

Estate Planning Considerations for Soldiers and Their Families: Estate Planning Upon Divorce

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Estate Planning Considerations for Soldiers and Their Families:

Estate Planning Upon Divorce

One of the major issues encountered by military families is the high incidence of divorce, which is even higher than the 50% figure for the failure of all marriages in the United States.

Being in the military creates unique problems not normally associated with divorces for people who do not routinely relocate residences. These include:

1. Which court will take jurisdiction – there is often confusion about the State of Domicile vs. Military Home of Record vs. Current Duty Station
2. What about during overseas assignments? If the military member is married to a foreign national, the foreign country might claim jurisdiction, but it doesn't have the authority to divide military retired pay. The family member is less likely to go that route unless there are small children, a marriage of short duration, or a lesser likelihood of the soldier continuing to retirement. What about enforcement of the custody order—will a foreign court honor a US custody order or vice versa? We have had a number of cases in which this became an issue.

3. What if the spouse owns property in the foreign country? This applies whether or not this is a divorce situation. For example, Germany will not honor a US Will or Trust—even for an American citizen, it requires a “Deutsche Testament” executed before a German Notar, an attorney partially compensated by the State who acts both as a Notary and in some instances as a court.
4. Among other protections, servicemembers are protected by the “Servicemembers Civil Relief Act” (SCRA) [see 50 U.S.C. §§ 3901-4043] from adverse litigation or divorce while deployed or otherwise unable to attend court hearings due to military assignment. It is designed to ease financial burdens on military personnel during military service but is a shield, not a weapon. And it is not always followed by local courts or foreign ones. If things go awry, it may require assistance from an attorney who specializes in this area of the law.

Division of military retired pay is the subject of an entire presentation on its own, so suffice it to say there are federal laws that dictate how and when this can occur.



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