

Law Help New Mexico

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Divorce

[this entire section is under review as of 12/20/2018 but is generally accurate]

Who can get a divorce in New Mexico?

People who are legally married can get a divorce in New Mexico if one or both of them have lived in the state at least six months immediately before starting (“filing”) the divorce.

What does a divorce do?

The obvious effect of a divorce is that people who were married are made single. People who marry usually own property, and have debts. They may have children together. A divorce determines who is entitled to which property, who is responsible for specific debts, where the children will live, and who will pay child support and how much that parent must pay. A divorce may require one person to pay temporary or permanent support (“alimony”) to the other. After two people are divorced, each person is free to marry again.

(See LawHelpNewMexico topics “Child custody,” “Child support,” “Property and debts in divorce,” and “Spousal support” for more information.)

What are the grounds for a divorce in New Mexico?

Grounds for divorce in New Mexico: [this section is under review but generally the grounds are incompatibility...]

What do I have to do to get a divorce?

You must first file a petition and other papers in the district court in the county where you live or where your spouse lives. You must pay a fee to file the case unless your income and resources are very small.

You may hire a lawyer to prepare and file the court papers for you. At some courts, you may be able to get help from the staff in preparing and filing papers yourself.

After you file, your spouse has the right to legal notice that you have started the case. This notice is called “service”; in most cases, it means that a sheriff or other adult gives your spouse a copy of the court papers you have filed.

It is also possible for both spouses to file together for the divorce. Then service is not needed.

If service is used, your spouse has 30 days after being served in which to “contest” what you want in the divorce. To contest, your spouse files an “answer” or a “motion.” A copy of the answer must be sent to you.

Your spouse cannot stop the divorce by contesting it. Your spouse can contest only such things as what you want to do about property, debts, children, and support.

If your spouse does not contest what you have asked for in your petition, you can ask the court to complete the divorce “by default.” The court generally will then give you what you asked for in your petition.

The court will require you to give it an outline of how you want to divide property and debts with your spouse. If you and your spouse have children, you must give the court a “parenting plan” that describes how the parents will share time with your children. You must also give the court a child support calculation form (unless there is already a court order for support for your children). See LawHelpNewMexico topic “Child support” for more information.

If your spouse contests what you want in the case, the court may schedule a hearing or a trial.

Depending on where you live and what you are asking for, you may be asked to attend a class about the effects of divorce on children. You may get the opportunity to discuss your case with a trained court mediator, someone who can help you and your spouse resolve some of the things about which you disagree.

How long does it take to get divorced?

If the couple files an “uncontested” case together (in which they agree on everything), the divorce can be final in only a few days.

If only one person files, the other has 30 days to file an answer. If that person does not file an answer, then the divorce can be final within a few days (although some judges require the couple to attend a short hearing). The other spouse can file an agreement to waive the 30 day period, too, to speed up the case.

If your spouse contests what you want, the court will schedule a trial. You may have to wait several months for your trial date. In the meantime, you and your spouse may be able to work out your differences informally. You may be able to solve some problems through mediation. If you are not represented by a lawyer in your case, it is a good idea to get advice about your rights if you have not done so already.

Most people can agree before trial about some or all of the issues that the judge would otherwise decide. It is important to put any agreement in writing.

If you cannot agree on all issues before trial, a judge will make a decision. The judge may tell you in court what the decision is. This is not your official divorce decree. It is up to you or your lawyer to give the judge a proposed decree to sign to make your divorce final and official.

What happens to family income and property while we wait for the trial?

At the start of every divorce case, the court orders that no one can get rid of property or take on big debts before the divorce is final unless the court okays it.

If one spouse needs support from the other while they are waiting for their trial, she or he can ask the court for an “interim income allocation”—temporary money from the other spouse. The parties disclose how much money they are earning and what fixed monthly bills they are paying. Bills are subtracted from the incoming money to get the combined net income. The parent who has the children most of the time gets a higher percentage of the couple’s income. When the judge signs the decree at the end of the divorce case, the interim income allocation ends.

How soon after filing the divorce papers can a person re-marry?

A person remains married until a judge has signed a final decree ending the marriage and that decree is filed with the District Court Clerk's office. However, once the decree is entered, a person is officially single again and can marry immediately. There is no waiting period as there is in many states.

What happens if I can't find my spouse to serve him or her with a copy of my divorce petition?

The law requires you to make a serious effort to locate your spouse. You should keep records of everything you do to find him or her. If you are unsuccessful, you can ask the court to let you “serve by publication.” Service by publication means that you put a legal notice in a “newspaper of general circulation in the county which is most likely to give the party notice”—usually where you believe your spouse was living last. The notice must run four times in a one-month period before your spouse is considered “served.” Running a legal notice can be expensive as well as time-consuming. Many court clerk’s offices have forms and instructions for serving your spouse by publication.

How does a divorce affect a person’s immigration status?

A person who has permanent resident alien status will not be affected. People whose immigration status is dependent on marriage to a U.S. permanent resident, U.S. citizen, or beneficiary of an immigrant petition, may jeopardize their status by divorcing. It is extremely important for these people to get legal advice from a lawyer who is familiar with immigration law. Special rules apply to people who are victims of domestic violence. See LawHelpNewMexico topics “Immigration” and “Domestic Violence” for more information.

Legal Separation

What is a legal separation?

Spouses who are permanently living apart can obtain a legal separation from a court. Simply living apart is not a "legal separation" no matter how long it lasts.

A legal separation is not the same as a divorce. A person who is legally separated is still married, and cannot remarry.

How is a legal separation different from a divorce?

In a divorce, a court makes the spouses single again. At the same time, it decides who gets certain property, who pays certain debts, where the children will primarily live, who will pay child support and how much, and whether one spouse will pay spousal support to the other and, if so, for how long. A legal separation does all of these things except make a married couple into single people. A person who is only legally separated is not free to marry again.

Why would someone get a legal separation instead of a divorce?

Some people want a legal separation to help them decide whether to divorce and the court decision protects them from each other's debts while they decide. Some want to divorce but have not lived in New Mexico long enough to do so; there is no time requirement for a legal separation. Some do not want to divorce for religious reasons.

How long do I have to live in New Mexico to be able to file for a legal separation?

There is no time requirement before a person can file for a legal separation. It is possible to move to New Mexico today and start a case for a legal separation tomorrow. In contrast, eligibility for a divorce requires that at least one spouse has lived in New Mexico for at least six months before filing for divorce. In both kinds of cases, however, the minor children of the marriage must usually have lived in the state for a minimum of six months before a New Mexico court can make a decision about custody.

Can my spouse keep me from re-marrying by getting only a legal separation

instead of a divorce?

No. Either spouse can file for a divorce after the other has filed for a legal separation, so long as one spouse has been a resident of the state long enough.

How does a legal separation get changed to a divorce?

Unfortunately, it is necessary to file a separate case for divorce. Either spouse can ask the court for a change in the way the court handled property or debts or custody and support in the legal separation case.

Printed: May 21, 2019

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