

Some of the states have complicated formulas to calculate how much of a member's retirement pay the spouse will receive under the divorce decree. Many of these formulas are available via the Internet. In all cases, an award of retirement pay must be stated specifically in the divorce decree. 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 and certified copy of the decree must be submitted to DFAS. Please contact DFAS, US Military Retirement Pay, P.O. Box 7130, London, KY 40742-7130 or 1-800-321-1080 for more information. If there will be no claim for retirement pay, the decree must state so. If you or your spouse separates from the military before retirement eligibility, this section will not apply to you.

For more information on retirement pay, see the Handout on The Uniformed Services Former Spouses' Protection Act (USFSPA) or go to <http://www.military.com/benefits/retiree/uniformed-services-former-spouses-protection-act>.

EARLY RETURN OF DEPENDENTS (ERD)

Either spouse may request an ERD up to one year after a finalized divorce decree or within six months after the member PCS. The installation commander makes the decision. Once ERD orders are cut, there is a two-month deadline to leave Italy at government expense. When the member or civilian spouse (with any children) leaves government housing, the other(s) must vacate within 30 days. The spouse's property (and children) may be sent to U.S. at government expense from Italy or storage facilities in the U.S. to any other reasonable U.S. location if the member approves. The weight shipped will be deducted from the member's own maximum weight allowance upon a later PCS move. ERD orders do not justify government payment of

costs to move a spouse onto the Italian economy. If the member refuses to concur with a dependent-initiated ERD, the dependent should seek legal advice for dependent child custody and division of household goods issues. For more details, see the Military Personnel Flight (MPF).

REMAINING IN ITALY

If civilian spouses decide to stay overseas after a divorce is final, they lose their SOFA status and are considered tourists. Within 90 days they must leave Italy, obtain appropriate documentation (i.e. work or residence visa), or obtain another SOFA sponsorship by going to work for AAFES, SVS, etc. While in non-SOFA status, a person may not use an AFI-plated vehicle or AFI driver's license, nor may he or she buy US gas coupons.

**Contact 31 FW/JA for more information
or legal assistance on this topic.
DSN 632-7843 or Commercial 0434-30-
7843**

**Legal Assistance Walk-In Hours
Monday and Wednesday 1530-1630;
Friday 0900-1000**

<https://aflegalassistance.law.af.mil>

DIVORCE OVERSEAS



JURISDICTION

If you are contemplating divorce while overseas, there are many decisions to be made; the first of which is where to file the action. Usually, either spouse may file for divorce in their state of permanent residence even while overseas. The Italian Courts will only grant a divorce if you were married here or either you or your spouse is an Italian citizen. Generally, a divorce obtained overseas will be honored in the US once a certified translation is filed in a US court.

REPRESENTATION

The next decision in the divorce process is who will represent you in your divorce action. You should hire a civilian lawyer for this purpose, especially if the divorce will be contested or complex. Italy requires participation by lawyers in all divorces. If you do not already have a U.S. lawyer, the best way to find one is to contact your state's Bar Association Lawyer Referral Service. (<http://www.abanet.org/legalservices/lris/directory/>). They will randomly give you several names of attorneys who practice within in the specialty you require, and who have not had any serious complaints filed against them. Alternatively, many states allow self-representation if there are no issues involving children. Nevertheless, it is strongly recommended that you retain the services of an attorney.

TIMING

In many states there is no longer a required period of physical separation before you may file for divorce. However, be aware that some states still require a period of separation. Italy requires several years of separation before the granting of a divorce. If military members can satisfy a judge that their overseas active duty service materially prevents them from defending their legal interest in divorce actions against them, they may invoke the Servicemembers Civil Relief Act to delay the proceeding until an appropriate time. Contact a

legal assistance attorney for more information concerning this Act.

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 will be held accountable in the final court ordered property distribution.

CUSTODY/VISITATION RIGHT

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." In Italy, there is a presumption that the parent, who actually cares for the children, generally the mother, will be awarded custody, unless there is an agreement or compelling reason to the contrary. Children are usually allowed to express their desires to the court, but the child's desires are not dispositive over the matter. 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 special arrangements when the parents are likely to be geographically separated.

CHILD SUPPORT

Parents can agree to a monthly child support payment. If the parents cannot agree, the court based on the respective income of the custodial and non-custodial parents will determine an amount. Child support payments generally continue until a child reaches age 18 or age 22 if a full-time unmarried student. 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. Nor is it wise to informally agree, even in writing, to changes to the support amount without a formal modification by the court.

SPOUSAL SUPPORT

Increasingly, states are doing away with spousal support or alimony. Those states, including Italy, that still allow alimony make the award on a case-by-case basis. The length of the marriage and the spouse's ability to work are key factors in this decision. In the U.S., any award of alimony is likely to be for a limited time only (with the exception of retirement pay). Military members also must meet the requirement of AFI 36-2906 to provide adequate support to their dependents. Thus, until a judge signs a final decree of divorce, spouses of military members must receive support. Commanders may require members to give proof of their support, so keep records.

RETIREMENT PAY

For divorces granted in the U.S. (not in Italy), the nonmilitary ex-spouse is normally entitled to request 1/2 of the disposable retired pay (DRP) that the military member "earned" while married to that spouse and on active duty. DRP equals total monthly retirement pay minus SBP premiums. In the past, it was common for state courts to refrain from awarding the non-military spouse a portion of the member's retirement pay if the couple was not married for at least 10 years of military service. That changed in 1982 with the passing of the Uniform Services Former Spouses' Protection Act. Now state courts can reach the member's retirement pay regardless of the length of the marriage.