

Military Retirement and Divorce in California

Military service members who perform at least 20 years of active duty service receive a retirement pension for the rest of their lives upon retirement. The Uniformed Services Former Spouses Protection Act (USFSPA) confirms that military pensions are property that can be divided in a divorce. Under the USFSPA, state courts were granted the right to choose how or whether to divide military retirement in a divorce, legal separation, or annulment. State courts may grant up to half of a service member's retirement pension as part of a divorce. So how does California divorce law treat military pensions?

How Does California Divorce Law Treat Military Retirement?

California is a community property state, which means that any asset acquired or earned during marriage is presumptively divided equally at the time of a divorce. Examples of assets include real property, bank accounts, vehicles, and retirement accounts, including military pensions. As such, military retirements are considered assets subject to division in a divorce. Unlike other states, there is no required length of marriage for a member's spouse to be entitled to a portion of the member's military benefits.

The military retirement system is a government-funded, defined benefit plan. Members contribute through their service, as opposed to through monetary contributions. They must complete at least 20 years of active duty service before they are eligible for retirement benefits. This is also referred to as being "vested." Upon retirement, the member receives monthly compensation and is eligible for disability benefits and participating in a survivor annuity program. There are additional nonmonetary benefits, including ongoing exchange and commissary privileges and medical care.

The overall amount of retirement pay depends on the amount of time served, basic pay at retirement, and annual cost of living adjustments (COLA or COLAs). In general, military retirements have the potential to be an extremely valuable asset with lifetime benefits.

Before a California court can divide a military pension, it must have jurisdiction, or the authority to be able to do so. For civilians, jurisdiction is a fairly easy analysis. If a person has been living in the State of California for at least six months and in the county of filing for at least three months, the requirements for personal jurisdiction have been met. While military members also acquire residency after the same period of time, their domicile does not automatically change due to the location of their duty station. A military member's choice of domicile can potentially impact whether or not California has jurisdiction over the member's pension.

What is Domicile?

A member's domicile is his or her "State of Legal Residence" (SLR). It's the place a member considers as the true, fixed, and permanent home. For those entering the military, their domicile is

the state they resided in at the time they entered the service. During the years of their service, members may elect to move their domicile to another state where they are stationed. Taxation is typically the primary consideration in changing domicile, as some states, such as Florida and Texas, have no personal state income tax. If a member is lucky enough to be stationed in one of the seven states that does not tax individual wage income, he or she often chooses to change domicile.

Requirements to Change Domicile

In order to change one's SLR, or domicile, the following requirements must be met:

- Physical presence in the new state;
- Intention to remain in the new state permanently or treat the location as a new permanent home; and
- Intent to abandon the old domicile

Demonstrating an intent to change domicile includes taking steps such as registering to vote, obtaining a driver's license, and registering vehicles in the new state. Completing forms such as [DD Form 2058](#), [DD Form 114](#), and an [updated W-4](#) are also required.

How Does Domicile Impact Retirement?

In general, when someone files for divorce, that person consents to California having jurisdiction to determine all issues, including property division. When the other spouse files a response, the same consent is given. If, however, a military spouse files for divorce in California but has a different SLR, that spouse must make a very important decision. That decision is whether or not to object to California having jurisdiction over dividing the member's military retirement.

Many military members simply assume that California is the right state to use and never think through their options. Alternatively, they may simply not know that they have a choice in this regard. It is undoubtedly easier to have one state handle all divorce issues, including military retirement division. That said, state laws vary greatly, and easier does not automatically mean better.

Some states require the parties to be married for at least 10 years before the military spouse is eligible to receive a portion of the member's benefits. Other states will not equally divide the retirement. These differences can translate into very results for both members and member spouses. As such, military members should be very careful to research their SLR's law as it pertains to retirement benefit division.

How to Object to California Having Jurisdiction?

Once a military member decides that it is in his or her best interests to have his or her SLR assume jurisdiction over the member's military benefits, a clear objection to California's jurisdiction must be made. The best and easiest way to object is in the initial pleadings. For a member who is petitioning for divorce, that would be in the Petition under Item 11c "Other." For members responding to a divorce, the objection should be noted in the Response, also under Item 11c "Other." The statement should clearly indicate that the military retirement is not subject to California jurisdiction and contain a specific request that the California Court acknowledge that it has no jurisdiction due to the member's objection.

It's very important for the member to remain consistent throughout the divorce proceedings and continue objecting to California's jurisdiction. That does not mean that California cannot determine issues related to custody, support, or even the division of other property issues. The member's military retirement is an isolated issue that does not impact California's jurisdiction over any other issue related to the divorce, including marital status.

Protecting military retirement requires careful planning and consideration. Domicile can be a very effective way of doing so; however, it is not intended to be a way of "gaming" the system. A judge will see through an attempt to deprive the other spouse of a valuable asset and be carefully scrutinizing whether or not the member's domicile is genuine.