan, you will not be entitled to medical benefits. Once you remarry, these

benefits will end. If your second marriage ends in death or divorce, you will probably be eligible to receive benefits again.

Even if you are not a 20/20/20 spouse, you may still be entitled to benefits upon divorce if:

- ▶ your marriage has lasted at least 20 years, and
- ▶ the military member has at least 20 years of creditable service performed toward retirement, and
- ▶ at least 15 years of this creditable military service was performed during the marriage.

In this case, you are considered a 20/20/15 spouse and can expect to receive medical and dental benefits if you are not covered by your employer's health plan and were divorced before April 1, 1985, as long as you do not remarry. If your divorce was entered on or after April 1, 1985, but before September 30, 1988, these benefits should have lasted for a period of two years from the date of divorce or until December 31, 1988, whichever was later. If the divorce was entered on or after September 30, 1988, benefits should have lasted for a period of one year.

Dividing Property

You should be familiar with some basic rules in dividing marital property. First of all, you are generally entitled to divide your property any way you want. It really doesn't matter what the laws of your state say. They apply only if you and your spouse can't agree on the division of property and take your dispute to court for a judge to decide.

Otherwise, you're free to divide your property in the way that makes sense for the two of you.

But let's say you can't agree and do fight it out in court, or you just want to know how a judge would decide things if you can't work it

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out. Then the judge will make a decision based on the rules of your state. These rules can be summarized as follows:

- ▶ The property each spouse brought into the marriage is considered that spouse's separate property, which that spouse gets to take out of the marriage. For example, if you entered your marriage owning a sport utility vehicle, you get to take it with you when you divorce.
- ▶ Similarly, the property a spouse inherited during the marriage is considered that spouse's separate property, which that spouse gets to take out of the marriage. For example, if your great uncle died last year and left you \$5,000, the \$5,000 is yours and yours alone — as long as you didn't mix it beyond recognition with money belonging to your spouse or jointly owned money. If you did, then the entire pool will be considered joint property.
- ▶ Property acquired during the marriage and the income earned during the marriage are generally considered marital, or joint, property. In the nine community property states — Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin — this property, called community property, is divided 50-50. The rest of the states use a property division principle called equitable distribution. There, the property is divided fairly. Often that is 50-50, but sometimes the higher wage earner is given 60 percent to 75 percent of the property.

No matter who decides how the property will be divided — you and your spouse or a judge

— often, one spouse keeps more property than the other and agrees to make up the difference by making one or more cash payments. These payments are sometimes paid over time.

More often, the money is paid down the road a few months, or even years, in a lump sum after the sale of a house or other valuable asset. This agreement works well in theory, but if you're the one expecting payments, make sure your divorce agreement doesn't leave you vulnerable.

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For example, your ex might not make the payments — perhaps out of spite or perhaps because of the lack of money due to a layoff or illness. How will you collect? Sue your ex? Hire a collection agency? Try to re-open your divorce case?

Perhaps you had the foresight to have your ex sign a promissory note (secured by some property your ex keeps, such as the house) agreeing to pay you. If your ex doesn't pay, at least you'd get your share when your ex sells the house or refinances it. But what happens if your ex files for bankruptcy and asks that the promissory note be wiped out? You may be able to protect yourself in advance by specifying in your divorce agreement that the payments are made "in lieu of" alimony or child support — neither of which can be wiped out in bankruptcy. Or, you might be able to protect yourself by including a "hold harmless" agreement in your divorce agreement that essentially prohibits your spouse from wiping out the debt in bankruptcy.

Unfortunately for you, neither of these is foolproof, in which case you'd probably have to spend the time and money fighting the bankruptcy case in court, trying to convince a judge that the detriment to you would outweigh any benefit your ex would get by wiping out the debt. Don't count on winning.

There's only one sure way of protecting yourself — cash in hand at the time of the divorce. If your ex will pay you out of the sale proceeds of an asset, wait until the sale is final, take the money and then finalize your divorce.

Dividing Debts

Allocating debts can be just as tricky, with a similar set of rules. Again, you can allocate your debts any way you want. A judge will apply your state rules only if you can't agree on your own and ask a judge to settle the matter. Then, the following rules will apply:

- ▶ Each spouse is responsible for paying his or her separate debts brought into the marriage. If you had a student loan from before you got married, for instance, you take it with you at divorce, even if your spouse was paying it off during your marriage.
- ▶ Debts incurred after separation but before the divorce is final are generally the responsibility of the spouse who incurred them and must be paid by that person. But both spouses are responsible for paying for family necessities, such as food, shelter and the care of the children.
- ▶ In most states, a spouse is responsible for paying only the debts that he or she incurred during a marriage — that is, you can't be forced to pay the bills your spouse runs up unless they were incurred on a joint account. Then both spouses are fully liable for paying the bills. The rule is different in community property states. There, both spouses are generally liable for all debts incurred during the marriage, unless the creditor was looking to only one spouse for repayment. In community property states, a married person filling out a credit card or loan application alone is asked to indicate his or her marital status. If you check off “married” and

don't assertively state something like, “but I intend that this be my separate debt and I, alone, am responsible for this account,” then the creditor has the right to go after both spouses for payment, even though the account is in just one person's name. This means that all community property and both spouse's separate property might be at risk of being grabbed to pay all community debts incurred by either spouse.

Your divorce agreement doesn't change your existing obligations to your creditors. So even if your ex agrees to pay the bills as a part of your divorce settlement or was ordered to do so in a divorce decree signed by a judge, the agreement or decree is binding on you and your ex alone. If your ex gets laid off or refuses to pay, the creditors will come after you for payment. If you refuse to pay on the grounds that the debts “belong” to your ex-spouse, your credit will be damaged and the creditors may sue you. You might even have to file bankruptcy. If you do pay the bills, your only remedy is try and get your ex to reimburse you. In rare instances, you might find a judge who would re-open your divorce settlement or decree to award you a greater degree of property, but even so, good luck finding your ex-spouse in order to actually get the property.

If your ex files for bankruptcy to wipe out the debts, you could raise in the bankruptcy court the kinds of objections described in the property section, above. If the judge grants the bankruptcy, you too, might be forced to file.

Again, the advice is simple: sever financial ties if you can, especially regarding debts. Don't divide them. Pay them off. Sell assets (including the house) to take care of the bills. File for bankruptcy jointly before your divorce is final if you have absolutely no other option. If getting rid of the debts isn't possible, then

you should agree to pay them in exchange for keeping a greater amount of the marital property.

Only as a last resort should you agree to let your spouse pay the debts. You can't be sure he or she will. If this is your only choice, be

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sure to have your agreement reviewed by a lawyer with expertise in both family law and bankruptcy law who can make the agreement as foolproof as possible. But remember that nothing is guaranteed. Keep your fingers

crossed and hope your ex makes good on the obligations.

Divorce Checklist

- ▶ Close all joint credit card accounts as soon as you become separated or before, if you think separation is imminent and your spouse is continuing to use the card. Remember, you will almost certainly be responsible for any expenses incurred by your spouse during this time.

Just cutting up your card and tossing it in the trash will not close the account. The safest way to close a credit card account is by sending a certified letter, return receipt requested, to the customer service department of the card issuer. Ask the card issuer to close your account and to report your account to credit bureaus as "closed by consumer." You can close your account even if you haven't paid off the balance — the card issuer will close your account but still send you your monthly statements until you pay it off in full. In approximately 10 days, the card issuer should send you a letter confirming that your account is "closed by the consumer." If you don't receive

the confirmation letter, follow up by calling the card issuer to make sure it closed your card and is reporting it properly to the credit bureaus. You may even want to get another copy of your credit report to make sure it is reported correctly. To receive a consolidated credit report, be sure to visit Myvesta.org.

- ▶ Close all open, but unused, joint accounts as soon as possible in the method described above. Make sure that you clearly state why you are asking for the account to be closed and that it not be opened again as a joint account. If you are unsure which accounts may be open, order a consolidated copy of your credit report.
- ▶ If possible, continue to keep current on your bills while you are arranging which spouse will be responsible for which bill. Remember that any joint account your spouse agreed to pay and then fails to pay will go on your credit report. You may consider agreeing to pay debts your spouse incurred on credit cards in your name or on joint accounts only to protect your credit rating.
- ▶ Don't count on the divorce decree to determine which spouse will pay joint debts. When you have a joint account with your spouse, both are responsible for all joint debts, regardless of how the decree divides the debts. Don't be misled into thinking your spouse is now the only one responsible since he or she "promised to pay."
- ▶ When dividing the debts with your spouse, try to avoid giving your spouse any debt that you are solely responsible for. If he or she defaults on the debt, you are the only one that will suffer.
- ▶ Try to establish credit in your own name. If you are employed and have good credit, apply for a credit card in your own name.

- ▶ If you own jointly held real estate you should consult with a real estate attorney to find out the best way to get the real estate in your name only.
- ▶ In case of emergency, you can try to pay off debts by selling assets.
- ▶ Get a copy of your credit report and remove any accounts that were in your spouse's name only.
- ▶ If your spouse fails to make payments as arranged, send a statement 100 words or less to the credit bureaus explaining the situation. Ask to have it attached to your credit report. Future creditors will be able to better understand why the payments were not made. However, that does not excuse the missed payments.
- ▶ Establish a bank account before the separation in your name only. If the other spouse abuses a bank account, like bouncing checks on a joint account, this will make it difficult for you to open a new bank account under your name.

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Where To Get Help

Your local military legal affairs office should be able to advise you of your rights under all applicable laws. To locate an office, contact the military base and explain that you are looking for legal help. Generally, both the spouse and the military member are entitled to free legal help.

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