

San Diego Military Divorces: What To Expect When It Comes To Dividing Retirement Pensions

In a military town like San Diego, divorces wherein one spouse has served as a member of our armed forces are extremely common. To that end, the division of assets in a divorce where one spouse is an active or former service member can pose unique challenges. One of the reasons is that military service members who have served 20 years of active duty or reserve service members who complete a minimum of 20 "qualifying" years of service (creditable retirement years) become eligible for retired pay, a monthly payment he or she will receive for the rest of his or her life.

Military pensions awarded to service members are funded by the government. Contributions to pensions are made through the service member's years of service, rather than through financial contributions, such as in civilian retirement plans.

For example, after 20 years of active duty service, military service members are considered vested, making them eligible for this pension. For the Reserves, service members who complete a minimum of 20 "qualifying" years of service (creditable retirement years) become eligible for retired pay at age 60. After retiring, veterans begin receiving monthly compensation, become eligible for disability benefits if appropriate and may take advantage of the Survivor Benefit Program. Additional non-monetary benefits are also afforded, such as medical care, commissary privileges and others. For active-duty service members, the amount of the pension is based upon the total amount of time served multiplied by a service percent multiplier and the average of the highest 36 months of basic pay; the monthly pension amount is increased by cost of living adjustments, typically on an annual basis. Obviously, this lifetime of benefits adds up to a substantially valuable asset.

Military Pensions in a Community Property State

Military retired pay is deemed property that can be divided in a divorce, per the Uniformed Services Former Spouses Protection Act. Under this Act, otherwise known as USFSPA, the California Family Law Courts have the ability to divide a military pension as they would any other retirement account or asset in a civilian divorce.

The reason that military pensions can be divided like any other asset is due to the fact that California law (as a community property state) holds that *any* assets that were acquired or earned during the course of a marriage should be divided amongst spouses equally unless extenuating circumstances exist. Therefore, in San Diego there is no requirement for the marriage to have survived a specific length of time in order for one spouse to be entitled to half of the accumulated or earned assets that were acquired during the marriage. Seems straightforward, right?

Not quite.

Understanding Domicile, SLR and Objecting to California Jurisdiction

One of the major issues at play in a San Diego military divorce is determining what state a service member has deemed their domicile. Domicile is essentially another name for a service member's "State of Legal Residence" (SLR). Initially, all service members' SLR is the state in which they resided when they entered the service. However, many service members elect to change their SLR over the years, typically to a different state in which they are stationed, which *maynot* be a community property state. To put it another way, although a military member may be living in San Diego, the state of California may not be their State of Legal Residence. In cases such as these, the California Family Law Court *maynot* have jurisdiction over the division of a military pension and the service member's spouse may be required to request a division in another state.

If a service member's SLR is not California, suffice to say, things can get tricky. The service member's SLR may actually have jurisdiction over the division of the military pension and that state's laws for the division of assets in a divorce may be vastly different than the community property laws in California.

Please note, by no means can the above address all of the possible issues that come up in determining retirement amount, characterization and division of military retired pay. Regardless of whether you're the spouse who served in the military or you're the civilian in the relationship, you need to consult with an experienced San Diego attorney who is familiar with the eccentricities of divorces involving service members.

If you're the military service member you will need expert advice on whether or not to object to California jurisdiction. If you're the civilian spouse, you're going to need an aggressive divorce

lawyer on your side to assure that you receive what you are legally entitled to after divorcing a military service member.

For questions, concerns, inquiries, or to explore our free 30 minute phone consultations, please use the links below:

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