

# Family Law

## Separation and Divorce Overview

# Initial Questions

- When can I file for divorce?
- Where do I file?
- How long does the process take?

# When Can I File?

- Not immediately
- Not soon, probably
- Not all the same - Depends on state

# When Can I File?

VA – 1 yr (kids), 6 mos (no kids & Sep Agmt)

NC – 1 year separation

TX – 60 days (if wife not pregnant)

FL – 30 days (sometimes)

CA – 6 months waiting period

NY – 1 year

# Where Can I File?

- Where you live
- Where your spouse lives
- Military spouse's HOR
- Must qualify as state resident

# Before Divorce

- Separation Agreement
- Interim Custody and Support
- Army Support Requirements

# Separation Agreement

SA = Contract

- Custody and visitation
- Child support
- Spousal support
- Retirement
- Property
- Debts

# Child Custody

Legal Custody = Care, control,  
decisions

- Usually joint unless one parent is unfit

Physical Custody = where child  
lives

- Usually one custodial parent



# Visitation - Flexible

- No specific schedule
- Best when parents are on good terms and live close to each other
- Circumstances often change, may require going back to court

# Visitation - Specific

- Guaranteed minimum protections
- Still allows for flexibility
- Set visitation schedule

Weekdays

Weekends

Holidays

Summers

- Travel arrangements

# Visitation – SM Considerations

- Deployment
- Military duties may prevent visitation
- Child care

# Child Support

- State specific calculation and factors
- Separation agreement: Couple decides, judge may reject if too low
- Filing in Virginia Court - Represent yourself or Hire an Attorney

# VA Support Calculation

Guidelines based on:

- Gross income of parents
- Number of minor children
- Amount of time children are with each parent

# VA Support Calculation

Court will also consider:

- Health care premiums
- Child care expenses
- Child support currently paid for children from prior relationships
- Support paid to prior spouse

# Virginia Child Support

- Virginia requires support until age 18 or 19 if still in high school
- Parties can agree for support beyond high school
- Continuing support for disabled children
- TIP: Life insurance on paying spouse

# Spousal Support or Alimony

- Must be addressed **PRIOR** to divorce or it is **GONE**
- Difficult to get in Virginia
- Strongly advised to hire an attorney



# Spousal Support

## How Much and How Long?

Separation Agreement: Couple decides

VA Court Ordered: Case by case basis

- Length of marriage
- Income & expenses of each spouse
- Earning potential of each spouse
- Standard of living during the marriage

# Spousal Support

## How Much and How Long?

- Adultery: Party who committed adultery not likely to receive spousal support
- Must PROVE Adultery
  - Court will have to decide
  - Civilian attorney

# Division of Property

- Can be addressed in separation agreement or by court order
- Separate v. marital property
- Need to specify which spouse is keeping jointly held assets

# Vehicles

- Both on title? Both on loan? Neither?
- Can agree to any division, BUT keep in mind who pays, who insures, etc.
- Divorce does NOT terminate duty to pay the loan or liability as a co-owner



# Houses and Land

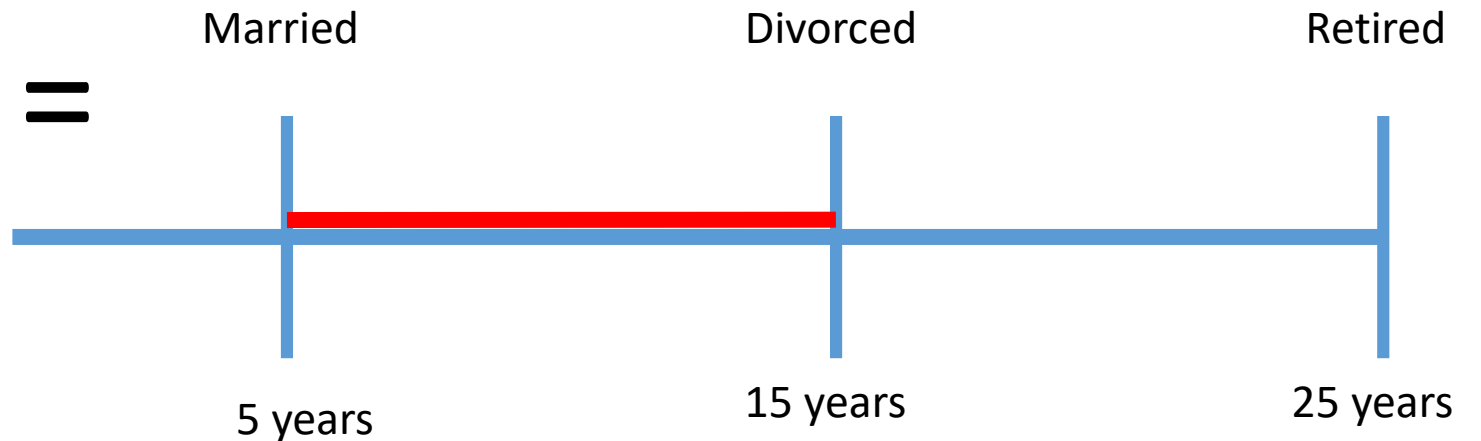
- Was the home purchased during marriage?
- Does one spouse want to remain in home?
- Should it be sold?
- Divorce does NOT terminate duty to pay the loan or liability as a co-owner



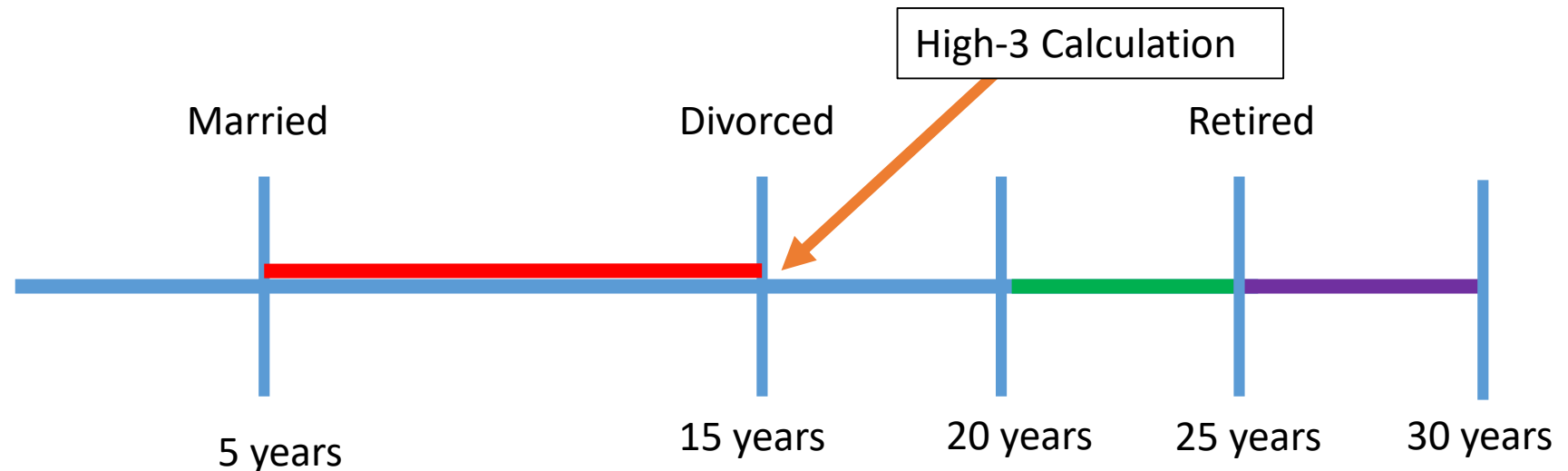
# Retirement Pay

- Divisible asset – both parties
- Up to half – how much overlap between marriage and career?
- **MUST** be divided at divorce

- 25 year career, 10 years overlap
- Spouse contributed to 10 yrs of the 25 yr career ( $10/25 = 40\%$ )
- Spouse has a 50% interest in 40% of the pension
- 50% of 40% = 20% share of pension



- Division of military retired pay uses SM's High-3 base pay at divorce
- 20 yrs -  $\$4,000 \times 25\% = \$1,000$
- 25 yrs -  $\$4,000 \times 20\% = \$800$
- 30 yrs -  $\$4,000 \times 16.7\% = \$668$





# Military Retirement Pay

- Disposable Retirement Pay
- Myth: Marriage must overlap with 10 years
- 10 year overlap required for direct payment from DFAS

# Retirement Pay – Other Considerations

- Parties can agree to +/- or waive
- Court can/will decide
- Get help
- Identify all sources

# Tricare



- Spouses are eligible to stay on Servicemember's insurance until divorce
- 20/20/20 = TRICARE FOR LIFE
- 20/20/15 = 1 year following divorce

# Debts

- Any purchase can create debt
- Community vs. equitable property state
- Joint accounts and joint titling

# **NO Separation Agreement**

Is there still an obligation to support?

Yes/Maybe

- Children – always (JDR & AR 608-99)
- Spouse – maybe (JDR or AR 608-99)

# AR 608-99 Overview

- Requires Soldiers to provide financial support to family members
- Amount to be paid is based on SM's and BAH II (with dependents) based on rank
- Soldiers can be punished for failure to obey the regulation

# Juvenile & Domestic Relations Court (JDR)

## When to go to JDR?

- Spousal support – Before divorce
- All child issues – at any time

# JDR Court Services

- Intake Officer at Court Services Unit
- Provide financials and spouse address



# **How to File for Divorce**

## **Complaint for Divorce**

- Reasons for divorce

## **Notice**

# How Do I Respond?

## Answer

- Agree = Uncontested, waive future service
- Disagree = Contested, continued notice/service

# Who Is Going To File?

## Civilian Attorney

You pay out of pocket - \$\$\$\$\$\$

## DIY – Pro Se

Depends on state

VA - [www.valegalaid.org/](http://www.valegalaid.org/)

(Answer “No” to military question)

# ELAP

## Expanded Legal Assistance Program

- Soldier only
- Uncontested, apply after signed SA
- Need based
- You pay court filing fee
- Subject to office resources

# **For More Information**

If you still have questions about a particular family law matter, you can call the Client Services Division at 804 765 1500.