

STATE OF NEW MEXICO

DISSOLUTION OF MARRIAGE

WITH MINOR CHILDREN

With or Without Property

Control Number NM-006-D

This packet contains the following:

1. Information about Divorce
2. Form List
3. Form Explanations
4. Instructions and Steps
5. Checklist
6. Access to Law Summary

**You and your spouse must agree to all terms of the divorce to use this packet.
All forms to be filed with the clerk must be printed on bond paper.**

INFORMATION ABOUT DIVORCE

1. **WHO MAY USE THESE FORMS:** You may use the forms in this package only when all of the following facts are true:
 - (a) The parties are seeking a decree of dissolution of marriage based upon incompatibility of the parties;
 - (b) There are minor children of the marriage;
 - (c) You and your spouse agree on all of the terms of the distribution of property and allocation of debt;
 - (d) All spousal support issues have been resolved and agreed upon by the parties.

2. **THE BASICS:** A proceeding for dissolution of marriage may be instituted in the county where either of the parties resides. **40-4-4**

3. **RESIDENCY REQUIREMENTS:** The district court has jurisdiction to issue a decree of dissolution of marriage when, at the time of filing the petition, either party has resided in the State of New Mexico for at least six months immediately preceding the date of the filing, and has a domicile in New Mexico. "Domicile" means that a person is physically present in the state and has a place of residence in this state with the present good faith intention to reside in the state permanently or indefinitely. **40-4-5**

4. **GROUND FOR DIVORCE:** On the petition of either party to a marriage, a district court may decree a dissolution of marriage on any of the following grounds:
 - (a) Incompatibility;
 - (b) Cruel and inhuman treatment;
 - (c) Adultery; or
 - (d) Abandonment. **40-4-1**

This dissolution of marriage package is designed for use by parties seeking a decree of dissolution of marriage based upon the ground of incompatibility of the parties. Incompatibility exists when, because of discord or conflict of personalities, the legitimate ends of the marriage relationship is destroyed preventing any reasonable expectation of reconciliation. **40-4-2**

5. **LEGAL SEPARATION:** A legal separation is different than Dissolution of Marriage. A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation **does not terminate the marital status** of the parties, and the parties are **not** free to marry again.

In the State of New Mexico, whenever the husband and wife have permanently separated and no longer live or cohabit together as husband and wife, either may institute proceedings in the district court for a division of property, disposition of children or alimony, without asking for or obtaining in the proceedings, a dissolution of marriage.
40-4-3

This package contains form for Dissolution of Marriage, not for Legal Separation. This information on Legal Separation is provided for your information only. A legal separation cannot be obtained using the forms in this package. For more information on legal separation, contact a local attorney.

6. **WAITING PERIODS:** There may be a waiting period in your county, between the filing of the divorce papers and the earliest date a final hearing may be scheduled. Consult your court clerk. In any case, your hearing will not be scheduled until the waiting period has expired. A typical waiting period is 30 to 60 days.

7. **DISTRIBUTION OF PROPERTY:** In a divorce, the property such as land, house, buildings, and items of personal property owned by the couple is divided between the parties. Debts owed are also allocated to one party or the other, or both. You and your spouse may agree to divide the property any way you like, as long as a basic fairness is maintained, and you both agree. Ordinarily, the fairest division of property is an equal division. However, there may be some circumstances, such as marriage of very short duration, which would justify something other than an equal division of all items acquired during the marriage.

Absent exceptional circumstances, during the pendency of dissolution of marriage proceeding, community income and expenses shall be equally divided between the parties. Upon motion, separate income and expenses may also be divided if appropriate. The parties may file a stipulation waiving the entry of an interim order allocating income and expenses. If the parties have not agreed to or waived entry of an interim order allocating income and expenses, at any time after commencement of the proceeding:

- (a) A party may file a motion requesting the court to enter an interim order allocating income and expenses; or
- (b) The court, on its own motion, may set a hearing to allocate income and expenses.

At least five (5) days prior to the hearing the parties shall be required to exchange the information set out in Civil Form 4A-122 NMRA. **1-122**

Unless otherwise stipulated by the parties or ordered by the court, in every contested domestic relations action involving property and debt division or characterization and in every original spousal support action, each party shall serve a community property and

liability schedule on the other party and file a certificate of service with the court. The schedules shall be in substantial compliance with the schedule approved by the Supreme Court. The schedules shall be served by the parties at least five (5) days before trial. The schedules shall be delivered to the trial judge at least one (1) day before trial. The schedules shall not be filed with the court. **1-123**

If you cannot agree on any item of the division of property, the dissolution of marriage transforms into a **contested divorce**. A contested divorce is outside the scope of this packet.

- 8. ALIMONY:** Because this is an agreed dissolution, you will decide issues of spousal “alimony”-- the periodic payment of money from one spouse to the other on a temporary or permanent basis. The forms in this no-fault dissolution package assume that no alimony will be paid and none will be sought-- but you may add provisions for alimony to the *Petition for Dissolution* if you desire. In a contested case,

In any proceeding for the dissolution of marriage, the court may make and enforce an order to provide for the support of either party during the pendency of the proceeding, as in its discretion may seem just and proper.

On final hearing, the court may allow either party such a reasonable portion of the spouse's property or such a reasonable sum of money to be paid by either spouse either in a single sum or in installments, as spousal support as under the circumstances of the case may seem just and proper, including a court award of:

- (a) Rehabilitative spousal support that provides the receiving spouse with education, training, work experience or other forms of rehabilitation that increases the receiving spouse's ability to earn income and become self-supporting. The court may include a specific rehabilitation plan with its award of rehabilitative spousal support and may condition continuation of the support upon compliance with that plan;
- (b) Transitional spousal support to supplement the income of the receiving spouse for a limited period of time; provided that the period shall be clearly stated in the court's final order;
- (c) Spousal support for an indefinite duration;
- (d) A single sum to be paid in one or more installments that specifies definite amounts, subject only to the death of the receiving spouse; or
- (e) A single sum to be paid in one or more installments that specifies definite amounts, not subject to any contingencies, including the death of the receiving spouse.

An award of spousal support shall terminate upon the death of the receiving spouse, unless the court order of spousal support provides otherwise.

When making determinations concerning spousal support to be awarded, the court shall consider:

- (a) The age and health of and the means of support for the respective spouses;
- (b) The current and future earnings and the earning capacity of the respective spouses;
- (c) The good-faith efforts of the respective spouses to maintain employment or to become self-supporting;
- (d) The reasonable needs of the respective spouses, including:
 - i. The standard of living of the respective spouses during the term of the marriage;
 - ii. The maintenance of medical insurance for the respective spouses; and
 - iii. The appropriateness of life insurance, including its availability and cost, insuring the life of the person who is to pay support to secure the payments, with any life insurance proceeds paid on the death of the paying spouse to be in lieu of further support;
- (e) The duration of the marriage;
- (f) The amount of the property awarded or confirmed to the respective spouses;
- (g) The type and nature of the respective spouses' assets; provided that potential proceeds from the sale of property by either spouse shall not be considered by the court, unless required by exceptional circumstances and the need to be fair to the parties;
- (h) The type and nature of the respective spouses' liabilities;
- (i) Income produced by property owned by the respective spouses; and
- (j) Agreements entered into by the spouses in contemplation of the dissolution of marriage or legal separation. **40-4-7**

9. CUSTODY/VISITATION: In any case in which a judgment or decree will be entered awarding the custody of a minor, the district court shall, if the minor is under the age of fourteen, determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including, but not limited to:

- (a) The wishes of the child's parent or parents as to his custody;
- (b) The wishes of the child as to his custodian;
- (c) The interaction and interrelationship of the child with his parents, his siblings and any other person who may significantly affect the child's best interest;
- (d) The child's adjustment to his home, school and community; and
- (e) The mental and physical health of all individuals involved.

If the minor is fourteen years of age or older, the court shall consider the desires of the minor as to with whom he wishes to live before awarding custody of such minor. **40-4-9**

There is a presumption that joint custody is in the best interests of a child in an initial custody determination. In determining whether a joint custody order is in the best interests of the child, the court shall consider the following factors:

- (a) Whether the child has established a close relationship with each parent;
- (b) Whether each parent is capable of providing adequate care for the child throughout each period of responsibility, including arranging for the child's care by others as needed;
- (c) Whether each parent is willing to accept all responsibilities of parenting, including a willingness to accept care of the child at specified times and to relinquish care to the other parent at specified times;
- (d) Whether the child can best maintain and strengthen a relationship with both parents through predictable, frequent contact and whether the child's development will profit from such involvement and influence from both parents;
- (e) Whether each parent is able to allow the other to provide care without intrusion, that is, to respect the other's parental rights and responsibilities and right to privacy;
- (f) The suitability of a parenting plan for the implementation of joint custody, preferably, although not necessarily, one arrived at through parental agreement;
- (g) Geographic distance between the parents' residences;
- (h) Willingness or ability of the parents to communicate, cooperate or agree on issues regarding the child's needs; and
- (i) Whether a judicial adjudication has been made in a prior or the present proceeding that either parent or other person seeking custody has engaged in one or more acts of domestic abuse against the child, a parent of the child or other household member.

In any proceeding in which the custody of a child is at issue, the court shall not prefer one parent as a custodian solely because of gender. **40-4-9.1**

- 10. PARENTING PLAN:** In any case in which the parents agree to a form of custody, the court should award custody consistent with the agreement unless the court determines that such agreement is not in the best interests of the child.

When joint custody is awarded, the court shall approve a parenting plan for the implementation of the prospective custody arrangement prior to the award of joint custody. The parenting plan shall include a division of a child's time and care into periods of responsibility for each parent. It may also include:

- (a) Statements regarding the child's religion, education, childcare, recreational activities and medical and dental care;
- (b) Designation of specific decision-making responsibilities;

- (c) Methods of communicating information about the child, transporting the child, exchanging care for the child and maintaining telephone and mail contact between parent and child;
- (d) Procedures for future decision making, including procedures for dispute resolution; and
- (e) Other statements regarding the welfare of the child or designed to clarify and facilitate parenting under joint custody arrangements.

In a case where joint custody is not agreed to or necessary aspects of the parenting plan are contested, the parties shall each submit parenting plans. The court may accept the plan proposed by either party or it may combine or revise these plans as it deems necessary in the child's best interests. A plan adopted by the court shall be entered as an order of the court. **40-4-9.1**

11. PARENTING PLAN: If a domestic relations proceeding involves custody or visitation of minor children, the parties shall attempt to agree upon and file a joint parenting plan within sixty (60) days of the filing of the petition for dissolution. **1-124**

12. CHILD SUPPORT: In any action to establish or modify child support, the child support guidelines established by the State of New Mexico shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. Every decree or judgment of child support that deviates from the guideline amount shall contain a statement of the reasons for the deviation. **40-4-11.1**

The parties shall each complete a child support worksheet. Unless otherwise stipulated by the parties or ordered by the court, the worksheets shall be served by the parties at least five (5) days before trial. The worksheets shall be delivered to the trial judge at least one (1) day before trial. **1-123**

For basic visitation situations, the basic child support obligation shall be calculated using the basic child support schedule, Worksheet A. The court may provide for a partial abatement of child support for visitations of one month or longer. For shared responsibility arrangements, the basic child support obligation shall be calculated using the basic child support schedule, Worksheet B.

The cost of providing medical and dental insurance for the children of the parties and the net reasonable child-care costs incurred on behalf of these children due to employment or job search of either parent shall be paid by each parent in proportion to his income, in addition to the basic obligation. **40-4-11.1**

13. MEDIATION: If the parties to a domestic relations action involving minor children have not filed a parenting plan, unless binding arbitration is pending, the court may order the parties to:

- (a) Attend a general information session;
- (b) Meet with a counselor designated by the court;
- (c) Participate in mediation;
- (d) Participate in priority consultation pursuant to this rule; or
- (e) Participate in advisory consultation pursuant to this rule.

If the court orders the parties to participate in mediation, if the mediation is successful, the counselor or mediator shall prepare a parenting plan which shall be submitted to the parties for approval. When the parenting plan has been signed it shall be submitted to the court for approval together with an order approving it. **1-125, 40-4-9.1**

14. NAME CHANGE: Any resident of this state over the age of fourteen years may, upon petition to the district court of the district in which the petitioner resides and upon filing the notice required with proof of publication, if no sufficient cause is shown to the contrary, have his name changed or established by order of the court. **40-8-1**

For more information, see the New Mexico Divorce Law Summary.

FORMS LIST

The following forms are included in this package:

1. Domestic Relations Information Sheet (NM-4A-102)
2. Petition for Dissolution of Marriage (NM-4A-302)
3. Verified Marital Settlement Agreement (NM-4A-311)
4. Child Support Worksheet (NM-4-11-1A)
5. Parenting Plan (NM-4A-313)
6. Final Decree of Dissolution of Marriage (NM-4A-322)

Note: Depending on your County, additional forms may be required that are County-specific. These forms will be available from the Clerk.

FORM EXPLANATIONS

All forms included in this are identified and described below.

1. **Domestic Relations Information Sheet (NM-4A-102)** – This form provides the Court with information required by New Mexico law and federal law for child support enforcement. The information also is used to identify and keep up with your case.

2. **Petition for Dissolution of Marriage (NM-4A-302)** – This form is used to request that the Court grant a decree of dissolution of marriage along with any other relief requested.

3. **Verified Marital Settlement Agreement (simple) (NM-4A-311)** - This is the agreement that you and your spouse should complete when there is little to no marital property, assets and debts. This agreement, if approved by the judge, will be incorporated into the final Decree of Dissolution in your case. Both spouses must sign the Agreement in front of a Notary Public.

4. **Child Support Worksheet (NM-4-11-1A)** – This form is used to calculate the correct amount of child support to be paid.

5. **Parenting Plan (NM-4A-313)** – This form is used by the parties to detail where the children will live, how much time the children will spend with each parent, and how decisions will be made about the children. It is also used to detail agreements reached between the parties regarding the support of the parties' minor children.

6. **Final Decree of Dissolution of Marriage (NM-4A-322)** – This form is used to grant the dissolution of marriage as well as any other relief requested.

INSTRUCTIONS AND STEPS

Note: All forms containing a space for the signature of a Notary Public must be signed by the appropriate party or parties in front of a Notary Public. Make several copies of the documents that you prepare. You and your spouse should have a copy of everything you file, stamped “filed” by the clerk.

STEP 1: In cooperation with your spouse, fill out the following forms:

Domestic Relations Information Sheet (NM-4A-102)

The court clerk will fill in the blanks for “case number” and “Judge assigned” when you file your documents.

Though the case is uncontested, one spouse must be the Petitioner, and one must be the Respondent. This classification must be maintained throughout the case and has no bearing on the outcome.

Petition for Dissolution of Marriage (NM-4A-302)

The court clerk will assign the case number when you file your documents. When this form is complete, it must be signed by both spouses in front of a Notary Public.

Verified Marital Settlement Agreement (NM-4A-311)

The agreement (NM-4A-311) is to be used for property, assets and debts. After completion, it must be signed by both spouses in front of a Notary Public.

Child Support Worksheet (NM-4-11-1A)

Child Support Worksheet (NM-4-11-1A) is for custody arrangements.

Parenting Plan (NM-4A-313)

When this form is complete, it must be signed by both spouses in front of a Notary Public.

Final Decree of Dissolution of Marriage (NM-4A-322)

Complete and sign at the bottom. Leave blank the space for the signature of the District Court Judge.

STEP 2: Make at least 3 copies of each completed, signed form. Go to the courthouse and FILE your completed forms and required copies with the clerk. You must call ahead to determine the amount of filing fee and acceptable forms of payment.

STEP 3: Ask the clerk if you must attend an uncontested final hearing. This may vary

from county to county. If you do have to attend a final hearing, obtain the hearing date from the clerk. Bring all of your documents to the final hearing. The Judge will approve and sign your *Final Decree of Dissolution of Marriage (NM-4A-322)*. Go to the clerk and FILE the signed *Decree (NM-4A-322)* immediately after the hearing. Obtain a certified copy of the filed *Decree (NM-4A-322)* for your records. Instruct your spouse to obtain a certified copy of the filed *Decree (NM-4A-322)*.

CHECKLIST

- Following forms completed:
 - *Domestic Relations Information Sheet (NM-4A-102)*
 - *Petition for Dissolution of Marriage (NM-4A-302)*
 - *Verified Marital Settlement Agreement (NM-4A-311) or (NM-4A-312)*
 - *Child Support Worksheet (NM-4-11-1A) or (NM-4-11-1B)*
 - *Parenting Plan (NM-4A-313)*
 - *Final Decree of Dissolution of Marriage (NM-4A-322)*

- 3 copies made of each completed form. Completed forms filed. Filing fee paid.

- Date for final hearing obtained from clerk. *(If necessary)*

- Decree of Dissolution (NM-4A-322)* signed by Judge and filed with the clerk.

- Certified copy of *Decree (NM-4A-322)* obtained.

NOTE ABOUT COMPLETING THE FORMS

The forms in this packet may contain “form fields” created using Microsoft Word. “Form fields” facilitate completion of the forms using your computer. They do not limit your ability to print the form “in blank” and complete with a typewriter or by hand.

If you do not see the gray shaded form fields, go to the View menu, click on Toolbars, and then select Forms. This will open the forms toolbar. Look for the button on the forms toolbar that resembles a shaded letter “a”. Click in this button and the form fields will be visible. If they do not become visible, then they were not included in this form package.

To complete the forms click on the gray shaded areas and type. You may also change other words in the document if the document is not locked. The separation agreement is a good example of a document that is not locked and allows you to make modifications outside the gray shaded areas.

Some forms may be locked which means that the content of the forms cannot be changed while the form is locked. You can only fill in the information in the fields. If you need to make any changes in the body of the form, it is necessary for you “unlock” or “unprotect” the form. **IF YOU INTEND TO MAKE CHANGES TO THE CONTENT, DO SO BEFORE YOU BEGIN TO FILL IN THE FIELDS. IF YOU UNLOCK THE DOCUMENT AFTER YOU HAVE BEGUN TO COMPLETE THE FIELDS, WHEN YOU RELOCK, ALL INFORMATION YOU ENTERED WILL BE LOST.** To unlock, click on “Tools” in the Menu bar and then selecting “unprotect document”. You may then be prompted to enter a password. If so, the password is “uslf”. That is uslf **in lower case letters without the quotation marks**. After you make the changes relock the document before you begin to complete the fields. After any required changes re-lock the document, then click on the first form field and enter the required information. You will be able to navigate through the document from form field to form field using your tab key. Tab to a form field and insert your data. If you experience problems, please let us know.

LAW SUMMARY

You may access the law summary for your State by using the link below:

<http://secure.uslegalforms.com/lawsummary/NM/NM-006-D.htm>

DISCLAIMER

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