

# **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.

## **DIVORCE**

### **WHAT ARE THE GROUNDS FOR DIVORCE**

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

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 cannot be reconciled and they no longer live together.

In Georgia, you must be legally separated before you file for divorce. Although you do not need a formal court-ordered separation, you must intend to be separated and discontinue all sexual relations with your spouse. It is acceptable to remain living together during the divorce proceedings as long as you are sleeping in different rooms and have not reconciled the marriage.

### **WHAT ARE THE RESIDENCY REQUIREMENTS?**

There are two ways to satisfy the residency requirement. First, one spouse must have lived in the state of Georgia for six months – either the resident spouse may file or the nonresident spouse may file if the Defendant spouse has been a resident for six months. This period is extended to one year for any person residing in Georgia on a military reservation. Second, Georgia was the last domicile of the marriage.

### **HOW DOES JURISDICTION WORK?**

Jurisdiction means whether or not a court has the authority to take “control” over something. In a divorce action, there are two types of “things” that the Court must have “control” over to establish an order. First, the court establishes control over the marriage itself through the residency requirements discussed above. This means that if you satisfy the residency requirement, the Georgia Superior Court may grant a divorce. Second, the court must establish control over the defendant spouse (the plaintiff spouse consents to this control when he or she files for divorce) if property is to be distributed or the spouse will be expected to make some type of support payment. This control is established if the defendant spouse lives in Georgia or

consents to the court's jurisdiction. While there are other ways to establish this control, you should ask your attorney if you think jurisdiction may be a problem.

#### WHERE DO I 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.

#### 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. It is not uncommon for it to take several months to get before a judge.

#### WHAT HAPPENS WHILE I WAIT TO GO TO COURT?

There is often a time delay between filing for divorce and actually getting before a judge for a trial. During this delay, either spouse may request a hearing where the judge can make a temporary order covering issues like child custody and visitation, alimony payments, or property rights. This temporary order must be followed until the final order is given by the trial judge.

#### 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.

#### HOW WILL OUR PROPERTY BE DIVIDED?

Financially, marriage is similar to a business – assets and liabilities are incurred and must be appropriately accounted for when the business (or marriage) dissolves. Georgia is an “equitable distribution” state. This means that the court will review all the assets and earnings accumulated during the marriage and assign a percentage to each spouse based upon its discretion for what is equitable. Please remember that equitable does not necessarily mean equal.

The court will first categorize the types of property belonging to the parties. Marital property is all property acquired with assets belonging to the marriage, including wages, items acquired using income earned during the marriage, or individual property converted to marital property. Non-marital property includes items acquired before the marriage or assets belonging to one specific spouse acquired from a third party by gift or inheritance. Mixed property is usually treated as marital property. Only marital property is considered in the equitable distribution.

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.

### HOW DOES ALIMONY WORK?

Alimony is a payment made by one spouse to another for support or maintenance. Either the husband or the wife may be awarded support from the other based on a series of factors considered by the court. The court may consider length of the marriage, a spouse's ability to support himself, educational opportunity, child support payments, or financial resources when making this determination.

The duration of alimony payments is determined by the court. Alimony can be awarded simply to allow the spouse to get back on his or her feet or for a longer duration if the marriage itself was longer. Alimony payments typically terminate, unless otherwise ordered by a court, when one spouse dies or the supported spouse remarries.

The payment method of alimony may also be determined by the court. Alimony can be paid periodically or in one lump sum.

### WHO GETS CUSTODY OF OUR CHILDREN?

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 court will consider the happiness and welfare of the child to determine what is in the best interest of the child.

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.

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 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.

It is important that you are aware of the importance of what type of custody the court may award. Legal custody means that parent has the right and responsibility to make major decisions involving the child. Physical custody means that the parent has the right to time and contact with the child and can make day to day or emergency decisions involving the child. The court may award either type of custody to one or both parents. Be aware, that without legal custody, you would not have the right to make decisions about where to send the child to school, what religion the child should practice, or even what medical care the child should receive.

In January of 2008, Georgia law began to require all divorcing parents to develop a parenting plan. The plan covers topics like decision making, custody schedule, information and record access, and whether supervised visits would be necessary. If the parents are in agreement, they may file a joint plan. Otherwise, each parent must file their own plan with the court.

#### HOW DOES CHILD SUPPORT WORK?

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. This support obligation can also end if the child marries, dies, or becomes emancipated.

In 2007, Georgia changed the way it calculates child support obligations. Now, both parents' gross income is considered in determining the child support amount and then each parent is responsible for their percentage of the amount. The combined total gross income is compared to the Child Support Obligation Table. The amount from the table may be adjusted based on unusual expenses or on what is in the best interest of the child. This final amount is then proportioned between the parents based on their contribution to the overall gross income. So, if the mother contributes 60% of the gross income to the original calculation, she is responsible for 60% of the child support obligation while the father is responsible for the remaining 40%. For more information, please see the "Child Support Enforcement" Pamphlet in the legal office, call the local Office of Child Support Services, or go to the Georgia Child Support Commission website.

Houston County Office of Child Support Services  
92 Cohen Walker Drive Suite 2  
Warner Robins GA 31088  
Phone: 1-844-MYGADHS (1-844-694-2347)  
Fax: 478-988-7727  
Email: [WRobbinsCSE@dhr.state.ga.us](mailto:WRobbinsCSE@dhr.state.ga.us)

There is a link to a child support calculator formatted in Microsoft Excel from the Georgia Child Support Commission: <http://csc.georgiacourts.gov/>

Some of the factors that should be considered in adjusting the contribution amount are: how long will support last, medical expenses, dental expenses, education expenses, and income tax consequences.

A decree which provides for child support is enforceable with many tools, including contempt, an income deduction order, a lien, garnishment, and if a parent is more than 60 days behind in child support the other parent could request that the court suspend a license. (Licenses include driver's, professional, hunting, or fishing)

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 does not pay child support for more than 30 days, he or she can be charged with the criminal offense of abandonment.

#### HOW DO I RESTORE MY MAIDEN NAME?

A party may request that the court restore a maiden or prior name.

#### WHAT ABOUT WILLS AND LIFE INSURANCE?

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.

### **FORMER SPOUSE LAW**

#### 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 involves the spouse's rights regarding the military member's retired pay. The second part concerns the use of certain military entitlements by former spouses.

#### 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:

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

## HOW MUCH OF A SERVICEMEMBER'S RETIRED PAY CAN BE AWARDED?

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. Generally, the standard maximum percentage is 50 percent. However, this can be extended to 65 percent if the amount awarded includes alimony and/or child support.

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).

## 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 recouplements 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.

NOTE: Disability is not considered part of the disposable retired pay.

## HOW IS THE FORMER SPOUSE'S SHARE 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:

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

#### HOW AND WHEN IS THE SHARE RECEIVED?

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.

#### 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.

#### 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.

## 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).

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

## MEDICAL CARE

1. The 20/20/20 rule states a spouse gets care if the spouse:
  - a. is not covered by an employer-sponsored health plan,
  - b. is 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. **All 20/20/15 divorcees can be covered under Tricare for one year and 20/20/20 divorcees' Tricare are covered for life.**

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**



## SURVIVOR BENEFIT PLAN

1. Member can designate former spouse as SBP beneficiary to exclusion of current spouse. If this designation is purely voluntary (not court-ordered or ratified and not pursuant to a written agreement), it MAY be subject to unilateral change by the member.
2. The court can order a member to designate former spouse as SBP beneficiary. If the designation is court-ordered, it CANNOT be changed without another court-order.

## ADDITIONAL RESOURCES FOR INFORMATION

If you are an active duty, retired military, 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:

### 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  
1-800-DFAS411  
[www.dfas.mil](http://www.dfas.mil)

### ARMY

Director, DFAS - Indianapolis  
Attn: DFAS - IN/DGG  
8899 East 56<sup>th</sup> Street  
Indianapolis, IN 46249-0160  
(317) 542-2155  
1-800-DFAS411  
[www.dfas.mil](http://www.dfas.mil)

### COAST GUARD/NOAA

United States Coast Guard  
Commanding Officer (L)  
Pay and Personnel Center  
444 Quincy Street  
Topeka, KS 66683-3591  
[www.uscg.mil/ppc/](http://www.uscg.mil/ppc/)

### DEFENSE LOGISTICS AGENCY

Director, DFAS – Columbus Center  
Attn: AEP  
P.O. Box 182317  
Columbus, OH 43218-2317  
(614) 338-7232  
1-800-DFAS411  
[www.dfas.mil](http://www.dfas.mil)

### 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  
[www.hhs.gov](http://www.hhs.gov)