

# THE MEN'S MILITARY DIVORCE MANUAL



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**TACTICAL TRAINING**  
BY THE FIRM FOR MEN

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*Dear Potential Client,*

First, if you're one of the many military men who so bravely serve us daily, thank you for your service! As a former military servicemember, I understand and appreciate the sacrifice. Second, if you're beginning the process of a military divorce, I hope this guide can bring you clarity.

In February, 2015, the Department of Defense happily announced that the rate of military divorces dropped to a mere 3.1 percent, the lowest level in 10 years. This continues to mark a steady downward rate, and indicates the strength of military marriages overall. Still, for some servicemembers, divorce can be a necessary solution to a difficult situation. Whether you and your wife cannot agree on a future together, are finding that you make better friends than spouses, or cannot adapt your marriage to match your military service, divorce can provide a relief, a way to recover a lost part of yourself.

For Virginians on active military duty, retired, or serving in the Reserve or National Guard, divorce is unlike civilian divorce proceedings. Nearly everything, from residency requirements to pensions, is made more complex by a man's connection to the military. In this guide, we'll cover everything from separation and property division to father's rights and custody issues for those here and abroad. Knowledge is power, and we aim to empower you to take control and protect what is yours!



*Jason Swango*

**CEO & Founding Attorney,  
The Firm For Men, Swango Law P.C.**

## **ABOUT THIS GUIDE**

At **The Firm For Men, Swango Law P.C.**, we have been advocating for men's and father's rights for over a decade, sharing passion and knowledge wherever we go. We represent men exclusively in family law cases, including contested and uncontested divorce, military divorce, custody, and all related family law matters.

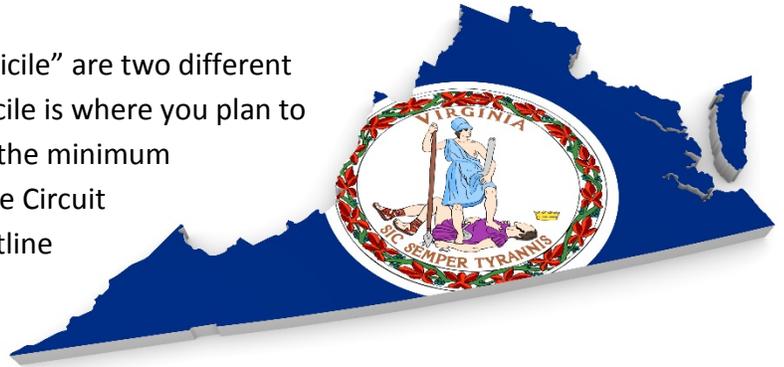
*The Men's Military Divorce Manual* was designed for information purposes only and should not be construed as legal advice. The information provided in this eBook should give you a basis for divorce law in Virginia. Please consult Attorney Jason Swango regarding any questions you may have because of this publication.

# VIRGINIA RESIDENCY AND FILING REQUIREMENTS

Normally a Virginia divorce attorney files on behalf of a husband seeking a divorce in Virginia. This is accomplished by filing papers with the Circuit Court for the county in which either the husband or wife has legal residency for at least six months before beginning the divorce. This is outlined under the Code of Virginia, § 20-97. “Domicile and residential requirements for suits for annulment, affirmance, or divorce.”<sup>1</sup>

## Residency & Domicile

The phrasing is not casual. “Residency” and “domicile” are two different concepts. Residency is where you live now. Domicile is where you plan to stay permanently. The same law that establishes the minimum requirements — six months in Virginia, filing in the Circuit Court most closely allied to your home — also outline conditions for military divorce.



## HOR vs. SLR

Your “home of record (HOR)” is not the same as your “state of legal residence (SLR),” because in the military, your HOR is the state where you first enlisted or the state from where you received a commission. Having an HOR not in Virginia permits benefits such as a travel allowance back to that state when you leave the military.

Your SLR is your permanent home, what Virginia would consider your domicile. It is the state you intend to reside in after leaving the military, and the same state you use for state income tax filing. Other benefits come from your SLR, such as earning in-state tuition rates for college, voter eligibility and probating wills.

Your military duty could take you outside Virginia, without affecting either your HOR or SLR designations, either or both of which could be Virginia. Your HOR can only be changed if it is in error (you enlisted in Virginia but your HOR is recorded as Maryland) or if you take a break in military service (leaving the service and later re-enlisting).

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<sup>1</sup> <https://law.lis.virginia.gov/vacode/title20/chapter6/section20-97/>

## Changing Your SLR

SLR can be changed by you anytime during your military service. You file a DD Form 2058<sup>2</sup> or State of Legal Residence Certificate, indicating your intent to make the state your legal residence after you leave the service. You may need to show proof, such as a driver license, voter registration card, or vehicle registration from the state, to back up your claim.

Living in Virginia for six months establishes your legal residency in the state. The military views your domicile as the place you plan to stay in after the service, which could or could not be Virginia. You may be stationed in Virginia and have chosen to rent an apartment off base for the duration of your posting; that apartment is presumed to be your domicile and allows you to file in Virginia for divorce. § 20-97 even states explicitly<sup>3</sup>,

*“If a member of the armed forces of the United States has been stationed or resided in this Commonwealth and has lived for a period of six months or more in this Commonwealth next preceding the filing of the suit, then such person shall be presumed to be domiciled in and to have been a bona fide resident of this Commonwealth during such period of time.”*

## Can Your Wife Have a Different Domicile?

This is all well and good; you know where your HOR and SLR is, and you have established six months' residency in Virginia. But can your wife have a different domicile?

Because of the **Military Spouses Residency Relief Act (MSRRA)**, the spouse of a military man can establish her domicile either in the same state as her husband or in a different state.

If your wife moved from her home state, say, of Kentucky to be with you while you served in Virginia, she could keep Kentucky as her domicile, retaining her Kentucky driver license, voter registration, and other Kentucky-based aspects of life. She could retain a Kentucky business license, for example, or own Kentucky property, or have a will written by a Kentucky attorney.

This means, while Virginia is your domicile and your state of legal residency, her legal residency is unimportant for filing divorce papers; her domicile is Kentucky. Only one of you needs to be a legal resident of Virginia for the state to have jurisdiction over the divorce. This makes her old Kentucky home downright inconvenient to her, since all the hearings, motions and testimony will be given in Virginia courts.

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<sup>2</sup> [http://armyrotc.sdsu.edu/forms/DD 2058 State of Legal Residence.pdf](http://armyrotc.sdsu.edu/forms/DD%2058%20State%20of%20Legal%20Residence.pdf)

<sup>3</sup> <https://law.lis.virginia.gov/vacode/title20/chapter6/section20-97/>

# PROTECTION FOR SERVICEMEMBERS ON DEPLOYMENT

You cannot live your life on pins and needles wondering when you may be deployed. If your marriage is a burden, you have every right (and some would say a personal responsibility to your true soul) to seek a divorce.

You can initiate divorce proceedings and then, thanks to the Servicemembers Civil Relief Act (SCRA) suspend the process while you serve overseas. The SCRA allows a court to stop proceedings either you or your wife may have begun, since you cannot reasonably be expected to conduct the various aspects of a divorce from, say, a base in the Middle East.

If you are overseas and wish to file for divorce while deployed, so long as you have legal residency in Virginia and your attorney is willing to handle your case, you can proceed. Much of the process will be harder for you because of distance and time differences, and this method usually only works well in uncontested divorces.

## **Servicemembers Civil Relief Act (SCRA)**

The SCRA<sup>4</sup> protects military service members in civil matters and can protect your legal rights in tangles such as:

- ▣ Divorce
- ▣ Child support issues
- ▣ Spousal support cases
- ▣ Foreclosures
- ▣ Bankruptcies
- ▣ Lease and contract disputes
- ▣ Enforcement of Virginia civil laws, such as the state's Lemon Law<sup>5</sup>
- ▣ Lawsuits such as personal injury claims

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<sup>4</sup> <https://scra.dmdc.osd.mil/>

<sup>5</sup> <http://www.oag.state.va.us/index.php/13-resource/188-lemon-law>

The SCRA allows you, deployed overseas, to participate in the case either by video conference or some other method acceptable to the court, or to delay the case altogether. Its primary aim, as far back as World War II, was to prevent unscrupulous lenders from foreclosing on servicemembers' homes during deployment, and to protect servicemembers from predatory lenders and landlords.

Your wife cannot use the SCRA to delay a divorce, if she is not a servicemember. The SCRA protects the servicemember only.



# THE SEPARATION AGREEMENT

Code of Virginia<sup>6</sup> enshrines the interchangeable “separation agreement” and “property settlement agreement” in § 20-155, “Marital agreements:”

*“Married persons may enter into agreements with each other for the purpose of settling the rights and obligations of either or both of them, to the same extent, with the same effect, and subject to the same conditions, as provided in §§ 20-147 through 20-154 for agreements between prospective spouses, except that such marital agreements shall become effective immediately upon their execution.”*

This means your military divorce could go through easily and relatively quickly if both you and your wife agree on terms within the separation agreement.

## Why Use a Separation Agreement?

Unless you have unlimited funds to pay your attorney to fight and squabble over every aspect of your divorce, a separation agreement will succinctly (for a legal document) spell out just about everything that needs to be decided in a divorce:

- ▣ Property division
- ▣ Child custody and visitation schedules
- ▣ Spousal support

That may not sound like much of a list, but bear in mind property means real estate, jewelry and furs, retirement funds, bank accounts, stock ownership, and more. Getting agreement on caring for and supporting your children is also a huge part of divorce.

Most fights in divorce center over those three areas; surprisingly few Virginia divorces focus on who did what to whom. If you and your wife can agree on how you will divide up your marital and personal property, how you will care for and provide financial support for your children, and how one spouse might support the other through the transition to independence, you can expedite the divorce itself.

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<sup>6</sup> <http://law.lis.virginia.gov/vacode/title20/chapter8/section20-155/>

## Do You Have to Sign a Separation Agreement?

Virginia law is very lenient; it allows you to get into a lot of trouble all by yourself. You are not obligated to sign a separation or property settlement agreement, and your attorney will caution you not to sign anything until it is carefully scrutinized. A property settlement agreement prepared by your wife's attorney could look deceptively simple, but it is a legally binding document. Avoid trying to rough it out over drinks and words on napkins. Leave it to your attorney, and take your time to get it right.

Neither party *must* sign the agreement when it is completed. Along the way you may have had to forfeit something that you would rather not budge on, like giving up a prized possession or only seeing your children every other week. Chances are, though, both attorneys will work hard to get the best compromise that the court will agree with, for the good of you, your wife, and any children you may have.

## Modifying an Existing Separation Agreement

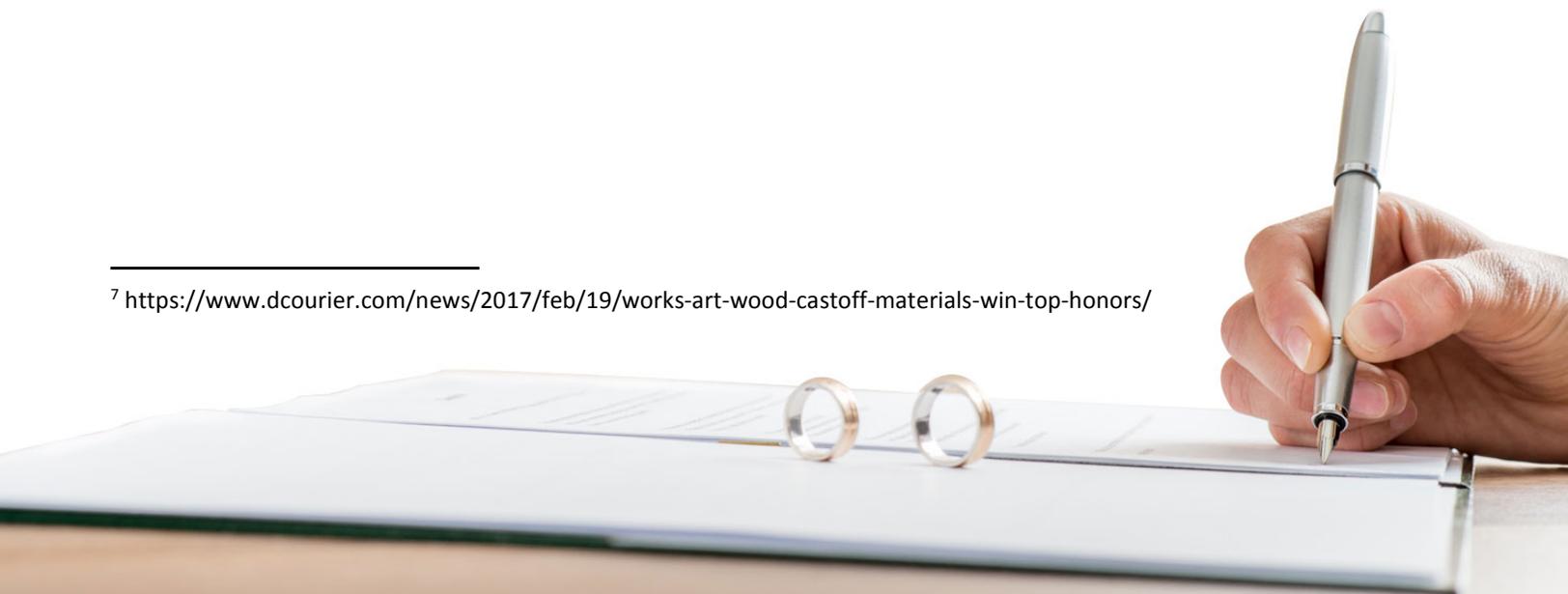
Even after you sign the agreement, you are not the final arbiter of its power. The judge presiding over your divorce will scrutinize the agreement, paying particular attention to the best interests of your children. Once signed, the agreement is part of the divorce and cannot be ignored by either party.

Say you and your wife have both signed the separation or property settlement agreement. You suddenly decide you would, in fact, like to keep possession of your wood, musical instrument and rubbish assemblages, like U.S. Navy veteran Willem van der Heyden<sup>7</sup>. Can you undo the agreement?

You have very little wiggle room to change a separation agreement. Your attorney could request an addendum to be added, with court approval, to the original agreement. Getting something reversed is unlikely; seeking greater clarity (“By ‘trash’ I was not referring to my handcrafted weird artworks; I want to keep those.”) is possible. The court will only entertain outright attacks on the original agreement if your attorney can show you signed under duress or if it included unconscionable demands. If you are a servicemember, you are unlikely to prevail in convincing a judge your wife overpowered you to force you to sign away your My Little Pony figurines. Unconscionable demands would be a stretch, too, since your attorney would not have allowed you to sign away your rights.

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<sup>7</sup> <https://www.dcourier.com/news/2017/feb/19/works-art-wood-castoff-materials-win-top-honors/>



# YOUR MILITARY RETIREMENT

Congress passed the Uniformed Services Former Spouses' Protection Act (USFSPA) in 1982. The USFSPA gives a State court the authority to treat military retired pay as marital property and divide it between the spouses. This is a two-edged sword; if she is in the service, you are entitled to a portion of her retirement income, but if you are the servicemember, she is entitled to a chunk of yours.

The USFSPA permits each state to apply its own standard family law principles to military pensions during divorce proceedings. Unlike some states, Virginia divorce laws allow its courts to divide military pensions between the two spouses. In fact, Virginia courts treat military pensions the same as civilian pension plans ... both are considered a marital asset and divided accordingly.

## Calculating the Marital Share

Virginia is an equitable distribution state, but that doesn't mean your former spouse automatically receives half your pension. Most courts will calculate a marital split based on a formula, which almost never equates to 50% of your retirement.

The marital share amount of your military pension is determined by adding up the number of months you were married *and* serving in the military (up to the date of separation), then dividing this number by the total number of months of credible service. Then multiply that figure by .5, and you'll have her marital share.

$$(\# \text{ of months married and serving} / \# \text{ of credible months of service at retirement}) * 0.5$$

Say, for example, you were married 15 years (180 months) and served 20 (240 months):

$$\begin{aligned} 180 / 240 &= 0.75 \\ 0.75 * 0.5 &= 0.375 \\ 0.375 * 100 &= 37.5\% \end{aligned}$$

Based on the above calculations, your wife would be entitled to 37.5% of your retirement pay.

If you're already retired when you get divorced, determining the marital share of your pension is fairly simple. However, if you're still on active duty, it's impossible to determine the actual marital share, because the date of retirement establishes the dividing number in the equation.

## Military Pension Division Order

Getting the money, however, is not easy. The Defense Finance and Accounting Service (DFAS), which handles all requests for access to military retirement income, rejects over 30 percent of pension division orders.

### Typical rejection reasons fall into three categories:

1. The person filing the request files insufficient paperwork, such as merely showing a property settlement agreement that lacks court approval, instead of a final divorce decree;
2. The person filing the request files the wrong paperwork entirely;
3. The language of the order is wrong, such as getting your rank, dates of military service, or years of marriage wrong



If you and your attorney are attempting to collect payments from your ex-wife who served in the uniformed services, you need the applicable court order certified by the court clerk and the completed DD Form 2293 application<sup>8</sup>.

## Payment Disbursement

Once approved, DFAS does not reflexively fulfill or reject every application for dividing a servicemember's retirement. One weakness in some court orders: not spelling out the exact intent of the order. For DFAS to fulfill its obligations under USFSPA, the court order must express the property award from the military retirement pay as:

- ▣ A fixed dollar amount, or
- ▣ A percentage of disposable retired pay (gross retired pay less allowable deductions)

The court order will generally declare a date from which to measure the retirement account's worth, but if you are still in service, a hypothetical retired pay award (generally hewing close to a 50-50 split) will be made.

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<sup>8</sup> <https://www.dfas.mil/garnishment/usfspa/apply.html>

Once you start receiving military retirement benefits, the Defense Finance and Accounting Services (DFAS) administers the disbursement of your funds. If your former spouse receives a portion of these funds and she satisfies the “10/10” requirement, then DFAS pays her share directly to her.

To qualify for direct pay through DFAS, 10 years of your military service must have coincided with 10 years of your marriage. If this qualification isn’t met, you must make arrangements to send her payments yourself. You’ll also have to file forms with DFAS to provide coverage for your former spouse under your SBP, if you want her payments to continue after your death. She may be forced to pay this upon agreement.

## **Protecting Your Pension**

Legally you cannot put your own military pension off limits to your ex-wife, since she contributed indirectly to your ability to earn it through her physical, emotional and financial contributions to your marriage — or so the assumption goes in Virginia and federal law. She may, in fact, have added needless stress to your life, but the law presumes she helped provide a loving home.

## **Cost-of-living Adjustments (COLA)**

In a divorce, you may be tempted to grab what you can at the time, without regard to the future. Cost-of-living adjustments (COLAs) are not to be overlooked, though. If you are seeking a portion of your ex-wife’s military retirement, you need to ensure your attorney phrases the property settlement agreement correctly, using percentage, rather than a fixed dollar figure. Not only will a percentage award include automatic COLAs into perpetuity, it will be readily accepted by DFAS; a fixed dollar award with mention of a COLA will cause the entire application to be rejected.

You are under no obligation, should you be the servicemember and your ex-wife be seeking a portion of your retirement, to inform her about the clash between COLA and fixed-dollar awards.

## **Survivor Benefit Plan (SBP)**

The Survivor Benefit Plan (SBP), Reserve Component Survivor Benefit Plan (RC-SBP) and Retired Serviceman's Family Protection Plan (RSFPP) are variations on an annuity offered to military personnel. This annuity must be considered in divorce planning for the former spouse, since it represents a potentially significant dollar value. If you are the active or retired servicemember, your ex-wife can arrange garnishment of your plan through the “Former Spouse Deemed Election”<sup>9</sup> feature and the court order. Otherwise, she is ineligible for SBP after the divorce.

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<sup>9</sup> <https://www.dfas.mil/garnishment/FormerSpouseSBPDeemedElection.html>

During your marriage, if you were the servicemember, your wife was entitled to 55 percent of the base amount of the annuity payout chosen by the two of you, for the rest of her life so long as she does not remarry before age 55.

Her attorney will strive to get the SBP specifically mentioned in the court order, using phrasing such as “former spouse coverage.” You should expect your ex-wife to file DD Form 2656-10, SBP/RC SBP Request for Deemed Election.<sup>10</sup>

The “timely election” feature means one year. That is, perhaps, not what you may view as “timely,” but in legal and military terms, it is fast enough to cost you dearly after you retire (SBP costs you nothing during active service). Once you retire, whatever level (full or reduced) you chose will stay with you, and is very difficult to change.

Though you may wish to cut off your ex-wife from the SBP, the court has its own say in the matter. If you can get your attorney to keep Former Spouse coverage<sup>11</sup> out of the order, you can cut your ex-wife off from the SBP. If the court orders you to cover her, one or the other of you must file the Form 2656-10 to preserve her rights.

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<sup>10</sup> <http://www.dtic.mil/whs/directives/forms/eforms/dd2656-10.pdf>

<sup>11</sup> <https://www.dfas.mil/retiredmilitary/provide/sbp.html>



# HEALTHCARE BENEFITS

USFSPA permits your ex-wife to receive free-to-her healthcare benefits through TRICARE after your divorce, if she meets several requirements. These are known as the 20/20/20 and 20/10/15 rules.

## **20/20/20 Rule**

You as the servicemember must have served at least 20 years (the first of the three 20s) of creditable service. You and your ex-wife must have been married at least 20 years (the second 20), and your marriage and service periods must overlap by at least 20 years (the third 20). This is not as hard as it may at first sound:

- ❑ Mark joins the Marines at age 19
- ❑ Mark marries Marla at age 20
- ❑ Mark leaves the service at age 40 (21 years of the Marines and 20 years of marriage)
- ❑ Mark divorces Marla at age 42 (22 years of marriage)

## **20/20/15 Rule**

If the third “20” is only 15 years, she is eligible for healthcare benefits<sup>12</sup> for only one year after the divorce. Using the same couple as before as an example:

- ❑ Mark joins the Marines at age 19
- ❑ Mark and Marla marry when he is 25
- ❑ Mark leaves the Marines at age 40 (21 years of the Marines, 15 years of marriage)
- ❑ Mark divorces Marla at age 45 (20 years of marriage)

The USFSPA offers no relief for early retirement, for less than 15 years of marriage, or for extending free benefits past the one year. Your 20/20/15 ex-wife can purchase continued coverage after the first year following the divorce. This is a Transitional Health Care Program (TAMP)<sup>13</sup>, a 180-day coverage that can lead to premium-based Continued Health Care Benefit Program (CHCBP).

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<sup>12</sup> <https://www.law.cornell.edu/uscode/text/10/1072>

<sup>13</sup> <http://www.military.com/benefits/tricare/transitional-health-care-programs.html#1>

## CHCBP

Humana Military Healthcare Services, Inc. administers the CHCBP<sup>14</sup> for the Department of Defense. A former spouse of a servicemember can continue to receive up to 36 months of coverage after the spouse loses eligibility for TRICARE after a divorce. The ex-spouse pays for premiums but has health coverage when transitioning to another provider, as through a new employer.

## Life Insurance



Members of the armed services have several life insurance policies provided for them that all have value when dividing property during a divorce. Overlooking a policy could be an expensive mistake by either you or your spouse. If you are the servicemember and have forgotten to include the face value (death benefit) of a policy, your ex-wife's attorney can cast that as a deliberate attempt to hide the asset during property settlement. Check for these three policies:

### *Servicemembers Group Life Insurance (SGLI)*

You are automatically enrolled for this benefit, with a policy issued for the maximum coverage available. Though you can decline SGLI coverage<sup>15</sup> or select a lesser amount than the maximum, you probably did neither of these when you first joined up. You can make changes to the policy once you know you will be divorcing (such as changing a beneficiary), but having \$400,000 in life insurance at a rate of \$0.07 per \$1,000 of protection for \$28 a month is a genuine bargain courtesy of Uncle Sam; you should probably not discontinue it.

### *Family Servicemember's Group Life Insurance (FSGLI)*

If you are the servicemember and are receiving SGLI, your spouse and dependent children can be covered with \$100,000 for the spouse and \$10,000 for each dependent child. For the children's coverage, this is essentially burial insurance and is provided at no cost if the spouse is covered. Rates for spousal coverage vary from a low of \$5.00/month to \$50.00/month depending on your spouse's age. The value in the FSGLI<sup>16</sup> spousal policy, for your ex-wife, is its ability to convert upon divorce to an individual policy.

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<sup>14</sup> <https://tricare.mil/CHCBP>

<sup>15</sup> <http://www.benefits.va.gov/insurance/sgli.asp>

<sup>16</sup> <http://www.benefits.va.gov/insurance/fsgli.asp>

### *Veterans Group Life Insurance (VGLI)*

After you leave the service you can be eligible for the same amount of insurance you had while in service under SGLI. Once you have VGLI you can convert your policy to a commercial policy at any time.

While all of these policies have value and should be reviewed during property settlement, they are also the subject of many myths and rumors. The VA even provides a page of information<sup>17</sup> on these spurious ideas, which could be helpful in allaying any concerns your ex-wife may have about the policies.

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<sup>17</sup> [http://www.benefits.va.gov/INSURANCE/sgli\\_myths\\_rumors.asp](http://www.benefits.va.gov/INSURANCE/sgli_myths_rumors.asp)

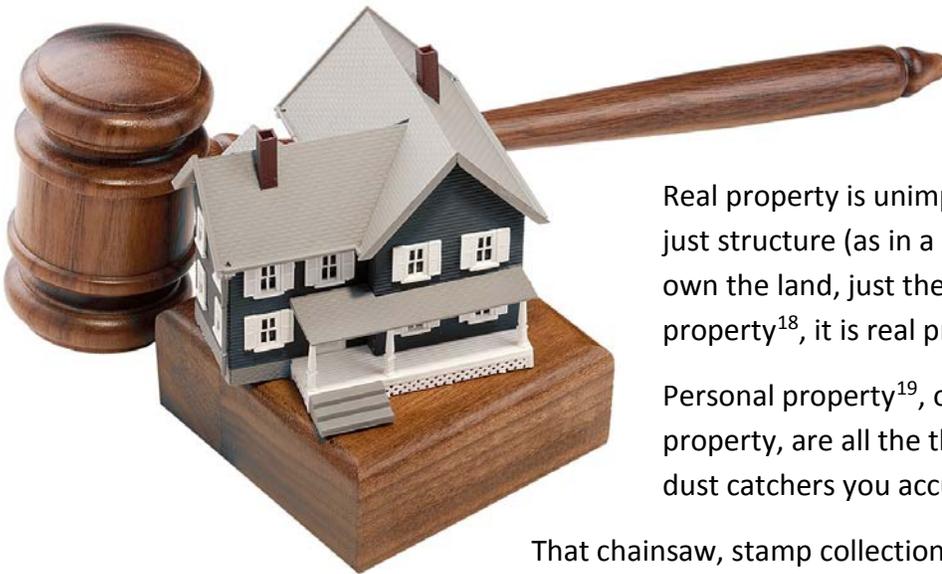
# PROPERTY DIVISION

If you have enjoyed a military career that included delightful postings in such exotic locales as Naval Air Station Lemoore (“Armpit of the Navy”) or the Marines’ Twentynine Palms (featuring Lake Bandini, aka the sewage treatment plant), you probably think you did not amass much property.

In a divorce, Virginia law recognizes three types of property subject to property division:

1. Real property
2. Personal property
3. Intangible personal property

For each, a decision must be made as to whether the property is marital, separate or a hybrid of both. This means you have to untangle everything — real estate, cars, bank accounts, stamp collections, chainsaws, vintage bird calls — and decide who gets what.



Let’s examine each type of property first, and then learn how the courts determine whose property it is.

Real property is unimproved land, land and structures, or just structure (as in a condominium in which you do not own the land, just the unit). If it can be taxed as real property<sup>18</sup>, it is real property.

Personal property<sup>19</sup>, or more specifically tangible personal property, are all the things, stuff, items, possessions and dust catchers you accumulate in your life.

That chainsaw, stamp collection, and those precious bird calls are all personal property. So, too, are the pots and pans, snowmobiles, RVs, cars, and other valuables you have around your place.

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<sup>18</sup> <http://law.lis.virginia.gov/vacode/title58.1/chapter32/>

<sup>19</sup> <http://law.lis.virginia.gov/vacode/title64.2/chapter16/section64.2-1626/>

If you want to know if something is significant to Virginia, find out if it is taxed. A lot of strange things are taxed in Virginia as “intangible personal property,”<sup>20</sup> such as supplies for poultry and livestock.

Intangible personal property is usually something that has value but cannot be held, like your patent for a carnival attraction that is a life-size bowl of soup<sup>21</sup>.

Intangible property<sup>22</sup> can be a copyright, patent, trademark, or even just the goodwill of a business you might own. It is subject to division in divorce, too.

## **Marital Property**

If you and your spouse acquired property during your marriage, it is marital property, no matter whose name is on the deed or title. The court will order an equitable division of marital property (she gets the house; you get the RV and cars, and so on).

## **Separate Property**

You have separate property in a marriage if you had it before the marriage, or if it came to you through inheritance or a gift meant for you, not the two of you. Just keep your things or inheritance separate from the marital property to maintain exclusive ownership. Separate property returns to the original owner and is not subject to division.

## **Hybrid Property**

Say you inherit some money (separate property) but use it to buy a house. While you own the house, you make monthly mortgage payments from both your paychecks (marital property). The house itself is hybrid property, being a mix of separate property (your original inheritance funds) and marital property (your monthly payments).

Valuing hybrid property calls for real expertise, and your attorney will likely seek an expert witness to assess your, and your ex-wife’s, share.

## **Debt, Too**

The same process of apportionment is true of debt, by the way. This may or may not be a good thing, but if the debt was incurred during the marriage for the purposes of running your household, the debt is marital debt and is split.

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<sup>20</sup> <http://law.lis.virginia.gov/vacode/title58.1/chapter11/section58.1-1102/>

<sup>21</sup> <https://www.google.com/patents/US6168531>

<sup>22</sup> <http://law.lis.virginia.gov/vacode/title58.1/chapter11/>

# SPOUSAL SUPPORT

In Virginia, either spouse can be compelled by the court to provide spousal support. Popularly also called alimony, it is separate from child support and is not meant to either provide one spouse an endless flow of money or to punish the other spouse by ruining him. Virginia law makes clear, too, that it is not a slush fund to reimburse divorce costs.

Spousal support can be for a given length of time or an indefinite time. Look to the Code of Virginia, § 20-107.1<sup>23</sup>, “Court may decree as to maintenance and support of spouses,” for the exact wording and factors affecting the decree.

## Factors Considered

Spousal support can be ordered from either spouse to the other, with the court awarding a lump sum, periodic payments for a given time, or periodic payments for an “undefined duration.” A judge can either combine these parameters, ordering a man to give his ex-wife a lump sum and then make periodic (usually monthly) support payments.

### Factors affecting the judge’s decision include:

- ❑ Financial resources, debts and needs of each party in the divorce
- ❑ Standard of living the marriage created, with the notion that the supported spouse continues in roughly the same standard after the divorce
- ❑ How long your marriage lasted
- ❑ Both parties’ age, health, and mental state
- ❑ What each party brought to the marriage (tangible and intangible contributions)
- ❑ Each party’s ability to earn a living, including having marketable skills, education and training
- ❑ Educational opportunity



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<sup>23</sup> <http://law.lis.virginia.gov/vacode/title20/chapter6/section20-107.1/>

- ▣ How children in the marriage affected each spouse's career, education, finances and employment opportunities

## **VA Disability**

A military divorce has special significance regarding spousal support, as the servicemember may, through no fault of his or her own, be incapable of independent living due to a service-related injury. When injured veterans divorce, the country and Virginia are loathe to leave them without any resources. With a family to support, the servicemember is entitled to disability compensation and, possibly, Special Monthly Compensation<sup>24</sup> (SMC), tax free. This money helps the servicemember provide for her or his family.

Unfortunately, though, disability income is actual income, and is subject to division in a divorce. You served honorably; you sustained an injury in service to your country; your disability income is legally protected from being taken by, say, creditors. None of that plays into it, though: your income is meant to provide for your whole family, so if part of your family peels away in a divorce, a share of that disability income peels away with her.

Allocation of your disability typically will not happen, but there's always more than one way to skin a cat. Never agree to split your disability payments!

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<sup>24</sup> <http://www.benefits.va.gov/compensation/>

# DIVORCE

Whether you are in the military or just enjoy tromping around Virginia's many Civil War battlefields, divorce in Virginia proceeds along the same lines. If you and your wife mutually agree that the love is gone, and the passion you once felt for each other has ebbed away, you will probably be able to agree on a "no fault grounds" divorce. If, though, she has committed something that destroys trust in your marriage, you could file for divorce with "fault grounds."

## Grounds for Divorce in Virginia

Fault grounds mean someone takes the blame for ending the Virginia marriage. Fault grounds for divorce are codified in Code of Virginia § 20-91, which lays out the rather grim grounds for divorce from the bond of matrimony:

- ❑ Adultery — legally, any married person voluntarily having sexual intercourse with any person not his or her spouse; this is punishable under the Code of Virginia as a Class 4 misdemeanor<sup>25</sup>
- ❑ Sodomy committed outside the marriage (y'all have fun if it is just you two, but be careful)
- ❑ Buggery committed outside the marriage (Do. Not. Ask. [but it involves animals])
- ❑ Felony conviction
- ❑ Jail sentence for more than one year
- ❑ Cruelty
- ❑ Willful desertion
- ❑ Abandonment
- ❑ Caused the spouse to fear bodily harm

Before leveling the charge of fault grounds for divorce against your wife in a Virginia court, be extremely certain of your facts and have evidence to back them up. These are all serious charges that can haunt either or both of you in later years. Of course, if she really did any or all (!) of those things, you have strong reason to ask for divorce based on fault. You should be in touch with a good attorney to represent you and help you rebuild your own self-esteem.

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<sup>25</sup> <http://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-365/>

## No Fault Divorce

If you and your spouse seek the somewhat less reputation-ruining path of a “no-fault” divorce — what Virginia calls a separation divorce — then you need only be separated from one another by six months with no minor children or a year with minor children. Neither party is “blamed” for the divorce.

Separated has a legal definition. To be separated from one another for either the half-year or year, you two should not:

- ❑ Have sex
- ❑ Provide for each other
- ❑ Do anything together
- ❑ Perform any favor, service, task, repair, or chore for each other
- ❑ Buy anything for each other
- ❑ Show up at the same functions other than activities related to your children

You can, though, continue to live under the same roof, so long as all the other requirements are met. The clock resets if the court finds out you two had a “festive” weekend in a Virginia Beach motel, for example. You can both go to your kids’ birthday parties and each can buy the kids holiday and birthday presents, but little else beyond that is tolerated by the court.

After a year (or six months) of living apart, you can begin the divorce process through your Virginia attorney. If neither of you contests the divorce, you can be done within a few months—and sometimes a few weeks.

# FATHER'S AND CHILDREN'S RIGHTS

## MILPERSMAN

We are immensely grateful that the U.S. Naval Military Personnel Manual abbreviates to MILPERSMAN, but that does not make navigating the manual any easier, whether by sextant or mouse click.

Buried deep within the manual is MILPERSMAN 1754-030<sup>26</sup>, part of the Dependent Aid Family Support Program. The article emphasizes that the U.S. Navy will not take a black eye by defending inappropriate actions by its servicemen or servicewomen in domestic matters.

If you have obligations to support your children, married or not, the Navy will compel you to pay, even to the point of garnishment. The schedule the Navy sets forth is not trivial: you can have up to three-fifths of your gross pay redirected to your spouse or ex-spouse for caring for her and two or more children. This attitude is not singular to the Navy, either. You are expected to take responsibility for your children, no matter whether you are living with them on base, deployed overseas, or living off-base.

Keep in mind that MILPERSMAN should not be followed without the *explicit agreement* of your attorney. Here in Hampton Roads, we will never allow a servicemember to pay three-fifths of their pay—that's just bonkers! Instead, we will typically have the servicemember pay child support based on guidelines, and then the difference between their single and married BAH pay, or we get a court order to stop MILPERS dead in its tracks!

## Children's Rights

After a divorce, the courts in Virginia are especially mindful of the impact on children. Child custody, child support, visitation and other child-centered issues are always zealously protected by the courts.

Nearly half (43 percent) of servicemembers have children, according to the Department of Veterans Affairs<sup>27</sup>. Your divorce could be the result of your deployment, so your children's lives are caught up in your personal challenges.

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<sup>26</sup> <http://www.public.navy.mil/bupers-npc/reference/milpersman/1000/1700Morale/Documents/1754-030.pdf>

<sup>27</sup> [http://www.ptsd.va.gov/professional/treatment/family/pro\\_deployment\\_stress\\_children.asp](http://www.ptsd.va.gov/professional/treatment/family/pro_deployment_stress_children.asp)



One goal in dealing with a military divorce is ensuring your children get the attention and support they need. In Virginia, judges are legally obligated not to give preference to either gender in selecting the spouse to take physical custody of the children. This means, servicemember or not, if you advocate for yourself to be the physical custodian of your children, you may get the job.

The types of custody in Virginia are legal custody and physical custody. Legal custody means the parent (or both of you) making decisions about the child, such as religious upbringing, school, medical treatments and the like. Physical custody means the parent with whom the child primarily lives.

A judge can determine joint legal custody, meaning you and your ex-wife share responsibility for everything from dental appointments to college decisions. A judge can also award sole legal custody to either of you, shutting out the other parent from having a legal say in where your child attends school, what clubs and activities your child participates in, and what religion your child follows or does not follow.

### *Child Support*

Whichever parent has the child can usually depend on some form of child support from the non-custodial parent. The court has a schedule of contributions<sup>28</sup> for parents with monthly incomes as small as \$0 with up to six children.

If you are somehow surviving on as little as \$350 a month, you can expect to give up to \$169 of it to your spouse for the care and feeding of your six children. The schedule tops out at \$35,000 a month income (yes, that is \$420,000 a year — must be a general's pay), with you forking over \$4,552 a month for your six kids.

Realistically, Virginia's 2015 per capita income<sup>29</sup> was a respectable \$52,052 annually, or \$4,337 in monthly income. Realistically, the U.S. Census tells us most Virginia families have 2.54 people. We seldom meet 0.54 of a person, so we will round it up to one child per family, so for average monthly income of an average one-child family, the supporting spouse can expect to pay \$682 in child support payments.

### *Child Support Dos and Don'ts*

If the court orders you to pay child support, you need to do it. Failure to make payments means you are violation of a judge's order. Virginia judges do not take kindly to that level of disrespect, meaning your next visit in court will almost certainly not lean your way.

While you may be thinking you are somehow punishing your spouse by refusing to provide money for your children, remember your children need clothes, school supplies, three meals a day, and other necessities of

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<sup>28</sup> <http://law.lis.virginia.gov/vacode/title20/chapter6/section20-108.2/>

<sup>29</sup> <http://vaperforms.virginia.gov/indicators/economy/personalIncome.php>

life. More, your spouse can have her attorney get a court order that compels your branch of the service to garnish your wages (take them without your permission). Wage garnishment is handled by the DFAS<sup>30</sup> in response to an order from a child support enforcement agency or a court.

- ❏ Do keep financial matters separate from other parenting challenges
- ❏ Do accept that children are expensive to raise, so be supportive when your custodial ex-wife indicates special needs for a school uniform, summer camp, oboe lessons and the like
- ❏ Do purchase things you know your children need when they are with you, rather than claiming you sent money to your ex-wife and they should ask her; Virginia law does not compel her to justify to you how she spends child support payments
- ❏ Don't overlook or stretch out payments
- ❏ Don't ask your ex-wife for receipts or proof of purchases
- ❏ Don't connect payments to visitation, extra time, or denial of time
- ❏ Don't mention money or payments around your children
- ❏ Don't use your ex-wife's child support or spousal support payments as an excuse to your children as to why you cannot do something for them

Your children have been through so much already, with you in the service, then seeking a divorce. You owe to them a continuation of as consistent and loving a life as you can provide.

## Father's Rights

### *Visitation*

Your attorney, your ex-wife, your ex-wife's attorney and any court appointed experts can all have a say in visitation arrangements. The goal of visitation is to provide as normal a life, with as regular a schedule of visitation, as is



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<sup>30</sup> <https://www.dfas.mil/garnishment/childsupportalimony/faqs.html>

practical. If you are deployed, your spouse has logical reasons to insist on no physical visitation, but may be compelled by the courts to provide virtual visitation through technology. The goal is to keep intact the relationships between each parent and their children.

If you are not deployed and are, for example, stationed in Virginia where your ex-wife lives with your children, you can push for and get regular visitation with them. This may mean every other weekend, or an entire month during the summer, or some other arrangement.

Try to work as much as possible with your ex-wife to reach a mutually agreeable visitation arrangement. You can build a lot of useful capital this way, so that should you need to ask her for flexibility later, she could grant it, knowing you will reciprocate.

Mutually agreeable visitation puts everyone — you, your ex-wife, and your children — in a good frame of mind to get the most out of every moment together.

### *Relocation*

If you choose to relocate after a divorce and this could have an effect on visitation, you may need to get the approval of the presiding court that oversaw your divorce. In the military you may have no control over your relocation, but again, you need to approach the court to notify them of changes to your living arrangements that could at first appear to violate a court order regarding visitation.

If you are not the custodial parent, the whole process could be easier on you than on the custodial parent, but will still be hard on your children. The price you pay for voluntarily relocating could be the emotional distance you create with your child, because you cannot visit together, in person, as much.

### *Kidnapping*

As a military person, you are sworn to uphold the backbone of our laws of our country, the Constitution. You have to follow orders and always try to do the right thing, so imagine your surprise to discover you could be charged with kidnapping your own child. If you attempt to take your child from custodial care, you can be charged with a felony. You can also say goodbye to your military service, benefits and all that you worked so hard to gain. A felony conviction usually leads to a dishonorable discharge.

You may argue that you are not kidnapping a child you helped to create, but the law does not agree with you. If you try, for example, to take your child out of Virginia during your divorce proceedings, that could be a Class 6 felony. Try to take your child overseas and you can be in violation of international treaties such as the Hague Abduction Convention<sup>31</sup>.

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<sup>31</sup> <https://travel.state.gov/content/childabduction/en/legal/law-and-regulations/hague.html>

# YOU'VE SERVED US - NOW LET US SERVE YOU

Divorce under any circumstances is never easy. Divorce for a member of our nation's military brings with it added hazards and concerns. You may not even be sure where to turn for help. Should you search out the JAG for your branch, confide in your best friends for advice, or simply take a chance on a random listing from the internet?

Your best strategy for dealing with all the pitfalls and problems is to place yourself in the hands of a trusted, local attorney. Military men dealing with divorce in Virginia trust the capable attorneys of **The Firm for Men**.

Contact us today to learn more about how we can handle your military divorce. We understand the challenges you face, and can provide practical, helpful support when you need it most for common military issues to more complex:

## **DIVORCE**

- The Separation Agreement
- Procedures for Servicemembers
- Peremptory Settings
- Foreign and Overseas Divorce
- Former Spouse Benefits
- Defense or Delay

## **FAMILY SUPPORT**

- Branch-specific Rules and Guidelines
- BAQ, VHA, and BAH
- Expediting Hearings
- Guard and Reserve Pay
- Garnishment Procedures
- Paternity Issues

## **DOMESTIC VIOLENCE**

- Military Procedures
- Command Responses
- Firearm Possession Issues
- False Abuse Allegations
- The Family Advocacy Program

## **PROPERTY DIVISION**

- Calculation of Benefits
- Fifty-percent Formula
- High-3 Formula
- REDUX Formula
- Guard and Reserve Considerations
- Statutory Bars to Pension Division
- Recall to Active Duty

*... and much more!*

# MILITARY DIVORCE GLOSSARY

**20/20/15 Rule:** The rule for determining limited healthcare benefits for your ex-wife (you served at least 20 years, were married at least 20 years, but those two events overlapped by only 15 years)

**20/20/20 Rule:** The rule for determining healthcare benefits for your ex-wife (you served at least 20 years, were married at least 20 years, and those two events overlapped at least 20 years)

**Code of Virginia:** The gathered laws and regulations under which all civil and criminal actions are handled

**Continued Health Care Benefit Program (CHCBP):** The program under which your ex-wife can pay premiums to receive healthcare benefits up to three years after your divorce

**Cost-of-living adjustments (COLAs):** Increases to amounts awarded through pensions and other financial instruments, to keep up with inflation

**DD Form 2058:** The State of Legal Residence Certificate, indicating your intent to make a particular state your legal residence after you leave the service

**DD Form 2656-10, SBP/RC SBP:** The Request for Deemed Election that entitles your ex-wife to a share of your pension or annuity

**Defense Finance and Accounting Service (DFAS):** The agency that handles all requests for access to military retirement income

**Divorce from bed and board:** Under Virginia law, one of the two types of divorce, in which neither party can remarry (the other is divorce from the bond of matrimony)

**Divorce from the bond of matrimony:** Under Virginia law, one of the two types of divorce possible (the other is divorce from bed and board)

**Domicile:** the physical location in which you intend to reside permanently; contrast with “residency”

**Family Servicemember’s Group Life Insurance (FSGLI):** Life insurance on your spouse and dependent children

**Home of Record (HOR):** The state where you first enlisted or the state from where you received a commission.

**MILPERSMAN:** The U.S. Naval Military Personnel Manual

**Military Spouses Residency Relief Act (MSRRA):** MSRRA provides protection to military spouses related to residency, voting, and taxes

**Property Division:** Under Virginia law, the process for determining rightful ownership of real property, personal property, intangible personal property, marital property, separate property and hybrid property

**Reserve Component Survivor Benefit Plan (RC-SBP):** See Survivor Benefit Plan (SBP)

**Residency:** The physical location where you currently live; see “domicile”

**Retired Serviceman's Family Protection Plan (RSFPP):** See Survivor Benefit Plan (SBP)

**Separation Agreement:** The document you and your divorcing spouse sign that spells out just about everything that needs to be decided in a divorce

**Servicemembers Group Life Insurance (SGLI):** Automatic life insurance coverage

**Servicemembers Civil Relief Act (SCRA):** The SCRA provides protections from civil actions against servicemembers who are called to Active Duty

**Spousal Support:** Payments ordered by the court from one divorcing party to the other

**State of Legal Residence (SLR):** Your domicile

**Survivor Benefit Plan (SBP):** Along with the Reserve Component Survivor Benefit Plan (RC-SBP) and Retired Serviceman's Family Protection Plan (RSFPP), the SBP is an annuity offered to military personnel

**Transitional Health Care Program (TAMP):** A 180-day coverage that can lead to premium-based Continued Health Care Benefit Program (CHCBP)

**Uniformed Services Former Spouses' Protection Act (USFSPA):** The USFSPA gives a State court the authority to treat military retired pay as marital property and divide it between the spouses

**Veterans Group Life Insurance (VGLI):** Life insurance you can get after you retire, for the same amount of insurance you had while in service