

Military MSA Language Flow Chart-NDAA 2017

Is Military Spouse Retired AND In Pay Status as of Date of Judgment?

Yes.

No.

NDAA 2017 Frozen Benefit Rules WILL NOT impact this case.

Is Military Spouse Active OR discharged and waiting for age 60 to start pension payments?

Use language from Section 1.A.

Discharged and waiting until age 60.

Active.

Yes.

Will Military Spouse Agree to Pre-NDAA 2017 Rules?

NDAA 2017 Frozen Benefit Rules WILL impact this case.

Use language from Section 1.B.

No.

Use language from Section 1.C.

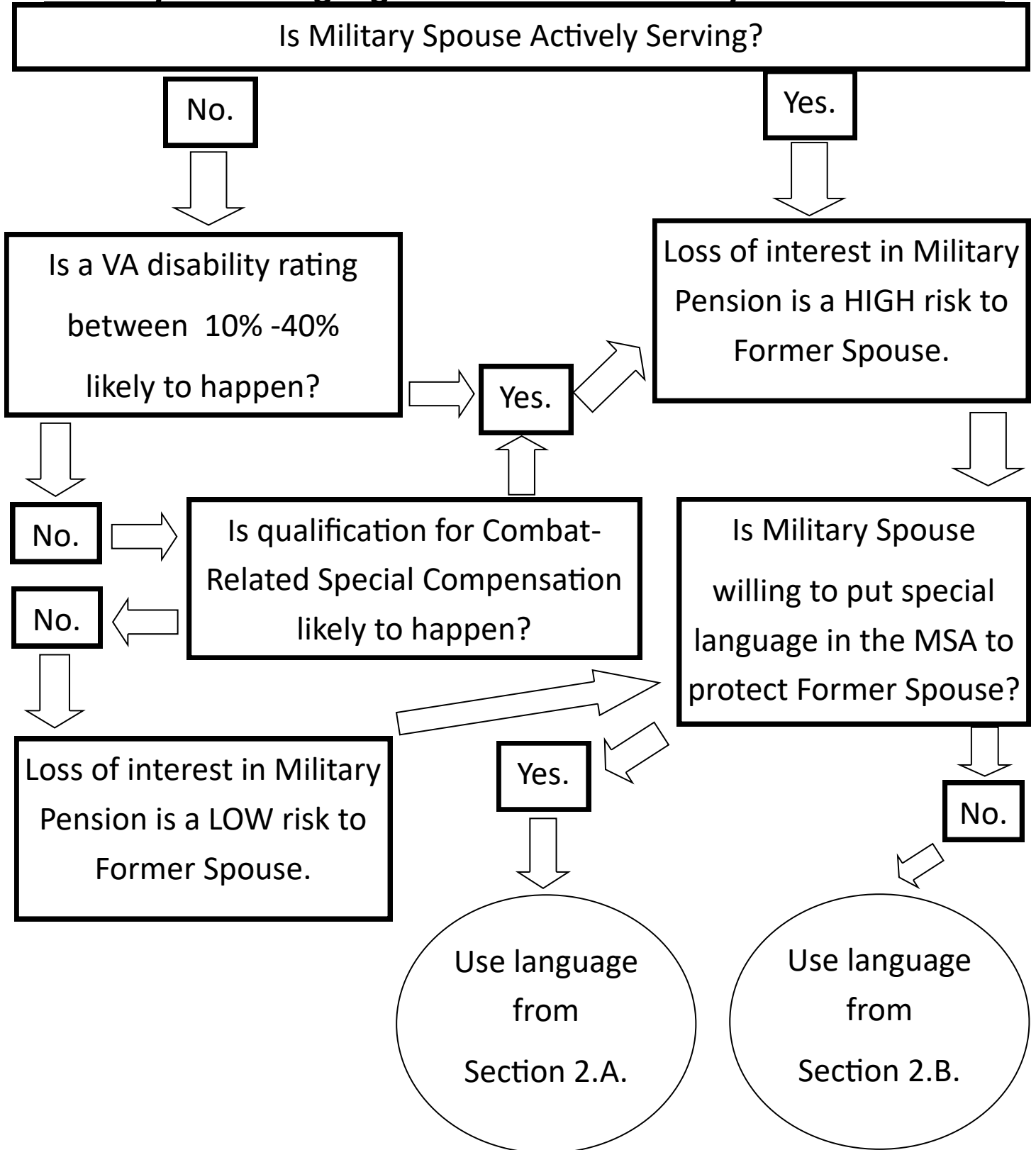


Phone (Riverside/Main): (951) 523-7376

Facsimile: (855) 880-0098

david@qdrodivision.com

Military MSA Language Flow Chart-Disability Related Waivers



Phone (Riverside/Main): (951) 523-7376

Facsimile: (855) 880-0098

david@qdrodivision.com

Military MSA Language Flow Chart-Blended Retirement

Has Military Spouse served more than 12 years?

No.

Yes.

The Military Spouse may elect the 'old system' or the 'new blended retirement system'.

The Military Spouse is stuck in the 'old system'.

Use language from Section 3.

No special MSA language needed.

All NEW service members entering Military after December 31, 2017 will be entering the 'new blended retirement system'.



Phone (Riverside/Main): (951) 523-7376

Facsimile: (855) 880-0098

david@qdrodivision.com

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PICK OPTION A, B, OR C FROM SECTION 1 **AND**
OPTION A OR B FROM SECTION 2 **IN EVERY SINGLE MILITARY CASE.**
USE SECTION 3 **ONLY IF APPLICABLE.**

[Optional at the preference of attorney/parties] Attorney David T. Ruegg 951-523-7376 will be the Evidence Code 730 Expert [CCP 638(b) Special Master for Orange County cases] for the division of Military Spouse’s Armed Forces Retirement System account and the Parties will retain Attorney Ruegg's services within 30 days of entry of judgment. Attorney Ruegg's fees will be split equally between the Parties. Both Parties shall cooperate with Attorney's Ruegg's requests for records to complete said division.

SECTION 1 - OPTION A

The community property interest in Military Spouse’s Armed Forces Retirement System account will be equally split between the Parties via Military Division Order (MDO). For the MDO, the Parties’ date of marriage is [DOM] and the Parties’ date of separation is [DOS]. [If SBP was selected at retirement] When Military Spouse retired from the Armed Forces Retirement System, Military Spouse elected coverage under the Survivor Benefit Plan (SBP) naming Former Spouse as "Spouse" beneficiary. Former Spouse is awarded a continuing interest in the SBP plan and Former Spouse shall convert the “Spouse” beneficiary election to a valid "Former Spouse" beneficiary election utilizing the Military DD forms within one year of entry of this judgment. [If SBP was not selected at retirement] When Military Spouse retired from the Armed Forces Retirement System, Military Spouse made no election for SBP coverage and therefore no survivor benefits under a Survivor Benefit Plan are available.

The court shall retain jurisdiction to make any orders to effect an equal division of the community interest in Military Spouse’s Military Retired Pay.

SECTION 1-OPTION B

As Former Spouse’s community property interest in Military Spouse’s Armed Forces Retirement System, Former Spouse is awarded a portion of the “Military Retired Pay” calculated:

$$\begin{array}{rcccl}
 & & \text{Accrued retirement benefits earned by} & & \\
 & & \text{Military Spouse during} & & \text{Former Spouse's} \\
 50\% & \times & \frac{\text{marriage/community time period}}{\text{Total accrued retirement benefits earned by}} & = & \text{percentage interest in} \\
 & & \text{Military Spouse upon retirement} & & \text{Military Retired} \\
 & & & & \text{Pay*}
 \end{array}$$

*“Military Retired Pay” means the full monthly Military Retired Pay Military Spouse is or would be entitled to receive before any statutory, regulatory, or elective deductions are applied. It includes retired pay paid or payable for longevity or active duty and/or reserve component military service. Treatment of disability related benefits received for a waiver of disposable retired pay is addressed in SECTION 2 of this Order.

Former Spouse [is/is not] awarded an interest in survivor benefits under a Survivor Benefit Plan (SBP). [If awarded] Former Spouse shall make a Former Spouse beneficiary election utilizing the Military DD forms within one year of entry of this judgment.

Military Spouse and Former Spouse understand that under The National Defense Authorization Act for Fiscal Year 2017 (NDAA 17), the Military Pay Office will only accept Military Division Orders that direct payment to Former Spouse as a fixed dollar amount, a percentage of disposable pay, or a hypothetical award fixed as of entry of judgment of dissolution.

Military Spouse and Former Spouse recognize that due to drafting limitations of NDAA 17, it may difficult or impossible to draft a Military Division Order that is both acceptable to the Military Pay Office and that Former Spouse will receive his/her entire community property award as a direct payment from the Military Pay Office. To effectuate this judgment, Military Spouse shall be personally responsible for any direct payment shortfalls between the amounts awarded in this judgment and the amounts actually paid to Former Spouse. After the shortfall is determined, the Parties may agree to alternative solutions, such as an actuarial buyout of the shortfall, an adjustment to spousal support tied to the shortfall, a superseding Military Division Order that restates the award in a percentage form, or any other reasonable solution to which both Parties agree.

1 To draft a Military Division Order which meets the requirements of NDAA 17 rules,
2 Military Spouse shall provide to Former Spouse documentation showing rank, total years (or
3 points) of creditable service, and pay base (High-3) which Military Spouse attained as of the
4 date entry of final judgment is issued. Military Spouse shall provide said documentation within
5 30 days after entry of final judgment.

6 The Parties Understand NDAA 2017 went into effect as of December 23, 2016 and
7 regulations are still evolving to adapt to resulting changes. This Court shall retain jurisdiction
8 over all retirement benefits to effect an equal division of community property rights. The Court
9 has the authority to adjust orders as required to conform to rules and regulations not yet issued
10 as of entry of judgment.

11 **SECTION 1 - OPTION C**

12 The community property interest in Military Spouse's Armed Forces Retirement System
13 account will be equally split between the Parties via Military Division Order (MDO). For the
14 MDO, the Parties' date of marriage is [DOM] and the Parties' date of separation is [DOS].

15 Former Spouse [is/is not] awarded an interest in survivor benefits under a Survivor
16 Benefit Plan (SBP). [If awarded] Former Spouse shall make a Former Spouse beneficiary
17 election utilizing the Military DD forms within one year of entry of this judgment.

18 Military Spouse and Former Spouse understand that under The National Defense
19 Authorization Act for Fiscal Year 2017 (NDAA 17), the Military Pay Office will only accept
20 Military Division Orders that direct payment to Former Spouse as a fixed dollar amount, a
21 percentage of disposable pay, or a hypothetical award fixed as of entry of divorce.

22 Since Military Spouse is actively serving, it is impossible to predict the percentage or
23 fixed dollar amount that will make up Former Spouse's community interest; therefore, the only
24 drafting option that may be utilized at this time is a hypothetical award. Under the hypothetical
25 award format, Former Spouse's interest will not enhance as Military Member receives
26 promotions/pay raises and therefore Former Spouse will not receive his/her full community
27 interest as a direct payment from the Military Pay Office.

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1 Former Spouse understands he/she may need to utilize collection remedies to make up
2 the shortfall between his/her community interest and the amount paid from the Military Pay
3 Office.

4 Should the Military Spouse not retire as of Military Spouse's earliest retirement date
5 under the Armed Forces Retirement System, then Nonmember Spouse shall retain all rights
6 under IRMO Gillmore (1981) 29 Cal.3d 418 and IRMO Cornejo (1996) 13 Cal.App.4th 381 to
7 seek payment of Nonmember Spouse's share of benefits directly from Member anytime
8 thereafter.

9 To draft a Military Division Order which meets the requirements of NDAA 17 rules,
10 Military Spouse shall provide to Former Spouse documentation showing rank, total years (or
11 points) of creditable service, and pay base (High-3) which Military Spouse attained as of the
12 date entry of final judgment is issued. Military Spouse shall provide said documentation within
13 30 days after entry of judgment for dissolution.

14 The Parties Understand NDAA 2017 went into effect as of December 23, 2016 and
15 regulations are still evolving to adapt to resulting changes. This Court shall retain jurisdiction
16 over all retirement benefits to effect an equal division of community property rights. The Court
17 has the authority to adjust orders as required to conform to rules and regulations not yet issued
18 as of entry of judgment.

19 SECTION 2 - OPTION A

20 Both Parties know of the U.S. Supreme Court Case Howell v. Howell 581 U.S. ____
21 (2017) wherein the Court held that State Courts do not have jurisdiction to order
22 indemnification or reimbursement to a Former Spouse divested of his/her community interest in
23 Military Retired Pay, because of a Military Spouse's unilateral waiver of disposable retired pay
24 for disability payments-no matter if the waiver occurs prior to or after a final dissolution of
25 marriage judgment.

26 Military Member understands he/she is not required by current law to indemnify or
27 reimburse Former Spouse, should Military Member later waive a portion of his/her disposable
28 retired pay for receiving disability related benefits.

1 In the interest of global settlement, Military Member voluntarily and contractually
2 agrees to indemnify and reimburse Former Spouse for any reduction in benefits payable to
3 Former Spouse because of Military Member's waiver of disposable retired pay. Said
4 reimbursement shall be a dollar for dollar reimbursement and may be made in a dollar for dollar
5 spousal support award adjustment.

6 At the time of execution of this marital settlement agreement, any disability related
7 benefits received by Military Member because of a prior waiver of disposable retired pay (if
8 any) are confirmed as Military Member's separate property and no offsets/reimbursements for
9 the prior waiver shall be required.

10 The Parties agree this Court shall retain jurisdiction over spousal support to effect any
11 adjustment that may be required due to a waiver of disposable retired pay and this Court shall
12 have the authority to make adjustments on a dollar for dollar basis.

13 **SECTION 2 - OPTION B**

14 Both Parties know of the U.S. Supreme Court Case Howell v. Howell 581 U.S. ____
15 (2017) wherein the Court held that State Courts do not have jurisdiction to order
16 indemnification or reimbursement to a Former Spouse divested of his/her community interest in
17 Military Retired Pay, because of a Military Spouse's unilateral waiver of disposable retired pay
18 for disability payments-no matter if the waiver occurs prior to or after a final dissolution of
19 marriage judgment.

20 Military Member understands he/she is not required by current law to indemnify or
21 reimburse Former Spouse, should Military Member later waive a portion of his/her disposable
22 retired pay for receiving disability related benefits. Military Member exercises his/her right to
23 reject any Court Order requiring indemnification or reimbursement for this purpose.

24 The Court reserves jurisdiction over spousal support and may order an adjustment of
25 support under Family Code §4320. Both parties understand the Court does not have authority to
26 use spousal support as a tool to compensate Former Spouse dollar for dollar for any divested
27 amounts resulting from a waiver of disposable retired pay. Any adjustment to spousal support
28 may only be made by findings under the Family Court §4320 factors.

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SECTION 3

The Parties understand Military Spouse may elect conversion of his/her Armed Forces Retirement System account into a new Military Retirement System, commonly called the Blended Retirement System. Should Military Spouse elect conversion into the new system, Military Spouse shall notify Former Spouse in writing forthwith.

Both Parties understand Military Spouse may elect to receive a mid-career incentive bonus/continuation pay bonus under the Blended Retirement System rules. Should Military Spouse elect to receive said bonus, both parties understand a portion of the bonus was accrued during marriage and therefore a community interest exists. Former Spouse shall be awarded his/her proportional interest in the incentive bonus/continuation pay bonus.

Both Parties understand Military Spouse may elect to receive an immediate lump sum payment of his/her retirement entitlement, in exchange for a reduced monthly annuity, under the Blended Retirement System rules. Should Military Spouse elect to receive said lump sum payment for a reduced monthly annuity, both Parties understand a portion of the payment was accrued during marriage and therefore a community interest exists. Former Spouse shall be awarded his/her proportional interest in the lump sum payment.

The Parties Understand the Blended Retirement System goes into effect January 1, 2018 and regulations are still evolving to adapt to resulting changes. This Court shall retain jurisdiction over all retirement benefits to effect an equal division of community property rights. The Court has the authority to adjust its orders as required to conform to rules and regulations not yet released as of entry of this judgment.