

MARRIAGE IN GERMANY

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Marriage in Germany is a function of the German civil authorities. It is suggested, therefore, that American citizens contact the appropriate registrar's office (**Standesamt**) for detailed information and make application for marriage. The Standesamt in Speicher is located at:

Rathaus Speicher
- Standesamt -
Bahnhofstrasse 36
54662 S P E I C H E R

Point of Contact: **Frau Sarah Illigen**
Hours: Mo-Fr 0830-1200
Th: 1400-1830
Telephone #: 06562-6433
E-Mail: s.illigen@vg-speicher.de

A religious ceremony is optional but can only take place **after** the civil marriage. The processing of the marriage application usually takes from 2 – 4 weeks.
IAW AFI 36-2609, you must have your commander's approval to marry a foreign national, who is not a legal resident of the U.S.

An American citizen is required to submit the following documents to the Standesamt:

- Affidavit upon Application for Marriage by a Marriage Registrar in Germany/ Eidesstattliche Erklärung zum Antrag auf standesamtliche Eheschliessung in Deutschland - (form can be obtained from the Legal Office – must be notarized!!!)

(All US civilians, who are NOT proper ID card holders, must get this from the US Consulate, Gießener Str. 30, 60435 Frankfurt, ext 069-7535-2515 or 2517 (Special Services) Mon-Fri 0800-1200, cost: \$ 30.00)

- Birth Certificate/Geburtsurkunde
Original birth certificate or certified true copy from the Registrar's Office. **NOT LEGAL OFFICE!!!**
Certified translation is required.
- Medical Certificate/Gesundheitszeugnis
The following states require a blood test: **District of Columbia, Mississippi and Montana** (only for women)
This test can be obtained from our clinic. Both parties involved need the blood test. Contact your individual care provider.
- ID Card/Passport - Truppenausweis/Reisepass
- Marriage Certificates from Previous Marriages/Heiratsurkunden der vorhergehenden Ehen. **Certified translation is required.**
- Divorce Decrees/Scheidungsurteile mit Rechtskraftvermerk. The divorce decree must show a statement from the court that **no appeal was filed.** **Certified translation is required.**
- Proof of Income (last LES)
- **Approx. Costs:** Registrar's Office: 200 € plus whatever translations are needed by certified translator

If you have any questions regarding the above, either contact the Standesamt where you are planning on getting married, or contact the Legal Office. Attached please find a list of certified translators.

CAUTION: This pamphlet is designed to provide information about Marriage in Germany. However, it provides only general guidance – the specific facts in your case may involve different legal issues not discussed here. For best results, consult your legal assistance office.

Official Translators

E = English F = French I = Italian

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SEPARATION AGREEMENTS

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Below, you will find answers to some commonly asked questions about separation agreements.

What is a separation agreement?

A separation agreement is a voluntary contract between a husband and wife to resolve issues such as property division, debts, child custody, and child support. Separation agreements are customarily used during the transition from marriage to divorce. The agreement cannot bind third parties that have not signed it (e.g., release one spouse from any co-signed debt). If a court adopts or incorporates the separation agreement into the divorce decree, it becomes a court order.

Do I have to have a separation agreement?

No. The law does not require a separating couple to execute a separation agreement. However, the execution of a written agreement is recommended if there are debts, children, support claims, or property involved. Please note, though, that not all states recognize a legal separation.

Who prepares a separation agreement?

While it is possible to prepare a separation agreement on your own, it is best to have an attorney prepare one for you. It is highly recommended that both spouses have attorney representation during the negotiation and signing stages of the process. Courts are wary where one party is unrepresented and could have been pressured into entering into an agreement. Air Force legal assistance attorneys cannot draft separation agreements, but they can offer advice.

Can we divide our marital property in a separation agreement?

A separation agreement is used specifically for the division of property. The agreement is binding on both individuals. The divided marital property can

consist of real property (e.g., land and the buildings on it), tangible personal property (e.g., cars, jewelry, and furniture), and intangible personal property (e.g., bank accounts, stocks and bonds, vested pensions, and life insurance).

Can we also divide our debts in the agreement?

Like marital property, marital debt can be divided in a separation agreement. Ideally, all marital debts should be paid off before separating to prevent creditors from coming after you if your former spouse defaults. If this is not possible, you should set out a debt repayment schedule in the separation agreement, and include the creditor's name, account number, purpose of the debt, approximate balance, and monthly payment amount. This will not stop the creditor from suing you both if payments are not made by the separated spouse; however, it will allow you to ask the court to hold your former spouse (and not you) accountable for the debt as agreed to.

Can a separation agreement settle who will get to claim the tax exemption for our children?

Yes. The 1984 Tax Reform Act allows parties to agree to who will claim the tax exemption for children on income tax returns. Without a written agreement, the parent who has physical custody of a child for more than half the year will get the dependency exemption by default.

What if my spouse breaks promises in the separation agreement?

You can sue your spouse only for breach of contract if they violate a term of the agreement. For this reason, it is important to specify which state has jurisdiction to hear disputes arising out of the agreement. However, if the agreement was made a part of a court order, any violation also constitutes a contempt of court.

Will a separation agreement stop my spouse from hassling me?

Separation agreements typically contain a nonharassment clause in them; however, no piece of paper – be it agreement or court order – is going to stop a person from doing something he or she wants to do. If there is a problem with physical violence, a court order (i.e., restraining order) would be more appropriate than a separation agreement. If there is only a separation agreement, a lawsuit for breach of contract is a possible remedy for violating a clause against harassment, but the remedies are minimal.

Is a court bound by what we put in our separation agreement about our children?

No. The terms you include for child support, custody, and visitation can always be modified by the court in the best interest of the children. In the absence of proof to the contrary, however, a separation agreement carries the presumption that terms concerning children are fair, reasonable, and in the best interest and welfare of the children. Please note, should the parties agree to support that is less than the amount provided by the state, a court will closely examine, and generally inquire, into the circumstances surrounding the provision.

Can the court modify the terms we include in a separation agreement concerning ourselves?

Unlike the terms concerning children, which are subject to modification by the court, terms that pertain to adults cannot be modified by the court, except in very limited circumstances. For example, if the separation agreement has been incorporated into a court decree, a court has the power to modify support terms (i.e., alimony or child support) based on a substantial change of circumstances. In contrast, if the terms involve property division and the agreement has been incorporated, the court can only modify an executory promise (i.e., one that has not yet been completed, such as the transfer next year of a car title to a spouse). A promise that has already been executed by the parties cannot be modified (i.e., a deed to a house already signed over to a spouse). A court can always overturn a separation agreement if it was signed due to fraud, coercion,

or lack of mental capacity. However, this is hard to prove in most cases.

NOTE: Avoid just signing a document to appease the other party or to make life convenient. Some states will merge certain provisions of the separation agreement, such as property division and marital support, into the final divorce decree. In other words, do not assume that you can agree to certain terms now and then have them modified prior to the final divorce decree.

Can a separation agreement provide for college tuition, and, if so, what should we consider when deciding about college expenses?

If you include a provision relating to support for college in a separation agreement, a court can enforce such payments because the agreement is a binding, enforceable contract. In some states, courts cannot unilaterally order you to pay child support for your child in college.

Should we provide for spousal support in our separation agreement?

Spousal support (i.e., alimony) is money paid by one spouse to the other to help provide food, shelter, transportation, clothing, and other living expenses. It is different from child support. Any agreement on a measure of temporary or permanent alimony should be included in the separation agreement. For example, such a provision might state that the husband shall pay the wife spousal support of \$500.00 per month until he or she dies, or that the wife shall pay the husband spousal support of \$100 per month for four years, at which time it will terminate forever. You should consult with an attorney about the rules of spousal support applicable to your particular case and state.

Is spousal support tax deductible?

If the agreement is drafted properly, spousal support can be deductible for the payor and taxable to the recipient. To be deductible by the payor, spousal support must end at the recipient's death. This term should be spelled out clearly in the agreement.

When does spousal support end?

Spousal support usually ends at the death of either party or upon remarriage of the recipient. Sometimes, clients may specify in the separation agreement that this support will end at such time that the recipient starts living with an unrelated person of the opposite sex on a regular basis as if they were husband and wife.

What should we do if we have agreed that no spousal support will be paid?

It is always best practice to set out such a term explicitly in the separation agreement. Once waived, spousal support/alimony can rarely, if ever, be subsequently granted.

How do I know if I am entitled to spousal support?

The attorney you hire to prepare your separation agreement will explain spousal support and post-separation support. In general, spousal support is used to assist the transition from married to single life. An absolute defense to spousal support exists in certain cases, including: when the parties have waived spousal support in a separation agreement or premarital agreement; when a divorce has been granted before a spousal support claim is filed; and when the dependent spouse alone has committed adultery or some other form of illicit sexual behavior.

Are pensions and retirement benefits divisible?

Military disposable retirement pay is considered a marital asset, capable of division. This type of property is often very valuable, and is an important aspect of equitable distribution. For a more in depth discussion on the matter, please see our office's handout entitled "Rights and Benefits of Former Spouses of Servicemembers." Thus, these benefits should be considered carefully when drafting a separation agreement. If there is to be no division, the separation agreement should say so explicitly. If the decision on pension division is to be put off or deferred until the divorce because there is no present agreement, then that also should be stated clearly. A poorly worded agreement may be challenged in court as

vague and unenforceable, or it may result in a loss of any rights to pension division because they were not preserved properly in the agreement.

How can a pension be divided?

The division of pension rights in a separation agreement can be done in two ways: a present-value offset or a future percentage of payments.

I want to make sure I can date after our agreement is signed. Can I have my attorney put in a dating clause?

There are no "dating clauses" in separation agreements to permit adultery.

Should we also provide for how we file for taxes in the agreement?

Yes. A tax provision is very important, as it can save you and your spouse a lot of money if prepared properly. A good example would be a clause that requires the parties to file jointly, so long as they are eligible to do so (usually up until the year they are divorced) and to divide the refund or liability for taxes in a specified way (e.g., 50-50 or 75-25) depending on the incomes of the parties and/or the time married for that year.

Can one attorney prepare the separation agreement for my spouse and me both?

No. A single attorney should not represent both husband and wife in a separation agreement. A separate attorney should advise each partner. This way, husband and wife both know that they have received independent legal advice for their specific situation from a lawyer without a conflict of interest. Additionally, courts dislike separation agreements prepared by an attorney of one party when the other party is not represented by counsel.

If I have other questions about separation agreements, what should I do?

Please consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer the many questions about separation agreements and help you to make a fair and intelligent decision about your choices, options, and alternatives. Our legal

assistance office stands ready, willing, and able to help you in these matters. As a reminder, there are limits on what services we can provide. For example, we cannot draft the legal separation agreement itself.

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EARLY RETURN OF DEPENDENTS

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The Joint Travel Regulation (JTR) provides guidance on who is authorized to use the Early Return of Dependents (ERD) program, and the specific conditions under which it is authorized (e.g., timeframes of entitlement, subsequent entitlements, etc.). Members requesting an ERD for family members should be aware at the outset that the ERD program is only used as a **last resort**. Below you will find answers to frequently asked questions.

I am serving an accompanied tour, and my spouse and I have decided to *separate due to marital difficulties*. My spouse wants to return to the United States with our children. Will the military pay for my dependents' travel back to continental United States, even though I have not completed my overseas tour?

For a separation due to marital difficulties, the JTR normally permits an ERD for your spouse and children back to the continental United States (CONUS) prior to your completion of your overseas tour if four requirements are met. ***First***, the marital difficulties must have arisen after you and your spouse arrived at the overseas assignment location. ***Second***, you must have exhausted local resources, meaning that local resources (e.g., Family Advocacy (FA), Mental Health (MH), the Chapel (HC), Airman and Family Readiness Center counselors (AFRC), etc.) cannot resolve the marital problems. ***Third***, you must have a letter from a base agency recommending that the ERD be granted. ***Fourth***, an officer, in the grade of O-5 or above, who is your unit commander or higher, must sign an Indorsement to your ERD request wherein he/she states that he/she believes that the ERD is in the Government's best interest.

Which agencies on base will provide a letter recommending an ERD be granted?

Both Family Advocacy and the Chapel are able to provide letters recommending that an ERD be granted after you have exhausted local resources.

The Military Family Life Consultants (MFLC) provide a great resource, but their counseling is not legally sufficient to process ERD requests because they do not maintain records or provide documentation of counseling. Additionally, AFRC counselors will not prepare letters recommending ERD approval or denial.

I am serving an accompanied tour, and my spouse and I have decided to *divorce*. Is there any specific ERD applicable to situations involving divorce?

Yes, an ERD based on a divorce is treated differently than an ERD based on "marital difficulties" under the JTR. When a divorce is finalized (i.e., a civil court has issued a final decree or order), an ERD may be granted without exhausting local resources or obtaining a letter of recommendation from a base agency. If an ERD is granted for divorce, a military member's dependents must leave Germany within one year of the entry of the final decree of divorce by a court, or within six months of the member's departure incident to PCS orders, *whichever occurs first*. A six-month extension of the later six-month limit may be authorized on a case-by-case basis by the member's commanding officer. Such extensions are infrequently granted and dependent travel still must be completed within one year of the final divorce decree. For additional information, please visit the legal office, or see Chapter 5, Subsection A3c starting at par. 5096 of the JTR. See also Chapter 5 subsection A5i, par. 5276 of the JTR for ERD HHG and Chapter 5 subsection A6d, par 5394 of the JTR for ERD POV shipment.

For more information on divorces, please refer to the legal office's handouts covering divorce and separation agreements. Also, please know that other base services are available to provide counseling on divorces (e.g., AFRC, Finance, FA, HC, and MH).

Under what other circumstances may my dependents return to the United States under the ERD program?

Other justifications for returning your dependents under the ERD program include: the need for specialized medical treatment that is not available locally; the death, serious illness, or incapacitation of the dependent who provides care for the member's minor dependents; a lack of acceptable employment opportunities for dependent children aged eighteen (18) years or older; under other circumstances that have an adverse effect on the member's duty performance; and any other situation where an ERD is in the best interests of the member, the dependents, and the United States Government. These requests are approved on a case-by-case basis.

How does the ERD process begin?

The ERD process begins by requesting an ERD packet from your first sergeant. The packet will contain a sample template for drafting an ERD request memorandum. You must submit a packet that contains a memorandum stating the justification for ERD under the JTR, a copy of your orders showing the accompanied overseas tour, a questionnaire wherein you answer questions relevant to the determination of whether an ERD may be granted, and a statement of understanding.

What if I refuse to initiate an ERD for my dependents?

You have no legal obligation to initiate an ERD for your dependents. No commander, first sergeant, or other superior may force you to submit an ERD application. However, if the member is unavailable or unwilling to initiate an ERD, a dependent spouse is permitted under the JTR to request an ERD packet himself/herself and submit the package to the member's unit. An ERD request by a spouse will be reviewed in the same manner and under the

same criteria as one submitted by a military member.

To where may my dependents travel in connection with an ERD?

The military member or dependent spouse may request a specific destination either within or outside the CONUS. However, the approving authority determines the actual place dependents will be authorized to travel. Usually, the Government will cover the entire expense associated with travel to your Home of Record or any location geographically closer, if not more expensive. The member or dependent will have to pay any additional costs to travel beyond the Home of Record.

If my request for ERD is approved, will my dependents be required to travel "space available"?

No. Dependents will be issued military orders (similar to PCS orders) and will travel either "space required" or commercially. This means they will have an assigned seat on a scheduled military or commercial flight.

If my request for ERD is approved, will the military also transport household goods (HHG) or a privately owned vehicle (POV) back with my dependents?

Yes. As long as you or your spouse requests a HHG or POV shipment in the ERD request memorandum.

My dependent spouse has decided to return to the United States, but does not know where he or she is going to settle. If my request for ERD is approved, can I ship household goods back and have them placed in non-temporary storage?

No. If dependents are traveling under ERD orders, non-temporary storage is not authorized at the Government's expense. You may request it, however, at your own expense. Consider requesting that household goods be stored under "Storage in Transit."

What must I do following the approval of an ERD and the departure of my dependents?

As soon as you are no longer accompanied, you must go to the Finance Office and update your status. You may lose your right to receive certain additional allowances, which are determined by dependency status or number of dependents.

In the case of a divorce, even if no ERD has been granted, military members are required to immediately update their marital status with the Finance Office. If no ERD has been granted following a divorce, the former spouse must return to the United States as soon as possible, unless the former spouse obtains his/her own command sponsorship (e.g., through his/her own employment).

CAUTION: This pamphlet is designed to provide information about the ERD program. However, it provides only general guidance. The specific facts of your case may involve different legal issues not discussed here. For best results, consult your legal assistance advisor.



THE RIGHTS AND BENEFITS OF FORMER SPOUSES

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For servicemembers and their spouses, entitlement to military benefits and retirement pay is often an important issue. This handout discusses some of the rights and benefits to which a former spouse of a servicemember may be entitled.

RETIRED PAY AND BENEFITS

In 1982, Congress enacted the Former Spouses' Protection Act (the Act), 10 U.S.C. 1408, which, among other things, made retired military pay divisible in a divorce proceedings. The Act did not mandate an automatic splitting of retired pay and benefits; rather, it merely allows for it. The Act allows judges in state domestic relations courts to view "disposable military retired pay" as an investment resulting from the efforts of both the servicemember and the spouse. Disposable military retired pay is defined as the member's monthly retired pay minus qualified deductions, such as certain disability compensation. A judge *can* consider "disposable military retired pay" and benefits, along with other property of the marriage, in making a fair settlement between the parties.

In making its determination of whether to divide retired pay, a court will consider the length of the marriage and the number of married years that coincide with retirement-creditable military service. Typically, the former spouse will receive 50 percent of the retirement share earned during the marriage. If retired pay is waived by the former spouse, the settlement agreement must explicitly state so.

If a court does award division of retired pay, the former spouse may be able to receive the payment directly from DFAS, the military pay center. Direct payment is available if the marriage coincided with at least ten years of retirement-creditable service by the member. The amount paid directly to the former spouse by DFAS cannot exceed 50 percent of the disposable retired pay. Any additional amount must be paid by the military member individually.

SURVIVOR BENEFIT PLAN

The 1987 Defense Authorization Act permitted state courts, for the first time, to order a servicemember to provide Survivor Benefit Plan (SBP) coverage for a former spouse. This provision applies only to divorces finalized after 14 November 1986. A court cannot order a retired member to provide SBP coverage unless the retired member had previously elected spouse coverage for the former spouse.

Former spouse SBP coverage is generally irrevocable. However, if the retired member remarries and wishes to cover the new spouse, a change in coverage may be requested within one year of the date of remarriage, with the consent of the former spouse. Further, if former spouse SBP coverage was ratified or approved by a court order, the court order must be amended before the year is up.

Voluntary coverage that has been ratified or approved by a court order, or involuntary court ordered coverage must be elected within one year of the date of the divorce or dissolution for the request to be honored. If the retired member fails to make the former spouse SBP election, the former spouse may request a "deemed" election from the finance center. This request must also be

made within one year of the divorce or dissolution. To ensure this deadline is met, the former spouse is encouraged to send the court order to the Finance Office and request a deemed SBP election as soon as possible after the court order is finalized.

Coverage for a former spouse will be in the same amount as for the spouse. A former spouse who remarries before age 55 loses SBP eligibility. However, if the marriage ends in death, divorce, or annulment, eligibility is reinstated. A former spouse who remarries after age 55 does not lose eligibility.

COMMISSARY AND EXCHANGE

Former spouses are entitled to commissary and exchange privileges only if they meet the following requirements of the 20/20/20 rule:

- 1) The former spouse and servicemember were married for 20 years.
- 2) The member performed at least 20 years of retirement-creditable service.
- 3) At least 20 years of the marriage coincided with 20 years of retirement-creditable service.

Privileges terminate if the former spouse remarries, but may be regained upon dissolution of the disqualifying marriage.

MEDICAL BENEFITS

Former spouses are eligible for space available medical care if they meet the following requirements:

- 1) The former spouse must remain unmarried. Remarriage results in permanent loss of the benefit.
- 2) The former spouse must not have medical coverage under an employer-sponsored health plan.

- 3) They must meet the requirements of the 20/20/20 rule. In cases where the servicemember performed only fifteen years of retirement-creditable service during the marriage (20/20/15), the former spouse may still qualify for one year of transitional medical benefits.

A former spouse may also be eligible for the Conversion Health Policy, which must be applied for within 90 days of the qualifying event. The policy allows former spouses, whose marriage lasted at least one year, to purchase a 24-month conversion health policy. For a former spouse who does not meet the 20/20/15 or 20/20/20 criteria, the qualifying event is the date of divorce. For a former spouse who does meet the criteria, the qualifying event is the end of the one year military medical coverage. It may be renewed every 90 days for up to 18 months.

BENEFITS FOR CHILDREN

Children (natural or adopted) remain entitled to military identification cards and certain military benefits after a divorce. Step-children of the member will not be entitled to benefits after divorce. If the member provides over 50 percent of the child's support, the child remains eligible for Base Exchange and theater privileges. They are also eligible for medical care at both civilian and military treating facilities if they are unmarried and under age 21, or, if unmarried and enrolled full-time in an accredited institution of higher learning, until graduation or age 23, whichever is earlier. These same criteria apply for delta dental care, if it is elected by the member. Once a divorce is final, children residing with the former spouse are not entitled to commissary privileges.

CAUTION: This pamphlet is designed to provide information about rights and benefits of former spouses of servicemembers. However, it provides only general guidance. The specific facts in your case may involve different legal issues not discussed here. For best results, consult your legal assistance advisor.