

Divorce costs. A divorce can cost from as little as \$200 to over \$50,000. If there are unresolved issues a judge must decide, the divorce will cost more. If the parties settle all issues, the divorce will cost less. A simple no-fault no-contest divorce can be accomplished for just the cost of court filing fees, starting around \$200. If the couple cannot agree to a settlement, and instead retain private lawyers to litigate differences, the cost of a divorce can range from \$5,000 to \$25,000 and higher, per spouse. This is especially true when contentious or complicated issues such as child custody and asset division must be decided by a judge, who often hears testimony from experts (paid for by the litigants) to help identify the best interests of the children or value marital assets such as retirement benefits. In cases where the parties are not financial equals, the court may order the stronger party to pay the legal fees of the other. A marital separation agreement can help avoid these expenses, and identify how court costs will be divided.

Adultery. Until the divorce is final, whether a separation agreement was executed or not, sexual intercourse with someone other than the spouse is adultery. Adultery is a crime under the Uniform Code of Military Justice. In many states adultery is a crime, or may be used as evidence in divorce proceedings or child custody disputes.

Marital separation agreement. A marital separation agreement is a contract between married persons who desire to live apart. The contract establishes the rules that will be followed by the married couple during separation. Issues that may be resolved in a marital separation agreement include spousal and child support, child custody, division of marital and premarital property, and allocation of marital and premarital debts. A marital separation agreement is valid only when signed by both parties. Once completed, the marital separation agreement, as a contract, may be enforced by court action and may be made part of a subsequent divorce decree. Actions may be taken in court for damages caused by contract violations.

A marital separation agreement is not a divorce. Couples who execute a marital separation agreement remain married, cannot marry another, and may be subject to legal consequences for committing adultery.

Some states incorporate marital separation agreements into the divorce decree. This has the effect of making the terms of the agreement part of the court order, and violation of the agreement constitutes a violation of a court order.

No one may be forced to sign a separation agreement. The entire process must be voluntary and without duress or coercion.

Legal separation. Legal separation is a marital status recognized by some states. Not all states recognize legal separation status. Some states require a period of legal separation before a divorce may be completed, and the court will enter orders concerning the rights and responsibilities of the parties during the period of legal separation. A marital separation agreement may be recognized by the court as a basis for determining separation rights and responsibilities. Remember, some states do not recognize or enforce separation agreements.

A marital separation agreement is not required. Without an agreement, a couple living apart from each other are simply physically separated with no agreement. Many married couples physically separated do so informally. No state requires a separated couple to execute a separation agreement or other paperwork. However, some states require a period of separation before a divorce will be granted, and those states may require proof of separation through either a court filing or executed separation agreement.

Insurance. A marital separation agreement can identify whether one spouse is obligated to maintain or initiate life insurance policies for the benefit of minor children or the other spouse. Consider insurance as a means of insuring continued child support or alimony payments at the death of the payor.

Retirement pay and benefits. Under U.S. law, states can treat retirement benefits, accounts, and pay as divisible marital property. This includes a retired soldier's disposable military retired pay. Every state permits division of retirement benefits, and most permit the division of military retired pay. In most cases the court will determine what portion of retirement benefits were earned by the employee during the marriage, and give the spouse credit for half. This is true if the marriage lasted one day or 20 years. Contact the retirement plan administrator to determine value and divisibility requirements for most retirement accounts, such as IRAs, 401 plans, TSP accounts, private pension benefits, and federal, state, and municipal pension plans.

For military retirement benefit division, most states will use the following formula to award a former spouse a percentage share of a soldier's retired pay:

$$\text{Spouse's percentage} = 50\% \times \frac{\text{length of time of marriage while soldier was on active duty}}{\text{length of soldier's military service}}$$

Multiply the spouse's percentage by the amount of retired pay to determine the dollar amount the spouse will receive when the soldier retires. When computing the times, use either months or years. Reservists can use points instead of time.

A marital separation agreement should discuss division of military retired pay, whether it is waived, deferred, or divided, and any subsequent survivor benefit rights. A waiver of rights to division of retirement benefits in a separation agreement is difficult to impossible to change in court at a later date. Be sure to discuss this matter with a lawyer.

Taxes. Many tax issues are raised by divorce and separation. Spousal support payments may be tax deductible to the payor and taxable income to the recipient. Child support payments are not tax deductible.

A marital separation agreement can help determine state and federal income tax filing status. Determine if a joint return will be filed for future years. Decide how any refund will be divided, and responsibility for taxes due.

A separation agreement should settle the question of exemptions. Who will claim the children? Only one spouse may claim an exemption for a child. The IRS rule is that whoever has physical custody of a child for more than half the calendar year may claim the child as a tax exemption. However, the custodial parent may allow the other to claim that exemption. IRS Form 8332 is used for release of tax exemptions for children.

Conclusion. Resolving the legal issues of a marriage takes compromise. Discuss separation and all the issues openly and rationally. Be reasonable about expectations and demands. Set aside emotionally charged issues until they may be addressed appropriately.

A separation agreement requires the agreement of both spouses. No one can be forced to sign an agreement. If one spouse refuses to sign, the only way to resolve the majority of the issues discussed in this document is through court, a time-consuming and expensive proposition.

Marital debts are debts incurred during the marriage, whether individual or joint debts. *Premarital debts* are those incurred before marriage. Premarital debts can become marital debts if the debt is commingled with marital debts (such as a premarital credit card used during the marriage).

In a divorce, a court will normally split marital debts evenly, and assign premarital debts to the account holder. A separation agreement should include settlement of all debt issues, in which the parties divide the debts by agreement. Couples are warned that debt payment can become a contentious issue when the responsible payor fails to pay or files for bankruptcy protection. Debt allocation in a marital separation agreement should follow these basic principles:

1. If a debt is secured by property such as a car or house, the debt should be paid by the person keeping possession of the property.
2. If a debt has only one name as account holder, the account holder should be named responsible for payments (to insure timely payment).
3. All joint credit accounts should be closed so no further debt may be incurred.
4. Joint debts that will take longer than one year to pay should be refinanced in the name of the person responsible for payments.

Couples should avoid agreements in which one spouse pays debts for accounts or property held by the other. Instead, divide debts, property, and separate maintenance obligations to maintain clear ownership of debt and property. Account holders should be able to make and track payments to insure debts are being addressed. Each should be responsible for debts in their name to avoid delinquency, collection, and adverse credit bureau histories.

Property. The division of marital assets is extremely important. If the property division is not agreeable to either spouse, the parties may expect that a later divorce action can involve substantial court costs, delays, and attorney fees. In a lengthy divorce action, the expense of economists, appraisers and accountants can be tremendous. The parties therefore need to know what property is considered marital property and what property the court has authority to divide.

Marital property is generally defined as property or assets acquired by the parties during the course of the marriage. Marital property includes wages earned, household furnishings, motor vehicles, bank accounts, life insurance, jointly received gifts, property purchased during the marriage, vested pension benefits acquired during the marriage, retirement pay for work during the marriage, military separation pay (VSI and SSB), and in some states, business or professional licenses obtained during the marriage. In most states, property acquired by gift or inheritance by one party is excluded from marital property, even if obtained during the marriage. Property acquired before marriage, held in that party's name during the marriage, and not commingled with marital property, is normally not considered marital property.

A couple must determine which property is divisible marital property. A separation agreement allows for two possibilities: a general statement that the parties have agreed on property division; or a specific division which separately lists property each will receive. Even in states that are not community property jurisdictions, courts often presume property will be divided equally. Couples with substantial amounts of property should prepare a spreadsheet accounting for the fair market value of assets being divided.

The division of real property, land and houses, and dealing with any mortgages that go with them present special challenges and should be fully dealt with in a separation agreement.

Various factors can be considered when determining an appropriate division of marital assets. Courts generally consider the length of the marriage, the difficulty of dividing individual items of property, the source of the property, and the situations of the parties. Marital fault may be considered in a few states.

Early return of dependents. Family members stationed overseas pursuant to military orders may be able to return to the U.S. at Army expense before the soldier's overseas tour ends. Early return of dependent orders may be issued by the command for personal or official situations. Divorce or marital separation is a personal situation normally warranting early return of dependents.

Transportation entitlements are often affected by marital status. Check with transportation officials concerning transportation eligibility for persons and property. Unit PAC sections can also answer questions about returning to the U.S.

Unlike soldiers, who must follow orders or risk punishment, civilian family members cannot be forced to leave Italy or board an airplane for the U.S. However, if a family member refuses to utilize early return of dependent orders, the command may terminate that family member's command sponsorship status, and the family member will have no legal authority to remain in Italy other than by passport. Logistical support and access to military installations can be denied. Unless the family member is able to obtain independent sponsorship for remaining in Italy, it is difficult to remain in Italy legally.

Spouses working at Caserma Ederle may lose eligibility for employment after separation. Contact the Civilian Personnel Advisory Center for specific information about employment eligibility.

Military privileges. Until a divorce is granted, separated spouses retain all military privileges, such as ID card and DEERS enrollment (retaining medical and dental coverage). Unless a former spouse has 20 years of marriage overlapping 20 years of the soldier's active duty military service, the spouse loses the ID card and privileges at the divorce.

Children retain military privileges (ID card, medical, dental) regardless of divorce, so long as the sponsor remains on active duty or retires. Stepchildren lose military privileges at divorce.

Advantages of a marital separation agreement. The primary advantage is that the parties, not a judge, make decisions, and the parties participate fully in the process. Oral agreements may be satisfactory for parties when they separate if there are no disputes when they separate, or the couple believes they have a complete understanding and agreement about all issues of marital separation. However, such agreements can break down over time, or result in dispute when one party feels the other is not complying with the original oral agreement. Oral agreements are usually not effectively enforceable in court, since resolution of disputed terms will be based solely on testimony of each party.

If there are children of the marriage, issues of child custody and visitation rights may be settled at the time of separation, permitting the couple to control the decisions affecting children. Without an agreement, a court may determine custody and visitation issues in the future, and the result may be different than what either parent may have wanted.

There are often debts, individual or joint, marital, premarital, or post-separation, involved in a marriage. Failure to resolve debts in a separation agreement may result in confusion about who will pay, resulting in unpaid debts. Unpaid debts can lead to deficiency, default, repossession, foreclosure, garnishment, and adverse credit bureau reports. A marital separation agreement should identify all debts and who will be responsible for paying the debts. Couples are cautioned to avoid arrangements where one is paying debts of the other. Avoiding delinquency and enforcement is best served by each paying the debts in their own name. An agreement can specifically detail who will pay joint debts, how the other will be notified of delinquencies or bankruptcy, and what will happen if someone fails to pay agreed upon debts.

Couples should address possession and ownership of the marital residence, if there is one, and land or houses owned, as well as a division of the value or proceeds from sale of any land or homes.

Disadvantages. No one can be forced to sign a separation agreement, and the terms of the agreement must be reached by mutual consent. This involves a process of negotiation, give-and-take, and in most cases both parties must give up something in order to obtain the final result.

Separation agreements cannot be modified without the consent of both parties. This prevents changes in the terms of the agreement after it is signed. Court orders or legal separation arrangements can be modified for changes in circumstances, with or without the consent of the parties, if the judge determines the situation so warrants.

In most states a marital separation agreement is not binding on the court for child custody, visitation, and support. A judge is free to change these terms if it is in the best interests of the child or state law otherwise controls.

Enforcement of a marital separation agreement can be difficult. If the violator is a service member, compliance might be obtained by contacting the commander. Otherwise, enforcement requires a lawsuit, which takes a long time and can be expensive. Violation of a separation agreement is not the same as the violation of a court order. Violation of a separation agreement is a breach of contract and is normally brought to a judge's attention in conjunction with filing for divorce. If a marital separation agreement is incorporated into a divorce decree by a court, the terms are easily enforceable through the court. Violation of a court order may result in a citation for contempt of court with civil and criminal penalties.

Family support requirements. The Army imposes a support requirement on soldiers separated from family members. If there is a valid court order or marital separation agreement, Army commanders can order soldiers to comply with the terms of support provisions. If there is no court order and no marital separation agreement, Army Regulation 608-99 details the amount a commander may order a soldier to pay to support family members. For most soldiers, this amount is equal to the soldier's Basic Allowance for Housing, Table II, at the with dependents rate (BAH II RC/T, formerly known as Basic Allowance for Quarters (BAQ)). Exceptions to this amount apply when family members live in government provided housing, when other family members are supported, and when both parties are soldiers. BAH II rates change every year, and can be found at http://www.defensetravel.dod.mil/Docs/perdiem/browse/Allowances/Non-Locality_BAH/2014-Non-Locality-BAH-Rates.pdf.

These support requirements are not intended to be a substitute for a judicial determination or state specific calculation of support. AR 608-99 amounts are intended to be temporary amounts where the parties cannot reach an agreement, or until they can go to court.

Child support. Each state establishes child support amounts based on statutory requirements. Go to www.supportguidelines.com/links.html for a directory of state **guidelines**. Online **calculators** may be used to estimate appropriate support levels based upon the income of the parents and other factors, such as child care expenses (www.supportguidelines.com/calcs.html). Though the parents may agree upon a temporary child support amount, the court can override that agreement and enter an order consistent with the state's child support guidelines.

A divorcing couple should review the needs of the child, childcare and other costs, and the guidelines of the controlling state. Child support payments are not tax-deductible, and continue according to state law. A separation agreement may also deal with paying the college expenses of a child.

Child custody. All states base custody orders on the best interests of the child. A marital separation agreement will determine custody of children until a divorce decree is entered. If a couple cannot agree on custody, only a judge can order custody. The Army cannot decide child custody matters. A court can enter a custody order, and is not bound by any separation agreement. Judges make custody decisions based upon what is determined to be the best interests of each child. The judge may accept custody terms in an agreement, and make them part of the final divorce decree. Or, the judge may completely disregard the agreement. The same applies for child visitation and support provisions.

When settling custody, try to come up with a workable arrangement. Consider the needs of the child, the ability of each to meet those needs, geographical separations and future PCS moves, the bonds between the child and each parent, parenting skills and abilities, and preferences of the child.

Visitation. Visitation is also based on the best interests of the child. Like child custody, the parties may decide on a visitation schedule in a marital separation agreement. Remember, the court has the final word, and can change a custody and visitation arrangement at any time.

There are generally two types of visitation, specific and reasonable. *Specific visitation* is detailed and clearly identifies times and places of visitation. *Reasonable visitation* relies on each parent's ability to cooperate and communicate concerning visitation, and manage the child's life without a specific schedule. Couples should select unscheduled reasonable visitation only if they are certain there will be no disputes, each can maturely address and accommodate each other and the needs of the child, each understands the need to give plenty of notice to the other of visitation dates and times, and they fully appreciate the requirement of cooperation.

Specific visitation may be as detailed as agreed upon. Consider geographic distances, travel costs, work and school requirements, holidays, birthdays, visitation by other family members (grandparents or others), and any other factors important to the child's well being.

Alimony. Alimony, also called spousal support or separate maintenance, can be addressed in a marital separation agreement. Alimony is separate from child support, and in most states is designed to support one spouse for a period of time until the spouse can resettle, pay bills, update job skills, and cover costs of a separate household. Some states call this rehabilitative alimony. Marriages of long duration may see orders for permanent alimony, for the life of the recipient. Alimony payments often terminate on the remarriage of the recipient, are tax deductible to the person paying it, and are taxable income to the recipient. When deciding whether to order alimony payments, the court will consider factors such as child raising responsibilities and foregoing education and employment opportunities in support of a spouse's career.

A divorcing couple can determine post-separation support and alimony in a separation agreement. The agreement should include the amount, how long the payments will continue, on what conditions payments will cease in the future, and tax treatment. If alimony is waived in the separation agreement, it will be difficult to get alimony in the future.

Debts. A marital separation agreement can effect the distribution of all debts, whether individual or joint, marital or premarital. It is very important to identify all debts and determine responsibility for payment.

Individual debts are debts with only one name on the account. These debts are the responsibility of account holder, and creditors cannot collect against anyone but the named account holder. *Joint debts*, debts with more than one name as account holder, are those for which each account holder is legally liable for payment.