



# LEGAL BRIEF

## MILITARY ENTITLEMENTS UPON SEPARATION OR DIVORCE

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Being married to a military member entitles family-member spouses to a wide variety of benefits and privileges. These benefits are derived from the military spouse's status as a military member and are dependent upon that status. A divorce directly impacts the benefits to which a family-member spouse is entitled. This pamphlet is designed to cover the impact of separation and divorce on these military entitlements.

### **I. Military Member:**

- A. May collect basic allowance for housing at the "dependent" or "difference" rate if the divorce decree or separation agreement stipulates child support. The amount of BAH is based on the individual's grade and may be terminated if not properly used to support dependents.
- B. May be authorized military family quarters if the military member has physical custody of the children.

### **II. Dependent Spouse:**

- A. Loses all benefits—I.D. card, medical care, commissary, Base Exchange, and use of all base facilities—upon the final divorce decree. (Exception: *See* Uniformed Services Former Spouse Protection Act [hereinafter USFSPA] below). If there is a court-approved separation or interlocutory divorce, the dependent spouse retains all benefits/privileges until the divorce is final.
- B. Not authorized base housing, even if dependent spouse has custody of dependents and even if purported right is given in the divorce decree.
- C. Not automatically authorized alimony or child support payments by allotment.
- D. May be authorized a division of military retirement pay (*See* USFSPA below).

### **III. Dependents:**

- A. Authorized medical care at military facilities (regardless of who has custody).

- B. Authorized retention of unlimited I.D. card if in the custody of the military spouse.
- C. Authorized retention of limited I.D. card if in custody of non-military spouse—typically limited to medical facilities and the base theater. However, access to the Base Exchange may be authorized if child is with nonmilitary spouse and is unmarried, under 21, legitimate or illegitimate, adopted or step-child, and more than 50 percent dependent on the military sponsor for financial support.
- D. Benefits end at age 21, marriage, or at age 23 if full-time student.

#### IV. Other Factors:

- A. On-base quarters may not be stipulated as part of a settlement, divorce decree, or separation agreement. On-base quarters are a benefit of the military member only, and the military member does not have an absolute right to on-base quarters.
- B. Commanders may not order military members to initiate allotment actions to satisfy child support or alimony payments. They also may not order military members to make support payments although they may take administrative action for failure to provide support as required by AFI 36-2906 and UCMJ Article 134. However, courts of competent jurisdiction may order such support.
- C. Involuntary allotments for child and spousal support are possible (*see* USFSPA rights and benefits below).
- D. Garnishment action may be initiated against federal wages for nonpayment of child support or alimony, but you must follow individual state rules on initiation and issuance of garnishment order.

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## UNIFORMED SERVICES FORMER SPOUSE PROTECTION ACT

Divorce in the military can be confusing because domestic situations are governed by a mix of federal statutes, state divorce laws and procedures, and military regulations. The Uniformed Services Former Spouse Protection Act (USFSPA) is a federal law that provides certain benefits to former spouses of military members. Under this law, former spouses may be entitled to portions of the military member's retirement pay, medical care, and exchange and commissary benefits. The Financial Management Regulation, DoD 7000.14-R, vol. 7B, ch. 29, explains what specific language must be included in the court divorce decree. **The USFSPA:**

- Allows state courts to divide disposable military retired pay between the service member and spouse
- Limits awards to former spouse to 50 percent of disposable retired pay

- Allows former spouses to receive a portion of retired pay directly from the government in some circumstances (rather than from the servicemember)
- Grants some former spouses access to health care at military treatment facilities
- Grants some former spouses access to military exchanges and commissaries
- Grants benefits to some victims of spousal or child abuse

**The Uniformed Services Former Spouse Protection Act does NOT:**

- Require courts to divide military retired pay
- Establish a formula for dividing military retired pay
- Award a predetermined share of military retired pay to former spouses
- Require an overlap of military service and marriage as a prerequisite to division of military retired pay as property

**Jurisdiction under the Uniformed Services Former Spouse Protection Act**

The Uniformed Services Former Spouse Protection Act prevents a court from treating retired pay as the property of the servicemember and spouse unless the court has jurisdiction over the servicemember based on the servicemember's:

- Residence other than because of military assignment
- Domicile
- Consent to the court's jurisdiction

**Direct payment of retired pay**

Direct payment of retired pay may be made to a former spouse from the military pay centers if there is a court order or a property settlement that was ordered, ratified or approved by the court, and if the final order specifically provides that payment is to be made from disposable retired pay for one of the following:

- Child support
- Alimony
- Division of retired pay as property if the former spouse was married to the member for 10 years or more, during which time the member performed 10 years or more of creditable service, and the order expresses payment in dollars or a percentage of the member's disposable retired pay

**Direct payments will terminate on these events, whichever comes first:**

- Terms of the court order are satisfied
- Death of the retired servicemember
- Death of the former spouse

**Procedure for request for direct pay**

The former spouse must send the following items to the designated agent of the member's uniformed service:

- Signed DD Form 2293, "Application for Former Spouse Payments from Retired Pay"

- A copy of the court order
- Other accompanying documents that provide for payment of child support, alimony or division of property, certified by an official of the issuing court within the previous 90 days

**Notification to the designated agent can be made by:**

- Regular mail
- Email
- Fax
- Certified mail

**No later than 30 days after effective service, the Defense Finance and Accounting Service:**

- Will send written notice to the affected member at the last known address
- Will consider any response received from the servicemember
- May reject any request for direct pay that does not satisfy requirements
- Will NOT honor the court order whenever it is shown to be defective, modified, superseded or set aside

No later than 90 days after effective service, the Defense Finance and Accounting Service will make payment to the former spouse and inform him or her of the amount to be paid, or send the former spouse an explanation of why the court order was not honored.

**Impact of the Uniformed Services Former Spouse Protection Act on Survivor Benefit Plan Designation**

Generally, when a retired servicemember passes away, retired pay stops unless the servicemember enrolled in the Survivor Benefit Plan. The Survivor Benefit Plan is a monthly benefit paid to the designated beneficiary of a retired servicemember who has passed away. Under the Uniformed Services Former Spouse Protection Act, a former spouse can be designated as a Survivor Benefit Plan beneficiary if the spouse was previously listed as a spouse beneficiary and one of the following conditions exist:

- The servicemember voluntarily keeps the former spouse as a beneficiary; or
- A court orders the servicemember to keep the former spouse as a beneficiary

If the servicemember and spouse get divorced after the servicemember's retirement, the former spouse's coverage will be the same amount as the spouse coverage. If the servicemember and spouse get divorced before the servicemember's retirement, the specific coverage level should be directed by court order. A former-spouse beneficiary is not eligible to receive monthly benefits if the former spouse remarries before age 55, and such ineligibility continues for the duration of the remarriage but may be restored if the remarriage ends.

**The 10/10 Rule**

In addition, for orders dividing retired pay as property to be enforced under the USFSPA, a member and former spouse must have been married to each other **for 10 years or more** during which the member performed at least 10 years of military service creditable towards retirement eligibility (the 10/10 rule).

## **State Jurisdiction**

To enforce orders dividing retired pay as property, the state court must have had jurisdiction over the member through one of the following ways:

1. The member's residence is in the territorial jurisdiction of the court (other than because of military assignment);
2. The member's domicile is in the territorial jurisdiction of the court;
3. The member consents to the jurisdiction of the court; or
4. The member indicates his or her consent to the court's jurisdiction by taking some affirmative action in the legal proceeding.

The 10/10 rule and the jurisdictional requirement do not apply to enforcement of child support or alimony awards under the USFSPA.

## **The 20/20/20 Test**

The USFSPA also permits former spouses to continue receiving commissary, exchange, and health care benefits after a divorce in certain cases. In order to qualify for continued benefits, a former spouse must show that the servicemember served at least 20 years of creditable service, that the marriage lasted at least 20 years and that the period of the marriage overlapped the period of service by at least 20 years. A former spouse who meets these requirements is known as a 20/20/20 former spouse and is entitled to full commissary, exchange and health care benefits. These benefits include TRICARE and inpatient and out-patient care at a military treatment facility. Former spouses who do not meet these requirements lose their commissary and exchange privileges once the divorce is final.

In cases where the servicemember served 20 years of creditable service, the marriage lasted 20 years, but the period of the marriage overlapped the period of service by only 15 years the former spouse is entitled to full military medical benefits only for a transitional period of one year following the divorce. After this year of coverage, the spouse may purchase a DoD-negotiated conversion health policy. Full coverage also requires that the former spouse does not remarry nor enroll in an employer-sponsored health insurance plan. Former spouses who are neither 20/20/20 nor 20/20/15 former spouses are not entitled to any military health benefits after a divorce. But, they are eligible for the DoD Continued Health Care Benefit Program, a premium based temporary health care coverage program for 36 months of coverage until alternative coverage can be obtained, if they enroll within 60 days of losing full military health care benefits.