**1.  A FEW WORDS ABOUT THIS HANDOUT**

Few experiences in life are as disorientating and stressful as the end of a marriage.  This pamphlet is intended only to provide a brief overview of some of the unique issues that may be implicated when a military member is involved. These issues may arise whether the military member is a reservist, on active duty, or a retiree. This handout is designed to be used in conjunction with the laws of the state where the divorce is filed. The base legal office also offers a separate handout entitled *Divorce in Colorado.*

If you need more detailed information or if you are planning to file for annulment or divorce, we encourage you to hire a civilian lawyer. The attorneys in the base legal office **cannot represent** you in divorce court or draft legal documents but they are available to assist you in understanding the law as it pertains to military divorces. We can refer you to the Colorado Legal Services (Adams, Arapahoe, Denver, Jefferson, and Douglas counties), 303-837-1313 for help in your search. Additionals referrals may be provided by the Colorado Bar Association (303-860-1115 or toll free 1-800-332-6736) and the Metro Volunteer Lawyers (303-830-8210). We recommend that you find an attorney who has experience working with military members since there can be unique issues associated with these types of divorces.

**2. MILITARY PENSIONS**

The Uniformed Service Former Spouses’ Protection Act, passed by Congress in 1982, gives former spouses of military members the right to a share of the military member’s retired pay. In Colorado, a nonvested military pension is considered to be marital property and is subject to division just like marital property. In other words, it is not treated as income by Courts in Colorado (and in most U.S. jurisdictions). The Colorado Supreme Court in determining the value of a military pension ruled that it should be based on the amount available when the pension holder retires, not when the divorce occurs. For example, if a military couple divorces after 15 years of marriage and the husband is a major, and retires as a colonel after 26 years of service, then the wife is entitled to one-half of the monthly benefits at the time of retirement as a colonel times 15/26.

Of course, no court can order a member to apply for retirement, or to retire at a particular time in order to effectuate any payment. However, the court can award the member’s spouse a share of retired pay which will become payable when the member retires. In practice, the member and spouse may come to an agreement on the present value of the military pension and agree to a one time cash settlement. This eliminates the uncertainty of when the spouse will receive money and enables both parties to get on with their lives. Also, a divorced spouse can now be awarded Survivor Benefits Plan (SBP). This program allows for the support of the ex-spouse in case of the death of the retiree.

Additional information related to military pensions is available at the Defense Finance and Accounting Service website: www.dfas.mil or you can contact their Customer Service center at 1-888-332-7411.

**3. SURVIVOR BENEFIT PLAN (SBP)**

SBP is a retired pay program, which allows a retiring service member to provide for the support of the spouse (or other eligible beneficiaries) upon the member’s death. If the service member elects full spousal coverage, the government deducts money from the retirement check every month. When the retiree dies, the government pays the surviving spouse 55% of the retired pay until the spouse reaches age 62, when the amount is reduced to 35% of the retired pay (the widow(er) is also eligible for Social Security payments at age 62). SBP benefits end if the receiving spouse remarries before age 55. However, if the spouse’s second marriage ends in divorce or death he/she may reapply for SBP payments arising from the earlier marriage.

SBP is an annuity program. An annuity is a monthly payment for the lifetime of the beneficiary. When the retiree dies and is not survived by a spouse, the benefit does not pay to anyone. Unlike a life insurance policy, SBP limits the retiree's opportunity to name an alternate beneficiary. On the other hand, if the retiree does not have a spouse (for instance, if the spouse dies before he/she does), then no money is deducted from the retirement check. If service member remarries, the retiree may elect to include the new spouse in the program.

SBP can play an important role in divorce cases. A divorced spouse can now be covered by SBP. Coverage does not occur automatically but the law now recognizes an ex-husband/ex-wife as a potential beneficiary. This can be a hotly-contested issue in divorce, since payments for SBP coverage can take a big chunk out of a retiree's check.

There's a one-year statute of limitations for doing the military paperwork after the SBP coverage is awarded in a divorce case. Just because the military continues to deduct the SBP premium after the divorce doesn't mean you are still covered. If an SBP “former spouse" request has not been filed with the proper military office, upon the death of the retiree, the government will simply refund the premiums to the deceased's estate and pay the former spouse nothing. The court can hold a service member in contempt if they refuse or fail to complete the ordered paperwork.

Additional information related to the Survivor Benefits Plan is available at the Defense Finance and Accounting Service website: www.dfas.mil or you can contact their Customer Service center at 1-888-332-7411.

**4. BASE HOUSING**

If the member no longer resides in quarters, his family must move off base. The family will be afforded time to move but will probably have to pay for the move themselves. Once the member takes definite action (i.e. renting apartment or filing divorce action), a termination letter should be sent to the housing office. In other words, a non-military spouse generally cannot remain in base housing following a divorce.

**5. BASIC ALLOWANCE FOR QUARTERS (BAQ)/BASIC ALLOWANCE FOR HOUSING (BAH)**

Children still qualify as dependents for the purpose of setting the BAH rate, even if the civilian parent has custody after the divorce. If the service member pockets the increased BAH and fails to pay child support, the member may face UCMJ punishment for defrauding the government.

How much support must a with-dependent rate BAH-receiving serviceman pay to the estranged spouse for spousal and child support? In the absence of a court order, a unit commander may require that the serviceman pay a portion of their check for support. This will often be the case while the parties are separated but not yet divorced. There is considerable variation of amount among Air Force commanders, but the measure of difference between the single and with-dependents rates is generally the minimum. The question is often the center of dispute, because it is permissible to support one's dependents "in kind" (i.e. with food, shelter and clothing) rather than with a check.

The instructions which govern your BAH entitlement may sometimes result in unfairness where both partners to the marriage are on active duty. There is a DoD directive that authorizes with-dependent rate BAQ to the party that provides more than 50% of the child's support. Of course, after being paid the higher BAQ his or her actual cost for child support may be less than that of the other party.

**6. SERVICEMEMBERS’ GROUP LIFE INSURANCE (SGLI)**

Most service members designate their government insurance to be paid “by law.” If the service member divorces, the ex-spouse is automatically excluded as beneficiary. The ex-spouse may be designated by name as a beneficiary (for example, to guarantee the spouse an income after the termination of alimony upon the service member’s death) but there are hidden hazards in this practice. There is a natural tendency for a serviceman to forget about court-required insurance and revert back to the “by law” designation. Unlike commercial insurance, SGLI will be paid to the “by law” beneficiary even if a court order says otherwise.

If a party is required to maintain SGLI coverage for the children, it's a good idea to require that she/he also execute a special power of attorney authorizing the other party to examine the military records to ensure that the beneficiary election does not, through choice or mistake, revert to a “by law” election.

**7. TRICARE/MEDICAL CARE**

Generally, the non-military spouse will forfeit their medical care coverage following a divorce. However, a former spouse can retain full medical benefits following a divorce if the following conditions are met: (1) they are unmarried; (2) do not have medical care coverage under an employer sponsored health plan; (3) and were married for at least 20 years during which the military member or former member completed 20 years of retirement credible military service (or 15 years of retirement-credible service if divorced prior to April 1, 1985).

**8. I.D. CARDS**

Like military medical care or Tricare, in most cases, the non-military spouse will forfeit their military ID card and all of the benefits that come with the card. These benefits include, but are not limited to, access to the Base Exchange and Commissary. A former spouse can retain the benefits if: (1) they are unmarried; and (2) and were married for at least 20 years during which the military member or former member completed 20 years of retirement credible military service. Once the former spouse remarries they are disqualified but can regain eligibility for these benefits upon termination of the disqualifying marriage by death or divorce.

**9. FAMILY SUPPORT REQUIREMENTS**

In the absence of a court order or during a period of separation before a final divorce decree is entered by the court, a military member is generally required to continue to support his or her family (i.e. dependent spouse and children). However, it is important to note that although each military branch requires its members to provide financial support for his or her family members, each branch’s respective approach is different. Therefore, it is important that you seek the appropriate legal advice in order to understand your rights as this may impact the amount of support that is required.