

# DIVORCE - MILITARY PENSIONS & BENEFITS



**Office of the Staff Judge Advocate**  
**Eielson AFB, Alaska**

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**Legal Assistance & Preventive Law Pamphlet Series**

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## DIVORCE - MILITARY PENSIONS & BENEFITS

Uniformed Service Former Spouses' Protection Act (USFSPA) gives spouses of military members certain rights and benefits after dissolution or divorce. The USFSPA contains several important provisions:

1. It recognizes the right of state courts to distribute disposable military retired pay to a spouse or former spouse, and
2. It provides a method of enforcing those orders through the Department of Defense.
3. It defines which former spouses are eligible to secure access to military sponsored medical benefits, as well as commissary and exchange privileges.

### FORMER SPOUSE'S SHARE OF RETIRED PAY

The USFSPA does **not** automatically entitle a former spouse to a portion of a member's disposable retired pay. A former spouse **must** be awarded a portion of a member's disposable military retired pay in the final court order. Court orders enforceable under the USFSPA include final decrees of divorce, dissolution, annulment, and legal separation, and court-ordered property settlements incident to such decrees. A court has proper jurisdiction to divide retirement pay by the member's: (1) residence in the state, other than because of military assignment; (2) domicile in the state; or (3) consent.

The formula for computing the non-military spouse's presumptive portion of the pension is:

$$\begin{array}{r} \text{(Years of Marriage During Service)} \\ \div \\ \text{(Years of Service X 2)} \\ = \\ \text{Presumptive Percentage} \end{array}$$

For example, SMSgt Mary and Mr. Joe are married for 14 years while SMSgt Mary is in the military. If SMSgt Mary serves 20 years, Mr. Joe will likely get 35% of her retirement, if he has none of his own. This is just a presumptive amount. The court will adjust the percentage for any retirement benefits the non-military spouse has earned in the marriage and for any unequal division of other property. Additionally, these payments are not terminated by the non-military spouse's remarriage.

### DIRECT PAYMENT TO A FORMER SPOUSE

If a court awards a division of retired pay, the former spouse may be able to receive the payment directly from the military pay center. The military 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.

Direct payment is limited to 50 percent of the military member's disposable retired pay. "Disposable retired pay" is the total monthly retired pay to which a member is entitled less disability pay, federal debts, and Survivor Benefit Plan (SBP) annuity premium payments, if the former spouse is going to receive the SBP annuity. The court is not limited to awarding 50 percent, but any portion of an award exceeding

50 percent must be paid by the military member and cannot be made through a direct payment.

## **COURT ORDER REQUIREMENTS**

A certified copy of the court order dividing the retired pay is necessary to receive direct payment.

## **DIRECT PAYMENTS**

To obtain direct payments, the former spouse must send by certified mail, return receipt requested, a copy of the divorce decree (or other court order which divides the retired pay) to: DFAS, Garnishment Operations-HGA, P.O. Box 998002, Cleveland, OH 44199-8002, (888) 332-7411, fax (877) 622-5930

If the submission is not in the proper form, DFAS will return it with instructions. If it is in the proper form DFAS will send the former spouse a DD Form 2293, *Application for Former Spouse Payments from Retired Pay*, to be completed and returned to DFAS.

## **COMMISSARY & EXCHANGE BENEFITS**

Former spouses are entitled to commissary and BX privileges if the spouse has not remarried and the 20/20/20 rule is applicable. The privileges can be regained upon divorce of the remarriage.

The 20/20/20 rule is satisfied if:

- The former spouse and military member were married for at least 20 years;
- The member performed at least 20 years of retirement creditable service; and

- At least 20 years of the member's service occurred while the couple was married. (The marriage and the member's retirement creditable service overlap by at least 20 years).

## **MEDICAL BENEFITS**

Former spouses are eligible for space available medical care if they:

- Remain unmarried (if new marriage is annulled, benefits can be restarted);
- Are not covered by an employer-sponsored health care plan; and
- Meet the requirements of the 20/20/20 rule outlined above. (If divorced prior to 1 April 1985 check with an attorney to see whether the 20/20/15 rule applies).

**This pamphlet is for basic information on divorce as it relates to military pensions and benefits. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.**



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