

SEPARATION AND DIVORCE FACT SHEET

This fact sheet is intended as a quick reference. It is not intended to be a substitute for seeking advice from an attorney and it should not be used as such. Its purpose is to inform individuals contemplating separation or divorce of their basic legal rights and responsibilities. The information provided is based on Maryland Law except where it is specifically stated that the information is applicable in all states.

Counseling Services Available

Marriage and Family Counseling

1. Army Community Services:
2. Chaplain Activities Office:
3. Family Life Center:

Support and Career Assistance

1. Look for support agencies like:
 - a. Project Second Start Free career counseling, job skill development counseling and job placement assistance is available to displaced homemakers who enroll in the Project Second Start Program.
 - b. New Directions, Baltimore, Maryland: 410-235-8800, Provides free personal and career counseling for displaced homemakers.
 - c. Family and Children's Services, General Counsel, provided by county government. Offers counseling services to men and women on a sliding fee scale.
 - d. State Information and Referral service of the Health and Welfare Council Offers advice and information about agencies offering help.
 - e. State, County, City: Child Development Services

Separation

Separation Agreement

1. Some states require written legal separation others do not. Know the law of your state.
2. A separation agreement is a mutual agreement, either oral or written, between a husband and a wife to live apart with the intention to terminate the marriage. In the agreement they resolve such matters as property division, custody, debts, support, and retirement. The agreement does not terminate the marriage nor are the parties free to have sexual intercourse with another, as this constitutes adultery.

The agreement fixes the rights and responsibilities of the parties.

NOTE THAT ORAL AGREEMENTS MIGHT NOT BE RECOGNIZED BY A COURT AND TERMS OF AN ORAL AGREEMENT WILL BE DIFFICULT TO PROVE.

3. The separation agreement is an enforceable contract that can be revoked by a second agreement in writing or by the parties living together again as husband and wife if they have the intent to be reconciled and to revoke the agreement. One person cannot unilaterally revoke the separation agreement. If one party no longer wishes to be separated, he or she must abide by the agreed upon terms of the property settlement, but he or she can stop the divorce by contesting it when the other spouse files after a year of separation. The resumption of marital relations will not automatically rescind the agreement as to property rights and support. The parties may include a provision in the agreement that it will become null and void upon the resumption of marital relations.

4. The agreement should be witnessed or notarized. It is not filed with the court. Each person maintains an original copy of the document in his/her possession.

5. Items to be included in the separation agreement, which are applicable in all states, is as follows:

- a. Date agreement was made.
- b. Date and place of marriage.
- c. Names and birth dates of children.
- d. State that the parties are living separate and apart and the date they separated.
- e. State the reason for the separation and the purpose (whereas irreconcilable differences have arisen between the parties and the parties do not intend to live together again as man and wife.)
- f. Divide all marital property (cars, furniture, savings, stocks, bonds, etc.)
- g. Provide for payment and filing for taxes.
- h. Military pension.
- i. Soldier's and Sailor's Civil Relief Act.
- j. Payment of present and/or future debts.
- k. Child custody, visitation and support.
- l. Insurance provisions.
- m. Whether agreement is to be merged into divorce decree.
- n. State whether or not spousal support will be awarded.

o. Who will be responsible for court costs?

p. State the consideration for the agreement. e.g. In consideration of the promises, guaranties, and covenants contained herein, the parties hereby agree as follows:

Support

1. In the absence of a court order or an oral or written agreement, service members in the United States Army are required to provide the minimum family support amount provided for in AR 608-99. Each of the Armed Forces has a different requirement for family support. If the family is living in government quarters, the service member need only pay an amount equal to the difference between the BAQ at the with dependent rate and the BAQ at the without dependents rate. If the non-military spouse agrees, the support may be provided in-kind, such as paying rent, mortgage, or certain bills.

2. If both parties are military, the non-custodial parent is responsible for providing support for the child/children involved. The minimal amount is the difference between the with and without dependent rate of BAQ.

3. If the non-military spouse earns an amount equal or greater than the pay received by the military spouse, and there are no children involved, then he or she is not entitled to the support. If the military person is not using the BAQ at the with dependent rate for the support of his/her dependents then he or she is not entitled to receive it.

4. If there are more dependents living outside of the military member marital home, then the BAQ is divided proportionately for each dependent.

5. If the military spouse vacates the government quarters, the non-military dependents generally have 30-45 days in which to vacate the government housing. Once housing is terminated, the military spouse will begin getting BAQ at the with-dependent rate and it should be sent to his/her dependents as required.

6. Support required by the various Armed Services is in the absence of a court order or separation agreement and is only intended to be short-term in nature until an agreement is reached or a court order is obtained. Commanders have discretion to order additional support if needed.

DIVORCE

Procedural Requirements (May vary depending upon state law)

1. Jurisdiction:

- a. A party may file for divorce in the state where the party seeking the divorce resides or in the state where the spouse resides, is regularly employed, or has a place of business.
- b. A state may require that one party has resided within the state for 1 year preceding the application for divorce unless the grounds for the divorce occurred in that state.
(Residency on post does count)
- c. A military person may be able to delay the proceeding by asserting his or her rights under the Soldiers' and Sailors' Civil Relief Act. He has to show his or her inability to participate in the judicial action because materially affects his/her military service.

- d. As long as the court has jurisdiction over one of the parties, the court can dissolve the marriage; however, the court will not have jurisdiction to decide any property rights or support rights unless it has jurisdiction over both parties.
2. Filing for Divorce (varies depending on state):
 - a. The party seeking a divorce files a Bill of Complaint in the Circuit Court for the County having jurisdiction.
 - b. Filing fees check with county. There will usually be a charge to serve papers. The option of using a sheriff to serve is a separate fee. No credit cards will be accepted for payment. Only cash, checks, certified cheques, or money orders are the normal methods of acceptable payment.
3. Notice:
 - a. The spouse must be served the Bill of Complaint. Service may be made by certified mail, personal delivery by a noninterested party or by a sheriff. Service can be made on post.
 - b. The spouse must answer within 30 days of service. Ninety (90) days is required if overseas. Failure to respond results in default.
4. Courtroom Procedures:
 - a. If the divorce is uncontested after the court receives the Answer, the party initiating the divorce calls a Master to set up a hearing.
 - b. The party seeking the divorce must be present at the hearing.
 - c. The other spouse does not have to attend the hearing. However, if both parties do not attend the hearing the spouse who filed must send a witness to the hearing. The witness must be able to verify the allegations in the Bill of Complaint.
 - d. Hearing dates are usually set within 30 days.
 - d. \$75.00 fee is required for the Master. The Master sends his/her recommendation (a divorce decree) to the Clerk of Court. 14 days later the recommendations are sent to the judge. After the Judge reviews the recommendation and makes his/her decision, the record lies in court for 30 days and the divorce becomes final. If the divorce is contested, the court will set a court date, which could be up to two years in the future.

Limited Divorce:

1. Acts as a judicial grant of separation. It does not sever the marital bond; thus, the parties may not re-marry. The parties still inherit property from each "by law".
2. Grounds:
 - a. Cruelty of treatment of the complaining party or of minor child of the complaining party. The behavior includes threatening or inflicting bodily harm. The actions must endanger life, person or health. Generally, more than a single act is required.
 - b. Excessively vicious conduct to the complaining party or to a minor child of the complaining party.
 - c. Abandonment and desertion for a period of twelve (12) months. Includes constructive desertion in which one party is forced to leave because of the misconduct of the other. Intention to terminate the marriage relation and the leaving was unjustified. No mutual consent for one party to leave.
 - d. Voluntary separation: Must live separate and apart, not under the same roof; no cohabitation; no reasonable expectation of reconciliation. There is no minimum time period for the separation. However, the parties may be required to attend and pay for counseling.

Absolute Divorce:

1. There is a total severance of the marital bond; parties are free to remarry immediately.
2. If requested, the court may grant the wife the right to resume use of her maiden name.
3. Grounds:
 - a. Adultery. Need not show actual intercourse, but only evidence that the offender had the disposition and the opportunity.
 - b. Desertion. Intention to terminate the marriage relation and the leaving was unjustified; no reasonable expectation of reconciliation; continued for one year without interruption; and is deliberate and final.
 - c. Voluntary separation for one year. Mutual agreement to separate with intent to end marriage; must live separate and apart, not under the same roof; no cohabitation; no reasonable expectation of reconciliation.
 - d. Conviction of a felony or misdemeanor in any state or in any court of the United States. If the spouse has been sentenced to serve at least three years or an undetermined sentence in a penal institution; and the spouse served 12 months of the sentence.
 - e. Two year separation if one spouse contests the separation and divorce.
 - f. Insanity. Spouse confined for three years; and incurable and no hope for recovery.

Support and Custody

1. Alimony in some states, either party may claim alimony from the other. The courts looks at the income and assets of the parties; financial needs and resources of the parties; financial obligations; and standards of living, age, and health; facts and circumstances leading to the separation and the duration of the marriage.
2. Child Support and Custody Parents may mutually agree on the type of custody
 - a. Joint Custody: Both parents retain full legal rights as parents of the child. They have legal control over the child's health, education, and religious training. One parent may be given physical custody or they may have joint physical custody with the child spending equal time with both parents.
 - b. Sole Custody: One parent takes full responsibility for the care and decisions surrounding the needs of the child with the other parent being extended visitation rights. The court may award custody and disregard the custody agreement worked out by the parents. The courts looks at the best interest of the child; also at who has cared for the child in the past; and who is able to provide a suitable environment for the child. Both parents have a legal obligation to support their children no matter who has physical custody.

Property Settlement

1. Marital property: All property acquired by either or both during marriage. Marital property does not include property acquired; prior to marriage, by inheritance, as a gift from their party meant exclusively for one party, from a court settlement, or property excluded by valid agreement, or property traceable to any of these sources.
2. The court cannot change title to property, but it does compensate by awarding a party more of other assets.

Medical Benefits

1. Full medical benefits if: Un-re-married; married 20 years; spouse has 20 creditable years; 20 years overlap
2. Transitional health care, full military healthcare for a 2 year period after the divorce, if: Un-re-married; married 20 years; spouse has 20 creditable years; 15 years overlap.
3. Former spouse will not qualify unless he/she has no medical coverage under the employment sponsored health plan.

Military Benefits

Former Spouse Entitlements

1. Some states treat military retired pay as a marital property, which can be divided among the parties. There is no federal right to a portion of the retired pay.
2. The formula generally used to determine the amount the spouse is entitled to is: $\frac{1}{2} \times \text{Relevant length of marriage} \times 100\% \text{ of retired pay}$ Relevant length of service (relevant length of marriage is the time of marriage overlapping with military service). (relevant length of service is length of service before retirement).
3. Remarriage of the ex-spouse will not cause the award to be terminated when the court order provides for the division of retired pay as property.
4. A former spouse can get direct payment from a members retired pay if they were married at least 10 years during which the member performed at least 10 years of service creditable toward
5. A service member has the option of naming his/her former spouse as the beneficiary under the Survivor Benefit Plan. A court can order a service member to designate a former spouse as beneficiary.
6. Ex-spouses are authorized commissary, exchange and theater privileges if they are:
 - a. An Un-re-married former spouse
 - b. Marriage lasted for at least 20 years
 - c. At least 20 years of creditable service during marriage.