

## **DIVORCE AND SEPARATION FREQUENTLY ASKED QUESTIONS**

*As a service to our legal assistance clients, we provide this handout to answer frequently asked questions about separations, divorce, and the divorce process. The information contained in this handout is very general in nature; it may not answer your specific questions. Please review the information below in connection with your visit to our legal assistance attorneys so that you may have the fullest information available to help you with your family law problem.*

*Reading this handout is not a substitute for legal advice from a family law attorney. The information is general in nature. You should discuss the circumstances of your case with an attorney.*

Divorce can be a messy, emotional, and expensive process—the very word "divorce" can cause fear and uncertainty. The first step to conquering this fear is to learn as much as possible about the process. Set out below are some commonly asked questions and answers about alternatives to divorce, the divorce process, the issues involved in divorce, and post-divorce legal rights and responsibilities.

### **ALTERNATIVES TO DIVORCE**

#### **Q. What should I do if I do not really know whether I want a divorce?**

A. You should seek counseling. A chaplain or a marriage counselor may be able to help you work through your marital problems. Counseling may clear the air and make communication about the problems possible. Even if you ultimately divorce, the process is simpler and less costly if you are communicating and cooperating with each other.

#### **Q. Can I get an annulment?**

A. An annulment essentially means you were never legally married. There are very few grounds for an annulment. Most states include bigamy, duress, fraud, impotence, kinship, lack of mental capacity, and being underage as grounds for annulment. Annulment has nothing to do with the length of marriage.

#### **Q. Can I prevent my spouse from divorcing me?**

A. No. You may ask the court to delay the divorce to give you and your spouse time to reconcile your differences. The court will eventually grant the divorce, though, if your spouse wants one.

## **THE DIVORCE PROCESS**

### **Q. Where do I start?**

A. Getting educated is the first step. Often, an attorney can help with this. A great first place to start is your local military Legal Assistance Office. Military attorneys cannot go to court on your behalf, but they can help you assess your choices, options, and alternatives.

It is important that you meet with at least two or three attorneys; all lawyers are different and you want to choose one that best matches your own personality, goals, and price range. Most attorneys will offer a 30 minute initial consultation for free or a reduced rate.

When you first meet with your new attorney, make sure you go over all the important facts of your case and outline the goals you have. Do not be afraid to ask questions or point out things that you think are relevant—you may have a unique circumstance that a lawyer's normal intake process does not cover.

### **Q. What can I expect from my attorney?**

A. Your civilian attorney will be bound by state ethics rules. In general, your attorney will have the duty to:

- Keep the information you give them confidential.
- Let you make the major decisions in your case, such as accepting a compromise or going to court.
- Remain open and honest about all aspects of your case, including the chances of success, the good and bad sides of your position, the time needed, and the fee required.
- Release your file to you upon request and with reasonable notice.

You can ask your attorney to explain specifically a) what will be done in your case and b) how much it will cost. Ask the attorney to put this in writing. Your attorney should never hide information from you, or make decisions without consulting you. You should remember that litigation is an inexact science; if your case goes to court, it may take longer and cost more than originally estimated. However, if you feel that your attorney is not responsive to your requests for information about your case, or has missed court dates or failed to follow your wishes, you should check with your state bar association about filing a complaint.

### **Q. Can my spouse and I file our own divorce without the help of an attorney?**

A. Yes, but it may not be in your best interests to do so. A "pro se" divorce is one in which you represent yourself; it is usually possible if you and your spouse agree on every issue (i.e. the divorce is uncontested), and you are able to communicate this agreement to the court. The agreement also must appear fair to the court. Some states have "pro se" divorce forms and instructions to make the process easier. You should consult an attorney before proceeding with this option.

**Q. How much will a divorce cost me?**

A. Costs will vary from state to state and from lawyer to lawyer, but as a general rule, the more you and your spouse disagree on the issues involved, the more expensive the divorce will become. It is a good idea to get estimates from several attorneys. You should find out how much the retainer is and how much the hourly rate is. Ask friends or family who have been through the process to make sure that you are not paying too much. In addition to attorney costs, you will have to pay court costs. Again, these will vary from state to state.

**Q. How long will it take to get a divorce?**

A. That depends on the circumstances of your case. The state in which you have filed may require a separation period or have a congested court schedule. You and your spouse may not agree on several issues and become embroiled in a lengthy divorce process. Disagreement not only causes delays, but will increase your costs significantly.

**Q. What are the grounds for divorce?**

A. Most states now have "no fault" divorces. The only requirement for a "no fault" divorce is that you and your spouse are no longer able to make the marriage work. The grounds for a "no fault" divorce are sometimes referred to as "irreconcilable differences" or an "irretrievable breakdown" of the marriage. "Fault" grounds generally include cruel treatment, adultery, and desertion, as well as others.

**Q. Where should I file for divorce?**

A. You or your spouse must have resided in a state for a certain period of time before you can file for divorce in that state. If your spouse has never lived in the state in which you filed, you may not be able to get a "complete" divorce. That is, the court will only be able to grant a divorce, but will not be able to decide property division or alimony because it lacks "personal jurisdiction," which gives the court the power to order your spouse to do certain things. An attorney will be able to properly advise you about the requirements of a particular state and the best place for you to file.

**Q. Can I file for divorce if I am pregnant?**

A. Yes. Pregnancy does not bar you from filing for a divorce and seeking temporary spousal support or child support for any existing children. A court will not order child support for an unborn child. Paternity and child support will be established after the child is born. Generally, the courts presume that any child born to a married woman is her husband's child. That presumption may be challenged in court during a paternity hearing.

**Q. Can my spouse divorce me without my knowledge?**

A. No. All states require the party seeking the divorce to prove the other party was notified of the divorce proceeding. If the party seeking the divorce does not know where the other party is living, a court may allow notification by publication in a newspaper. If your spouse lies about notification and is awarded a divorce, the divorce can be set aside.

**THE ISSUES INVOLVED IN DIVORCE**

**Q. What issues are involved in a separation or divorce?**

A. The break-up of a marriage often involves five issues: property division, spousal support (or alimony), child support, child custody/visitation, and divorce. Each of these issues can be resolved by mutual agreement or contested in court.

**Q. How is property divided if my spouse and I cannot agree?**

A. In community property states, all property acquired during the marriage is marital property and belongs to both spouses equally. Statutes in these states require the court to divide the property exactly in half between the two parties. In equitable distribution states, a court is not required to divide property exactly in half. It can consider a variety of factors, including the length of the marriage, sources of income and needs of each party, and the custodial arrangement of children.

**Q. Is my spouse entitled to my military retirement pay?**

A. The Uniformed Services Former Spouses Protection Act has authorized state courts to divide military retirement pay, much like a civilian pension. States differ on how they divide retired pay, but courts generally use the following formula:

$$1/2 \quad x \quad \frac{\text{Months of overlap of marriage and service}}{\text{Total months of service}} \quad x \quad 100 \quad = \quad \%$$

**Q. If we do not agree, how will debts be divided?**

A. Debts are divided in a similar fashion to property. Each party is responsible for half the marital debt, unless the court finds this unfair under the circumstances. Marital debt usually includes any debt incurred during the marriage by either you or your spouse. It generally does not matter who is named as the debtor. It is important to remember that you are ultimately responsible to pay the creditor if you are named as a debtor on an account, even if the court orders your spouse to pay the bill. The court order only governs the relationship between you and your spouse; it does not release you from responsibility to the third party creditor. You should cancel all joint accounts or have your spouse put them in his or her name alone to protect yourself.

**Q. Is alimony or spousal support automatically granted?**

A. No. Most states do not award alimony automatically. If one spouse can demonstrate a need for support due to an inability to work, a need to complete education, or another specific rehabilitative purpose, a court may award alimony for a limited time. A court also may grant more or less alimony depending on how the property and debt is distributed.

**Q. Should I ask for joint custody of my children?**

A. Many states have separated custody into two distinct areas: legal and physical custody. Legal custody gives the parent the right to make decisions affecting the child's health, education and welfare. Physical custody determines where a child will reside and who will exercise supervision. Sole legal custody means one parent makes the decisions affecting the child's life and simply advises the other parent. Sole physical custody means the child lives with one parent except during visitation times. Joint custody requires you and your spouse to communicate and reach decisions together. You should discuss the different types of custody with an attorney to determine what will work in your situation.

**Q. How much child support will be awarded?**

A. Most states have guidelines that establish child support. The amount of support is generally calculated using your income and your spouse's income. You may agree to pay more child support than the guidelines required, but you will not be allowed to pay less. You should consult an attorney regarding the applicable guidelines.

**Q. Can I obtain custody of my children even though I am a military member assigned to a deployable unit?**

A. Yes. This factor alone will not automatically bar you from being awarded custody of your children. The "best interests of the child" is the paramount concern in a custody dispute. You can improve your chances in a custody dispute by providing a comprehensive child care plan to the court, which includes appointing a responsible person to watch the children while you are deployed. You should consult an attorney to assist you with your custody case.

**Q. Does the fact that my spouse committed adultery, spouse abuse or other criminal conduct have any impact on my divorce?**

A. It's possible. The court may consider this type of behavior in custody cases if it affects the children. Again, the court is trying to determine what is in the best interests of the children. If conduct demonstrates a lack of judgment, the court will consider it.

## **POST DIVORCE LEGAL RIGHTS AND RESPONSIBILITIES**

### **Q. How do I get military ID cards for my children?**

A. The sponsor must complete the paperwork (DD Form 1172) and have the children's photographs taken at Personnel Support Detachment. If the sponsor and the children do not live in the same location, the sponsor should forward the DD Form 1172 to the custodial parent, who must then go to the nearest military base to get the cards issued.

### **Q. What military benefits will the non-military spouse get after the divorce?**

A. The military categorizes former spouses into three groups and provides different privileges depending on the category:

**20/20/20 former spouse:** The military member has completed 20 years of creditable service, the spouse has been married to the military member for 20 years, and the period of marriage overlaps the period of creditable service by at least 20 years.

**20/20/15 former spouse:** The military member has completed 20 years of creditable service, the spouse has been married to the military member for 20 years, and the period of marriage overlaps the period of creditable service by at least 15 years.

**All other former spouses:** Any spouse that does not fall into one of the other categories.

**Commissary and exchange privileges:** A 20/20/20 former spouse is entitled to commissary and exchange privileges to the same extent and on the same basis as a surviving spouse of a military retiree. A former spouse's full commissary and exchange privileges are suspended upon remarriage, but "revive" when the subsequent marriage is terminated in any manner. No other former spouses are eligible for commissary and exchange privileges.

**Medical Benefits.** There are three categories of health care:

**Full military health care program.** A 20/20/20 former spouse and a 20/20/15 former spouse whose divorce was final before 1 April 1985) will continue to be eligible for military medical and dental benefits. These benefits are extinguished upon subsequent marriage and the privileges will not "revive" if the subsequent marriage is terminated by any cause other than annulment. Tri-Care can be reached by dialing: North Region- 1-877-874-2273; South Region- 1-800-444-5445; West Region: 1-877-988-9378.

**Transitional health care.** An un-remarried 20/20/15 former spouse with no employer- sponsored health insurance is entitled to full military medical care only for a transitional period of one year after the date of divorce. After the first year, the 20/20/15 former spouse is eligible to enroll in a DOD civilian health group care plan. A second year of military health care may be available for pre-existing health problems that are not covered by a civilian health care plan. To qualify for the

second year of limited coverage, the spouse must have enrolled in the DOD-negotiated health insurance plan.

**Continuation of Health Care Benefits Program (CHCBP).** The Continued Health Care Benefit Program (CHCBP) is a premium-based plan that offers temporary transitional health coverage for 18 to 36 months after TRICARE eligibility ends. CHCBP acts as a bridge between military health benefits and your new civilian health plan. It is a healthcare program intended to provide you with continuous healthcare coverage on a temporary basis following your loss of military benefits. For more information, please visit: <https://www.humanamilitary.com/beneficiary/plans-and-programs/chcbp>.

**Legal assistance.** Former spouses are entitled to legal assistance if they are 20/20/20 un-remarried former spouses. A former spouse's legal assistance privileges are suspended upon remarriage, but "revive" when the subsequent marriage is terminated in any manner. No other former spouses are eligible for legal assistance.

**Q. Will my children still be entitled to military benefits?**

A. Yes, provided they have a military ID card. Children are eligible for military medical benefits until they are 18 (or 23 if a full time student). They also are eligible for commissary and exchange privileges, and are entitled to legal assistance.