

Military Divorce

Written by Loretta Smith

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If you are a military servicemember, former military servicemember, or the spouse of a current or former servicemember, you know there is a mind boggling number of acronyms and labels used in navigating military life. To the uninitiated, it seems almost like a foreign language. This is even more true if you are contemplating a "military divorce".

A divorce between a military servicemember and his or her spouse involves all of the elements of any other divorce in Georgia – the division of marital assets, the division of marital debts, possible alimony, child custody, visitation, child support, etc. However, if you find yourself in this position, you owe it to yourself, and your children, to consult with an attorney who at least has a working knowledge of the military jargon and elements of a divorce that are specific to military situations. Below are some of the area your attorney should know how to handle.

Support Prior to a Court Order: Every branch of the military, save one, has specific guidelines to dictate a minimum amount of support a military servicemember should provide to his spouse and/or children up until the time that a Court issues an order dictating the amount. The policies all are dependent upon whether or not support is ordered for the spouse and the number of children covered. For instance, per the Navy nonsupport policy, a commander can direct a servicemember with a spouse and two children to pay 3/5 of his gross pay (base pay plus BAH) for family support until there is a court order in place. While the spouse usually initiates this support by contacting the servicemember's commander, an attorney involved in the case should be aware of these policies and able to advise his or her client.

Child Support: The Georgia child support guidelines contain specific guidance for determining the portion of a servicemember's pay which is considered for child support purposes. Base pay and basic allowance for subsistence (BAS) must be included. Basic allowance for housing (BAH) must also be included, but only at the non-dependent, non-location rate. Other bonuses and special categories of pay (reenlistment bonuses, hazardous duty pay, etc.) may be considered. An attorney competent to handle a military divorce will be aware of what goes into military pay, how to read a leave and earnings statement (LES) and how to argue for or against the permissive categories.

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Family Care Plan: Under Georgia law, a judge must consider the best interests of the child in any case involving custody. The legislature enacted, in 2011, some very detailed guidelines for temporary modification of custody or visitation in the event of a deployment. The Family Care Plan, required of the military for all single parents, must be consistent with any such court order.

Tricare: It is common knowledge that active duty military servicemembers and certain retired servicemembers and their families are covered under the Tricare insurance plan selected by the servicemember, but what happens after a divorce? Are children still covered? (Yes, a servicemember's biological children and any children he or she has adopted remain covered). What about step-children? (No, unless the servicemember has adopted the step-child, coverage will cease on the day the divorce is final). What about coverage for the former spouse? (If the marriage lasted for 20 or more years, the servicemember has served for 20 or more years, and there is at least a 20 year overlap between the marriage and the service, then the former spouse will be eligible for full Tricare benefits for life, unless she remarries or has an employer sponsored health plan. (The 20/20/20 rule). If the overlap is between 15 and 20 years, the spouse will be eligible for Tricare benefits for one year. (The 20/20/15 rule). Former spouses who don't fit into one of those categories are not eligible for continued coverage, and their coverage is terminated as of the date of the divorce). There is a COBRA type coverage available to most former spouses through the Continued Health Care Benefit Program (CHCBP). This insurance is through a private insurer but is designed to have comparable benefits to Tricare. Beware however, the CHCBP may be considered pricey and premiums must be paid 3 months at a time.

Thrift Savings Plan (TSP): TSPs which were accumulated during the course of the marriage are considered marital property in Georgia and subject to equitable division. There is specific language that must be included in a Final Order in order to divide the TSP. Make sure your attorney knows what this is or how to find it.

Military Pension: Likewise, the portion of a military pension which was accumulated during the course of a marriage is marital property, **regardless of the length of the marriage**. A common misperception is that the marriage must last ten or more years before the pension can be divided. The truth is, a court can divide the pension earned during a shorter marriage, however, the Defense Finance and Accounting Service (DFAS) will only directly divide the pension if the marriage has lasted ten or more years. With shorter marriages, if there is a division order, the servicemember, upon retirement, will be directed to make a payment to the former spouse for each pension payment he or she receives. There are many factors involved in drafting a Military Pension Division Order (MPDO). Your attorney should be able to navigate through that process or else you need to be

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willing to pay a third party to draft this order.

Survivor Benefit Plan (SBP): One thing that will need to be determined prior to drafting an MPDO is whether there will be SBP coverage for the former spouse. Whether to agree to an SBP for the former spouse or whether to ask the judge to order such coverage is both an emotional and a financial decision. If an SBP is in place, the beneficiary would receive 55% of the pension amount of the servicemember's pension pay each month should the servicemember pass away. However, in most circumstances the premiums for an SBP are steep as compared to other types of life insurance. Your attorney should be aware of and know how to evaluate these factors.

Servicemembers Civil Relief Act (SCRA): There is protection available through the SCRA for a servicemember who is deployed or otherwise unable to attend hearings because of military duty. However, this Act has specific requirements that must be met before the proceedings can be stayed. An attorney representing the servicemember or the spouse should be well familiar with the SCRA so he or she can secure a stay, where necessary, or can defend against the abuse of this procedure.

The above list is by no means exhaustive. There are other factors peculiar to military life that may need to be taken into consideration in a military divorce. Please make certain that an attorney representing you in such a divorce has enough knowledge of these factors to protect your interests and to get the most fair outcome possible. You should also be aware that a final divorce order should be considered a "one-shot deal". While certain portions of an order (child support, visitation, alimony) may be modified in the future as a result of a change of circumstances, a division of property will not be. Make sure you have representation who will get it right the first time.

To schedule a free 30 minute consultation about your military divorce, call 678-310-8002.