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Top Considerations for Military Families Considering Divorce

The U.S. military is the guardian of our nation. As Elmer Davis put it, “This will remain the land of the free so long as it is the home of the brave.”

Despite the well-deserved honor that comes with military service, complications can arise when you divorce. In addition to the state laws that ordinarily apply, you have to comply with certain federal laws as well as military regulations. This is why you need to work with a Texas attorney who understands military divorce.

As a former reservist assistant judge advocate general (JAG) in the U.S. Army, Attorney Russell Amsberry is familiar with these challenges. He has been assisting service members and their spouses with their family law matters for years, and has put together this free special report, which highlights top considerations for military families considering divorce.

Civil proceedings during active duty

The Servicemembers Civil Relief Act (SCRA) protects the rights of service members while they are on active duty. When one spouse files for divorce and serves the paperwork, the other spouse normally has to respond within a certain time frame.

Under the SCRA, however, if you are unable to attend because of duty, the proceedings are stayed or postponed until 60 days after you return from active status. This measure was enacted after too many servicemen and women returned from months overseas to find themselves divorced without their knowledge.

Child custody in military divorce

If you're a military parent, you may be worried that the possibility of deployment will affect your parental rights during the divorce. If you and your spouse can't agree on a custody arrangement, the court will determine which outcome is in your child's best interests. This means that you can potentially receive joint custody and even full custody.

In Texas, you can transfer your custody and visitation rights to another party, such as your parents or an adult sibling, during periods of active duty. As soon as you come home, you resume your custody rights and can even seek additional visitation to make up for the lost time.

Child and spousal support matters

Regarding child support, under Texas law the amount payable depends on how many children you have. For example, support for one child amounts to 20% of your net resources while with two children the percentage increases to 25%. With spousal support, the court may award short or long-term maintenance depending on the length of the marriage, each spouse's income, the requester's need for support, and the payor's ability to pay.

These guidelines are dictated by state law, but the challenge is that service pay varies from a traditional paycheck in multiple respects. Job-specific factors like food and housing benefits, military allowances, and hazard and combat pay can cause your income to fluctuate, making it difficult to accurately estimate your income for support purposes. An experienced military child and spousal support attorney can help you address these issues without jeopardizing your own financial stability.

Property division between military spouses

Texas is one of nine community property states. This means that with few exceptions, any property acquired during the marriage is owned equally by both spouses. The exceptions include:

- Assets that each party owned before getting married (although any accrued value may be subject to division)
- Property designated as separate in a fair and valid prenuptial agreement
- Property that one spouse inherited, received from a third party as a gift, or recovered in a personal injury lawsuit

You and your spouse can negotiate a division of marital assets and debts or, if you cannot agree, the court will divide community property in a manner that it deems “just and right.” A Texas military divorce lawyer will protect your right to a fair division, so that divorce does not leave you at a financial disadvantage.

Division of military benefits

Under the Uniformed Services Former Spouse Protection Act, a military ex-spouse may receive healthcare, commissary, and exchange benefits if they meet what is known as the 20/20/20 rule, which are:

- They were married to a military member for at least 20 years at the time of divorce
- Their military spouse performed at least 20 years of service creditable in determining retirement pay eligibility
- They were married to the military member during at least 20 years of the latter’s eligible service

If you meet these criteria, you will still be able to access Tricare, the commissary, and the exchange after divorce, but if you remarry, all of these benefits are forfeited. If you have minor children together, they will still qualify for military benefits, no matter how long you were married and even if you remarry.

Under the USFSPA, military retirement pay (minus qualified deductions) can be divided in divorce, provided that you have been married for 10 years or longer and your former spouse performed at least 10 years of creditable military service. You can also be designated as a Survivor Benefit Plan beneficiary to receive an annuity when your former spouse dies, provided that you elect "former spouse coverage" within one year of the divorce.

What about VA disability pay?

Unlike military retirement pay, Federal law does not allow states to treat Veteran’s Affairs disability payments as marital property and divide them in a Texas divorce action. If you develop a service-related disability, you can apply for payments, but if your disability rating is under 50%, you must waive retirement pay on a dollar for dollar basis.

Contact a Texas law firm that understands military divorce

Divorce among service personnel can be complex, which is why it is essential that you work with an experienced military divorce attorney who can help you navigate the complicated laws surrounding child custody, property division, and proper allocation of military benefits once the divorce is complete.

At the Amsberry Law Firm, we will safeguard your interests during negotiations or litigation and even help you pursue modifications to support orders if your circumstances change. If you are deployed and unable to be present during divorce proceedings, Attorney Russell Amsberry offers remote legal representation, so that you can rest assured that your rights are being protected. To schedule a free consultation, please contact the Amsberry Law Firm.