

DIVORCE AND FORMER SPOUSE LAW

This pamphlet seeks to answer frequently asked questions about divorce in Georgia and about the Uniformed Services Former Spouse' Protection Act. Even in uncontested cases, divorce is a legally involved process that causes emotional and financial strain on the parties and their families. Therefore, it is important to seek legal counsel if an individual contemplates a divorce. Take the opportunity to consult with an attorney in the Robins Air Force Base (AFB) legal office so you can approach the divorce with as thorough an understanding of the process as possible.

1. DIVORCE

a. What are the grounds for divorce in Georgia?

1) There are thirteen statutory grounds for divorce in Georgia. Included among these grounds are adultery, desertion, cruel treatment, habitual intoxication, and habitual drug addiction.

2) The statutory ground most commonly used for divorce is that the "marriage is irretrievably broken," which is commonly called the "no fault" ground. For this ground, the parties do not specifically complain of each other's conduct, but merely state that their marital differences are insoluble and request a change of status.

b. **What are the residence requirements?** One spouse must have lived in the state of Georgia for six months or Georgia must have been the last domicile of the marriage. This period is extended to one year for any person residing in Georgia on a military reservation. A nonresident may file a petition for divorce if the spouse, that is, the Defendant, has been a resident for six months.

c. **Where do you file?** A complaint for divorce should be filed in the Superior Court of the defendant's county of residence or, if the defendant has recently moved from the state of Georgia, in the county of the plaintiff's residence. This would be considered the domicile of the marriage. Upon the defendant's consent, the complaint may be filed in the plaintiff's county of residence regardless of whether the defendant has moved from the state of Georgia or not. However, when the plaintiff resides on an army post or other military reservation, the action may be brought in any county adjacent to the post or reservation.

It is important to remember that before a party may file for divorce, the spouses must be considered legally separated. Spouses are considered legally separated even if they are living in the same house as long as they are sleeping in different rooms and have not reconciled their marriage.

d. **How long does all this take?** The length of time involved will depend on whether the action is contested, and if so, how much the process is slowed down by the tactical maneuvering of the parties and their attorneys. However, the process can be quite short in some situations. If both sides are in complete agreement on the division of property and custody of the children, and they file an agreement on the terms of the divorce petition, the divorce may be granted any time 31 days after service of the petition on the defendant (or filing acknowledgment of service). IF

there is disagreement as to any matter, the divorce will be obtained when the case reaches the court, which can take many months.

e. **What happens while I wait to go to court?** Either spouse may request a temporary hearing. This hearing is not a final trial. A temporary hearing resolves the issues of child custody, visitation, child support, alimony, debts and possession of property on a temporary basis until the final trial. The judge will issue a temporary order that must be followed until the end of the final trial.

f. **What happens at trial?** Questions of child custody and visitation are decided by the judge. The financial issues, such as division of property, division of debts, alimony and certain findings concerning child support are decided by the judge or a 12-person jury. For child support purposes the jury can decide the gross income of the parties and whether any deviations and what deviations should be applied to the child support guidelines.

g. **What about division of property and alimony?**

1) In some respects a marriage is like a business--assets are acquired and liabilities incurred. Thus, when a divorce occurs, just as when a business dissolves, the parties must take into consideration the division of property, and the responsibilities for debts.

2) Marital property is all property acquired during the marriage, except for property received by from a third party or by inheritance. Each spouse is entitled to an equitable share of all marital property acquired during the marriage. The judge or jury will determine each party's equitable share. Please remember that equitable does not necessarily mean equal.

3) A claim for division of property can be tried before a court, or the parties may agree upon a property settlement and have it incorporated into the decree. Once a division of property is made part of the judgment, it may be enforced just as any other part of the judgment may be enforced.

4) An award of alimony may be an issue. Alimony is payment by one spouse to the other for support and maintenance. The court may grant alimony to either the husband or the wife. There are four types of alimony: permanent periodic alimony, lump sum alimony, rehabilitative alimony, and reimbursement alimony. Permanent periodic alimony may be awarded to either spouse based upon the needs of the spouse and the ability of the other to pay. Don't let the word permanent fool you, however. Permanent periodic alimony is terminated if there is no need or ability to pay. Meaning that if the receiving spouse gets remarried or begins cohabitating with another individual, alimony could be terminated. Permanent alimony also terminates at the death of either party. Lump sum alimony is awarded at the trial and is a one-time payout. An example of lump sum alimony would be the receiving spouse to gain title to the marital home or some form of property, rather than receiving monthly alimony payments. Rehabilitative alimony is awarded when the receiving spouse has the opportunity to go to school or gain training in an area that would allow him or her to enter the work force. Alimony may be awarded for a short time while the receiving spouse gets back on his or her feet and finds a job. Reimbursement alimony is awarded when one spouse works and sacrifices in order to put another spouse through school or job training. Under this type of alimony the supporting spouse may be entitled to recover for the time and money spent while supporting the other spouse. It is important to remember to ask for a ruling on temporary alimony in order to assist you during the

divorce proceedings. If alimony is granted, it is enforceable by either an action for contempt, or by execution on property.

h. What about custody of minor children?

1) Few issues cause more concern for the courts and consternation for the parties involved than custody, visitation and support of minor children. In all cases in which an application for divorce is pending, or a divorce is granted, the court may look into all the circumstances of the parties and determine custody. The issue of custody is based upon what is in the best interest of the child.

2) In all custody cases in which the child has reached the age of fourteen, the child has the right to select the party with whom he desires to live. The child's selection is controlling unless the selection would not be in the best interest of the child.

3) Visitation rights are usually set out in the decree. The issue of visitation is never truly settled. As the child grows and the family situation changes, the needs and requirements of visitation obviously change. The court may not review the issue of visitation or modify or alter visitation without the petitioning parent showing that there has been a material or substantial change in condition of either party or the minor.

4) The parents can share custody in some situations. The court can award joint custody to the parents. There are two types of joint custody: joint legal custody and joint physical custody. Joint legal custody means that both parents have equal rights and responsibilities for major decisions concerning the child. Joint physical custody means that physical custody is shared by the parents in such a way to assure the child substantially equal time and contact with both parents. The court can award joint legal custody, joint physical custody, or both.

i. What about child support?

1) It is the joint and several duty of each parent to provide for the maintenance, protection and education of his or her child until the child reaches the age of majority, except to the extent that the duty of one parent is otherwise or further defined by court order. A child in Georgia reaches majority at 18 years of age.

2) Some factors that should be considered in arriving at an agreement on child support are: how long will support last, medical expenses, dental expenses, education expenses, and income tax consequences.

3) A decree which provides for child support is enforceable by action for contempt or by execution on property.

4) There are alternate methods for the enforcement of child support. The Uniform Interstate Family Support Act allows a district attorney to acquire child support from an obligated parent. Also, if a parent abandons a minor child, that is a criminal offense under Georgia law.

5) Georgia recently amended state child support law in O.C.G.A. § 19-5-15, effective January 1, 2007. The new law is based on an "income shares" model that requires consideration of both parents' gross income. Gross income has a broad definition and encompasses salary, commissions, income from self-employment, bonuses, overtime payments, severance pay, recurring income from pensions, interest and dividend income, trust income, capital gains, gifts, prizes, lottery winnings, and income from any other source. Once the monthly gross income is determined the two incomes are added together and the Child Support Obligation Table is consulted to determine the amount of child support. The basic child support obligation is applied to each parent's proportionate share of the combined adjusted income. The amount of child support may be modified by certain deviations provided it is in the best interest of the child to deviate from the presumptive amount of child support. For more information, please see the "Child Support Enforcement" Pamphlet in the legal office or contact the local Office of Child Support Services.

Houston County Office of Child Support Services
92 Cohen Walker Drive Suite 2
Warner Robins GA 31088-2829
Phone: 478-988-7700
Fax: 478-988-7727

There is a link to a child support calculator formatted in Microsoft Excel at the Office of Child Support Services Official Web site: <http://ocse.dhr.georgia.gov/portal/site/DHR-OCSE/>

h. **May a maiden or prior name be restored?** A party may request that the court restore a maiden or prior name.

i. **What about wills and life insurance policies?** Once a divorce has been granted, it is recommended that a new will be executed. Also, do not forget to change the beneficiary on your life insurance policies.

2. FORMER SPOUSE LAW

a. **What is the "former spouse law?"** The official name of the "Former Spouse Law" is the "Uniformed Service Former Spouses' Protection Act." The USFSPA (Public Law 97-252) is codified at 10 U.S.C. Sections 1072, 1076, 1086, 1408, 1447, 1450, and 1451. Passed by Congress in 1982, this law gives former spouses of military members certain rights and benefits after a divorce. There are two main aspects of the law. The first part pertains to a former spouse's right regarding the military member's retired pay. The second part concerns the use of certain military entitlements by former spouses.

b. **How does the law affect retired pay?** The law does not create an automatic entitlement to a member's retired pay. A court in a divorce action may divide military retired pay as part of a property settlement, if state law permits. There is no minimum length of marriage required before this division may be made. The service member need not be retired at the time of the

court action. Additionally, retired pay may be considered when a court awards spousal or child support. This law does not allow a court to consider military retired pay in an divorce-related property settlement unless the court has jurisdiction over the military servicemember or retiree by reason of:

- His or her residence other than by reason of military assignment in the territorial jurisdiction of the court; or
- His or her domicile in the territorial jurisdiction of the court; or
- His or her consent to the jurisdiction of the court.

c. **How much of a servicemember's retired pay can be awarded to a former spouse?**

- Although a court may award a former spouse as much of a member's retired pay as it deems reasonable, there is a maximum percentage that a military finance center will honor and send directly to the former spouse. Whether the maximum is 50 percent or 65 percent of disposable retired pay depends on when the divorce, annulment or legal separation became effective and on the number of support payments.
- If the order became effective on or after February 3, 1991, there is a 50 percent cap on payments under court-ordered divisions of property even where there is more than one payment involved. For example, if the service member is already making a court-ordered payment of 30 percent of retired pay, only 20 percent may be ordered under the Former Spouse Law for the second former spouse. Remember, however, that the cap does not prohibit a court from considering the retirement as income or from ordering the member to make the payments to the former spouse--it merely means that the former spouse will not receive more than 50 percent directly from the military finance center.
- If the order became effective before February 3, 1991, there is a 65 percent cap if more than one payment is involved (former spouse payment and child support payment or two former spouse payments).
- If only one payment is involved, then the cap is 50 percent even for orders, which became effective before February 3, 1991.

d. **What is disposable retired pay?** Disposable retired pay is defined as the total monthly retired pay to which a member is entitled, less certain deductions. These deductions include amounts owed to the United States for previous overpayments of retired pay and recoupments required by law resulting from the entitlement to retired pay. With regard to divorces, annulments, and legal separations effective before February 3, 1991, deductions can also be made for federal, state, and local income taxes and for other debts owed to the United States. However, these deductions have been eliminated with regard to all decrees, which are effective on or after February 3, 1991.

e. **How is the former spouse's share of retired pay computed?** State law, not Federal law, governs how a former spouse's share of retired pay will be computed. Normally, a former spouse is eligible for one-half of the part of retired pay which "accrued" during the marriage. The part of retired pay "accruing" during the marriage is called the "community share." Local law clearly determines the former spouse's share of the member's disposable retired pay. The following examples are how most state courts decide retired pay questions:

Example 1: MSgt A served 20 years on active duty, then retired. During his service, he was married to Mrs. A for 8 years. The community share of MSgt A's retired pay is 8/20 or 2/5 (40 percent) of his total retired pay. Since the marriage was for only 8 of the 20 years of service, only 40 percent of the retired pay "accrued" during the marriage. Upon divorce, Mrs. A is entitled to one-half of the community share, or 20 percent of MSgt A's retired pay.

Example 2: Major B and her husband, Mr. B, have been married for 24 years. Major B retired after 22 years on active duty. The community share of Major B's retired pay is 22/22 or 100 percent of her total retired pay. This is because the B's were married for the entire period of Major B's service. Upon divorce, Mr. B is entitled to one-half the community share, or 50 percent of his wife's retired pay.

The formula generally used for computing the former spouse's share is as follows:

$$\frac{\text{Years of marriage during service}}{\text{Years of service}} \times \frac{1}{2}$$

f. **How and when does a former spouse actually receive his or her share of retired pay?** A court must order the division of retired pay as part of a property settlement upon divorce or dissolution of marriage. If the service member is retired at the time of the court decree, the member must begin payment according to the court order. If the member is not yet retired, payments do not begin until the member actually retires. No court can order a service member to retire at any particular time. If the marriage lasted 10 years or more during the member's service, the former spouse may request the government to issue a separate check each month directly to the former spouse. If the marriage was for 10 years or less during the member's service, the member must make arrangements for payments to be made. If the member fails to make payments, then the retired pay may be garnished.

g. **What if the former spouse dies or remarries?** The former spouse has only a life interest in the retired pay, so payments terminate when the former spouse dies. Furthermore, the payments would also stop at the death of the retired member. The payments Do Not terminate if the former spouse remarries.

h. **What if the divorce took place before the law was passed?** If a final decree of divorce, annulment, or legal separation was issued before June 25, 1981, and did not treat (or reserve jurisdiction to treat) military retired pay as the property of both the military retiree and his or her former spouse, then a state court may not subsequently divide the retired pay between the retiree

and the former spouse. This provision applies to judgments entered before, on, or after November 5, 1990, the date the USFSPA was amended. However, if a court had issued an order dividing previously undivided retired pay before June 25, 1981, the affected retiree must still make any payments, which were due under such order prior to November 1990, and continue to make such payments until November 5, 1992.

i. **Commissary and exchange privileges:** Full privileges for 20/20/20 spouses (meaning the military member served a minimum of 20 years of qualifying service for retired pay with the marriage and the qualifying service overlapping for at least 20 years).

- Lost upon former spouse's marriage.
- Regained upon termination of subsequent, disqualifying marital or death of subsequent marital partner.
- Spouses failing to meet 20/20/20 rule get no such privileges.

j. **Medical care:**

- 1) The 20/20/20 rule states a spouse gets care if:
 - a) not covered by an employer-sponsored health plan,
 - b) under 65 or has a Letter of Disallowance for Medicare, and
 - c) has not remarried (termination of subsequent, disqualifying marriage by divorce or death of partner does not restore entitlement for medical care).
- 2) All 20/20/15 spouses are treated the same as 20/20/20 spouses, provided divorce occurred before 1 April 1985.

NOTE: Determining creditable service for eligibility to retired pay and the overlap with the marriage is complex, especially if the member has reserve or guard time. Do not assume because a spouse has been married at least 20 years to a military member (or former member), who has been serving the military (in some capacity) for at least 20 years, that the spouse is automatically entitled to medical care under the USFSPA (especially if reserve/guard time is involved).

SPOUSES SHOULD ALWAYS VERIFY THE MEMBER'S CREDITABLE SERVICE AND THE NUMBER OF YEARS OVERLAP WITH THE MARRIAGE

SPOUSES SHOULD CONTACT THE BASE MILITARY PERSONNEL FLIGHT (MPF) TO VERIFY USFSPA MEDICAL CARE ELIGIBILITY

k. **Survivor Benefit Plan (SBP)**

1) Member can designate former spouse as SBP beneficiary to exclusion of current spouse.

NOTE: If designation is purely voluntary (not court-ordered or ratified and not pursuant to a written agreement between member and former spouse), it MAY PERHAPS be subject to unilateral change by the member.

2) Court can order member to so designate former spouse.

NOTE: If designation is court-ordered or pursuant to agreement approved by court, designation cannot be changed absent court-ordered modification.

1. **Who can answer my further questions?** If you are an active duty or retired military member, or a still-married military spouse, contact your base legal office for further information about divorce in general. For information about eligibility benefits and Survivor Benefit Plan, contact the Customer Assistance Section of the Military Personnel Flight (DPMAC) at (478) 926-6651.

FOR FURTHER INFORMATION ON THE UNIFORMED SERVICES FORMER SPOUSE'S PROTECTION ACT, CONTACT THE APPROPRIATE FINANCE CENTERS BELOW:

1. AIR FORCE/NAVY/MARINE CORPS

Defense Finance & Accounting Service
Cleveland Center Code L
P.O. Box 998002
Cleveland, OH 44199-8002
(216) 522-5301/5302/5303

2. ARMY

Director, Defense Finance & Accounting Center - Indianapolis Center
Attn: DFAS - IN/DGG
8899 East 56th Street
Indianapolis, IN 46249-0160
(317) 542-2155

3. COAST GUARD/NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

United States Coast Guard
Commanding Officer (L)
Pay and Personnel Center
444 Quincy Street
Topeka, KS 66683-3591

4. DEFENSE LOGISTICS AGENCY

Director, DFAS - Columbus Center
Attn: AEP
P.O. Box 182317

Columbus, OH 43218-2317
(614) 338-7232

5. PUBLIC HEALTH SERVICE
Office of General Counsel
Department of Health and Human Services
333 Independence Avenue, S.W.
Washington, D.C. 20201
(202) 475-1053