



Military Divorces and Colorado Law



1. A FEW WORDS ABOUT THIS BOOKLET

Few experiences in life are as disorientating and stressful as the end of a marriage. This pamphlet is intended to provide a brief overview of the law and procedure governing divorce in the State of Colorado and, more specifically, the legal principles that apply to military personnel, dependents in Arapahoe County.

If you need more detailed information or if you are planning to file for annulment or divorce, we encourage you to hire a civilian lawyer. The attorneys in the base legal office **cannot represent** you in divorce court or draft a separation agreement. We can refer you to the Colorado Legal Services (Adams, Arapahoe, Denver, Jefferson, and Douglas Counties) 303-837-1313 for help in your search. We recommend that you find an attorney who is familiar with military divorces since there are some special problems associated with them. Also, you can "interview" several attorneys before making your decision.

Another way to find an attorney is through the Metropolitan Lawyer Referral Service, 303-831-8000, <http://www.cobar.org/mlrs>. (this web address was current as of June, 2001) This is run by the Colorado Bar Association.

2. DIVORCE: WHAT IT IS, WHAT IT DOES

A marriage is a contract between a man, a woman and the state. Your legal status as husband and wife can only be ended through an action of the state court. Divorce is the action by the state to cut the legal bonds of marriage. The marriage partners don't need the state's permission to live apart, but their legal status as husband and wife can only be ended by the action of a state court. Divorce, then, is the declaration of a state court that the marriage between the partners is dissolved. The court then goes on to finish other business involved in the dissolution, including determination of custody for the children, deciding how the couple's property and debts will be divided, and determining whether one party will send the other a monthly alimony payment.

Colorado employs the term *dissolution of marriage* rather than "divorce"; the words mean exactly the same. Colorado divorce law also speaks of *spousal maintenance* rather than "alimony".

This pamphlet uses the terms "alimony" and "divorce" because they are more familiar to most readers. A note of caution, alimony is often associated with the notion of fault. Colorado is a no-fault state, and spousal support is awarded without any consideration of who was at fault.

The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

3. SHOULD I SEEK COUNSELING?

In a word “yes”. Before the divorce process begins, the parties may want to consider asking a third party to help them mediate their differences. Even if you decide to get divorced, counseling may help you understand each other and help you get along better during and after the divorce. A good relationship during and after the divorce can help you save time, money and trouble and could be essential to the well-being of your children. Mediation services are also helpful to some couples who are trying to stay married or want a smoother divorce. These services are listed in the yellow pages. Mediation may also be ordered by judges in some cases.

Base chaplains, other religious counselors, private marriage counselors or even friends and family may be able to help you. The Mental Health Clinic at Buckley provides marriage counseling to active duty members and family and to retirees subject to availability. The Family Support Center may also be able to help. Be sure that you discuss confidentiality rules with whomever you choose to speak to.

4. WHICH STATE'S LAW APPLIES?

Many military members have been married in one state and have lived in several other states or countries. They now live in Colorado (on or off the installation) but the member's LES (Leave & Earnings Statement) will say that (s) he is a domiciliary of yet another state (often Texas, Florida or California). In addition, the spouse may have a job in town and pay Colorado income tax. The first question is whether a Colorado court has authority to hear the case. The authority of a court to hear a case is called jurisdiction.

Colorado law requires that at least one of the partners to the marriage be a Colorado domiciliary for at least 90 days before the filing of the divorce action. In Arapahoe County the court will look to a few specific facts in making the dominant determination. If the person claiming to be a domiciliary is a military member, his/her LES had better say that his state of legal residence is Colorado. An Air Force LES will read *State of Leg. Res.: CO*. The military member should also have a Colorado driver's license. There are other factors which may be considered (voting registration, property ownership, and intention to remain permanently) but without the LES and driver's license the military member's claim will be met with skepticism.

If the party claiming to be the Colorado domiciliary is a military spouse, the court will look at her/his driver's license and whether (s) he is physically present in the state. Similarly, for retirees, driver's license and physical presence in the state are the big factors. The judges in Denver are very careful about jurisdictional issues. They may be lenient about a civilian spouse's residency, but they don't hesitate to dismiss cases in which the service member claims to be the domiciliary but isn't paying state taxes.

Changing domicile with plans to file a divorce action, is permissible, but the change of domicile must be complete 90 days before filing the suit. Of course, changing your LES will subject you to Colorado income tax. When a military couple gets a divorce, it's not necessary that the one

filing the divorce action be domiciled in Colorado. The law only requires that one of the parties be a Colorado resident.

5. GROUNDS FOR DIVORCE

Colorado is a complete "no fault" state. This means that the only basis for divorce is a factual finding by the judge that the marriage is "irretrievably broken". Colorado has done away with the traditional bases of divorce, including adultery, abandonment, habitual drunkenness and mental cruelty. The questions before the court are simply: *Who gets what? Who gets custody? Who pays how much?*

Colorado's decision to do away with the "for cause" grounds for divorce is not based on a legislative determination that no one is ever at fault in a divorce. Sometimes no one is, sometimes both parties are at fault, and often one is more at fault than the other. Rather the decision is based on the realization that courts are not well-suited for determining who is at fault. Colorado views marriage as a kind of economic and social partnership, and the job of the court in divorce--the "shutting down of the partnership"--is to divide the partnership assets and debts and to provide for the care of the children. On the other hand, the behavior of the parties is often relevant to the issue of child custody.

The law requires the judge to go beyond the request of the person petitioning for the divorce to find whether or not the marriage is, in fact, irretrievably broken. In practice, if the couple wants a divorce, it will be granted. If one of the marriage partners wants a divorce, and the other does not, the judge may give them time to participate in marriage counseling. If the unwilling party continues to want out of the marriage, except for rare circumstances, the divorce will be granted.

6. THE MECHANICS OF DIVORCE

The initial paperwork part of a divorce is fairly simple. Most of the basic papers have been standardized, which helps the court in handling the case. The attorney interviews the client, prepares the legal papers, and either mails or hands the papers to the court clerk, at the County District Court. The clerk of the court opens a new case file and sends it to the divorce referee. The Clerk is an officer of the court whose job it is to handle most of the judicial tasks required by a divorce case. Colorado law requires the court to wait 90 days before acting on the petition. The "cooling off" period is intended to encourage reconciliation of the couple.

During the separation, many couples enter into a separation agreement, a temporary contract in which the couple agree to details about custody, division of assets or debts and financial support. There is no "typical" separation agreement. If you wish to create a separation agreement you need to discuss the issues with your spouse and your attorney to come to an agreement that is satisfactory to all the parties and that allows for a good relationship in the future when dealing with any children. Drafting and negotiating the separation agreement is often where the lawyer earns his/her fee. What each party takes out of the marriage depends upon the facts of that particular case and the lawyers' skill and energy. In most cases, the drafting of the separation agreement is not so much a contest as an effort to create an agreement which will address the needs of both parties and offer them a realistic working relationship in which they can cooperate

as parents during the children's adolescence. If the parties are in agreement on all the issues in the divorce, the case is forwarded to a judge for his action. There will then probably be a brief hearing, which in many cases may be attended by only one of the parties.

If the case is in dispute, the matter is scheduled for at least one hearing before the judge, where witnesses may be called, legal arguments presented and evidence given. It may be necessary to have one hearing (a temporary orders hearing) to determine who pays what and who gets the kids while the divorce is in progress, and another hearing (a final orders hearing) to decide the final outcome of the case. In contested cases, the legal and procedural issues are too complex to permit do-it-yourself efforts.

7. HOW MUCH WILL IT COST?

Dissolution of Marriage is \$195.00. Legal Separation is \$195.00. Most courts accept only cash. Please check with your court for the type of payment they will accept. At the time you pay your filing fee you will receive a receipt from the clerk that will contain your CASE NUMBER. Include that case number on all further paperwork. To schedule your case for a court hearing you will need that case number.

In Arapahoe County you can get a packet of the necessary forms from the Clerk of the Court's Office. You can also find many forms online. A good starting point is at the website located at www.courts.state.co.us/forms/index.cfm

In most counties you can have the papers legally "served on" (delivered to) your spouse by a representative of the Sheriff's department. This can help avoid confrontations. The Arapahoe County Sheriff's Department charges roughly \$35.00 plus mileage for this service. Other Departments have similar fees, and some charge extra to serve away from the metro area, such as out in the eastern plains. You can also hire a private company that serves such notices, called Process Servers. The fees for this vary.

If you decide to hire a lawyer, there is a broad range of fees among lawyers in Denver. You are encouraged to discuss all fees likely incurred during your "interview". Many lawyers charge a minimum fee, which covers the amount of time the lawyer anticipates your case will require. We have heard that for most Divorce attorneys in the area this initial "retainer fee" is around \$1,500.00 to take on a divorce matter. Portions of this may or may not be refundable to you after all the work is done, depending on the contract you agree to. Most attorneys will send you an additional billing when the time spent on the case exceeds the retainer. The final cost of a divorce is in large part a product of the case's complexity and the attitude of the parties. The emotions arising from a failing marriage sometimes find their expression in court, resulting in an otherwise simple case becoming a long and difficult legal battle. Fighting for weeks over who gets the microwave is expensive, no matter what the lawyer's fee schedule. Some cases (such as those involving contested custody) are unavoidably expensive, whoever the attorney.

If both of the marriage partners are represented by counsel, then the cost of legal representation may be doubled. No attorney in Colorado will represent both parties to a divorce, because it

would cause a conflict of interest between clients. Frequently, however, a divorce action is commenced with one party represented by an attorney and the other acting on his own behalf.

How much of the lawyer's fee must be paid up front? Lawyers usually ask for all or a portion of their fee before the filing of the suit. The reason is simple: divorce is frequently a financial disaster for both partners, and if it comes to buying groceries or making a payment on an attorney's bill, any sane person will choose the former. Some lawyers offer a payment plan (using an allotment or other automatic deduction to assure payment).

What if I'm broke? It sometimes happens that the wage-earning partner to the marriage leaves the other without any cash to pay for a lawyer. It's worth noting that the law permits the cash-poor spouse's attorney to petition the court for attorney's fees. In other words, the law places a high value on both partners receiving competent legal advice and representation...and can require one spouse to pay for both the lawyers.

Other costs: Along with the cost of filing fees, and legal representation, the divorce itself carries with it many hidden costs. If a husband and wife were living from paycheck to paycheck during the marriage (and financial worries often contribute to unhappiness in marriage!), then splitting up to create two households, requiring two sets of furniture, two modes of transportation and two dinner menus, will not improve their financial outlook. Divorce is expensive.

8. ALIMONY

Alimony (or "spousal maintenance") is the periodic payment of money by one party to the other, usually on a monthly basis. Alimony is directed towards the well-being of the receiving ex-spouse. Alimony may be awarded in order to give the receiving party an opportunity to look for a good job, update work skills, stay home with small children or attend school. The award of alimony is not automatic, and where the financial position of the parties is about equal, alimony may not be appropriate at all. Whether alimony is awarded depends on the parties' financial conditions, their earning capacity and the circumstances of the marriage. Alimony often ends upon the recipient's remarriage or the death of either spouse.

What if I can't get my spouse/ex-spouse to make his/her ordered child support or alimony payments? You may be able to get his/her military paycheck garnished or have an involuntary allotment taken out of it, depending upon the circumstances. Both procedures will require that the member have an outstanding legal obligation. This is done through a court order requiring support payments. The procedures vary after this threshold requirement is met. The legal office has a separate handout for these procedures and also for getting direct payments from retired pay for alimony and child support.

9. TEMPORARY SUPPORT DURING THE DIVORCE.

The Colorado divorce statute provides that the court may award alimony only if it finds that the spouse seeking alimony lacks sufficient property to provide for her/his reasonable needs and is unable to support her/himself through appropriate employment or has custody of minor children whose circumstances make it appropriate that (s) he not be required to seek employment outside

the home. Courts often require parties to file financial affidavits disclosing income, debts, property, etc. The trend in Colorado has been towards a “rehabilitative” award, which ends after a few years.

Colorado has recently enacted new legislation to clarify what the support will be in the interim between when couples file for divorce and when it is final. This is called “temporary maintenance, and is codified at 14-10-114, Colorado Revised Statutes, establishing a formula for calculating temporary maintenance. The act takes effect July 1, 2001. In all proceedings for dissolution of marriage or legal separation where temporary maintenance is requested or requested to be modified, there will be a rebuttable presumption of setting the amount of maintenance based upon a formula.

1. If the combined income of the parties is less than \$75,000:
 - a. 40% of the higher income—50% of the lower income=maintenance amount.
For example, if Spouse #1 makes \$4000/month and Spouse #2 makes \$2000/month
40% of \$4000=\$1600 and 50% of \$2000=\$1000
so \$1600 - \$1000 = \$600 maintenance
If the amount comes out to 0 or a negative number, the presumption is that no maintenance will be awarded. Otherwise, the maintenance is the figure remaining.
 - b. Courts should deviate from this formula only where its application would be inequitable or unjust, and the reason for deviating must be set out in writing.
 - c. The parties may agree to waive or deviate from the amount, however, the court has discretion to disapprove this if it is found to be unconscionable.
2. If the combined income of the parties is more than \$75,000:
 - a. Maintenance may be awarded either on a temporary or permanent basis if the court finds that the spouse seeking maintenance:
 1. Lacks the property to provide for his/her own reasonable needs;
 2. Cannot support themselves through appropriate employment or cares for a child whose condition prohibits them from seeking employment;
 - b. The court should consider the following factors:
 1. The financial resources of the parties;
 2. The time needed to acquire education;
 3. The standard of living established during marriage;
 4. The duration of marriage;
 5. The age, physical & mental condition of one seeking maintenance
 6. The ability of the one providing maintenance to provide for their own needs in addition to spouse's.

“Monthly adjusted gross income” means gross income less preexisting maintenance or alimony obligations actually paid and less any child support paid.

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has a separate handout for these procedures and also for getting direct payments from retired pay for alimony and child support.

10. DIVISION OF PROPERTY/MILITARY PENSIONS

Colorado law looks at marriage like a partnership and presumes that all property acquired during a marriage is "marital property" which can and will be divided between the parties, regardless of which party's name is on the title or deed. The law says that the assets a couple has acquired during a marriage should be divided "equitably" in a divorce. Each party usually keeps any property they owned when they entered into the marriage, as well as any property they received during the marriage through inheritance or gift.

"Equitable" means fair, but it does not mean "50/50". What's "fair" is a matter for negotiation. Parties to a divorce are often shocked by the apparent unevenness of the division. One reason for the disparity is that the earning capacity of the parties may be very different. Courts do not like to spend their time deciding who gets what. In your divorce decree, you should list major items of property each party will receive.

The court's power to divide marital property is not limited by the title ownership of the property (i.e. whose name is on the title or deed). Both parties are required to make a sworn statement disclosing all their assets to the other person. The automatic temporary restraining order will stop each spouse from disposing of any property before the decree is issued.

Not all property owned by the parties is considered "marital property" subject to division. For instance, property owned prior to the marriage or received during the marriage by inheritance remains "separate property" not to be divided. However, the classification of "marital" and "separate" property is often a complex and disputed legal issue.

The Uniformed Service Former Spouses' Protection Act, passed by Congress in 1982, gives former spouses of military members the right to a share of the military member's retired pay. In Colorado, a nonvested military pension is held to be marital property. The Colorado Supreme Court in determining the value of a military pension ruled that it should be based on the amount available when the pension holder retires, not when the divorce occurs. For example, if a military couple divorces after 15 years of marriage and the husband is a major, and retires as a colonel after 26 years of service, then the wife is entitled to one-half of the monthly benefits at the time of retirement as a colonel times 15/26.

Of course, no court can order a member to apply for retirement, or to retire at a particular time in order to effectuate any payment. However, the court can award the member's spouse a share of retired pay which will become payable when the member retires. In practice, the member and spouse may come to an agreement on the present value of the military pension and agree to a one time cash settlement. This eliminates the uncertainty of when the spouse will receive money and enables both parties to get on with their lives. Also, a divorced spouse can now be awarded Survivor Benefits Plan (SBP). This program allows for the support of the ex-spouse in case of the death of the retiree.

For additional information the Defense Finance and Accounting Service visit the following site: www.dfas.mil/garnishment/civgarnishment/faqs.html or contact them at 1-888-332-7511.

11. DIVISION OF DEBTS

The parties must determine which spouse will pay off which debts. The courts can order the division of joint debts (bills, loans, credit cards, etc. in the name of or signed by-both spouses). However, getting a divorce does not end both partners' liability for the debt, even if one of the partners is ordered to pay it. If the party responsible for paying the joint debt fails to do so or goes bankrupt, the creditor will come after the other spouse. Your divorce decree is a settlement between you and your spouse and does not affect your creditors' rights. If a creditor comes after you, you will have to pay the debt and then sue the other spouse for breaking the divorce decree. One way to avoid some problems in this area is to notify any joint creditors that you are canceling those accounts, thus ending your liability for future charges. However, you are still liable for charges made while both names were on the account.

12. CHILD SUPPORT

Colorado provides statutory guidelines for the calculation of child support payments. The calculation is produced through a formula that considers the income of both parents, as well as the cost of day care, if any. An attorney who is familiar with the guidelines can calculate on a pocket calculator the amount of child support suggested by the guidelines. If you go up to Division X (where most divorce hearings are held) and see lawyers pushing buttons on calculators, that's probably what they are calculating. Unfortunately, there's a bit more to it than arithmetic. Crunching the numbers is easy. Deciding which numbers to use is harder. If a husband/wife quits his/her high-paying job to start a business, and wife/husband gets a second job to make ends meet, which income figures should be used?

In the military, base pay represents only a portion of the financial benefit received. Much of a member's "pay" comes in the form of "allowances". It's generally accepted that all LES items are considered income for the guidelines. However, the child support order may itself change the amount of the military member's allowance entitlement. This is especially true in cases in which both parties are on active duty. Determining proper child support in military cases demands clear thinking and an understanding of the military pay system.

Colorado's child support laws are contained in Colorado Revised Statute 14-10-115. Among the changes is a reduction of the age to which support must be paid. With a few exceptions, child support continues until graduation from high school, unless the parties agree or the court orders that support continue through postsecondary education. A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment, but not beyond age of twenty-one." Quoted from Colorado Revised Statute 14-10-115 (1.5)(a)(III).

Unfortunately, obtaining a child support order and actually getting it into the bank are often very different things. We are all familiar with the stories of ex-spouses who disappear or stop paying. If the paying spouse is a service member, Colorado courts have the power to order the child support payments to be deducted from the service member's paycheck (with Uncle Sam sending

a check directly, to the ex-spouse). In addition, the laws have been strengthened to permit wage assignments (i.e. forced payroll deduction) in all cases where the wage-earner is delinquent in his payments, whether or not he is military.

Please see the “Colorado Child Support Guidelines” handout.

13. MODIFYING COURT ORDERS.

If you want a change to your divorce decree or support order, you must ask a court to make the modification. Any agreements the parties make without the court’s approval could be ignored by the court in a later modification hearing. The party seeking a modification has the burden of proving to the court a substantial and continuing change of circumstances before the court will modify maintenance orders. If the court determines that there is a substantial and continuing change in the parent’s or child’s circumstances a new support order may be made. A legislative increase in the child support guidelines of more than ten percent creates a rebuttable presumption that the existing support award must be modified.

14. CHILD CUSTODY

Colorado law does not presume that the mother should be awarded custody of minor children. However, the mother is often (but not always) the person whose life is structured around child care responsibilities. Military life--with TDY’s, deployments, and often long work hours--presents great obstacles to the single parent. That’s not to say that a parent on active duty cannot gain custody. The court will look closely at each parent's demonstrated ability and willingness to care for the child. A mere desire to live with one's kids is not enough. The court will not consider whose “fault” the divorce resulted from, but will seek the custody arrangements that are in the **best interests of the child**. For a service member who is married to a civilian to seek custody over the other party's wishes, the member must have, at the very minimum, a clear plan for how the child will be cared for in the context of military life.

A good percentage of divorces in the military occur between parties who are each on active duty. This renders the custody decision more difficult in a contested case. On the other hand, it may form the basis for an agreement, which allows each parent to play an active role in the child's life while cooperating with the other to handle the demands of military service.

The primary task in most divorces is not deciding who will have custody but rather how large a role the non-custodial parent will play in the child's life. Colorado recognizes two kinds of custody, primary residential and legal custody. Primary residential custody means who the children live with. Legal custody refers to the rights that a party has to be involved in decision affecting the child. A frequent approach is to award joint legal custody and primary residential custody to one of the parents. If both parties want primary residential custody, the court will usually appoint an independent expert to conduct a custody evaluation. Custody evaluators have a mental health or counseling background, and report their observations and recommendations to the court. The judge doesn't always follow the evaluator's recommendations, but it's a big factor in his decision-making.

Here are some suggestions when you are involved in a custody dispute.

Get the kids in counseling. There are two reasons for this. The first is simply that divorce is hard on kids, and they need the help. Children of divorcing parents sometimes act out their pain and anger often get help. Children who may seem unaffected by the divorce usually aren't. Unfortunately, one way children deal with the pain of divorce is to pretend it isn't happening. Another is to try to be the perfect child. Don't judge by appearances. The second reason to send a child to counseling is that custody is about the best needs and desires of the child, and there's no way you can be objective to do a first-rate job addressing those needs without help.

Write out what you think would be best for the children. List your reasons. There's a reason for doing it in writing. Ideas that sound good in conversation may look awfully weak in black and white. There's a benefit of this exercise that goes beyond clarifying your reasoning: this is also the most effective way of providing your attorney an outline for his case. Include visitation as well as residential custody in your writing.

Talk your reasons and ideas over with a chaplain or counselor. Some people think that seeing a counselor will be used against them in court. It won't be. Judges assume that everyone involved in a divorce needs counseling, and mark it in your favor if you get it.

15. CHILD SNATCHING (KIDNAPPING)

Until a few years ago, it was sometimes, a legal advantage in a custody dispute to put the kids in the car and drive off to a different state, which is no longer the case. There is a new set of statutes, which remove that advantage and make child-snatching (kidnapping) a felony. The Military will take this situation extremely seriously.

16. VISITATION

The familiar formula for the non-custodial parent's visiting the children "every other weekend" seldom works after a PCS. Both parents have an interest in making visitation work; the separation agreement in military divorces must be tailor-made to fit the family's circumstances.

17. TEMPORARY RESTRAINING ORDERS

Colorado imposes an automatic temporary injunction on both parties when a divorce action is filed. This prevents them from hiding or squandering marital assets, molesting or disturbing the peace of the other party or removing the children from the state without permission of the other party. Additionally, either party can apply to the court to get further legal restraints, including removing the other party from the marital home.

18. LEGAL SEPARATION WITHOUT DIVORCE

Colorado permits the court to order permanent separation without divorce. This procedure was more common in the days when divorce carried a social stigma, but it is still used today when one spouse wishes to "let the other down easy" where the parties have religious scruples against

divorce, or where it is important that the civilian spouse maintain military medical benefits. However, after six months of court-ordered separation either party may petition the court to change the separation into a divorce.

19. SURVIVOR'S BENEFIT PLAN

SBP is a retired pay program, which allows a retiring service member to provide for the support of the spouse (and minor children) upon the member's death. If the service member elects full spousal coverage, Uncle Sam deducts money from the retirement check every month. When the retiree dies, the government pays the surviving spouse 55% of the retired pay until the spouse reaches age 62, when the amount is reduced to 35% of the retired pay (the widow (er) is also eligible for Social Security payments at age 62). SBP benefits end if the receiving spouse remarries before age 55. However, if the spouse's second marriage ends in divorce or death (s) he may reapply for SBP payments arising from the earlier marriage.

SBP sounds a lot like life insurance, but it has a few unique features. First, if when the retiree dies he is not survived by a wife, Uncle Sam pays no one. Unlike a life insurance policy, SBP limits the retiree's opportunity to name an alternate beneficiary. On the other hand, if the retiree does not have a spouse (for instance, if the spouse dies before (s) he does), then no money is deducted from the retirement check. If service member remarries, the retiree may elect to include the new spouse in the program.

SBP can play an important role in divorce cases. A divorced spouse can now be covered by SBP. Coverage does not occur automatically, but the law now recognizes an ex-husband/ex-wife as a potential beneficiary. This can be a hotly-contested issue in divorce, since payments for SBP coverage can take a big chunk out of a retiree's check.

There's a one-year statute of limitations for doing the military paperwork after the SBP coverage is awarded in a divorce case. Just because the military continues to deduct the SBP premium after the divorce doesn't mean you are still covered. If an SBP "former spouse" request has not been filed with the proper military office, upon the death of the retiree Uncle Sam will simply refund the premiums to the deceased's estate and pay the former spouse nothing. The court can hold a service member in contempt if they refuse or fail to complete the ordered paperwork.

20. TAX CONSEQUENCES

If you were married on the last day of the calendar year, you may file a "married filing jointly" return. This is true even if the couple's divorce action is pending in the courts.

Unless the court orders otherwise, the parent who has custody of the kids gets the income tax deduction. In many cases the custodial parent gives up this right in return for some benefit from the other party: this is one of the few areas of the law where both parties can come out ahead. If Wife has the kids and Husband earns more taxable income, a little cooperation on taxes will reduce the parties' total taxes.

Alimony is treated as income for the receiving spouse and as a deduction for the paying spouse. Property settlements and child support are not treated as income or deductions for either spouse.

The IRS will not allow anyone to disguise child support or property settlements as spousal support to shift the tax burden.

21. BASE HOUSING

If the member no longer resides in quarters, his family must move off base. The family is provided time to move but will probably have to pay for the move itself. Once the member takes definite action (i.e. renting apartment or filing divorce action), a termination letter should be sent to the housing office.

22. BAQ/BAH

Children still qualify as dependents for the purpose of setting the BAH rate, even if the civilian parent has custody after the divorce. If the service member pockets the increased BAH and fails to pay child support, he may face UCMJ punishment for defrauding the government.

How much support must a with-dependent rate BAH-receiving serviceman pay to his estranged wife for spousal and child support? In the absence of a court order, Uncle Sam (in the guise of a unit commander) may require that the serviceman pay a portion of his check for support. There is considerable variation of amount among Air Force commanders, but the measure of difference between the single and with-dependents rates is generally the minimum. The question is often the center of dispute, because it is permissible to support one's dependents "in kind" (i.e. with food, shelter and clothing) rather than with a check.

The instructions which govern your BAH entitlement may sometimes result in unfairness where both partners to the marriage are on active duty. There is a DoD directive that authorizes with-dependent rate BAQ to the party that provides more than 50% of the child's support. Of course, after being paid the higher BAQ his or her actual cost for child support may be less than that of the other party.

23. SGLI

Most service members designate their government insurance to be paid "by law". If the service member divorces, the ex-spouse is automatically excluded as beneficiary. The ex-spouse may be designated by name as a beneficiary (for example, to guarantee the spouse an income after the termination of alimony upon the service member's death) but there are hidden hazards in this practice. There is a natural tendency for a serviceman to forget about court-required insurance and revert back to the "by law" designation. Unlike commercial insurance, SGLI will be paid to the "by law" beneficiary even if a court order says otherwise.

If a party is required to maintain SGLI coverage for the children, it's a good idea to require that (s) he also execute a special power of attorney authorizing the other party to examine in the military records to ensure that the beneficiary election does not, through choice or mistake, revert to a "by law" election.

24. WILLS AND OTHER DOCUMENTS

Divorce alters the legal effect of wills made during the marriage. Both wills should be rewritten. This is a good time to review all your documents, including life insurance beneficiaries, "pay on death" beneficiaries on certificates of deposit, emergency data cards at work, and powers of attorney.