

RETIREMENT PAY:

For divorces granted in the U.S. (not in Italy), the nonmilitary ex-spouse is normally entitled to request a portion of the disposable retired pay (DRP) that the military member "earned" while married to that spouse and on active duty. For example, if the ex-spouse was married to an active duty military member for 10 years and the military member retires after 20 years, the non-military spouse may ask the court for up to the maximum of 50% of disposable retired pay. An award of retirement pay must be stated specifically in the divorce decree. If it is not included in the decree, the decree will have to be modified to get that later, and this is not usually approved by the court without cause.

To receive direct payment (like an allotment) of this pay, the two ex-spouses must have been married for at least 10 years while on active duty, and a written request, certified copy of the decree, and DD Form 2293 must be sent to DFAS – HGA/CL, Assistant General Counsel for Garnishment Operations, P.O. Box 998002, Cleveland, OH 44199-8002. If there will be no claim for retirement pay, the decree must so state. If you or your spouse separates from the military prior to retirement eligibility, this section will not apply to you.

Hours of Operation

Legal Assistance

(Attorney consults by appointment only)

Will Appointments

Please complete Will worksheet BEFORE you make a will appointment! Stop by or contact our office for more information.

Italian Legal Assistance

(Attorney consults by appointment only)

Powers of Attorney/Notaries

Mon-Fri 0745 - 1630

You can complete power of attorney & will worksheets, and read information at <https://aflegalassistance.law.af.mil>

31 FW/JA

Unit 6140 Box 115

APO, AE 09604-0115

Building 1403, upstairs

DSN 632-7843 or

commercial 0434-30-7843

YOUR RIGHTS DURING AND AFTER DIVORCE



31ST FW LEGAL OFFICE

Current as of April 2022

YOUR RIGHTS DURING AND AFTER DIVORCE

If you are considering a divorce or are currently involved in a divorce action, please be aware of the following information.

PROPERTY DIVISION

Courts usually divide property (including savings and debts) obtained during the marriage roughly in half, regardless of who actually purchased the property. You can avoid this process by agreeing on the division of property in a separation agreement. Otherwise, lawyers will be paid (a lot) to fight over the property, and a judge, not the parties, will decide who keeps the property. Spouses who spitefully use up, dispose of, or hide marital assets prior to the final divorce will be held accountable by the court.

CHILD CUSTODY AND VISITATION

Courts will generally respect any arrangement made by the parties, although they are not required to do so. Courts award custody of children based on the "best interests of the child." Children may be allowed to express their desires to the court if they are considered old enough and sufficiently mature. The older the child is, the more weight his or her opinion will have. Typically, the parent who is not awarded primary

custody will be granted liberal visitation privileges. Special provisions should be included in a divorce decree to cover travel expenses and other arrangements when the parents are likely to be geographically separated. It is important to be specific when possible with a visitation schedule to avoid costly disputes.

CHILD SUPPORT

Parents can agree to a monthly child support payment, but may not be allowed to agree to no child support as it may not be determined to be in the child's best interest. If the parents cannot agree, an amount will be determined by the court based on the respective income of the custodial and non-custodial parents. Child support payments generally continue until a child reaches 18 or gets married, whichever is first. However, some states require child support to continue if the child attends college full time. One may not withhold child support (or visitation) as retaliation against an ex-spouse or if visitations are cancelled. Nor is it wise to informally agree, even in writing, to change the support amount; the decree should be formally amended by an appropriate court.

SPOUSAL SUPPORT

Increasingly, states are doing away with spousal support or alimony. The

length of marriage and the spouse's ability to work are key factors in this decision. Alimony is likely to be for a limited time only to enable the spouse a chance to finish school or obtain work skills and find a suitable job (with the exception of retirement pay, see below). Military members also must meet the requirement of AFI 36-2906, *Personal Financial Responsibility*, to provide adequate support to dependents. Thus, until a judge signs a final decree of divorce, spouses of military members must receive support *even when separated*. Commanders may require members to give proof of their support, so keep records.

SURVIVOR BENEFIT PLAN (SBP)

The Survivor Benefit Plan provides a portion of retirement pay to be paid to a surviving spouse after the retiree's death, depending on the premium paid. A military member's previous choice of a spouse as a beneficiary does not end upon divorce and cannot be revoked *unless the ex-spouse consents or the divorce decree so specifies*. Also, a previously non-covered ex-spouse may become a SBP beneficiary if the divorce decree says so.