

VETERANS' RIGHTS, ENTITLEMENTS, AND BENEFITS

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OVERVIEW AND BACKGROUND

The Department of Veterans Affairs estimated that by September 30, 2014, there would be 1 million living veterans of WWII. Since that date, we have seen approximately 14,400 WWII servicemembers die. That leaves approximately 558,000 WWII veterans still living, many needing your services. Between February 28, 1961, and May 7, 1975, more than 3.4 million service members served in theater in Vietnam. A total of 8.7 million served during the Vietnam era. It is estimated that there are 7.3 million living Vietnam War era veterans.

The Persian Gulf War is defined as lasting from August 2, 1990, to a date to be prescribed by presidential proclamation. This period includes the Iraq and Afghanistan wars that have been waged since September 11, 2001. The last twenty years of conflict have seen more than 2.2 million members deployed since 9/11. Today, there are more than 450,000 service members deployed worldwide. <http://www.businessinsider.com/us-military-deployments-may-2017-5>. National Guard and Reserve members made up a large part of the Iraq and Afghanistan deployments.

There are currently 22 million living veterans of the U.S. military. Approximately 400,000 of these veterans live in Colorado, 243,000 of them are 55 or older. https://www.va.gov/vetdata/Veteran_Population.asp.

As of September 30, 2017, the VA reports approximately 4.5 million veterans were receiving disability compensation for service-connected disabilities, and 276,000 were receiving VA pension for non-service-connected illnesses. <https://www.va.gov/vetdata/report.asp>.

Representation. Not every attorney may represent a Veteran. Effective June 23, 2008, attorneys who represent or assist veterans in preparing, presenting, and prosecuting claims for benefits must be accredited by the VA's General Counsel. 38 CFR §14.629. Attorneys assisting veterans with claims for benefits prior to the effective date of the regulation may continue to assist those veterans on those claims. The aforementioned rule also applies to those attorneys who represent veterans on a pro bono basis. Should the lawyer not wish to go through the accreditation process, there is a search engine for accredited attorneys, Veterans Service Officers (VFW, Am Legion, DAV, etc.), and county veteran services offices at <http://www.va.gov/ogc/apps/accreditation/index.asp>. The Colorado Division of Veterans Affairs provides an index of County Veterans Service Offices at vets.dmva.state.co.us/?page_id=63.

Fees. Only accredited agents and attorneys may receive fees, and then only after an appeal has been commenced with the filing of a Notice of Disagreement. Fees for direct payment from the VA may not exceed 20%. Fees may be charged based on a fixed fee, an hourly rate, a percentage of past-due benefits, or any combination of the above. Past-due

benefits are one-time payments and do not include any future increases in benefits that are paid to the veteran.

Appeals. Prior to the Veterans' Judicial Review Act (Pub. L. No. 100-687), an appeal of an unfavorable VA decision ended at the Board of Veterans Appeals. There was no judicial review of a Board decision. The Judicial Review Act created the United States Court of Veterans Appeals. The Veterans' Programs Enhancement Act of 1998 (Pub. L. No. 105-368) renamed the court as the Court of Appeals for Veterans Claims. The court has exclusive jurisdiction to review decisions of the Board of Veterans Appeals. Congress passed the Veterans Appeals Improvement and Modernization Act of 2017 (Pub L. 115-55). The VA is in the process of modifying the appeals process through the Rapid Appeals Modernization Program.

Military Retirement and Divorce. Military service members may retire after 20 years of service and receive a monthly retirement benefit based on their years of service and their rank at the time of retirement. In some cases, members get divorced prior to their retirement. Both federal and state law provide for a distribution of the military retirement benefit. Although this presentation focuses on benefits available to elderly veterans and their spouses, the division of military retirement pay may be an appropriate discussion if your client is a veteran, or spouse of a veteran, facing divorce.

ELIGIBILITY

Federal

The Department of Veterans Affairs is divided into three main administrations. The Veterans Benefits Administration is responsible for service-connected disability ratings and payments; non-service-connected pension payments; vocational rehabilitation, GI Bill, home loans, and life insurance; dependency and indemnity payments for surviving spouses and death pension payments to surviving spouses. The Veterans Health Administration is responsible for hospitals and clinics, pharmacy services, prosthetics, nursing homes, community living centers, and state veterans' homes. The National Cemetery Administration is responsible for burial benefits, headstones, markers, plots in national cemeteries, and a U.S. flag to drape the casket.

To be eligible for any of these benefits, the veteran must be a "veteran" for VA purposes. That is, he or she must have served on active duty and been discharged under honorable conditions. The military discharge certificate, known as a dd214, must state that the character of discharge is honorable, or general under honorable conditions.

Compensation. Payments for injuries or illnesses require that the veteran have a currently diagnosed illness or injury, the injury or illness occurred during service or was aggravated by service, and credible evidence that the injury or illness was related to the veteran's military service. Compensation payments are tax-free to the veteran. If the veteran is married and has a service-connected rating of 30% or higher, he is entitled to an additional monetary benefit because of the spouse. Descriptions of the injuries/illnesses that the VA compensates are found in 38 CFR Part IV.

Presumptions. There are certain diseases which a veteran may have that are presumed to be service-connected because of the veteran's service at a particular time or place. The most well known of these presumptions are the Agent Orange illnesses for veterans who served during the Vietnam War era and had "boots on the ground" in Vietnam during the period January 9, 1962, through May 7, 1975. Of the 27 diseases listed, the most common ones for Vietnam vets are Type 2 diabetes, Hodgkin's disease, Ischemic heart disease, prostate cancer, and Parkinson's disease. The list of presumptive diseases can be found on the VA website, www.va.gov. More recently, veterans, especially Marine veterans, who served at Marine Corps Base Camp Lejeune or Marine Corps Air Station New River, North Carolina for at least 30 days between August 1953 and December 1987, are presumed to be service connected if they have one of the following diseases: adult leukemia, aplastic anemia, bladder cancer, kidney cancer, liver cancer, multiple myeloma, non-Hodgkin's lymphoma or Parkinson's disease.

Aid and Attendance. For a service-connected veteran who is receiving compensation, the veteran may also be entitled to an additional amount per month called Special Monthly Compensation (SMC) for Aid and Attendance. This add-on amount requires that the veteran is rated at 100% and needs the assistance of another to help him or her with activities of daily living (ADL), such as bathing, dressing, getting around the house, cooking, eating, bathroom duties, etc. This usually requires that the veteran have a doctor's opinion that the veteran requires the assistance of another for activities of daily living.

If the spouse of the veteran who is receiving service-connected compensation benefits requires aid and attendance, the veteran may apply for the additional benefit, even though the veteran is not rated at 100%.

Incompetency. In cases where the veteran has been judicially declared incompetent, or the VA has declared the veteran incompetent without any judicial declaration, the VA may appoint a fiduciary to manage the veteran's financial affairs. The VA may only declare a veteran incompetent if there is evidence that the veteran cannot manage his or her financial affairs, specifically the VA compensation payments. A family member may be appointed by the VA as the veteran's fiduciary. The fiduciary is responsible for managing the VA benefit payment and reporting annually to the VA.

ID Cards. Veterans who are rated 100% service-connected, or who are receiving compensation under a rating of Total Disability Individually Unemployable are entitled to an ID card that gives them access to military bases to use PX and Commissary facilities. Purchases from the PX are free of state sales tax. Purchases of large items, such as appliances and televisions may save the veteran hundreds of dollars in sales tax. Commissary privileges may save a veteran's family as much as 30% on a grocery bill.

CHAMPVA. The Civilian Health and Medical Program of the VA is a comprehensive benefits program in which the VA shares the cost of covered health care services and supplies with eligible beneficiaries.

Eligibility. A beneficiary cannot be eligible for medical benefits under TRICARE, the military's health care program for retired military. The following are eligible for CHAMPVA:

- The spouse or child of a veteran who has been rated permanently and totally disabled for a service-connected disability, or
- The surviving spouse or child of a veteran who died from a VA rated service-connected disability, or
- The surviving spouse or child of a veteran who was at the time of death rated permanently and totally disabled from a service-connected disability, or
- The surviving spouse or child of a military member who died in the line of duty, not due to misconduct (usually, these family members would be eligible for TRICARE).

Cost. The cost share is 25% up to the catastrophic cap of \$3,000 per calendar year. There is an outpatient deductible of \$50 per person up to \$100 per family per calendar year. <https://amra1973.org/data/files/What%20is%20CHAMPVA.pdf>.

Pension. VA pensions are monthly payments made to veterans who do not have a service-connected injury or illness. The eligibility requirements for a pension are that the veteran is a "veteran" as described above, be age 65 or older with limited or no household income, or be totally and permanently disabled, or be a patient in a nursing home. The veteran must have limited assets. New rules establish a "bright line" net worth of income and assets in the amount of \$127,061.00. If the total of the veteran's annual income and assets exceed that amount, the veteran is not eligible for a pension. The veteran's household income must not exceed \$13,855 (for 2018). However, income may be reduced by the unreimbursed medical expenses in excess of 5% of the Maximum Annual Pension Rate (the \$13,855 mentioned above). The income of the veteran and spouse that is counted by the VA is essentially all income from all sources with some limited exceptions. Income may be reduced by qualified medical expenses above a certain amount. For example, the veteran may have \$50,000 in annual income from social security, investments and a private retirement. However, the veteran is in a private nursing home, and the cost of the nursing home is \$80,000 per year. The veteran's family has sold the veteran's home and has used all of the proceeds to pay for the veteran's nursing home care. The veteran is eligible to apply for a non-service-connected pension as the total income is offset by the amount of the nursing home expenses. (This assumes that the total of the veteran's income and assets are less than \$127,061).

The veteran must have served at least 90 days on active duty with at least one day during a period of war. Periods of war can be found on the VA website. If the veteran's active duty started after September 7, 1980, the veteran must have served at least two years with at least one day during a period of war. Pension payments are tax-free to the veteran.

Aid and Attendance for VA Pensioners. The additional benefit for aid and attendance is available to VA pensioners and is usually applicable when the veteran is in a nursing home and is already presumed to be getting assistance with ADL.

Survivor Benefits. Surviving spouses of veterans may be entitled to benefits based on their spouses' service.

Dependency and Indemnity Compensation (DIC). DIC is a tax-free monetary payment paid to eligible survivors who died in the line of duty while on active duty or whose death resulted from a service-related injury.

To qualify for DIC, a surviving spouse must meet the requirements below.

The surviving spouse was:

- Married to a Servicemember who died on active duty, active duty for training, or inactive duty training, or
- Validly married the Veteran before January 1, 1957, or
- Married the Veteran within 15 years of discharge from the period of military service in which the disease or injury that caused the Veteran's death began or was aggravated, or
- Was married to the Veteran for at least one year, or
- Had a child with the Veteran, AND
- Cohabited with the Veteran continuously until the Veteran's death or, if separated, was not at fault for the separation, AND
- Is not currently remarried

Note: A surviving spouse who remarries on or after December 16, 2003, and on or after attaining age 57, is entitled to continue to receive DIC.

The evidence requirements for this benefit are:

- The Servicemember died while on active duty, active duty for training, or inactive duty training, or
- The Veteran died from an injury or disease deemed to be related to military service, or
- The Veteran died from a non service-related injury or disease, but was receiving, OR was entitled to receive, VA Compensation for service-connected disability that was rated as totally disabling
- For at least ten years immediately before death, or

- Since the Veteran's release from active duty and for at least five years immediately preceding death, or
- For at least one year before death if the Veteran was a former prisoner of war who died after September 30, 1999

Example 1: the veteran served in Vietnam in 1968. He later developed ischemic heart disease and was rated at 50%. The veteran dies in 2018 of heart disease. The veteran's widow of 30 years is entitled to DIC. DIC payments may be less than the service-connected compensation payment that the veteran was receiving. In the case above, the veteran would have been receiving approximately \$920 in compensation for his 50% rating. The surviving spouse will receive \$1,258.

Example 2: the veteran served in Vietnam in 1968. He was diagnosed with diabetes mellitus type 2 in 2000. In 2001 the veteran died of complications from the diabetes. He had never filed a claim for service-connection for the diabetes, based on his service in Vietnam. The surviving spouse may file for DIC based on the fact that he was entitled to service-connected compensation based on his disease and his service in Vietnam.

Death Pension. The Survivor's Pension benefit, also known as the death pension, is a tax-free monetary payment made to surviving spouses of non-service-connected veterans. The deceased veteran must have met the same service requirements as for a regular pension. The Survivor's Pension is based on the annual household income of the surviving spouse but is reduced by qualifying medical expenses. The Survivor's Pension pays at a rate that is lower than the pension rate for a living veteran. Currently, the death pension is \$8,656 annually for a surviving spouse with \$0 income for VA purposes. If the surviving spouse also qualifies for Aid and Attendance, the annual payment is \$13,386.

Death and Burial Benefits. VA burial benefits include a gravesite in any one of 135 national cemeteries on a space available basis. Benefits also include a government headstone or marker, a burial flag, and a Presidential Memorial Certificate at no cost to the family. Spouses of veterans may be buried with the deceased veteran, or may be buried in a national cemetery if the spouse dies first. In most cases, the funeral home will assist the survivors in applying for death and burial benefits from the VA. The veteran must have served on active duty and been discharged under honorable conditions.

The VA may also pay a burial allowance toward the veteran's funeral and burial expenses under certain conditions. 38 U.S.C.S. §2302. If the veteran died of a service-connected illness,

the VA will pay an amount up to \$2000 toward the veteran's funeral and burial expenses. 38 U.S.C.S. §2307; 38 CFR §3.1704(2017).

Medical Benefits. One of the most important benefits available to veterans is the ability to access VA medical care. The VA has 1,240 health care facilities, including 170 medical centers and 1,061 outpatient clinics. It is the largest health care system in the United States. These facilities serve 9 million enrolled Veterans each year.

Eligibility. Like the eligibility requirements for compensation and pension, a veteran must have served on active duty and been discharged under honorable conditions. Generally, veterans who enlisted after September 8, 1980, must have served a minimum of 2 years on active duty. VA health care is principally directed toward treating veterans with service-connected conditions and low-income veterans. Very elderly veterans with wartime service also receive priority care. Some veterans may have to pay small co-pays for the care they receive.

Enrollment. Veterans can complete the applications for enrollment in the VA healthcare system by telephone, 1-877-222-VETS (8387) Monday through Friday between 6 a.m. and 6 p.m. MST. Once enrolled, veterans can receive health care at VA facilities anywhere in the country. Not all veterans must enroll but are still encouraged to do so. The categories of veterans who are not required to enroll are:

- Veterans with a service-connected disability rating of 50% or more.
- Veterans seeking care for a disability the military determined was incurred or aggravated in the line of duty, but which the VA has not yet rated, within 12 months of discharge.
- Veterans seeking care for a service-connected disability only.
- Veterans seeking registry examinations (Ionizing Radiation, Agent Orange, Gulf War/Operation Enduring Freedom/Operation Iraqi Freedom/Operation New Dawn (OEF/OIF/OND) depleted uranium, airborne hazards and Airborne Hazards and Open Burn Pit Registry).

Priority Groups. Each veteran is assigned to a priority group. The VA uses priority groups to balance demand with available resources. There are eight groups and six sub priority groups under group 8.

https://www.va.gov/opa/publications/benefits_book/Chapter_1_Health_Care_Benefits.asp.

Most veterans who are not receiving VA disability compensation or pension payments must

provide a financial assessment upon initial application to determine their eligibility for free medical care, medications and/or travel benefits.

Veterans Choice Program. This program allows certain eligible veterans to elect to receive care from non-VA health care providers if they cannot receive VA care within 30 days or live more than 40 miles from a VA facility or face excessive travel burdens. www.va.gov/opa/choiceact/.

Affordable Care Act. Veterans who are enrolled with the VA for their health care meet the standard for minimum health care coverage under the Act. Veterans who are on Medicare can use the VA as secondary coverage.

Audiology services and hearing aids. In order to be eligible for audiology services and hearing aids, the veteran must enroll in the VA health system. If needed, hearing aids and batteries will be provided free of charge.

Vet Centers. Vet Centers are community-based counseling centers and part of the VA. The goal of the Vet Center program is to provide a broad range of counseling, outreach, and referral services to eligible veterans in order to help them make a satisfying post-war readjustment to civilian life. On April 1, 2003, the Secretary of Veterans Affairs extended eligibility for Vet Center services to veterans of Operation Enduring Freedom (OEF) and on June 25, 2003, Vet Center eligibility was extended to veterans of Operation Iraqi Freedom (OIF) and subsequent operations within the Global War on Terrorism (GWOT). The family members of all veterans listed above are eligible for Vet Center services as well. On August 5, 2003, VA Secretary Anthony J. Principi authorized Vet Centers to furnish bereavement counseling services to surviving parents, spouses, children and siblings of service members who die of any cause while on active duty, to include federally activated Reserve and National Guard personnel.

National Guard and Reserves. Older veterans may have served in the National Guard during their military career but never served on active duty. By statute and regulation, these service members are not “veterans” for VA purposes and are not entitled to VA benefits. In order to be a “veteran” a National Guard member must have been activated, individually or by unit, under Title 10 U.S.C. At the end of that deployment, the member would receive a DD-214 form showing active duty. Many National Guard members who served during the Vietnam era were never activated under Title 10 and are not entitled to benefits. Since 9/11, National Guard members have been continually activated for operations in Iraq, Afghanistan and other

countries under Title 10. As mentioned earlier, a large number of these “veterans” have reached the age where they are of concern to the practitioners of elder law in Colorado.

Reservists have special provisions as to what constitutes “active duty” for purposes of VA eligibility. Check the individual service’s website to determine the eligibility of a former reservist who is applying for VA benefits.

Resources for federal benefits.

- www.va.gov
- <http://www.va.gov/ogc/apps/accreditation/index.asp>.
- <https://www.law.du.edu/veterans-advocacy-project>.
- Veterans Benefits Manual, Stichman, Abrams, Odom, Spataro, NVLSP, LexisNexis

State Eligibility -- Colorado requires state residency and an honorable discharge in order to qualify for state veteran benefits.

STATE ENTITLEMENTS AND BENEFITS

Tax Exemptions.

Property tax. There is a property tax exemption for 50% of the first \$200,000 of a home’s value for 100% service-connected disabled veterans. C.R.S. §39-3-203(1.5). If the veteran is over 65 and has lived in the home for ten years or more, the exemption also applies, and the veteran does not have to be 100% service-connected. C.R.S. §39-3-203. If the veteran’s spouse is an owner and the veteran is not, the veteran can still file for the exemption if he has been rated at 100% by the VA. If the veteran had been approved for the Disabled Veterans Property Tax Exemption and then dies, the surviving spouse can continue to receive the exemption.

Income tax. Military retirees ages 55-64 can exclude up to \$20,000 of retired military pay from taxable income. Those 65 and older can exclude up to \$24,000. C.R.S. §39-22-104(4)(f). This exemption applies to anyone 55 to 64 regardless of whether the pension is a military retirement benefit or another pension, such as PERA, to the extent that the pension receipts are included in federal adjusted gross income. For retirees 65 and older, \$24,000 can be exempted from income.

License Plates. Veterans who are service-connected by the VA at a permanent rating of 50% or more are exempt from paying the annual ownership tax. A veteran who has the loss or loss of use of both feet or one or both hands or permanent impairment or loss of vision in both eyes that constitutes virtual blindness is also exempt. This exemption applies to one Class B or Class C motor vehicle per veteran. C.R.S. §42-3-104(5). This exemption applies to prisoners of war and survivors of the attack on Pearl Harbor. C.R.S. §42-3-104(6).

Military license plates are free for first-time issuance for those awarded the Medal of Honor, Silver Star, Navy Cross, Prisoner of War, Air Force Cross, Distinguished Service Cross, Purple Heart or Pearl Harbor Survivors. C.F.R. §42-3-104(8). See www.colorado.gov/revenue.

Fishing and Hunting Licenses. Veterans rated at 60% or greater by the VA or who have been awarded a Purple Heart are entitled to a free lifetime Combination Small Game Hunting/Fishing License or a free Lifetime Fishing License. Veterans must be Colorado residents for six months or more immediately preceding the date of application. If the veteran was born after January 1, 1949, he or she must present evidence of having completed a hunter safety course before applying, if he wants the combo license.

State Parks Passes. Veterans who have a Disabled Veterans License Plate receive free admission to any state park or recreation area.

Veteran Preferences in State Hiring. Colorado gives veterans preference in the form of extra points added to the state employment examination. There is a five-point preference for: honorably discharged veterans who served during a period of war or who are in receipt of a campaign medal; the spouse of a veteran who is unable to work because of service-connected disabilities; the widow/widower of a deceased veteran who was entitled or should have been entitled to a veteran's preference.

There is a ten point preference for an honorably discharged veteran who is receiving VA disability compensation or pension.

Vital Statistics Documents. Fees for birth, marriage, and death certificates are waived if the document is used to apply for veterans benefits. Veterans may also present their dd214 to their County Clerk and Recorder for recording, free of charge. A veteran may receive a certified copy of the dd214 free of charge.

Colorado State Veterans' Cemeteries. The Veterans Memorial Cemetery of Western Colorado is located in Grand Junction. The Homelake Cemetery is located in Homelake, CO. Eligibility for burial is the same as for the VA national cemeteries, but the deceased must have been a resident of Colorado.

Community Living Centers. There are five Colorado State Veteran Community Living Centers, located at Fitzsimmons, in Florence, Homelake in Monte Vista, Rifle and Walsenburg. http://vets.dmva.state.co.us/?page_id=103. Each location offers 24-hour nursing care, meals, physician services, restorative therapy, transportation, and diversified activities. The application for admission is found at <http://vets.dmva.state.co.us/wp-content/uploads/2013/08/VETERANS-NURSING-HOMES-APPLICATION.pdf>.

Active Duty and Veterans Discounts. Some local businesses provide discounts to active duty military and veterans. See <https://www.legion.org/veteransbenefits/military-veteran-discounts>.

OTHER THAN HONORABLE DISCHARGES

Some elderly veterans, especially those who served in Vietnam, received military discharges under a characterization of "Other Than Honorable." This characterization prevents them from obtaining VA benefits and the other services detailed in this chapter.

Discharge Review Boards. Each service has a Discharge Review Board that reviews the discharges of service members. However, the Navy Discharge Review Board also reviews the discharges of Marines. Discharge Review Boards are made up of active military members. The member must submit an application to have his or her discharge reviewed and hopefully, upgraded. An application for discharge review must be submitted within fifteen (15) years of the date of discharge. Applications are made on dd form 293. Any attorney can assist a discharged service member. Accreditation by the VA is not required. However, accreditation will give the attorney access to the veteran's service medical records and any VA medical records.

Boards for Correction of Military Records. For discharges older than fifteen years, the application must be made to the particular service's Board for Correction of Military Records. Boards for Correction are made up of civilian members of the particular service. These individuals may or may not be former military members of that service. The application is made on DD-149.

Recent changes in the Discharge Review Procedures. In September 2014, then Secretary of Defense Charles Hagel issued a memorandum to the DRBs and BCM/NRs to give “liberal” consideration to those applicants, especially Vietnam veterans, who claim post-traumatic stress (PTSD), PTSD was not recognized at the time and diagnoses were often not made until years after service. In August of 2017, Under Secretary of Defense Kurta issued further guidance regarding the review of discharges where PTSD was present. Finally, Congress made changes to 10 U.S.C. §§ 1552 and 1553 that codified these memorandums into law and expanded the liberal review concept from just PTSD and traumatic brain injury (TBI) to any mental health issue that was present during service.

Elderly veterans, especially those who served in Vietnam, who suffer from mental health issues, may be able to access VA and state benefits by applying for a discharge upgrade.

University of Denver Sturm College of Law Veterans Advocacy Project. In the fall of 2015, Professor Ann Vessels at the law school created the Veterans Advocacy Project after seeing the difficulties her Marine Corps son had in getting VA benefits after leaving the Corps. The Advocacy Project is a pro bono project run by law students and supervised by three professors. The project focuses on discharge upgrades and appeals of the denial of VA benefits. The project accepts clients through an online application process. The application can be found at <https://www.law.du.edu/veterans-advocacy-project/apply-services>. The telephone number and email is 303-660-6421, vap@law.du.edu. Over the past six semesters that the project has been operating, it has obtained discharge upgrades in several cases and has appealed numerous VA decisions, resulting in more than 3 million dollars in benefits to veterans.

Character of Discharge Determination by the VA. Veterans with Other Than Honorable discharges may also request the VA to conduct a Character of Discharge Review if they have been denied benefits by the VA. This can be done without applying to the member’s Discharge Review Board or Board for Correction. Character of Discharge requests must be done by an accredited VA attorney or agent.

DIVORCE AND MILITARY RETIREMENT

Many veterans are under the belief that former spouses cannot touch their military retirement or VA benefits. However, under federal law, state Courts can order a divorcing service-member to pay a certain amount to a former spouse as a division of marital property. The court doesn’t care how or from where the military member gets the money.

Federal Law. A former spouse of a retired military member is not automatically entitled to a portion of the military member's retirement benefits. The former spouse must have been awarded a portion of the member's military retired pay as property in the final court order. Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. §1408.

A state court cannot increase a spouse's share of the member's retirement benefit when the member elects to waive a share of his retirement pay to receive nontaxable, federal disability benefits from the VA. *Mansell v. Mansell*, 490 U.S. 581 (1989), *Howell v. Howell*, 137 S. Ct. 1400 (2017).

10/10 Rule. If the member and former spouse were married for ten years or more and the member was credited with at least ten years of service for retirement eligibility during the marriage, the Defense Finance and Accounting Service (DFAS) will pay the former spouse directly from the member's retirement payment.

Sample Order. Divisions of military retirement pay as property must be in a form acceptable to DFAS. See <https://www.dfas.mil/garnishment/usfspa/NDAA--17-Court-Order-Requirements.html>.

Colorado Case Law. Military retirement pay is marital property subject to distribution. *IRM Gallo*, 752 P.2d 47, No. 86SC128, 1988. For the calculation of the division of military retirement pay when the divorce occurs prior to the member's retirement, see *IRM Hunt*, No. 93SC565 and No. 93SC631, 1995.

Concurrent Receipt Disability Pay (CRDP). Prior to January 1, 2004, a military retiree who was receiving both military retirement benefits and VA service-connected compensation had to waive one or the other. For example, a married Army Staff Sergeant who retired in 1995 was receiving \$1,100 per month (50% of 1995 pay plus cost of living increases). However, in 2000, he was awarded a 50% service-connected disability from the VA and was paid \$669 per month. The military reduced his retirement benefit by \$669 and paid him \$431. The VA payment was tax-free so the veteran was able to reduce his taxable income by a small amount. Federal law changed in 2004 and was fully implemented by 2014. Today, any military retiree who also receives VA service-connected disability compensation at a rating of 50% or greater receives both his full military retirement and his VA disability pay. In the scenario above, the veteran would receive a total of \$1,769 per month with annual cost of living increases for both the military retirement and the VA disability compensation. There is no application for the veteran to submit. It is all done between the VA and DFAS.

In the case of a divorced couple, the former spouse would receive her share of the full military retirement benefit if the military member has or gets his VA disability rating to 50%.

APPENDIX

Federal Forms

Application for VA Benefits - VA form 21-526

Application for Benefits where the client is already service-connected - VA form 21-526EZ.

Application for DIC, Death Pension, Accrued Benefits by a Surviving Spouse – VA form 21-534

Application for Health Care Benefits - VA form 10-10EZ

Application for Non-Service Connected Pension – VA form 21-527EZ

Aid and Attendance – write to St. Paul VA Regional Office, Department of Veterans Affairs, Claims Intake Center, Attn: St. Paul Pension Center, PO Box 5365, Janesville, WI 53547-5365.

Medical Centers

VA Eastern Colorado Health Care System 1055 Clermont St. Denver, CO 80220 (303) 399-8020	VA Medical Center 2121 North Ave. Grand Junction, CO 81501 (970) 242-0731 Toll free (866) 206-6415
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§VA Clinics

1020 Johnson Rd. Golden, CO 80401 (303) 914-2680	14400 E. Jewell Ave Aurora, CO 80012 (303) 283-5400
13701 E. Mississippi Ave. #200 Aurora, CO 80012 (303) 398-6340	2509 Research Blvd. Ft. Collins, CO 80526 (970) 224-1550
3141 Centennial Blvd. Colorado Springs, CO 80907 (719) 327-5660	2425 S. Grand Ave. Ste. 101 Glenwood Springs, CO 81601 (970) 945-1007
1970 E. 3 rd Ave. Ste. 102 Durango, CO 81301 (970) 247-2214	785 Russell St. Craig, CO 81625 (970) 824-6721
622 Del Sol Dr. Alamosa, CO 81101 (719) 587 6800	1177 Rose Ave. Burlington, CO 81501 (719) 346-5239

Vet Centers

Western Mountain Regional Office 789 Sherman St. #570 Denver, CO 80203 (303) 577-5207	7465 E. 1 st Ave. #B Denver, CO 80230 (303) 326-0645
4999 Pearl E. Cir. Ste. 106 Boulder, CO 80301 (303) 440-7306	702 W. Drake Bldg. C Fort Collins, CO 80526 (970) 221 5176

602 S. Nevada Ave. Colorado Springs, CO 80903 (719) 471-9992	1515 Fortino Blvd. #13 Pueblo, CO 81008 (719) 583-4058
2472 Patterson Rd., Unit 16 Grand Junction, CO 81505 (719) 583-4058	