



CRISIS MANAGEMENT & SUPPORT

## Divorce FAQs --Frequently Asked Questions about Divorce in the Foreign Service

**1). Q: *Where can an employee or spouse find information about divorce in the Foreign Service?***

**A:** The Family Liaison Office (FLO's) newly revised *The Foreign Service Family and Divorce* is available on the internet at <http://www.state.gov/m/dghr/flo/c23129.htm>. It contains updated information on many topics including: counseling, departure from post, support and jurisdictional considerations, legal assistance, children and divorce, retirement and health benefits, and financial and privacy considerations. It provides a number of additional resources, as well as a real life scenario and statements by Foreign Service employees and spouses who have experienced separation and divorce.

**2). Q. *If circumstances are such that the employee and family (spouse and/or children) can no longer live in the same official residence because of an impending separation, is the post required to find other housing for the employee, spouse (and children) at post?***

**A:** To minimize the disruption to the children's education or to give the spouse time to get organized, post **may** provide temporary housing if available; however, this is not a requirement. Curtailment is always an option and post management may determine this for the employee if there is no suitable solution at post.

**3). Q: *How can a separating/divorcing spouse leave post?***

**A:** A spouse who leaves post before the tour of duty ends can leave using advance travel authority. Return travel of an employee's spouse may be authorized to the employee's service separation address in the United States (see definition of "United States" in 14 FAM 511.3) or any other location in the United States on a cost-constructive basis from the employee's post of

origin to the employee's separation address when a permanent marital separation or divorce is intended.

The spouse will receive advance travel orders and a ticket for return to the U.S. When advance orders are prepared, the spouse may receive HHE and airfreight shipments. The HHE and airfreight should be shipped from post in the spouse's name. The weight of the advance shipment is then subtracted from the total weight allowed at the employee's next transfer. Airfreight is authorized per person traveling. (14 FAM 613.3-1)

Before the spouse departs post, the couple should both sign and have notarized:

- Statement of mutual consent that one partner is not deserting or abandoning the other

The employee should sign the following:

- Joint Property Statement (14 FAM 627.6) which will allow the spouse access to goods in storage; and
- Authorization to Receive Goods Shipped From Post, which will allow the spouse to receive household effects

The separating spouse is not eligible for Separate Maintenance Allowance. This allowance is not intended for situations of marital separation or divorce. (DSSR 261.1b).

***4). Q. What if the employee refuses to sign documents allowing the spouse access to HHE from post and storage, and denies the spouse (and children) financial resources necessary to establish themselves when they leave post.***

A: There is a requirement for employees to provide adequately for spouse and children due to separation and/or impending divorce as stated in STATE 96211 (see <http://www.state.gov/m/dghr/flo/c23186.htm> for more information). Employees are reminded that they have a responsibility to facilitate the return of their spouse (and children) to the United States or other location the family may choose. The employee is encouraged to reach a settlement with respect to disposition of household effects before anyone departs post.

The employee is also encouraged to reach a settlement with his or her spouse in order to ensure adequate financial resources for the spouse and family to establish themselves back in the United States or other location. This document, based on a Department of State cable to all posts, discusses possible actions available, if the employee fails to make these adequate arrangements.

***5). Q: How can a separating spouse gain access to goods in storage?***

A: The separating couple should sign and have notarized a Joint Property Statement which authorizes the spouse to obtain access to goods in storage. Each spouse should keep copies,

and a copy must be presented to the Transportation Division of the employee's agency. (14 FAM 627.6)

**6). Q: *What if an employee refuses service of papers?***

**A:** Service of papers (or service of process) refers to the serving of court orders by one party on another. The position of the Department of State is that refusal of an overseas employee to accept service reflects adversely upon the U.S. government and may result in the employee's reassignment to the U.S. so that the service can be made and divorce proceedings can begin. A Foreign Service employee may not use an overseas assignment, or diplomatic status, to avoid service of process. (22 CFR 172.2(d))

**7). Q: *Does a spouse have a right to a portion of the employee's pension?***

**A:** Yes, a spouse has an *automatic* right to a portion of the employee's pension if the spouse meets certain eligibility requirements. These requirements are: 1) that the spouse has been married to the employee for at least 10 of the employee's years of creditable government service, at least five of which were with the Foreign Service, and 2) that the spouse not remarry before the age of 55. If the spouse meets these requirements, he or she has a right to a prorated share of up to 50% of the retirement pension. Since this right is automatic, the spouse should be careful not to sign it away without careful consideration, and, preferably, legal advice. (Foreign Service Act, 1980, P.L. 960465, Section 814)

**8). Q: *What about health insurance coverage for the spouse?***

**A:** For a qualifying spouse, there is a 60 day window following the finalization of the divorce in which the spouse may opt to enroll in any of the government health plans at his or her own cost. To qualify, the spouse must have been enrolled in one of the government health plans as a family member at any time during the previous 18 months and must not remarry before the age of 55. The spouse must contact the Retirement Office in the Department of State, or the Personnel Office of their agency during the 60 days following the divorce. (P.L. 98-615).

If the spouse does not qualify for a pro rata share of the pension, the spouse may still be eligible for 36 month coverage of health insurance if he or she was enrolled as a family member at the time of the divorce. (P.L. 100-654)

**9). Q: *How can an employee's wages or pension be garnished?***

**A:** Wages of an employee or pension of a retiree can be garnished for child support or alimony payment if the ex-spouse presents a court order for debt garnishment to the Office of Legislation and General Management at the Department of State, or to their agency. (5 U.S.C., 5520a(j)(2))<sup>3</sup>

**10). Q: Are there any other consequences for a Foreign Service Officer who is in arrears with child support?**

**A:** Any individual owing over \$5000 in child support is prohibited from receiving a new or renewed passport. This statute includes tourist, diplomatic and official passports. (P.L. 104-93)

**11). Q: Can a spouse's diplomatic passport be taken away?**

**A:** As long as the couple has not yet divorced and the spouse is on the employee's travel orders for the post to which the employee is assigned, the spouse is entitled to hold a diplomatic passport. A spouse who is not a U.S. citizen may not carry a U.S. passport, diplomatic or tourist. (For entitlements see Title 22, CFR Section 51.3)

**12). Q: Does a foreign-born spouse of a Foreign Service Officer have the same rights regarding divorce as a U.S.-born spouse?**

**A:** Yes. A foreign-born spouse, whether or not a U.S. citizen, has the same rights under Department of State regulations as a U.S.-born spouse. The couple should be aware that foreign marriages and divorces may not always be recognized in U.S. courts. Also, the Department of State may not recognize provisions for former spouse benefits that may be included in a foreign divorce. (Title 22, Part 19, Section 19.2 (f))

**13). Q: In which state I should file for divorce? I have property in VA and in FL and been out of the United States for nearly a year.**

**A:** Let's say you are considering both Virginia and Florida as you have owned property there before you went overseas, or still do, pay taxes to one of them, etc. You can sign up with IQ and ask for a divorce lawyer in the particular county in Va. and Fla., explain your situation and ask if you would be able to file from that state.

**14). Q. I am an employee and the state where I am filing has a domicile requirement of 6 months. Do I have to go on LWOP to meet this requirement because I do not have enough leave accrued?**

**A.** Usually not, but before filing you should consult your attorney to determine whether you meet any residency or domicile requirements and/or whether any such requirements can be waived. A domicile is a fixed and permanent home, to which a person intends to return even if currently residing elsewhere. A person may be physically resident in one place while his/her domicile is elsewhere. The definitions of residence and domicile may vary slightly from state to state and different states may consider different factors when determining residence or domicile.

**15). Q. When a spouse requests access to storage in Hagerstown, with proper documentation, is there a fee?**

**A.** First of all, one should define “proper documentation.” This would include specific permission from the employee to access the employee’s storage and a list to which both parties have consented of what the spouse may take away. If early travel orders have been written and access to Hagerstown is included, there would be no charge. Or, if the employee’s travel orders are still valid and access to storage has not been used, the orders could provide the entitlement to access storage. If no such entitlement exists, then there would be the standard \$258 (as of August 2011) minimum charge to access goods.

A second possibility is that the employee refuses to return personal belonging to a divorcing spouse and a court order has been obtained by the spouse. This court order legally obliges the employee to turn over the goods. If these goods which s/he is obliged to turn over are in storage, this means that the employee also has to grant access to storage in order to fulfill the terms of the court order. If the employee’s orders are still valid and the one-time access to storage has not been used, that access could be used to make the goods available to the spouse free of charge.

**16). Q. What if a spouse leaves post early without a joint property statement, or a statement of mutual consent?**

**A.** The joint property statement serves the purpose of allowing the non-employee access to storage when there is no question of divorce. However, if a spouse seeks access to storage in connection with a divorce, s/he must have a list to which both parties have consented of what the spouse may remove. The spouse also needs specific permission to access the stored goods to remove the ones designated on the list.

As for the Statement of Mutual Consent, this does not so much deal with property as with the conduct of the departing spouse. The Statement of Mutual Consent states that the departing spouse is not deserting or abandoning the other member of the couple.

**For further information see the Family Liaison Office’s booklet [“Divorce and the Foreign Service,”](#) newest edition published in November, 2010.**