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HOW DOES THE SURVIVOR BENEFIT PLAN EFFECT A MILITARY MEMBER'S BENEFIT, INCIDENT TO A DIVORCE?

In our most recent article "GETTING A DIVORCE AND YOUR SPOUSE WANTS A PORTION OF YOUR PENSION BENEFIT," we mentioned that we would explore the issues surrounding the survivor benefit plan (SBP). As many of you are aware The Uniformed Services Former Spouses Protection Act governs the terms and conditions regarding the division of your retired pay, as well as your Survivor Benefit Plan. This article will specifically address your options regarding the member's (SBP), incident to a divorce, and how it is a negotiable item. Simply stated, explaining the entire Survivor Benefit plan is too voluminous to completely construe in this article.

The (SBP) was originally enacted to enable a member to designate a spouse and/or former spouse as beneficiary to a their pension benefit, on the basis that the spouse and/or former spouse had an insurable interest in the member. When this benefit was originally provided, it was only enforced given the member had voluntarily agreed in writing, to make such an election. However, this provision was amended so that the courts could order a retiring soldier through a Military Order (MO) to designate a former spouse as beneficiary, if so stated in the settlement agreement. The SBP election is not automatic, it will only be enforced by a request from the former spouse to (DFAS), no later than one year after the date of divorce. Failure to comply with the one-year rule will prohibit the former spouse from being named beneficiary. Then if, as, and when, the member retires, the former spouse will be designated (SBP) beneficiary. An important fact to remember for a former spouse is the SBP coverage for a spouse is not specific for any individual. Coverage does not continue for a spouse who subsequently becomes a former spouse, unless the election is changed to former spouse with (DFAS).

In numerous divorce cases, military retired pay is the single largest asset subject to division. What every member is wondering is how will this effect my benefit and my retirement? The answer is quite simple, the SBP election will reduce your monthly retirement benefit. This election is no different than a joint & survivorship annuity. You elect a reduced monthly benefit, which provides an annuity payout, for a beneficiary, upon your death. These payments will continue in whole, or in part, until both you and your beneficiary decease.

How is the SBP annuity payout computed? In March of 1986 the Department of Defense Authorization Act was passed which established a two-tiered benefit system for computing the gross SBP annuity from the base amount. The main provisions are as follows:

- If the annuitant (spouse and/or former spouse) is under age 62, then the survivorship annuity is paid at 55% of the SBP annuity base amount.
- If the annuitant (spouse and/or former spouse) is age 62 or older and the member was eligible to retire before October 2nd 1985, then gross SBP annuity is computed as follows:
 - 1) 55% of the SBP annuity base amount less any social security offset

or

 - 2) 35% of the SBP annuity base amount
- If the annuitant is age 62 or older and the member was eligible to retire after October 2nd 1985, then gross SBP annuity simply 35% of the SBP annuity base amount.

Beginning this October 2005 these provisions will be amended. The lowest amount of the SBP annuity that a spouse and/or former spouse will be able to receive, will be 40% of the deceased member's retired pay. If the spouse and/or former spouse falls in the 55% category, then this rule does not apply to them. But, if they fall in the 35% of retired pay category, they will receive an increase of 5% after October of 2005. In 2006, 2007, and 2008 the new provisions of the SBP annuity increase the benefit an additional 5% per year, until 2008 when the benefit hits 55% of the base amount. In 2008, every spouse and/or former spouse that is eligible or receiving the SBP annuity, will secure 55% of the deceased member's base amount.

Now every question on a member's mind is, "How much will this SBP election cost me." The answer is easy, it will cost the member 6.5% regardless of your monthly retired pay amount. For example, if you will receive \$1,000/month upon commencing and you have elected the Survivor Benefit Plan for a former spouse, your monthly amount will be reduced to \$935/month. Seems like a nominal cost, but what if your benefit was \$3,000/month? You would only receive \$2,805/month. The larger your monthly benefit, the more the cost of coverage. One aspect to remember with the (SBP) premiums is that only the member is allowed to pay them. Even if your divorce order states that the former spouse is supposed to pay, the member must still pay.

As a military member you need to be aware that in a divorce the (SBP) election is a negotiable item. It is a benefit that could be used to offset other assets subject to division. This is a common misconception amongst military members. Yes, your former spouse is eligible for the (SBP) annuity, but you could argue that by providing this benefit another asset should be used to offset this marital property.

Understand that we can compute a present value of your future monthly retired pay benefit, by using variables such as an interest rate discount, a mortality rate discount and a tax rate discount. We can also compute a present value, for the loss of income you incur by electing the (SBP).

For example, Let's assume you retire today, your projected monthly benefit is \$3,000/month, and you make the (SBP) election for a former spouse. Now, we know that your benefit will be reduced to roughly \$2,800/month. To make this calculation relatively simple, let's presume that you and your former spouse are both 55 years of age. You will be commencing in 5 years when you are eligible. We can assess that the difference in present value from the reduction in your benefit, is roughly **\$34,000**. This is a large number considering that the member would have received that amount given no reduction.

With all of that said, it is imperative that you consult with an attorney and financial professional if you or your non-member spouse is contemplating divorce. A financial professional with expertise on Military retired pay & SBP annuities can be a great advocate for you, especially when negotiating your (SBP) election. If you take one thing from this article, remember that the larger your monthly retired pay, the larger the present value necessary to fund that future benefit. This also means a larger number to be offset with marital property, if the former spouse requests that you make the (SBP) election. If you should have any questions regarding this article please contact us at the number provided or go to our web site and click on [QDRO's](#) and then [Governmental Plan & Military Plans](#) to read more about Military Orders.

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