

FORT BELVOIR DIVORCE WORKSHEET

Background. Please read this document carefully to obtain general information regarding separation and divorce issues. Please note that this document is not intended to convey legal advice regarding your case. Legal advice will be provided to you by a licensed attorney after careful consideration of the unique facts of your case. Please answer the questions as thoroughly as possible.

Information Confidentiality. You must bring a completed copy of this questionnaire with you to your appointment with the Fort Belvoir Legal Assistance Office. The information you provide will help your attorney evaluate your case, and assist you. All information you provide to legal assistance is confidential, and your attorney will return this form to you at the conclusion of your appointment. *Please also bring any divorce decrees, marital separation, prenuptial agreements or similar documentation to your appointment.*

How can legal assistance help me? Here is the normal progression that our separation / divorce cases follow, but please note that each case is different and may not follow this exact sequence:

- The client downloads and completes this divorce worksheet;
- Initial meeting with an attorney to examine the unique facts of the case, discuss strategies and possible outcomes. At the conclusion of the first meeting with the attorney, the client is given the separation agreement worksheet;
- Client meets with spouse, completes the separation agreement worksheet and returns it to our office (no appointment needed);
- Attorney drafts the separation agreement and sends document to client for initial review;
- Client returns to legal assistance and reviews the document with the attorney in detail;
- Client gives the separation agreement to spouse;
- Client and spouse sign the separation agreement;
- Client contacts attorney, and asks to have divorce pleadings prepared;
- Attorney drafts the divorce pleadings for the court and reviews them with the client;
- Both parties sign the divorce pleadings, and the client files these documents (with an original separation agreement) with the Circuit Court in Alexandria;
- The client is required to return to the court for a short hearing, (usually about 3 weeks after the initial filing). The judge will usually sign the final decree of divorce after this hearing.

Abused Spouses. In an emergency, call 911. On Fort Belvoir, call the MPs at (703) 806-4277. If you are being physically hurt, sexually abused, or threatened by household or family members:

- You can file criminal charges by getting an assault warrant from a magistrate. The police will tell you how you can do this. However, charges can only be dropped when you have appeared before the judge;
- In cases of spousal abuse, you can file a civil case by asking the Juvenile and Domestic Relations Court for a protective order. If you live in Fairfax County, call: 703-246-3040;
- You can file both a family abuse case (a civil case) at this Court and an assault case (a criminal case) through a magistrate;
- If a person has been sexually assaulted by a military member, he or she should contact the local MP office, and the Fort Myer Special Victims Counsel at (703) 696-0761. At Fort Belvoir, call the Victim Witness Liaison at (703) 805-4408.

Protective Orders. A protective order tells the person to obey certain rules before or after a court hearing. The person can be ordered to have no contact, or limited contact, with you or your children. The Court (and the command) can order the person to leave your home and stay away for a certain period of time. This means that the person will be arrested or taken to jail if that person does not follow the rules. If you are afraid or worried that something else may happen before a protective order takes effect, you should stay with friends or go to a shelter. Military spouses should always seek both civilian and military protective orders.

Divorce Types. Virginia recognizes divorces based upon a set period of separation (also known as “no-fault” divorces), or upon marital misconduct (also known as “fault” divorces.) To qualify for a no-fault divorce, the spouses must have lived separate and apart with the intention of ending the marriage for one year or six months, depending on the particulars of the case. A fault-based divorce typically involves some action of the spouse such as desertion, commission of a felony or adultery, and in such cases, the injured spouse needs to prove the misconduct to qualify for a divorce. **The Fort Belvoir Legal Assistance Office can provide you with information about both types of divorce, however, the focus of our practice is to assist clients with “no fault” divorces which are based on mutual voluntary periods of separation.**

Separation in Virginia. To qualify for a divorce based upon separation, you need to live separate and apart, with the intention of ending the marriage for one year. This requirement can be shortened to 6 months if: 1) the parties have a written separation agreement and 2) the parties do not have any minor children. Notably, one party will be required to prove the date of separation in court (normally by sworn testimony) that must be verified or corroborated by another person (not the spouse). In Virginia, the parties are separated when they move apart, and establish separate residences, bank accounts, utility bills, etc. However, Virginia courts also recognize that parties can be separated under the same roof. This is commonly referred to as “in-house” separation. This type of separation is more difficult to prove than a separation that results from different residences, but normally requires the following elements:

- Prove that the intention was to end the marriage
- Establish separate bedrooms
- Cease romantic or sexual intimacy
- Stop wearing wedding rings
- Shop for your own food and prepare your own meals
- Do not shop for any other categories of items (clothing, other necessities, etc.) on behalf of your spouse
- Do not use your spouse’s food or other purchases
- Do not eat meals together
- Care for and clean your own space within the home, such as your bedroom
- Do your own laundry
- Establish separate checking accounts.
- Cease socializing (e.g. do not attend parties, movies, theater together)
- If you have young children, interact as parents only where strictly necessary from the children’s perspective and their well-being (e.g., it is appropriate to attend a meeting with a school official relative to problems confronting a particular child, but less appropriate for the parents to ride together and sit together at a child’s school play)
- Cease gift-giving between spouses for such occasions as birthdays, Christmas, anniversary, Valentine’s Day, etc
- Make it known to close associates and relatives that you and your spouse are separated within the residence, though continuing to reside under the same roof
- Have a third party come to the home from time to time to personally observe the your separate and distinct living quarters (bedrooms, bathrooms, etc.)
- Use separate entrances to residence, if feasible

Separation Agreements.¹ Spouses can enter into a marital separation agreement (sometimes referred to as an “MSA”). This is a legally-binding contract between spouses about things such as child custody, child support, division of property (including military retirement pay) payment of debts, and other matters relating to the marriage. Under Virginia law, a signed separation agreement reduces the separation time required for couples with no minor children to be physically separated from 12 months to 6 months for a “no fault” divorce. Couples with minor children must be separated for at least one year regardless of whether they have a Separation Agreement. In such cases, the separation agreement actually becomes part of the final decree of divorce. **Please note that once separation agreements are signed by both parties, they are normally not subject to change (even by a divorce court) unless both parties desire to modify the original agreement.**

VA Residence Requirement. To be divorced in Virginia, at least one of the spouses must have been a VA resident and domiciliary for at least six months. Military members stationed or living in Virginia for six months before the commencement of a divorce suit qualify as residents.²

Support and Alimony (Spousal Support)³ There are three ways for a spouse to obtain support from a service member: 1) through a separation agreement; 2) through a court order; or 3) through the service member’s command . Note that the parties may agree on any amount of support that they believe is reasonable, and a commanding officer may only order support under limited circumstances. Separation agreements and court orders providing support take precedence over the military support regulations that govern support of family members.

How a Court Calculates Spousal Support / Alimony. First, the court will examine the circumstances of the marriage to determine if spousal support should be awarded to the lesser-earning spouse. In Virginia, the court will consider the following factors:

1. The obligations, needs and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature;
2. The standard of living established during the marriage;
3. The duration of the marriage;
4. The age and physical and mental condition of the parties and any special circumstances of the family;
5. The extent to which the age, physical or mental condition or special circumstances of any child of the parties would make it appropriate that a party not seek employment outside of the home;
6. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
7. The property interests of the parties, both real and personal, tangible and intangible;
8. The provisions made with regard to the marital property under § 20-107.3;

¹ For more information, see: Silent Partner, Separation Agreements. Available at: <http://apps.americanbar.org/family.military.silent.separation.pdf>.

²Va. Code Ann. § 20-97 (West)

³For further information, see Army Regulation 608-99, 29 October 2003.

9. The earning capacity, including the skills, education and training of the parties and the present employment opportunities for persons possessing such earning capacity;
10. The opportunity for, ability of, and the time and costs involved for a party to acquire the appropriate education, training and employment to obtain the skills needed to enhance his earning ability;
11. The decisions regarding employment, career, economics, education and parenting arrangements made by the parties during the marriage and their effect on present and future earning potential, including the length of time one or both of the parties have been absent from the job market;
12. The extent to which either party has contributed to the attainment of education, training, career position or profession of the other party; and
13. Such other factors, including the tax consequences to each party and the circumstances and factors that contributed to the dissolution, specifically including any ground for divorce, as are necessary to consider the equities between the parties.

If the parties gross income combined does not exceed \$10,000 per month⁴, the Court may use following formula to calculate temporary spousal support in accordance with Virginia Code § 16.1-278.17:1(c):

“If the parties have minor children in common, the presumptive amount of an award of pendente lite spousal support and maintenance shall be the difference between 26% of the payor spouse's monthly gross income and 58% of the payee spouse's monthly gross income. If the parties have no minor children in common, the presumptive amount of the award shall be the difference between 27% of the payor spouse's monthly gross income and 50% of the payee spouse's monthly gross income.”

For example: With minor children, payor spouse makes \$6,000 per month and payee spouse makes \$2,000 per month the calculation would be as follows:

Payor - $\$6,000 \times 26\%$ (or 0.26) = \$1,560; Payee - $\$2,000 \times 58\%$ (or 0.58) = \$1160

Payor's temporary support obligation: $\$1,560 - \$1,160 = \$400$ per month that the Court may award.

Note that this amount of \$400 is the “presumptively correct” amount of **temporary** support only. Critically, this amount may not necessarily be the amount of non-temporary ongoing support that is ordered as the result of a contested divorce case. In such cases, the Court can make deviations from this amount after considering evidence from the parties.

⁴ Virginia Code § 16.1-278.17:1(e). Formula for determination of pendente lite spousal support

Child Custody Issues. Families with minor children should carefully consider where the children will live, how their time will be divided with their parents, how the children will be supported, where the children will go to school, and the other issues relating to child care. From a legal perspective, child custody is the care, control, and maintenance of a child. In Virginia, there are several types of custody:

- **Joint legal custody** is when both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child, even though the child's primary residence may be with only one parent.
- **Joint physical custody** is where both parents share physical and custodial care of the child.
- **Sole custody** gives a parent the primary responsibility for the care of the child. That parent makes all the daily decision about his/her child's life.

Visitation. A parent who does not have primary physical custody of a child is legally entitled to visitation with that child. There are exceptions to this when it is not the best interest of the child. If the parents cannot agree to a visitation schedule, the judge will order a schedule. This can include general visitation days as well as holidays, school breaks, summer, vacations, and special occasions. Custody and visitation provisions are important parts of a separation agreement, and should be carefully considered with your attorney.

Calculating Child Support. Each state has specific guidelines for calculating child support (Virginia's Child Support Guidelines for shared custody are available at <http://www.courts.state.va.us/forms/district/dc640.pdf>). There are also numerous child support calculators available online (for example www.supportsolver.com/calculators.htm). In calculating the amount of support one spouse owes to another, the courts consider income from all sources, including taxable and nontaxable sources (such as BAH).

Military Retirement Pay. A federal law called The Uniformed Services Former Spouses' Protection Act (USFSPA) allows a court to award a former spouse a portion of retired pay when dividing property in a divorce case. There is no minimum vesting time required for a spouse to have an interest in the other spouse's military retirement pay. The court, however, cannot award more than 50% of the military member's "disposable retired pay," which is defined in the USFSPA as the gross monthly pay entitlement, less authorized deductions. Interest in military retirement pay usually is expressed as either a fixed dollar amount, a percentage of disposable retired pay, or by using a formula that your attorney will explain to you. Additionally, in order to consider retired pay in dividing property, the court must have jurisdiction of the military member by reason of the member's residence in the court's territorial jurisdiction (other than because of military service), domicile in the court's territorial jurisdiction, or consent to the court's jurisdiction. For those marriages in excess of 10 years overlapping 10 years of military service, the former spouse is entitled to receive direct payment from DFAS of interest in the retirement pay. The former spouse should complete and mail the DD Form 2293, "Application For Former Spouse Payments From Retired Pay", with the required enclosures, to DFAS as soon as possible after the divorce is final. The final decree (or incorporated separation agreement) needs to meet certain requirements for DFAS to make direct payments to the spouse, and such documents should also reflect the duration of the marriage.

Survivor Benefit Plan. SBP is an annuity that provides continued payment to dependents upon the death of the military retiree. Beneficiaries may include a widow or widower, surviving dependent children, and former spouses if not remarried before age 55 (a former spouse may regain eligibility if the remarriage ended before the former spouse turns 55). Former spouses must notify the respective service of their right to receive such benefits. Critically, such notice MUST be provided within one year of the order providing for SBP coverage, which is usually the date of the final divorce. DD Form 2656-10 is used for this purpose. If the request for SBP coverage is not made within one year from the date of the order providing SBP coverage (usually the divorce decree), the benefit is forever lost.

DEERS Enrollment for Former Spouses:

20/20/20 Rule. In order for a military spouse with no prior service to continue to receive DEERS benefits and privileges after a divorce (i.e. access to legal assistance, commissaries, medical benefits etc.), the spouse must have been married to the service member for at least twenty years during which period of time the service member performed at least 20 years of qualifying military service credited towards retirement, and both 20 year periods need to overlap. Such benefits are available to both active duty and reserve families. Such benefits come from the government, and are not granted under separation agreements or court orders. **Former spouses who later remarry lose these benefits permanently.**

20/20/15 Rule. Under DOD regulations, un-remarried spouses can retain DEERS (and Tricare) enrollment for a period of one year from the date of divorce, if they:

- Were married to military members for at least 20 years;
- Have spouses that performed at least 20 years of military service; and
- Have at least 15 years of marriage overlapping military service.

A former spouse that remarries loses these benefits.

Private Health Insurance⁵. Certain former spouses who will lose medical coverage are eligible to purchase up to 36 months of health insurance through the Continued Health Care Benefit Program (CHCBP). The program is intended to provide benefits similar to TRICARE. For more information, please visit: www.humana-military.com or call Humana Military at 1-800-444-5445.

Children's Benefits⁶. Unmarried children up to 21-years-old (including stepchildren who are adopted by the military member) may keep their medical benefits after divorce. A stepchild not adopted by the military member, however, loses eligibility once the divorce is final. An unmarried child may be covered until 23-years-old if he or she is in school full-time. Entitlements for incapacitated children are handled under special rules. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until the divorce is final. Once the divorce is final, children residing in the house of a former spouse who is not extended commissary privileges are not considered to be members of the authorized military member's household for purposes of commissary privileges. Children continue to be entitled to use the exchange and theater after the divorce if they are dependent on the military member for over 50% of their support.

Final Thoughts. This is a difficult time for you and your family. In looking at all of these issues, it helps tremendously if you can start to frame out a budget that projects what your actual income and expenses will be after the family separates. This will aid you in objectively evaluating you case, and will help you to make good decisions along the way.

Helpful Links:

General information and resources on divorce in the military, with subsections on the Army, Air Force, Marines and Navy: <http://www.military-divorce-guide.com>.

⁵ Section taken from information paper: *Former Souses' Rights*, by Joint Base Andrews Law Center, dated February 2014.

⁶ Section taken from information paper: *Former Souses' Rights*, by Joint Base Andrews Law Center, dated February 2014.

THE INFORMATION REQUESTED IN THE FOLLOWING SECTIONS IS NEEDED BY YOUR ATTORNEY TO PROPERLY EVALUATE YOUR CASE AND GIVE YOU ADVICE.

YOUR RESPONSES ARE CONFIDENTIAL.

PLEASE COMPLETE THESE SECTIONS AS COMPLETELY AS POSSIBLE. THIS FORM WILL BE RETURNED TO YOU AT THE CONCLUSION OF YOUR APPOINTMENT.

A. INFORMATION ABOUT CLIENT

Client's Full Name: _____ Rank: _____ Last 4: _____
Address: _____
U.S. citizen? _____ State of residence _____ Email: _____
Phone: (cell): _____ (work): _____ (home): _____
Previously married? _____ (Please bring any divorce decrees, marital separation or prenuptial agreements to your appointment.)
Date and location of marriage: _____
Employer: _____
Gross Monthly Income (including BAH and all other sources before taxes): _____
Date joined military: _____
Date retired from military: _____

B. INFORMATION ABOUT SPOUSE

Spouse's Full Name: _____ Rank: _____ Last 4: _____
Address: _____
U.S. citizen? _____ State of residence _____ Email: _____
Contact information of spouse's attorney: _____
Previously married? _____
Date and location of marriage: _____
Employer: _____
Gross Monthly Income (including BAH and all other sources before taxes): _____
Date joined military: _____
Date retired from military: _____

C. INFORMATION ABOUT CHILDREN (List all children including stepchildren)

Name	DOB	Resides With?	Who are the parents?
1.			
2.			
3.			
4.			
5.			

Please list any further notes about your children which may be relevant. For instance, do you anticipate any dispute over custody, do they have disabilities, or have they lived elsewhere in the last five years?

D. SEPARATION

Are spouse and client currently living together? _____

When did you separate? _____

Is this an "in-house" separation? _____ If so, do you meet the standards for an "in-house" separation as described above?

E. FINANCIAL INFORMATION ABOUT MARRIAGE

1. Please list your residential, timeshare and investment real estate properties below.

Description and Location	How Titled ?	Market Value	Mortgage Balance	Net Value
Total Net Value				

2. Please list your cars, boats and other similar property below.

Description and Location	How Titled ?	Market Value	Loan Balance	Net Value
Total Net Value				

3. Please list your cash assets below.

Account Type	How Titled? Beneficiary Named?	Approx. Balance
Total Net Value		

4. Please list your mutual funds, stocks, and other investments below.

Account Type	How Titled? Beneficiary Named?	Approx. Value
Total Net Value		

5. Please list your IRAs, 401(k)s, and retirement accounts below.

Account Type	How Titled? Beneficiary Named?	Approx. Value
Total Net Value		

6. Please list your life insurance policies and annuities below.

Company	Insured	1 st Beneficiary	2nd Beneficiary	Is there a Trust?	Policy Amt
SGLI	Servicemember				400,000
Death Gratuity	Servicemember				100,000
Total Net Value					

7. Please list other items of significant value (such as coin collections, antiques, jewelry, etc.) below.

Description	Approx. Value
Total Net Value	

8. Please total items 1 through 7 here. (_____)

9. Please list your debts other than mortgage(s) and loans listed above.

Creditor	Type of Account	Party Now Responsible	Balance Due

Total Amount Owing: _____

10. Please calculate the total net value of your estate (line 8 minus box 9) . (_____)

Client Notes. Please explain in detail anything else which you think will help the attorney best advise you:
