

Military Retirement and Divorce in Utah

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There is little doubt divorce is complicated. One further complication is one of the partners is a member of the military or a past member who is entitled to certain benefits. Under the Uniform Service Former Spouses' Protection Act (USFSPA), military benefits including healthcare, commissary access, military pay, and pensions are addressed. In Utah, while marital property must be distributed equitably, there are specific rules and guidelines which are followed when one of the partners is a military member. Wall & Wall, a Salt Lake City divorce attorney works with spouses involved in military divorces.



Length of Marriage and Service

Before filing for divorce in Utah, one of the partners must have lived in or be stationed in the state for at least six months. Divorced spouses may receive a portion of any assets awarded by the courts directly from Defense Finance and Accounting Service (DFAS) provided the couple was married for at least 10 years. This does not mean those married less than 10 years cannot qualify for benefits, only that they will not be paid directly. It is important you work with an attorney who understands how military divorce works and make sure the proper language is included in the final divorce decree.

Pension Plans and Thrift Savings Plans

Regardless of the type of pension or TSP, a military member has, the spouse receiving benefits is not entitled to more than 50 percent of the military retirement pay. The exception to this is if the retirement plan is also being used for child support in which case the maximum is 65 percent.

In nearly all cases, the Thrift Savings Plan (TSP) is treated exactly like any retirement plan that a civilian employee would have access to. The difference is that instead of using Qualified Domestic Relations Orders (QDRO) the divorce decree must specifically lay out the percentage of the TSP and other retirement plans are to be distributed to the other spouse.

Another difference is how the assets of the retirement plan are distributed to the spouse and children (if applicable):

- Net Present Value — in the event the spouse is entitled to benefits and wants those benefits upfront, this is the value that is used.
- Deferred Distribution — when the military member is not retired, the share of the plan is calculated at the time of the divorce but not accessible until the active member retires.
- Reserve Jurisdiction — the amount to be paid to the other spouse is calculated at the time of retirement; this is the method most commonly used in Utah military divorces.

Base Privileges: Commissary and Exchanges

There is a rule that applies to certain on-base privileges awarded to a divorced spouse known as the 20/20/20 rule. This rule states the couple must have been married for 20 years, the military member served at least 20 years, and there was an overlap of the marriage and military service by 20 years. If these conditions apply, the ex-spouse will have full access to these benefits provided they do not remarry. Children of the marriage will have access to base privileges until they turn 23 regardless of the length of the marriage. Should these conditions not apply, a spouse will lose base privileges (excluding medical) when the divorce is finalized.

Health Care: TRICARE

TRICARE rules are slightly different with the 20/20/20 changing to 20/20/15. The only change is the marriage and time served overlap by 15 years. However, this rule allows the spouse to have access to TRICARE for only 12 months following a divorce. Should the rule not apply, spouses will not be eligible for TRICARE. The military does offer a temporary health care coverage for up to 36 months. Again, children will have access to coverage until they reach the age of 23.

Contact Wall & Wall

Wall & Wall, P.C., in Salt Lake City, Utah can help you navigate the complicated military divorce process and ensure the final divorce decree contains all the required language to ensure benefit entitlements are properly explained in the decree. We have more than 100 years combined experience with family law matters and complicated divorces. Contact us today for a free consultation.