



# DIVORCE AND SEPARATION AGREEMENTS



**Please note this Information Paper provides only basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.**

Divorce can be one of the most stressful times in a person's life. It can be both financially and emotionally taxing, but the better informed you are about the process, the better prepared you will be.

## **1. Can I get a divorce at the Legal Assistance Office?**

No. The divorce process can be initiated only by filing the proper papers in the court of the state of your legal residence. Although you are not legally required to have a private attorney file these papers for you, you should consult one to be aware of all of your legal rights and responsibilities.

## **2. What is a separation agreement?**

First and foremost, a separation agreement is an agreement. Therefore, to have one, you and your spouse must cooperate and be in agreement on marital issues.

It is a contract between the spouses that resolves issues such as property division, division of debts, spousal support, child support and custody, and visitation schedules. Once executed, the agreement is legally binding and enforceable on both parties. It can make getting a divorce faster and less expensive by resolving issues before you see a private attorney.

No law requires a separating couple to execute a separation agreement. However, a court will usually require all issues be resolved before granting a divorce. If the parties cannot resolve these issues by agreement, it will order resolution in a manner one or both parties may not like. In addition, the parties will usually spend far more money litigating (asking the court to decide) these issues than negotiating an agreement. Therefore, you will likely reduce risk and expense if you can cooperate.

Keep in mind a separation agreement binds only the two parties who sign it unless it is entered as part of a divorce decree; it will not bind other parties (e.g., mortgage lenders, credit card companies, etc.). The only way to enforce it is for the aggrieved party to sue the other for breach of contract.

## **3. Can a single attorney draft the separation agreement for my spouse and me?**

No single attorney can represent both husband and wife in a separation agreement. It is best to have two attorneys involved, one to advise each partner. That way, both parties have received independent legal advice from a lawyer who is not trying to represent two clients with different goals and needs.

## **4. How should we divide our property in the separation agreement?**

The separation agreement should cover all types of property owned by the parties, e.g., real estate; tangible personal property, such as cars, jewelry and furniture; and intangible property, such as bank accounts, mutual funds, IRAs, pensions and insurance. Generally, you and your spouse are free to divide your property any way you want, and the judge may accept it without question. However, as a rough guide in drafting your separation agreement, you may want to consider that different states have different rules for dividing marital property.

The majority of states follow equitable distribution law, which means that property is allocated in proportion to the economic and non-economic contributions of each spouse in acquiring the asset. In theory, equitable distribution is the fairer of the two systems; however, it is also unpredictable. Equitable does not necessarily mean equal. A judge will consider a variety of factors, including age, health, monetary and non-monetary contributions to the marriage, tax consequences and, in some states, whether fault (adultery, abuse, etc.) contributed to the breakdown of the marriage. You should learn whether your state follows community property or equitable distribution laws.

A minority of states (including Arizona, California and Texas) follow community property law, meaning all property accumulated by a husband and wife during their marriage becomes joint property even if it was originally acquired in the name of only one partner. At divorce, all joint property is then equally divided between the parties.

Marital property is all property that is not separate property. Separate property cannot be divided. Separate property includes property acquired and paid off before the marriage; property which both spouses agree is non-marital in a properly executed document; professional licenses, if they cannot be transferred to another individual (except in New York); pension rights, in some states, if those rights are not vested at the time of the divorce; and property acquired during marriage by gift, will, or inheritance.

One or both spouses often acquire property during marriage through gift or inheritance. As long as inherited property is maintained by the spouse who inherited it separately, it remains that spouse's sole property and is not subject to division by a court. However, once inherited property becomes "comingled" with marital property, it is no longer considered separate property. For example, using gifted or inherited funds to make mortgage payments or improvements to the marital home means those funds which were originally separate property have now become marital property.

#### **5. Can the court modify the terms we include in a separation agreement?**

It depends. Provisions for child custody, support and visitation are always modifiable, as courts maintain continuing jurisdiction over children and will consider changing provisions if it deems those changes are in the best interests of the children. Provisions for division of property, debts and alimony are seldom modified by the court, except in limited circumstances where a party can prove fraud, coercion, or lack of capacity.

#### **6. If I get a separation agreement, does my spouse have to sign it?**

No. Both parties must sign it voluntarily.

#### **7. Will a separation agreement stop my spouse from harassing me?**

Provisions regarding harassment are difficult to enforce. For harassment by a military spouse, the military spouse's commander can order him or her not to contact the non-military spouse. For harassment by a non-military spouse, barring him or her from the installation or getting a restraining order are probably your best options.

While separation agreements usually have a non-harassment clause, no piece of paper—be it agreement or court order—is going to stop a person from doing something he or she wants to do. If the problem is one of physical violence, a restraining order would be better than a separation agreement and could be used to punish the wrongdoer if he or she violated the order. If there is only an agreement, a lawsuit for breach of contract is one possible remedy for breaking the promise of not bothering each other, but it may not be a very effective remedy.

## **8. Do I need a separation agreement for an Early Return of Dependents (EROD)?**

No. EROD is an administrative process and does not require a separation agreement. An EROD permits both military and civilian dependents to travel to CONUS at government expense prior to termination of the Servicemember's/civilian's OCONUS tour due to *official or personal situations*. An EROD may be requested by the Servicemember or civilian, his/her dependent, or Command. ERODs are granted when the appropriate authority determines that the best interests of the Servicemember or civilian, dependent(s) and government will be served by the transportation of one or more dependents for compelling personal reasons, such as marital difficulties.

Commanders are required to determine that the spouses' problems cannot be resolved within the overseas command. Therefore, all available resources must be exhausted before an EROD request can be granted. Command resources include the Army Community Service (ACS) Family Advocacy Program (FAP), and marital counseling offered by the Garrison Chaplain and medical services.

EROD entitles the returning dependent(s) to transportation, shipment of unaccompanied baggage, household good and a personally owned vehicle (POV). Keep in mind that once family members have returned to the United States on EROD, the government will not provide these benefits if the dependent decides to return to Germany. Servicemembers and civilians who return dependent(s) to Germany must do so at personal expense and must request command sponsorship upon their return. In addition, dependent(s) must commence early return travel prior to the Servicemember or civilian being officially notified he/she is being reassigned. Unexecuted ERODs become void once the Servicemember or civilian receives notice of reassignment.

A checklist of required documentation is provided by the Garrison's Military Personnel Division. For more information on Early Return of Dependents, contact the Military Personnel Division.

## **9. I have a separation agreement and an approved request for Early Return. Must my spouse leave?**

No. A family member cannot be forced to leave Germany. Your spouse will lose command sponsorship once an EROD is granted, but he/she is not obligated to go back to the United States if he/she doesn't want to.

## **10. After the separation agreement is signed, can I "date" other people?**

No. You are still legally married, even after the separation agreement is signed, until your divorce is finalized by judicial decree. Soldiers may be prosecuted under the UCMJ for adultery if they have sex with anyone else before the divorce has been finalized by a judge. Adultery may also be considered in the final settlement and therefore may have adverse consequences in your divorce decree.

## **11. Who gets custody of the children?**

Child custody, visitation, and child support issues are discussed in the "Custody" handout. Please ask for it.

A separation agreement is a good forum in which to settle these issues. Please remember, however, that a court is not necessarily bound by what you say in your agreement. The terms you include for child support, custody, and visitation can always be modified by the court in the best interests of the child. However, in the absence of proof to the contrary, there is a presumption that the agreement's terms concerning the children are fair, reasonable and necessary for the best interest and welfare of the children.

## **12. Can we provide for college education of our children in a separation agreement?**

In most states, judges cannot order child support for your child while he/she is in college, but you may make provisions for college in a separation agreement and these will be binding and enforceable; the court can require each of you to perform the promises you set out in the agreement.

### **13. What points should we remember when deciding about college or other schooling expenses?**

Here are some of the items that a good separation agreement will address:

- How long should the obligation last? Not every child finishes college in 4 years. Some ending date should be set.
- What costs will be covered? Usually college students incur expenses for tuition, fees, room and board, and textbooks. Some parents also agree on a modest monthly allowance for spending money for the child, or for travel to and from home, or for summer expenses. If the student receives a scholarship, how will that affect each parent's obligations?
- What part of the college costs will each parent pay? Set some specific percent or amount so that it will be enforceable in court. Clauses that state each party should pay "a reasonable share of the child's college expenses" are may not be enforceable because they don't say exactly what each parent has to pay. When in doubt, **spell it out!** Even if you just divide the college costs 50-50, it's still better than a vague and unenforceable clause.
- What are the expenditure limits? Few parents want to agree to finance a college education for a child at any college or university because the cost of some private colleges and universities would bankrupt the average parent. Consider putting a ceiling or "cap" on the college expenses, such as by specifying that the maximum shall be "the then-prevailing rate for in-state tuition at XYZ State University" or some other nearby public institution.
- What other limits should be set? For example, some agreements state that the child "must attend an accredited institution, in pursuit of a generally recognized undergraduate degree, on a full-time basis, while maintaining at least a "C" average."

### **14. Can the separation agreement set out how we file our income taxes and which parent can claim our children as dependents?**

Yes. Filing a joint tax return can be difficult when a couple is separated; it requires the cooperation of both parties and involves exchange of financial information. However, you and your spouse can save a lot of money by choosing to file jointly, rather than separately or as head of household. Once you choose not to file jointly, you lose the ability to claim each other as exemptions on your return, as well as the ability to claim a lot of tax credits that are available only to spouses filing jointly.

Additionally, the 1984 Tax Reform Act allows the parties to agree as to who can claim the children as dependents and the Child Tax Credit. Without a written agreement, the parent who has physical custody of the children for more than half the year is entitled to the dependency exemption.

Once a court issues your divorce decree declaring you divorced, you can no longer file jointly. Therefore, it is a good idea to review your tax withholdings and make any adjustments required.

You may also want to consider that child support payments are for the benefit of the children, and as such are neither taxable income to the parent receiving the payments, nor tax deductible to the parent making the payments. As such, sometimes parents agree to one of the following arrangements:

- Custodial parents can elect to "trade" the exemption in exchange for an increase in child support. A small increase in support would help offset the tax increase that will be incurred by the custodial parent as a result of losing the dependency exemption, and the other parent can better afford such an increase due to the taxes he or she saves by claiming the exemption on federal and state tax returns.
- Parents can elect to alternate the exemption between parents. For example, the father could claim the exemption in even-numbered years (2006, 2008, 2010, and so on) and the mother could do so in odd-

numbered years. Or the father could claim one child and the mother could claim the other. Such alternation would reduce the taxes on the custodial parent.

- Custodial parents can elect to condition the transfer on the other parent's regular and full payment of support. Instead of transferring the exemption permanently without regard to the timely payment of child support, some custodial parents agree to transfer the dependency exemption only if the other parent is current (not in arrears) on child support payments by December 31 of each year. This would be very useful to the custodial parent in getting prompt payment of child support each year (at least by year's end) without the need for court intervention when the other parent gets behind.

## 15. Can I get alimony in my separation agreement?

Yes, you can make provisions for alimony in your separation agreement. Here is some useful information regarding alimony:

Alimony, also known as spousal support or maintenance, is separate from child support. Alimony provides the lower or non-income earning spouse with money for living expenses (food, shelter, transportation, medical expenses, clothing, etc.). Generally, as with property and debts, you and your spouse may determine the amount and duration you think is appropriate, and the judge is likely to agree. However, as with other issues, if you and your spouse cannot agree on alimony provisions, a judge will order what he/she deems appropriate. Therefore, you may want to consider the following:

- Not all states have official alimony guidelines. Nevertheless, there are some general factors a judge would probably consider, such as: the length of the marriage; the age, work and education history of the spouses; the financial needs and resources of the two spouses (military couples should consider the possibility of the soldier losing the BAH entitlement when the divorce becomes final); and, in some states, any marital fault. For spouses returning to the U.S. from overseas, it would be appropriate to consider the cost of travel to and setting up a new household in the U.S., and looking for new employment. Travel and transportation expenses, deposits for an apartment and utilities, job hunting expenses, and training and education expenses should also be considered.
- Alimony must be requested in documents filed with the court before the divorce is granted to keep the issue "alive" for the judge to decide. Alimony does not need to be requested if you make more than your spouse or you do not wish to receive these payments. But if you're a dependent spouse and you intend to ask the court for alimony, discuss this with your divorce lawyer at the outset. This means before the divorce is granted!
- You will probably have to prove that you are the **dependent spouse**, meaning you are financially dependent on the other party. Likewise, you'll probably have to prove your spouse is the **supporting spouse**. Additionally, in some states, you may have to prove some sort of fault on the part of your spouse (abandonment, adultery, domestic violence, etc.) although this is becoming less important.
- An absolute defense to alimony may exist when the parties have waived alimony in a separation agreement or premarital agreement, when a divorce has been granted before an alimony claim is filed, or when only the dependent spouse has committed adultery or another form of marital fault.
- Some agreements include a "cohabitation" clause that states that alimony ends when the recipient cohabits with another person to avoid the loss of alimony resulting from remarriage.

Of course, if you agree no alimony will be paid, then you should put that in your separation agreement, too, to avoid any future misunderstanding.

## 16. How much alimony is appropriate and long how should it last?

The amount and duration of alimony depends on the type of alimony being paid: (a) temporary or *pendente lite*; (b) rehabilitative; (c) reimbursement; (d) bridge-the-gap; (e) permanent or indefinite; and (f) lump-sum.

- a. Temporary or *pendente lite* (pending litigation) alimony lasts only while the parties are engaged in litigation. It is used to provide the dependent spouse with support during the divorce process.
- b. Rehabilitative alimony is the most commonly awarded type. This type is awarded in situations in which the recipient is given support for a definite period of time while he/she becomes financially independent. This type of payment may include tuition for education to enable the recipient to attend school to acquire a higher paying job.
- c. Reimbursement alimony awards the spouse whose financial contributions during the marriage directly enhanced the other spouse's earning capacity, such as when one spouse puts his/her education on hold and joined the work force so the other spouse can attend school full-time.
- d. Bridge-the-gap alimony is used to support the dependent spouse to 'bridge the gap' between married and single statuses, and to meet his/her short-term support needs.
- e. Permanent alimony is appropriate when the dependent spouse cannot reasonably be expected to become self-supporting due to age, illness, or disability.
- f. Lump-sum alimony is a single payment instead of periodic (weekly, monthly, etc.) payments. Courts usually award lump-sum alimony only when periodic payments cannot be implemented.

## 17. Is alimony tax-deductible?

Unless agreed otherwise, alimony is taxable income to the recipient and tax deductible to the payer.

## 18. I don't have a court order yet. Am I entitled to any spousal support right now?

If your spouse is in the military, he/she is almost always required to pay you "adequate support." Failure to do so may be grounds for administrative or disciplinary action. The best way of ensuring you receive spousal/child support is by obtaining a court-order. This includes "temporary support orders," that a court can issue pending resolution of the divorce. In that case, if the member fails to pay, you can return to court and obtain a garnishment or involuntary allotment order, which would allow you to have the support payments taken directly out of the spouse's pay, through the Defense Finance and Accounting Service (DFAS), completely by-passing the military chain of command.

Keep in mind, however, that servicemembers have certain legal protections under the Servicemember's Civil Relief Act. For example, under the act, if a servicemember cannot appear in court due to military necessity (such as the member is deployed or assigned overseas), and the commander certifies that leave is not possible, the court must grant a 90-day stay (delay) in any court action. And, upon application to the court, the member can request that such stays be extended (the court doesn't have to grant extensions, however). If obtaining a court order is not possible, you should contact the servicemember's Commander, Executive Officer, or First Sergeant. It is best to make your complaint in writing, and allow them an opportunity to investigate the matter before they need to respond.

The military also requires servicemembers to comply fully with the provisions of separation agreements, so you should include provisions for spousal and/or child support when drafting your agreement. If you and your spouse execute the agreement and the military spouse fails to make the payments as dictated by the agreement, you can sue for breach of contract and report that spouse's failure to pay to his/her chain of command.

In the absence of a valid court order or signed separation agreement, however, exactly how much he/she will be required to pay depends on his/her branch of service:

- **Army** Regulation 608-99 requires a soldier to provide an amount equal to BAH Type II, at the "With Dependent Rate," unless there is a court order or written agreement providing for a different amount. Search online for a chart of the most current rates. If the soldier has more than one support obligation, that amount is divided equally among the supported parties. This is not an "absolute" requirement, however -- the regulation contains provisions which allow the commander to waive requirements in certain cases, such as when the spouse makes more money than the soldier, or the soldier is a victim of abuse, or the family member is in jail.
- **Air Force** Instruction 36-2906 does not specify a specific amount for "adequate support." Instead, "adequate support" is determined by the individual commander, based on the circumstances, in the absence of a written agreement or court order. When a commander receives an allegation of nonsupport, he/she will order the servicemember to furnish proof of financial support. Commanders are also required to inform servicemembers they are not entitled to receive BAH at the with-dependent rate if they do not provide financial support to their dependents.
- **Naval** Personnel Manual Section 1754-030 likewise does not specify an amount for "adequate support," but does provide the following guidance to commanders for determining "adequate support:"
  - Spouse only -- 1/3 of gross pay
  - Spouse and one minor child -- 1/2 of gross pay
  - Spouse and two or more children -- 3/5 of gross pay
  - One minor child -- 1/6 of gross pay
  - Two minor children -- 1/4 of gross pay
  - Three minor children -- 1/3 of gross pay
  - Gross pay includes base pay and basic allowance for housing (if entitled), but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or subsistence allowance.
- **Marine Corps** Manual for Legal Administration Paragraph 15004 provides guidance to commanders for determining interim support in cases where the amount of support has not yet been fixed by court order or written agreement. Interim support per supported family member shall be the greater of the fixed amount of support reflected in the center column of the chart below, or the pro-rated share of whatever BAH to which the Marine is entitled, as shown in the chart below, per month. Note that BAH that is credited to the Marine for government housing, but is not actually paid in cash, is not counted for these purposes. The total amount of support required shall not exceed 1/3 of the Marine's gross military pay per month. Gross military pay is defined as the total of all military pay and allowances before taxes or any other deductions.

Total Number of Family Members Entitled to Support	Minimum Amount of Monthly Support per Requesting Family Member	Share of Monthly BAH per Requesting Family Member
1	\$350	1/2
2	\$286	1/3
3	\$233	1/4
4	\$200	1/5
5	\$174	1/6
6 or more	\$152	1/7 or etc.

If your spouse is a DOD civilian, the best way of ensuring you receive spousal and/or child support is to obtain a valid court order. If your civilian spouse fails to make payments required by the order, you can bring the delinquency to the court's attention and obtain a garnishment of your spouse's wages. Or, if you have a fully executed separation agreement and your spouse fails to provide spousal and/or child support, you can sue for breach of contract.

Without a court order or separation agreement, your options for recourse become more limited. LQA is determined by the civilian's grade, quarter's group and family size, and is an entitlement of the civilian employee, not the spouse. When a marital separation occurs, the civilian is required to report the change in marital status to the appropriate human resources office. LQA will then be adjusted downwards to reflect the civilian's new family size. There is, however, no regulation that dictates what portion of his/her salary a civilian is required to turn over to his/her spouse for spousal and/or child support upon marital separation.

## **19. Are military pensions divisible?**

Yes. Please see the handout on the Uniformed Services Former Spouses Protection Act (USFSPA).

## **20. What about other types of pensions?**

A couple's most valuable asset, aside from the marital home, is generally retirement pensions. A federal law titled the Employment Retirement Income Security Act of 1974 (ERISA) protects the claims of the non-employee spouse and permits state courts to divide pensions benefits at divorce. ERISA facilitates enforcement by requiring that a Qualified Domestic Relations Order (QDRO) be drafted, signed by a judge, and served on the employee spouse's pension plan administrator. The purpose of a QDRO is to recognize the non-employee spouse's right to receive benefits under the pension plan on an "if, as, and when basis," i.e. when the benefits are actually paid. It tells the pension plan administrator the amount of the employee spouse's pension to be distributed to the other spouse.

Federal retirement benefits are governed under different legislation, such as Federal Employees' Retirement System (FERS), but similarly allow assignment of a proportion of the benefit at divorce.

Social Security benefits, however, may not be assigned at divorce. This evaluation varies from state to state.

## **21. How should we divide our debts in the separation agreement?**

The same general principles discussed above in the sections on division of property apply when dividing debts. As the parties are generally free to divide their debts in any way they see fit, there is no right answer to this question. In addition to those general principles, you may also want to consider who received the benefit of the debt before deciding who should be responsible for paying it off. For example, a student loan primarily benefits the spouse who obtained the degree, so it might be fair for that spouse to be responsible for repaying that loan. By the same token, it might be fair for the spouse keeping the car to also pay off the car loan.

When identifying who pays which debts, include enough information to identify the specific debt involved, including the creditor's name, and the amount owed.

Remember, as mentioned above, that third parties (such as credit card companies) are not bound by separation agreements. So if a debt is in your name, creditors can still demand payment from you, file an adverse credit report and institute collection proceedings against you if you fail to pay. This is so even if you divided the debt or assigned it completely to your spouse in a separation agreement.

## **22. What if my spouse fails to pay a debt as required under our separation agreement?**

If your spouse violates the signed agreement by failing to pay a debt under the terms of your agreement you can sue your spouse and ask the court to order your spouse to reimburse you for the amount of money you had to pay.

It is possible to protect yourself from such a situation. For example, if your spouse is supposed to pay the mortgage on the property you are continuing to live in, have your spouse pay you instead of the creditor. That way, if your spouse fails to make any payments, you'll know right away and will be able to take the appropriate corrective action. Also, if the agreement requires your spouse to pay you spousal support, the agreement might provide that the support payment be increased by any amount you are required to pay due to the spouse's failure to make a required debt payment (of course, this all assumes the spouse has money to pay in the first place).

## **23. I still need a lawyer, so who pays for that?**

Generally each spouse has to pay for his/her own attorney's fees in a divorce case unless you have agreed otherwise in a separation agreement or other agreement, or unless the judge requires your spouse to pay your lawyer's fees.



Once there is a signed separation agreement in place, you should research a lawyer. An uncontested divorce is a simple procedure. There's no reason to pay a very large fee just to have someone file a few simple forms.

#### **24. Does it matter who actually files the divorce?**

Yes. For example, certain states may grant you a divorce but not be able to handle any property separation or child custody if both the husband and wife are not legal residents of that state (the court would not have jurisdiction, or authority, to handle these issues). Ask your attorney if you qualify to get a divorce in multiple states. Sometimes certain jurisdictions are more favorable than others when determining alimony, property division and child custody issues. If you discover you qualify in several states, you may want to be the first to file so that you decide where the divorce will be handled.

#### **25. What if my spouse won't give me a divorce?**

The judge is the person who grants a divorce, not your spouse. If your spouse won't cooperate with you, it will take longer and probably cost more to get your divorce, but you can still get one.

#### **26. How does the court procedure actually work?**

In most states, you qualify to file for divorce there only if you have been living there or are a bona fide resident for a set period of time, usually six months, prior to the date of filing. You may also file for divorce in the state where either you or your spouse are a legal resident. If there is any dispute about child custody, then you may have to file in the state where the child has been living for the six months immediately preceding the filing of the lawsuit. You may also file for divorce in Germany, but you must have lived apart for at least one full year to get an uncontested divorce, and at least three full years to get a contested divorce. Also, attorney fees in Germany are usually much higher than in the United States, particularly for an uncontested divorce.

After filing your divorce paperwork in the proper state court, your lawyer will serve a copy of the summons and complaint on your spouse. In an unusual case where the spouse who has been served agrees with everything the filing spouse has asked for in his/her papers (in the absence of a signed separation agreement), and consents in writing, a judge will eventually grant the divorce on an uncontested basis. If your spouse does not file an answer within the allowable time limit determined by state law, you or your lawyer will need to file additional papers with the court to proceed with the divorce on a default basis.

If your spouse files an answer contesting the divorce, then the judge will set dates for various hearings, and eventually, a trial date. At trial, both of you will be allowed to testify and present evidence, and then the judge will decide child custody, support, and visitation rights, the appropriateness, amount and duration of alimony, how to split up your property and debts, and all the other issues involved in your case. Remember, what the judge decides may be very different than what you or your spouse think is fair.

#### **27. That seems pretty long. Is there a quicker way?**

No. You may see ads for quickie foreign divorces, but don't be fooled. Those divorces are not recognized by the U.S., unless you have your spouse's consent. And if you have your spouse's consent, it's usually cheaper to file in the U.S.

#### **28. Is my divorce final when the judge signs the decree?**

Not always. In some states there is a waiting period after entry of judgment before the divorce becomes final. The decree itself should state its effective date.

#### **29. Can I get my maiden name back in the divorce?**

Yes. But like requests for alimony, a request to be restored the use of your maiden name should be made when you file the initial paperwork with the court. The judge will then include a provision in the divorce decree allowing you to return to that name. The divorce decree will then be what you show to governmental agencies,

such as the passport office and the Social Security Administration, as well as any financial institutions that require it, as proof that your name has legally changed. Some offices might require you to obtain a certified copy of your divorce decree. It is advisable you obtain several certified copies of your divorce decree shortly after entry of judgment, and keep them with your other important documents for use at a later date.

### 30. Is there anything else I should do or know about?

Yes. Among other things:

- a. Both spouses should consider canceling joint financial arrangements, such as credit cards, bank accounts, and phone calling cards. The military spouse should file a disclaimer with AAFES and other check-cashing facilities to avoid being held liable for the non-military spouse's bad checks, and should put a block on DPP or similar plans at AAFES for the same reason. AAFES disclaimers must be renewed yearly, until the divorce becomes final.
- b. Both spouses should consider canceling powers of attorney, making new wills, and changing the beneficiaries of life insurance policies, including Servicemembers' Group Life Insurance.
- c. If you and your spouse decide to reconcile after the separation agreement is signed, the validity and legal effectiveness of the agreement may be damaged or destroyed. In most states, the separation agreement is void even if the parties only cohabit one night.
- d. If you both agree not to follow one or more of the provisions of the separation agreement, for example, if you decide that one of the children should live with someone other than the custodial parent named in the agreement, then you should sign a new agreement. To change court-ordered child support or alimony, you must go back to court and ask the court to modify its previous order.
- e. The military spouse must notify DEH after the agreement is signed or you stop living together, whichever occurs first. DEH will ask you to move out of government quarters, usually within 30 to 60 days.
- f. You should also notify your commander to update the military spouse's personnel records and the non-military spouse's ID card, passport stamps, no-fee passport, ration cards, driver's license, POV registration, and residence permit.

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#### References:

Military divorce and separation issues:

- 1) <http://usmilitary.about.com/cs/divorce>

General Family Law:

- 2) *Tables Summarizing Family Law in the Fifty States* (<http://www.abanet.org/family/familylaw/tables.html>) - it covers alimony/spousal support factors; custody criteria; child support guidelines; grounds for divorce and residency requirements; property division; and third-party visitation.
- 3) *Contemporary Family Law*, Douglas E. Abrams, et al. editors, Thompson West Pubs. 2006.
- 4) <http://www.divorcenet.com> – a good place to find basic information about divorce in a specific state. It is also a resource to try to find a divorce lawyer in a particular state; however, be advised that lawyers pay to be listed on this site.
- 5) <http://www.divorcesource.com> – also a good place to start finding out basic information or looking for an attorney by state, but also a site for which attorneys have to pay to be listed.
- 6) <http://www.divorceinfo.com> – a site written and maintained by a divorce lawyer in Alabama. It is especially worth looking at if you are having trouble coping with the emotional side of separation and divorce.

Separation Agreements:

- 7) <http://www.divorcesupport.com/divorce/Separation-Agreements-1345.html>

LQA:

- 8) <http://www.dodea.edu/Offices/HR/employees/allowances/lqa.cfm>

EROD:

- 9) JFTR, Chapter 5, Part J: Early Return of Dependents