

1. Understanding Military Benefits
2. Identifying Military Benefits
3. Securing Military Benefits
4. Conclusion

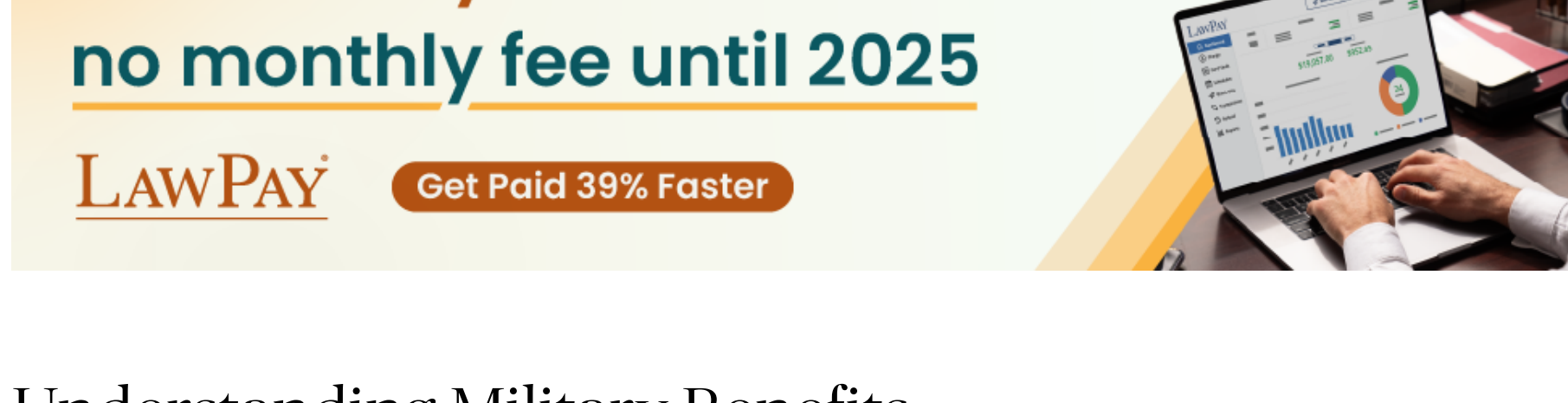
February 27, 2024MARITAL PROPERTY

Navigating Military Benefits in Divorce: A Guide for Non-Military Spouses

By: Kris Hilscher & Lisa Oeltgen

Share: [f](#) [t](#) [in](#) [e](#) [p](#)

Divorce can be a challenging and emotionally taxing process, especially when it involves a spouse who serves in the military and one who has always been in the supportive role of that military spouse. One crucial aspect of divorce proceedings for non-military spouses is identifying and securing military benefits to which they may be entitled. Navigating this aspect of the law requires a clear understanding of military benefits and how they intersect with divorce settlements. In this article, we'll explore the steps non-military spouses can take to identify and secure their rightful share of military benefits during divorce proceedings. We will also address how crucial it is for the divorce law practitioner to educate themselves in this area when they become aware that this is going to be an aspect of the overall marital property division .



Understanding Military Benefits

Military benefits encompass a wide range of financial, healthcare, and other support services available to service members and their families. These benefits can include:

- Healthcare Benefits:** Military spouses may be entitled to continued healthcare coverage through the military health system (TRICARE) after divorce, depending on the length of the marriage and other factors.
- Housing Allowances:** Service members often receive housing allowances as part of their compensation package. Non-military spouses may be entitled to a portion of these allowances.
- Retirement Benefits:** Military pensions are considered marital property and may be subject to division during divorce proceedings. The Uniformed Services Former Spouses' Protection Act (USFSPA) enables the states to divide military retirement benefits. Service members will also typically have invested in a TSP account (Thrift Savings Plan), which is a retirement and savings investment plan for military members. In general, the non-military spouse is entitled to one-half of the marital share of this account. It will be important for the non-military spouse to identify all retirement sources to ensure they are receiving a fair division of property.
- Survivor Benefits:** Non-military spouses may be eligible for survivor benefits under the Survivor Benefit Plan (SBP) if the service member elects coverage during divorce proceedings. Specific rules are in place for the receipt of this benefit. To avoid losing this benefit for a client, a practitioner must be familiar with the rules and regulations and deadlines for the survivor benefit plan. Be careful – lost or missed SBP is a common area of malpractice. When in doubt, seek the help of a qualified attorney to assist, such as a former JAG officer or attorney who specializes in military family law.
- Federal Service:** Many service members are employed by the federal government. The non-military spouse may be entitled to survivor benefits and a share of federal retirement benefits. Further, the service member may make elections to waive military retired in order to receive more federal retired pay. The non-military spouse cannot afford to lose these valuable entitlements, and counsel must ensure they are appropriately divided.
- Other:** There are other benefits potentially available to a former spouse. Those benefits may include a military ID card, commissary privileges, a share of accrued leave, and the USAA subscriber savings account.

Identifying Military Benefits

Each divorce practitioner should have a comprehensive intake document that asks questions of every new client about benefits and current/past military service for either party in the divorce action. Be specific. A question asking to check 'yes' if there was military service will not provide sufficient information. To properly address a military divorce case, much more will be needed. By way of example, the date of entry into military service, any breaks in service, current rank, date of rank, years of service, and more are needed to accurately assess and prepare for the division of assets.

To ensure a spouse receives their fair share of military benefits, non-military spouses should take the following steps:

- Gather Documentation:** Collecting documentation of the service member's military benefits, including Leave and Earning statements (LES) or Retiree Account Statements (RAS), retirement orders, DD Form 214, and any discharge documents, and healthcare information, is essential for understanding what benefits are available.
- Educate yourself or seek qualified Co-Counsel:** It's crucial for non-military spouses to have counsel that have a good working knowledge and understanding of military benefits and how they are determined and applied. This requires either i) a knowledgeable attorney who specializes in military divorce; or ii) an attorney who has a solid understanding of what to look for and who associates with counsel who specializes in this area for assistance in identifying and using the necessary language in all drafting that pertains to division and allocation of military benefits and accounts as part of the marital property division.
- Understand State Laws:** Military divorce proceedings are governed by both federal and state laws. Non-military spouses should understand how their state's laws impact the division of military benefits in divorce and what federal laws define and shape the final allocation of those benefits. The intersection of federal and state laws is very complex, and can be a recipe for disaster if counsel or co-counsel is not well-versed in these issues.

Securing Military Benefits

Once military benefits have been identified, non-military spouses can take proactive steps to secure their entitlement during divorce proceedings:

- Negotiate a Settlement:** Non-military spouses and their attorneys can negotiate a divorce settlement that includes provisions for the division of military benefits, such as retirement benefits and healthcare coverage. Understanding the Uniformed Services Former Spouses' Protection Act (USFSPA), and how the 10/10 rule governs the method of payment will be necessary to determine the non-military spouse's ability to receive direct payments from the paymaster, typically Defense Finance and Accounting Service (DFAS). This is just one example of the 'need to know' items for a non-military spouse and their lawyer.
- Obtain a Court Order:** A court order is required for direct payment from the government on a spouse's share of a military pension. In cases where a settlement cannot be reached, a court's intervention, typically via a bench trial, may be necessary to secure military benefits. Whether by trial or by consent, all awarded benefits require an appropriately drafted Military Pension Division Order (MPDO) for the pension benefits, and a Retirement Benefit Court Order (RBCO) for the military spouse's TSP account for the division of retirement benefits.
- Ensure Compliance:** Once a property settlement agreement and/or final court order/deed is in place, it's essential to ensure that the service member complies with the terms regarding the division of military benefits. This may involve monitoring retirement payments or healthcare coverage to ensure they are being provided as agreed upon. A practitioner will be required to ensure that all necessary documents and Orders have been provided to DFAS and that counsel has received approval at all steps of submission to ensure that nothing falls by the wayside. Practice tip: former spouses can be granted access to view the service member's portal at the DFAS website. A former spouse cannot make changes, but can keep up to date on all necessary information.

Conclusion

Divorce proceedings involving a military spouse require careful attention to the identification and securing of military benefits for the non-military spouse. Silence will not protect the non-military spouse, and neither will generic clauses such as "the former spouse shall receive all benefits to which she may be entitled." Understanding the types of benefits available, gathering necessary documentation, and ensuring that you have the required knowledge base to secure these marital benefits for your client will be essential to an equitable resolution of military benefit division. Associating with a practitioner who specializes in this field may be necessary, and will be a valuable tool to protect the non-military spouses' interests due to the specificity required in this area.. It is important to get it right at the settlement or trial; the final nature of a property division in most states will not allow for modification if not done correctly during the pendency and finalization of the dissolution.

Disclaimer: The outline for this Committee Corner article was supported by ChatGPT. The final draft reflects a synthesis of the authors' input and drafting, as well as the assistance provided by the AI tools to create an outline for this article.

Endnotes

ENTITY:
SECTION OF FAMILY LAW

TOPIC:
MILITARY & VETERANS, FAMILY

The material in all ABA publications is copyrighted and may be reprinted by permission only. Request reprint permission [here](#).

Authors

Kris Hilscher
Esq., Raleigh, NC

Sullivan & Hilscher Family Law

Lisa Oeltgen
Esq., Lexington, KY

Law Offices of Lisa J. Oeltgen, PLLC

Section of Family Law Committee Corner

FAMILY LAW SECTION
The Favorable Interest Rate Mortgage as Marital Asset



FAMILY LAW SECTION
Tips for Child Support Mediations



FAMILY LAW SECTION
Military Divorce: Four Common Questions Answered



Explore ARCHIVES



ABA Resources

ABA Journal
Law School Accreditation
Legal Resources for the Public
Model Rules of Professional Conduct

The ABA

About the ABA
Work at the ABA
ABA Member Benefits
Office of the President
ABA Newsroom

Connect

Contact Us
Contact Media Relations
Web Staff Portal
[f](#) [t](#) [in](#) [e](#) [c](#)