

## **Darrell M. Harding** **Attorney at Law, PLC**

With more than twenty years of experience we know that not every case is the same and provide each case with the personalized individual attention it deserves. Our firm is committed to providing our clients with skillful and professional representation. We provide our clients personalized attention and service. Our firm understands that family issues involving divorce and/or children can be emotionally and physically stressful. We are here to help guide you through the legal system and will take you through the process one step at a time.



**Darrell M. Harding** graduated with honors with a Bachelor of Science in Psychology from Brigham Young University in 1984. He also graduated at the top of his class with his Juris Doctor Degree from J. Reuben Clark Law School, Brigham Young University, in 1988. He served as Legal and Political Chairman over the Civil Law Division from 1987-1988, Negotiator Forum Vice President in 1988 and served on the Law Review. For over 25 years he has focused exclusively on family law to best serve individuals like you.

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# **MILITARY DIVORCE**

## **DID YOU KNOW:**

**The USFSPA allows military retirement to be divided as marital property in a divorce action.**

**Read on to better analyze your case.**



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## **The Uniformed Services Former Spouse Protection Act (USFSPA)**

The USFSPA permits the court to treat military retired pay as it would treat a civilian pension plan. Which means the military retired pay may be divided for property settlement purposes by the court. Section 20-107.3(G)(1) of the Code of Virginia authorizes a court to divide military retired pay in a divorce proceeding.

### **Military Retired Pay**

The court can only divide the marital portion of the military retired pay, which is the portion that was earned during the marriage. The portion of military retired pay that was earned before or after the marriage is the service member's separate property. The court will decide what percent of the marital portion of military retired pay you will receive, but it usually is 50% of the marital share. The following formula is usually applied:

$$\frac{\text{Number of credible months of service during marriage}}{\text{total credible months of service}}$$

$$\times .5 = \text{Wife's \% of disposable retired/retainer or severance pay.}$$

### **Survivor Benefit Plan (SBP)**

In the event that the retiring service member dies, the former spouse may continue to receive income if they are designated as a SBP beneficiary. The SBP is an annuity that allows retired service members to provide continued income to a named beneficiary after his or her death. Section 20-107.3(G)(2) of the Code of Virginia authorizes the court to designate a spouse as irrevocable beneficiary and who should bear the cost of maintaining the SBP.

## **Thrift Savings Plan (TSP)**

The TSP is a retirement and savings plan for federal employees and members of the military. The service member may or may not have elected to contribute to the TSP, but it should be considered when determining property division. The marital share on the date of separation is usually divided equally between the Husband and Wife.

### **Military Health Benefits 20/20/20 Rule**

Under the 20/20/20 rule a former spouse is eligible to continue their medical coverage through Tricare if they meet the following criteria:

- you have been married to military spouse for at least 20 years;
- The military spouse has at least 20 years of service;
- The military service and marriage have overlapped for at least 20 years;
- the former spouse has not enrolled in an employee sponsored health plan; and
- The former spouse has not remarried.

Other benefits for 20/20/20 former spouses include:

- continued use of commissary and post exchange.
- may retain their military I.D.

### **Military Health Benefits 20/20/15 Rule**

Under the 20/20/15 rule a former spouse is eligible to continue their medical coverage through Tricare for up to one year if there is only 15 years of overlap between the military service and the marriage.

## **Service members Group Life insurance (SGLI)**

SGLI is a group life insurance policy for service members of the military. The former spouse may want to consider being kept as a beneficiary of the service member's SGLI when drafting a separation agreement.

### **Service-Member Civil Relief Act (SCRA)**

In the event that a service member is deployed or mobilized and a legal action is brought against said service member, SCRA requires the court to delay the proceeding until the service member can appear if certain requirements are met.

### **Child Custody**

The overall guiding principle governing child custody is the "best interest of the Child". Determining child custody when a service member is involved is generally more complicated because of the service members propensity to be deployed or to move out of state. The parties should consider entering into a separation agreement to address how deployments and moves out of state will be handled.

### **Virginia Military parents equal protection act (VMPEPA)**

The VMPEPA can give deploying military members special presumptions and protections in custody proceedings. The VMPEPA also allows a court to delegate a deploying parents visitation rights to a family member during a deployment.