

California Military Divorce and Survivor Benefit Plans

Military service members who perform at least 20 years of active duty service receive a pension for the rest of their lives upon retirement. As part of that retirement package, they are also eligible to purchase a Survivor Benefit Plan (SBP), or other similar, related plans, such as the Reserve Component Survivor Benefit Plan (RC-SBP) and Retired Serviceman's Family Protection Plan (RSFPP). These plans are sponsored by the Department of Defense (DOD) and provide up to 55% of a service member's gross retired pay to an eligible beneficiary upon the member's death. While there is free automatic coverage to members while on active duty, as well as to reservists who die while on inactive duty training, the ability to purchase this continued coverage upon retirement makes the SBP a potential asset to divide during a California divorce.

The SBP allows a retiree to provide a continuous lifetime annuity for their dependents after death. The annuity, which is based on a percentage of retired pay, is called SBP and is paid to an eligible beneficiary. It pays eligible survivors a monthly income, which is adjusted for inflation and cost of living, typically once a year. A military retiree pays premiums for SBP coverage upon retiring. In some ways, it can be compared to a life insurance annuity.

One of the bigger benefits is that SBP premiums are paid from gross retired pay and are therefore excluded as taxable income. This means less tax and less out-of-pocket costs for SBP. Additionally, because the premiums are partially funded by the government and the costs of operating the program are absorbed by the government, the average premiums are well below the cost for a conventional insurance policy. For most military service members, electing this additional coverage is an easy decision to make.

Defining Who are Eligible Beneficiaries

Unlike many other pensions, it's important to understand an eligible [military retiree's retirement](#) pay stops upon their death. The military does not offer lump sum distributions at retirement or upon death. The only option is to receive ongoing monthly payments, which are periodically adjusted for inflation and cost of living, for the duration of the member's life. SBP benefits are designed specifically to continue the partial payment of these benefits to an eligible beneficiary.

Eligible beneficiaries include a current spouse and can include a former spouse as well. Therefore, during divorce, it is important for both the member and the former spouse to explore their options regarding the SBP. Since eligible children may also be SBP beneficiaries, either alone or added to spouse coverage, both the member and the former spouse have similar interests in protecting this asset, as this can provide financial security to their children.

Determining a Former Spouse's Eligibility for Survivor Benefit Plan Benefits

If a service member is going through a divorce, California Courts can award the soon to be former spouse Survivor Benefit Plan benefits pursuant to the divorce judgment. A former spouse who seeks SBP benefits must ensure that his or her rights and obligations are explicitly set out in divorce judgment. These details include whether or not the former spouse will receive SBP coverage, how the benefit premiums will be paid, and how the member is to make his or her SBP election at the time of retirement. If these steps are not taken, it could result in significant complications for the former spouse in securing the SBP benefits to which they were entitled.

In the event that the divorce decree fails to contain language requiring the member to elect Former Spouse Coverage, the retiree has the absolute ability to either remove the former spouse for the plan or voluntarily continue the coverage. The SBP election made at the time of retirement is nearly impossible to change, and there are only a few circumstances under which it is possible to change or alter a previously made election. Therefore, it is imperative that both the member and the former spouse ensure that the correct election is made at or shortly after the date of divorce, including filling out a SBP Election Statement for Former Spouse Coverage (DD 2656-1).

Furthermore, the award of SBP benefits to a former spouse is likely to have implications for subsequent marriages and divorces, because when former spouse coverage is elected, the current spouse must be informed. As the retiree can only make one SBP election, a former spouse's right for SBP benefits has a large impact on a current spouse's rights. If there is more than one former spouse, the member must specify which one will be covered. Although a spouse can be awarded SBP benefits pursuant to a divorce decree, additional specific steps must be taken to ensure that the SBP benefits are ultimately properly paid out.

Ensuring the Proper Payment of Survivor Benefit Plan Benefits

In order to properly elect the former spouse option, a member must send DFAS a properly executed SBP Election Statement for Former Spouse Coverage (DD Form 2656-1) that is signed by both the member and the former spouse. They must declare:

1. Whether the election is made in order to comply with a court order; or,
2. Whether the election is made to comply with a voluntary written agreement related to a divorce action, and if so, whether that voluntary agreement is part of a court order for divorce, dissolution, or annulment.

It is best to also send a certified copy of the Judgment (divorce decree) directly to DFAS in addition to DD Form 2656-1. As stated above, it is vital that the divorce decree specifically set forth the requirement of the member to provide SBP benefits to the former spouse. The decree should contain language that specifically states the former spouse is being awarded "former spouse coverage" pursuant to the divorce judgment. This is what is commonly referred to as a "deemed election" request, and it often plays a critically important role in preserving a former spouse's eligibility to receive SBP benefits.

Deadlines for Notification

The deadline for an election by the service member is one year from the divorce. DFAS must receive the required form within this one year period. The deadline for a “deemed election” by the former spouse is one year from the date of the order granting SBP coverage. That said, there is no benefit to either party to delay in making this election. As such, it is generally a good idea to ensure that the election is made as soon as possible after the divorce.

Other Important Factors

Remember that it is not enough for there to be a provision in a court order awarding the former spouse SBP coverage. It is up to the member and the former spouse to inform DFAS of the court order that awards the former spouse SPB coverage in a timely manner, which means within one year. Once the one-year time limit expires, it is virtually impossible to award the former spouse SBP coverage, regardless of what is contained in the divorce Judgment. The parties will have to go back to Court to determine the appropriate remedies and modifications to the Judgment once the ability to make an election expires. Truthfully, there is no comparable substitute for this valuable asset, at least at comparable cost. Therefore, ensuring that the election is properly made is important for both the member and the former spouse.

Conclusion

The awarding of Survivor Benefit Plan benefits to a former spouse as part of a military divorce is a complex matter that requires attention to detail and a clear understanding of the SBP. It is important that anyone dealing with these issues obtain the counsel of an experienced military divorce attorney to review the multitude of factors that go into properly awarding SBP benefits to a former spouse and to ultimately ensure those benefits are secured in a timely and efficient manner.