

GETTING A DIVORCE — IN — NEW MEXICO

What You Need to Know during
This Difficult Time in Your Life



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OPENING STATEMENT



My parents divorced when I was in the third grade. I was thunderstruck.

Divorce strikes like an earthquake and shakes one's life to its foundation. My memories of that year are not viewed through rose colored lenses and painted with hearts and butterflies.

As an attorney, I observe many of the emotions that I experienced as a young child while answering legal questions and handling all aspects of the legal process necessary to complete a divorce.

People have an inborn tendency to fear the unknown. To individuals that have never experienced a divorce, the process can seem like blindly walking through a dark and unfamiliar place without a map or flashlight. In these situations, friends and family with the best of intentions often provide bad directions. This misguided advice can amplify the stress and confusion one experiences during a time when one is already lost and emotionally exhausted.

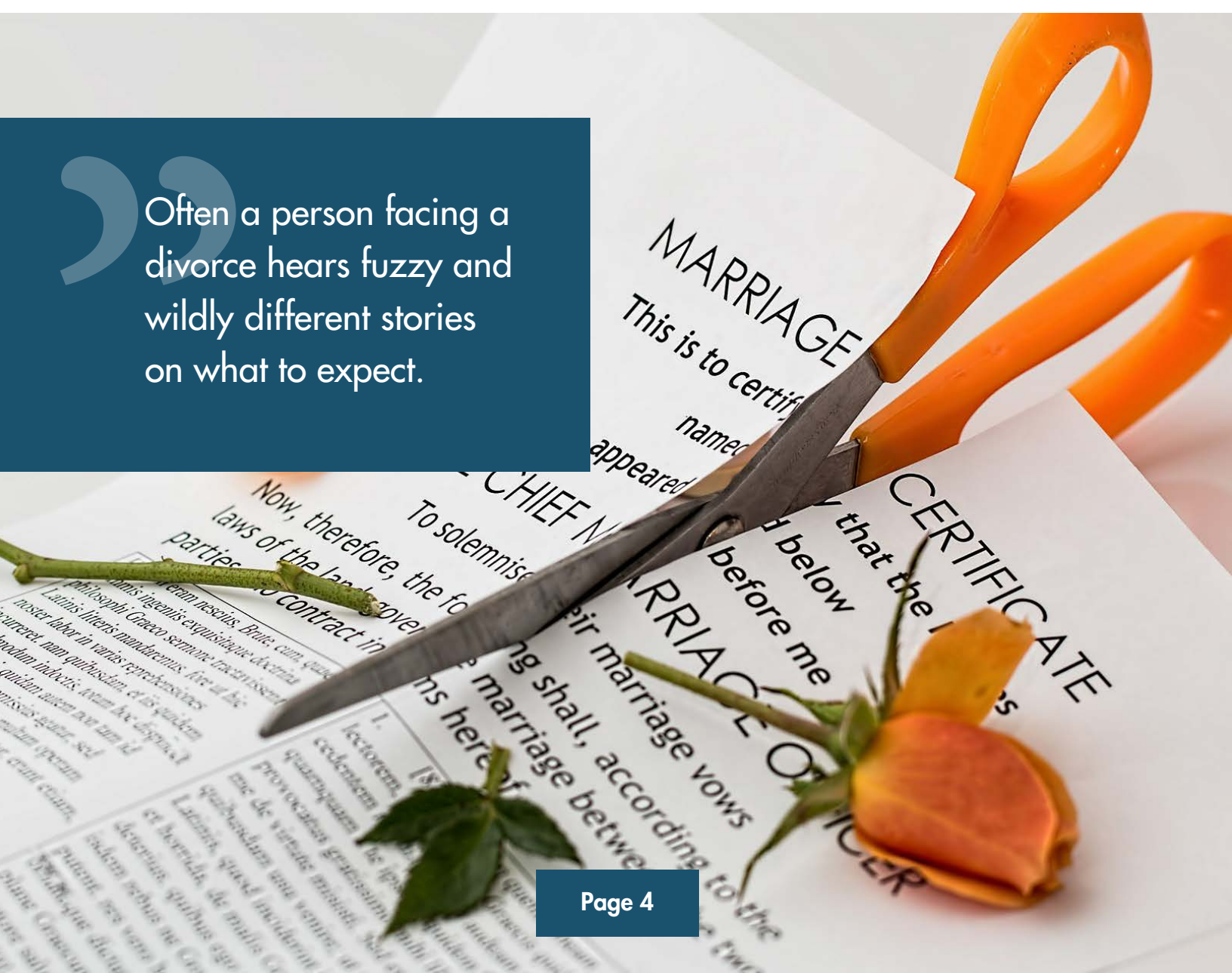
Often a person facing a divorce hears fuzzy and wildly different stories on what to expect. Some of these stories might come from individuals that faced divorce in a state other than New Mexico and the stories are told like a nightmarish ghost story. Other stories may involve marriages with completely different facts and circumstances — yet the story is told

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with a tone suggesting that one size fits all divorces. As a result, one is left reeling from the hodgepodge of misinformation.

The books that I've read about the divorce process are overpriced. These books are also written by individuals that likely have never visited New Mexico —nor stepped foot in a courtroom for that matter. Because of this fact, many books that I've read about divorce attempt to jam a square peg into a round hole.

This eBook provides the first easily accessible and holistic guide to the common legal issues encountered on the road to divorce in New Mexico. This eBook is written from the eye and hand of an *experienced* attorney that has exclusively practiced law in New Mexico.



Often a person facing a divorce hears fuzzy and wildly different stories on what to expect.

CHAPTER 1:

THE DIVORCE PROCESS



All divorces are not created equally. Each divorce varies in the degree of its difficulty depending on the issues and factors presented by the unique marriage. On one end of the spectrum, there are short marriages without children, community debt, or community property, where the parties can agree on all of the limited issues necessary to complete the divorce. On the other end of the spectrum, there are highly contested divorces where the parties are unable to reach an agreement on a wide range of potential issues.

These wide and varying issues can include issues relating to the children such as custody, timesharing, child support, tax exemptions, or relocating to another state with a child. Potential financial issues can include community debt/property, interim support, alimony (spousal support), taxes, retirement accounts (401k, IRA), and so on.

For all levels of divorce, New Mexico has a jurisdictional requirement that demands one or both parties to live in New Mexico for six months before the court will exert personal jurisdiction over the couple. Additionally, the divorce case must be filed in a civil court that handles domestic matters.

New Mexico is a “No Fault State” which means that either person in the marriage can request a divorce for essentially any reason, and one is not required to prove or state abandonment, abuse, or adultery as a basis for requesting a divorce.

Did you know New Mexico does not allow for annulments? Divorce is the only path to end a valid marriage.

Typically the person seeking the divorce (i.e. “Petitioner”) moves forward claiming “incompatibility” or “irreconcilable differences.”

In contested divorces, the process begins when the Petitioner files a Petition and Summons with the Court, and then properly serves the other party (i.e. “Respondent”) with a copy of the Petition and Summons. The Summons essentially puts the Respondent on notice that a case has been filed and that a response must be filed within thirty days. Note that neither the Petitioner, nor the Petitioner’s attorney can serve the Respondent with these initial documents.

In New Mexico, once the Petition is filed the court may enter a Temporary Domestic Order (“TDO”) that basically places a freeze on all activity.

The TDO is served along with the Petition and Summons and provides important protections for the parties and their children — if any — while the divorce is pending. The TDO prevents one person from cleaning money out of bank accounts, changing locks on the family residence, changing account information, removing the other party from any joint accounts, and sets restrictions on the general behavior of the parties to the divorce, as well as the children. In other words, TDO’s freeze the “status quo.”

“New Mexico courts take violations of court orders seriously. All court orders should be treated like they were forged into stone on the top of Mount Sinai. ”

New Mexico courts take violations of court orders seriously. All court orders should be treated like they were forged into stone on the top of Mount Sinai. Violating the terms of a TDO can result in a sliding scale of sanctions. Best case scenario, the judge will lecture the person responsible for violating the TDO. Worst case scenario, the judge will hold the responsible party in contempt of court and order the individual to pay any costs associated with bringing the violation before the court’s attention. In both scenarios the violation can create a bad first impression with a judge that ultimately decides how one’s future unfolds.

CHAPTER 2:

HOW LONG DOES A DIVORCE TAKE?

At this point the divorce case has been filed and the other party has been properly served with the necessary papers. Now comes the age old question, “How long will it take to complete my divorce?”

Let me answer this typical question with an annoying, yet typical lawyer answer: *“It all depends.”*

The elements needed to finalize one’s divorce can be completed in a single day, or they can take several years. Whether the divorce process will take one day or one year all depends on the number of issues involved within the individual divorce. Just as two snow flakes are never alike, two marriages are never the same.

As discussed in the following sections, all financial issues are handled within the Marital Settlement Agreement. For marriages with children, all of the issues relating to the children must be agreed upon and then reduced into a document called a Parenting Plan.

Did you know a legal separation often involves the same amount of time, stress, and expense as a divorce?

On the lighter side of the spectrum, there are divorces where the parties agree on all of the elements necessary to complete the Marital Settlement Agreement, and Parenting Plan, if children are involved. The quicker the parties can come to an agreement, the quicker that the necessary paperwork can be signed before a notary and then filed with the court.

On the more complex end of the spectrum, there are divorces with many issues and little agreements. In relation to the necessary Marital Settlement Agreement,

these issues often surround disputes over marital debts such as credit cards, medical debts, student loans, upside down mortgages, etc.

Other issues include dividing community property such as vehicles, home equity, deciding who keeps the house, household furnishings, businesses, retirement accounts, distinguishing marital and separate property, and the most feared word in divorce: Alimony.

Often issues surrounding dollars and cents are easier to solve than issues involving children and the heart strings that they pull. In this vein, the divorce process can also be greatly prolonged by disagreements on issues within the Parenting Plan. These issues include reaching an agreement on custody, timesharing, and the second most feared phrase in divorce — Child Support.

Highly contested divorces generally can be settled outside of court with a skilled facilitator.

When the former couple is unable to reach an agreement on any of the issues discussed above, the court generally will refer the parties to a settlement facilitation. During this settlement facilitation, the parties and their respective attorneys — if attorneys are involved — will sit down with a neutral, third party facilitator in an attempt to reach an agreement on any of the contested issues. In most situations the remaining issues can be resolved during settlement facilitation. As mentioned later in the book, although at times it is unavoidable, there are a number of potential drawbacks with bringing a case to trial and putting one's future into a judge's hands. For this reason, settlement facilitation is generally the end of the road for most divorces.

Assuming that both sides can reach an agreement during settlement facilitation, the facilitator will reduce the agreement into writing, which can then be used as the content for the Marital Settlement Agreement, Parenting Plan, and Final Decree of Dissolution of Marriage.

CHAPTER 3:

MARITAL SETTLEMENT AGREEMENTS

Every divorce that passes through a New Mexico courthouse must contain a Marital Settlement Agreement (MSA) before the judge will sign the Final Decree of Dissolution of Marriage. MSA's are basically contracts that determine how property and debts that were accumulated before and during the marriage will be distributed between the parties upon divorce. A detailed MSA is an essential aspect of each divorce because it clearly outlines who retains the specific property/debts, and prevents downstream issues from floating to the surface.

A detailed and effective MSA covers every asset that was accumulated before and during the marriage. These assets include: Bank Accounts, Retirement/401K/Pension Accounts, Homes, Land, Household Furnishings, Vehicles, and any other conceivable asset that one owns that was either acquired before or during the marriage. A detailed and effective MSA also covers every debt that was accumulated before and during the marriage. These debts include: Credit Cards, Medical Debts, Home Equity Loans, Student Loans, and any other debt acquired either before or during the marriage.

Checking little boxes on a pro se MSA, can affect the rest of your life.

Often I see rushed and "fuzzy" MSA's that were completed *pro se* (without an attorney), where the parties fail to list many of the relevant assets and debts, or fail to state how and when the assets and debts will be transferred into one person's exclusive name. Another common mistake that I see are MSA's that fail to provide a deadline for removing the other person's name from joint accounts, debts, or

property. Removing one's name from any asset or debt is crucial to ensure one's credit is not damaged in the event that the other party defaults on payment.

New Mexico is a community property state. Generally speaking, this means that any assets and debts that are accumulated during the course of the marriage — other than gifts, inheritances, bequests, or pain and suffering awards — are considered “community” and will be split 50-50 upon divorce. On the other hand, generally speaking, all of the assets and debts that were accumulated before the marriage are considered “separate.”

As you can see, the distinction between separate and community property is pretty cut and dry. Here comes the curve ball — in certain situations one's separate property can be transformed (transmuted) into community property. This situation generally arises when assets or money that were previously separate property are thrown into the marital stew and then stirred by a legal process called commingling.

Let's take a look at the most common ways that separate property transforms into community property through commingling.

SEPARATE & COMMUNITY BANK ACCOUNTS

The process of separate property becoming community property often begins with separate funds being placed into a joint bank account.

Placing separate funds into a joint banking account does not transform the separate property into community property unless there is also a finding of intent to do so.

Moreover, simply opening a joint account, by itself, does not establish a gift or trust of separate monies. However, separate funds can be transformed into community funds when the funds are mixed in a joint account to such a degree that it is impossible to later distinguish the separate and community funds.

COMMINGLING (“MIXING”) BANK ACCOUNTS

In some instances separate funds can transform into community funds through the process of commingling. Commingling is another word for mixing and takes place when separate funds are mixed into a joint account and become so intermingled with community funds that they cannot be traced or identified. According to New Mexico law, the commingling of separate funds with community funds

can demonstrate that the owner of the separate funds intended to make a gift of those funds to the community. *See Nichols*, 98 N.M. 322

Let's examine a few New Mexico cases to better understand how separate funds can become community funds through commingling.

In *Wiggins v. Rush*, Husband and Wife held joint bank accounts during their marriage. All of the couple's money — both separate and community was deposited into a joint account making it impossible for the Court to distinguish separate from community money. The New Mexico Supreme Court stated that: "Nothing appears in the record to indicate that the separate funds of either Mr. or Mrs. Wiggins were traceable in their joint account. The effect of this commingling [mixing of funds] was that any separate funds deposited in the joint account were transmuted [transformed into community funds]."



In another case, *Nichols v. Nichols*, Husband sold his sole and separate home and deposited his separate funds into the couple's joint account with Wife having unlimited rights of withdrawal. The couple then used a portion of this money to purchase a new home. The couple also used a portion of the money from time to time to pay for living expenses — with Wife writing checks for a majority of the purchases. The couple subsequently separated. Husband argued that the funds were traceable and therefore remained separate property. Wife countered that Husband's separate funds were transformed into community funds through commingling.

The Court ultimately sided with Wife, ruling that Husband's separate funds were transformed into community funds. The court reasoned that based on the facts above, Husband intended to make a gift to the community by commingling his separate funds with community funds.

SEPARATE & COMMUNITY HOMES

A common question that I hear involves homes that were purchased before marriage, and whether the other party has any claim to the home upon divorce. Homes that are purchased before marriage, or during marriage with separate



funds, are considered separate property. Nevertheless, when community labor or community funds enhance the value of the separate property, a portion of the enhanced value becomes community property that is subject to distribution.

Although the community is entitled to a portion of the enhanced value, it is also the community's burden to prove that community labor/funds increased the value of the separate property (such as principle payments, remodeling, etc.) It is not enough to demonstrate that community money paid for "living expenses" such as mortgage interest, property taxes, insurance, or any other fees that did not generate a *measurable increase* in the home's value. As such, one must prove that community labor led to a measurable increase in the home's value.

As stated above, the value of the separate property must be measurably increased due to community funds or labor. In *Dorbin v. Dorbin*, the New Mexico Supreme Court established a four-step formula to determine how much of the home's enhanced value is considered community property.

1. Take the value of the home at the date of marriage [Fair Market Value of home].
2. That pre-marriage value is then added with the home's rate of return (i.e. the profit on the investment over a period of time). The total of the

fair market value at the time of marriage [+] the rate of return during the marriage is considered separate property.

3. The fair market value of the asset is determined from the date of divorce.
4. The community interest in the home [=] the fair market value of the home at the time of divorce [-] the value of the home at the date of marriage [+] rate of return of the home during the marriage.

To put the factors described above into context, let's examine a New Mexico case where the court ruled that the community was not entitled to a portion of the home purchased during the marriage with separate money.

In *Martinez v. Block*, Wife inherited a sum of money during her marriage [separate funds]. Wife used a portion of her inheritance to purchase a house for \$85,000. The home was purchased exclusively from Wife's inheritance [sole and separate funds]. Wife then used \$93,486 of her separate funds to extensively renovate and improve the property. Husband and Wife divorced. The parties agreed that the value of the home at the time of the divorce was equal to the purchase price [\$85,000] + renovations [\$93,486] = \$178,486.

Husband argued that the community was entitled to a portion of the enhanced value of the home, because his labor increased the value of the home. Wife countered that the community is only entitled to a portion of the enhanced value when the community can prove that community funds or community labor actually enhanced the value of the property.

Deeding a separate home to one's current spouse can blur the lines between community and separate property.

The New Mexico Court ultimately ruled in Wife's favor because Husband failed to prove that his labor increased the home's value. The court reasoned that the community is only entitled to a portion of the enhanced value of separate property when the increased value can be traced to community funds and labor. Because Husband and Wife agreed that the value of the property was equal to Wife's separate funds that were used to purchase and then renovate the home, Husband's labor did not actually enhance the home's

value. Based on this fact, the community was not entitled to any interest in the home.

The court stated that community labor devoted to a residence is comparable to community funds that are used to pay interest, taxes, insurance, or any other expense associated with maintaining an asset (i.e. “living expense”). Additionally, husbands and wives have a mutual duty to support one another, including the use of separate funds/labor when necessary or appropriate. In the end, because a measurable asset or measurable increase in value was not acquired through Husband’s labor, the community was not entitled to a share in the increased value of Wife’s separate property.

SEPARATE & COMMUNITY BUSINESS

The community is also entitled to a lien against a spouse’s separate business when community funds or labor enhances the business’ value. In this respect, the labor of both parties belongs to the community rather than to the individuals, but community labor alone does not result in a community interest in the business. Instead, the community labor must lead to a *measurable* increase in the value of the business.

In *Mitchell v. Mitchell*, a New Mexico court examined the enhanced value of a business through community funds/labor. In *Mitchell*, Husband argued that his business as a CPA was his sole and separate property because his practice was opened before the marriage. The court ruled that the enhanced value of the



business — the value of the business from the time of marriage to the time of divorce — could be traced to a measurable amount of community labor.

The court supported its ruling by reasoning that at the time of the marriage, Husband's CPA practice showed the annual income of about \$600 and included a couch, calculator, and small office equipment. At the time of the couple's divorce, Husband's CPA practice reported gross receipts of \$153,968. Because of these facts, the court ruled that the value of Husband's business was due almost entirely to Husband's labor during the marriage (i.e. community labor). Therefore, the increase in value was likewise community property. The court went one step further and ruled that the company had also gained a measurable amount of goodwill that was also community property.

SEPARATE & COMMUNITY MONEY SPENT ON LIVING EXPENSES

The New Mexico Supreme Court has also held that one's separate money that is spent towards the community for food, clothing, entertainment, travel, etc. — but where no tangible and measurable asset is acquired — will not be reimbursed. In other words, any community/separate funds that are spent during the marriage must be traced to *a specific and measurable asset*.

In many situations a husband or wife acquires separate money during the marriage, by inheritance, gift, personal injury settlement, etc. The money is then used for vacations, paying off debt, or any number of everyday living expenses. In these situations the separate money that was used during the marriage is lost and cannot be recovered in divorce.

"In other words, any community/separate funds that are spent during the marriage must be traced to a specific and measurable asset."

The New Mexico Supreme Court believes that community/separate money that is spent on living expenses is not reimbursed because husbands and wives have a mutual duty to support one another — including the use of separate funds where necessary or appropriate to support the community.

CHAPTER 4:

WHAT HAPPENS TO MARITAL HOMES AFTER DIVORCE?


For many Americans, owning a home is the embodiment of the “American Dream.” Unfortunately, this dream can quickly turn into a nightmare when divorce looms on the horizon and the couple is forced to decide what will happen to their little slice of the American Pie.

One of the most contentious aspects of divorce surrounds the marital residence.

In many instances the marital residence is the couples’ most valuable asset that must be divided upon divorce. Ultimately the couple needs to decide what will happen to their home that is loaded with memories, experiences, and hopefully value.

Generally speaking, homes that were purchased during the marriage with community funds are considered community property. “Community funds” means any money earned during the marriage, but excludes: (1) Inheritances (2) Gifts, and (3) Personal injury settlements for pain and suffering that are received during the marriage. Because New Mexico is a community property state, if the home meets the requirements above, then the home is community property and any debt or equity (value) in the home will be split 50-50 upon divorce.

On the other hand, if the home was purchased before the marriage, or during the marriage with separate funds, then the home is considered one’s separate property. Nevertheless, even if the home is one’s separate property, when the home increases in value during the marriage due to community labor or



Generally speaking, homes that were purchased during the marriage with community funds are considered community property.

community funds being placed into the home, this increased value can be considered community property — as discussed in section three.

Determining the best financial option on how the home will be separated after the divorce is often a stressful decision. This difficult decision usually falls under one of three categories:

1. One person stays in the home and refinances the home in their name alone;
2. Sell the home and split the equity/debt; or
3. Walk away from the home.

OPTION 1: ONE PERSON STAYS IN THE HOME AND REFINANCES.

In this situation one person stays in the home, refinances the home in their name alone, and the other party signs a “Quit Claim Deed” relinquishing any interest in the home.

In this situation, the home’s equity or debt is taken into consideration. Generally, the person remaining in the home either pays a lump sum amount for the other

person's interest in the home, or waives their interest to a share of the home's equity.

This option requires one to answer three questions:

- Do you want to remain in a home that is loaded with memories and sentimental value?
- Can you re-finance the home in your name alone?
- Can you afford the monthly costs associated with the home (Taxes, Mortgage Payments, Maintenance, Repairs, Landscaping, etc.)?

Sometimes refinancing the home in one party's name is desirable, but unrealistic.

Did you answer yes to *all three* questions above? If so, then the choice of staying in the home is a viable option to be considered when determining what will happen to your home. If you answered "no" to any of the three questions above, then what happens to the marital home will probably fall under the following two options.

OPTION 2: SELL THE HOME AND SPLIT THE EQUITY/DEBT.

This option is relatively straightforward. In this situation the parties' sell the home and split any equity or debt. On the rainy side of the spectrum, the couple possibly bought the home at the top of the housing bubble and now find themselves underwater with their loan. Another common situation is that the couple recently purchased the home and any equity in the home is offset by the costs associated with the proposed sell. In these situations any debt in the home will be split between the parties. On the sunny side, the home's value exceeds the debt plus any costs associated with the sale. In this situation, any money remaining after the sale will be split between the parties.

OPTION 3: WALK AWAY FROM THE HOME.

As children, the idea of never giving up is drilled into our heads over and over and over. Throughout life we are continually told to finish what we start, quitters never win, and winners never quit. At times this childhood wisdom is simply wrong. When it comes to home ownership sometimes it's a wise decision to stop

payments on your mortgage. In situations where the home's debt far exceeds the value, foreclosure can be the best option for many reasons.

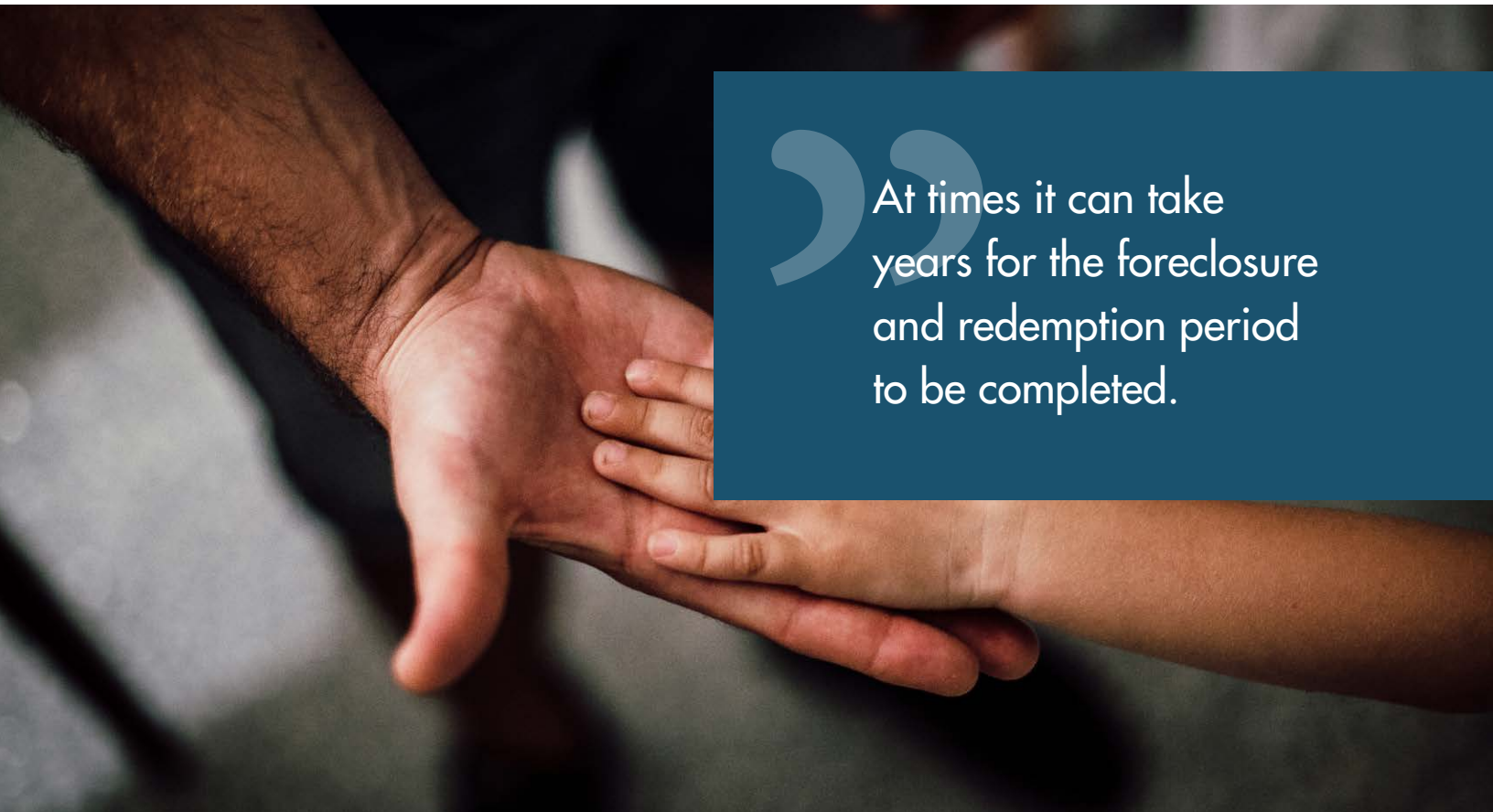
First, even when the foreclosure is uncontested, at times, the bank requires several months to finalize all of the paperwork necessary to complete the lengthy foreclosure process.

The time involved with the foreclosure can also be substantially delayed if the borrower contests the action, seeks delays and adjournments of hearings, or files for bankruptcy.

Secondly, even after the bank completes the requisite foreclosure, New Mexico law then provides the home owner with a "right of redemption" that grants the owner an additional period of nine months to reclaim the property.

At times it can take years for the foreclosure and redemption period to be completed. During this lengthy period of time the home's owner can remain in the home without making any payments. This valuable stretch of time can provide home owners with the opportunity to save a considerable amount of money before they are legally forced to leave the home.

If you have children the court will want to know your living arrangements if you both sell the home.



At times it can take years for the foreclosure and redemption period to be completed.

CHAPTER 5:

ALIMONY



New Mexico is an alimony state. Alimony is a word meaning “**spousal support**” and it has the ability to scare, anger, or offend in one breath. At its core, alimony is financial support that is intended to ease the difficult transition from the unity of marriage to the singularity of divorce. At times reaching an amicable agreement on alimony is the biggest hurdle preventing couples from completing the requisite Marital Settlement Agreement and finalizing a divorce.

New Mexico courts consider a number of factors when determining if alimony is appropriate. These factors include whether each party is self-supporting through employment, one’s earning capacity, the need for education or specialized training to gain employment, age, mental or physical health conditions prohibiting or limiting employment, and financial means.

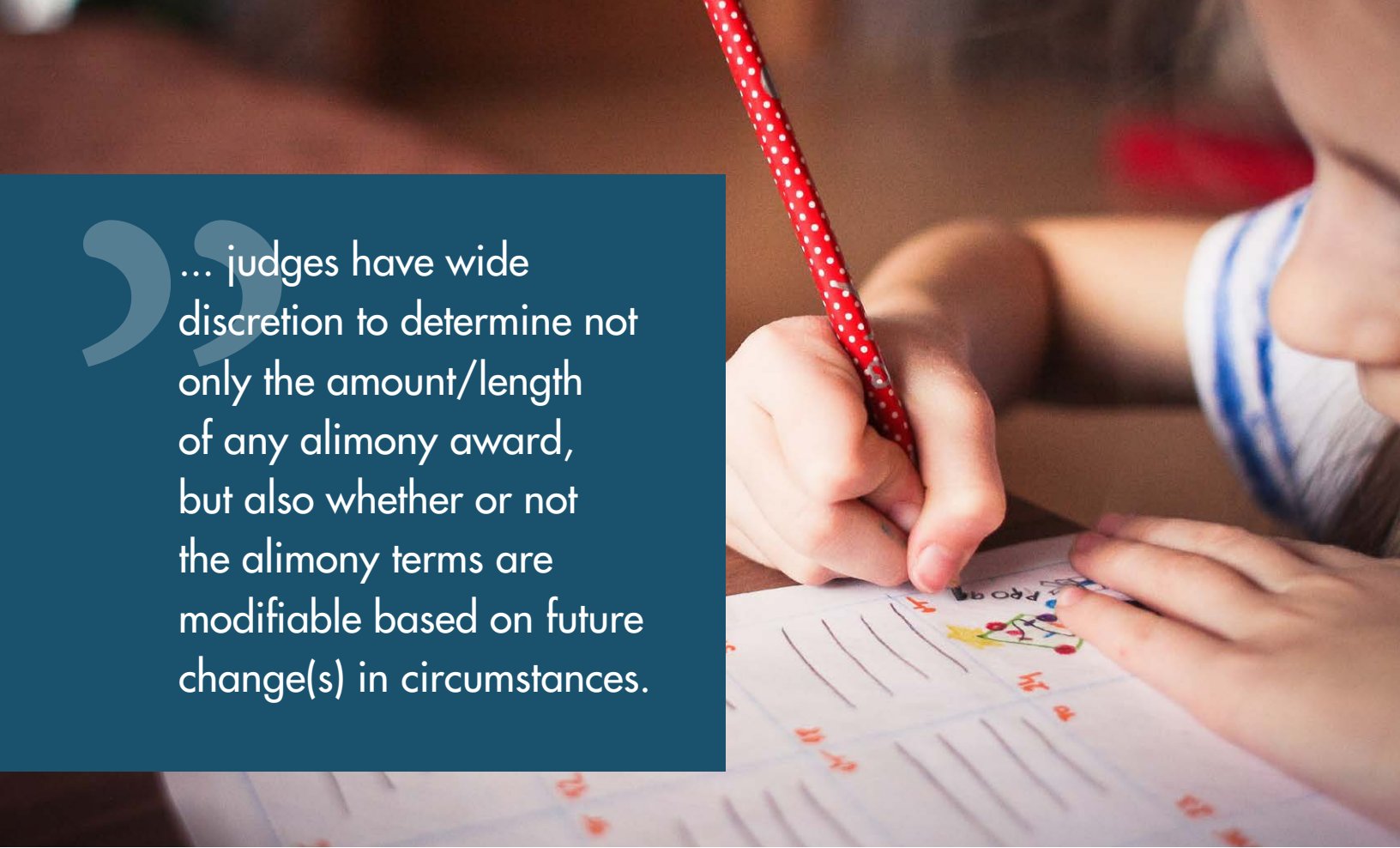
Need and length of marriage are the most important factors that are considered when deciding if alimony is appropriate. New Mexico judges consider the following categories of time when determining the length of time that alimony will be awarded:

0–5 years:

Rarely will a court award alimony if a marriage lasts less than five years.

5–10 years:

When the marriage is between five and ten years the court may award alimony on a rehabilitative/transitional basis. In the five to ten year time-frame Courts consider transitional alimony to be appropriate if one of the parties left a promising career, interrupted opportunities in favor of marriage, or used separate assets during the marriage to advance the other partner’s job or education. The purpose of transitional alimony is to provide one party with a reasonable amount of financial



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support to obtain job training or education, with the long term goal of becoming self-supporting.

10–20 years:

Alimony is generally granted if the marriage is between 10 and 20 years and will often be awarded for 30% to 50% of the total years of marriage. Therefore, if the marriage is 12 years, then alimony will be around 5-6 years.

20+ years:

When a marriage lasts more than twenty years the Court retains the continuing power to decide the issue of alimony, awarding an indefinite, modifiable amount of alimony. This continuing power exists unless the parties can agree to a lump-sum, non-modifiable amount (e.g. \$50,000 to be paid over ten years). Assuming that the parties are unable

“At times reaching an amicable agreement on alimony is the biggest hurdle preventing couples from completing the requisite Marital Settlement Agreement and finalizing a divorce.”

to reach an agreement on the issue, the Court retains jurisdiction over the issue and retains the continuing power to alter or amend the alimony award according to a change in circumstances — such as a substantial increase or decrease in one's gross income.

New Mexico Courts also consider the following factors, in addition to the length of the marriage:

1. The age, health, and means of support for each party;
2. Each parties' current and future earnings, and earning potential;
3. The good faith efforts of the party to maintain employment;
4. The reasonable needs of each party;
5. The amount of the property awarded or confirmed to each party;
6. Assets;
7. Debts; and
8. Income from property owned.

Most importantly, the factors listed above are simply the factors considered by each individual judge. Ultimately, judges have wide discretion to determine not only the amount/length of any alimony award, but also whether or not the alimony terms are modifiable based on future change(s) in circumstances — such as change in income, remarriage, death, or some other substantial event.

CHAPTER 6: ALIMONY GUIDELINE WORKSHEET



HOW WILL ALIMONY BE PAID

There are several options on how alimony will be paid.

The first option is to follow the previously discussed guidelines for transitional/rehabilitative alimony — guidelines that determine the payment duration and amount based on the respective parties' incomes. This option sets a monthly amount that can be modified based on a substantial and material change in circumstances — unless the amount is either agreed upon or ordered as non-modifiable.

New Mexico courts look to the words contained in the MSA such as “lump sum,” “definite amount,” or “non-modifiable” to determine whether the alimony agreement or judgement is modifiable or non-modifiable, based on a substantial change in circumstances.

The second option is a lump sum payment of alimony in lieu of ongoing support. Lump sum alimony basically means that the parties' agree on a fixed amount that will be paid (e.g. \$25,000 payable within 30 days in lieu of alimony). Additionally, this “lump sum” can be paid in a number of different ways. Property can be awarded in lieu of alimony. Additionally, this lump sum can be paid by one party receiving a bigger portion of the community interest than they are entitled to under New Mexico law. This offset in one's community interest can be achieved by one receiving an additional interest in the marital residence, retirement accounts, or any other distribution of property/debt. The agreed upon

Alimony ends when the recipient remarries, unless stated otherwise in the MSA.

lump sum can also be paid by a non-modifiable payment, or through clearly defined payments towards the lump amount.

On the positive end, lump sum agreements allow the parties to take alimony into their own hands and plan their future finances by determining when and how the total amount will be paid. A lump-sum amount also eliminates the possibility that the parties will be forced to litigate the issue of alimony in the future based on a change of circumstances.

On the negative end, lump sum agreements, whether in the form of one fixed payment or a series of scheduled payments, cannot be modified. Non-modifiable means non-modifiable and is a vested property interest that cannot be changed for any reason — including death, remarriage, unemployment, etc.

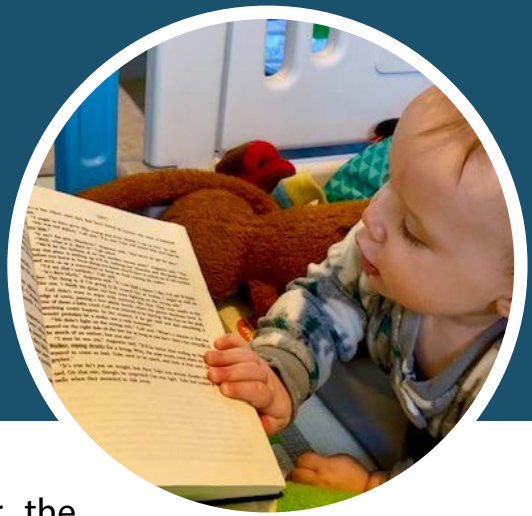
*Once you waive
alimony, you waive
it forever.*

Lastly, as previously mentioned, New Mexico is a no-fault state meaning that either party can petition the court for a divorce regardless of fault. In the context of alimony, New Mexico courts are not allowed to consider which party is at fault or responsible for the divorce when determining if alimony is appropriate. Additionally, New Mexico courts cannot consider the level of support needed to equalize the earning capacity between the parties, nor to order support in an amount necessary to provide a life-style comparable to the one enjoyed by the parties during marriage. Lastly, in New Mexico, a person's right to receive alimony cannot be waived by pre-nuptial agreement.



CHAPTER 7:

PARENTING PLANS



Before reading any further, please answer the following question:

Were any children born during your marriage?

- If you answered ‘no’ then feel free to skip this entire section.
- If your answer is ‘yes’ then take a seat because this section is for you.

Every marriage that involves children must include a Parenting Plan before the court will grant a divorce. Parenting Plans are essentially contracts that outline agreements on custody, timesharing, child support, and any other issues relating to the children. The Parenting Plan is comparable to a roadmap that clearly outlines the co-parenting relationship between the child[ren] and parents.

CUSTODY AND TIMESHARING

Often parents can agree on all of the elements needed to complete the Marital Settlement Agreement discussed above, yet negotiations fall apart once the parents reach issues involving custody and timesharing. At times, agreements involving dollars and cents are easier to make than choices that involve love, affection, and the time spent with one’s child[ren].

The word “custody” is often misused or used interchangeably. There are two forms of custody: **Legal Custody & Physical Custody**.

Legal Custody means the right to make major decisions on the child[ren]’s behalf regarding issues such as education, discipline, health, extracurricular activities, summer activities, religion, medical and dental care, etc.

New Mexico law presumes that it is best for parents to share joint legal custody of their children, requiring mutual agreements on the issues addressed above.

Physical Custody (i.e. Timesharing) simply means the time that the child[ren] spends with each parent. Similar to joint legal custody, there is a presumption in New Mexico that children are best served by having an open and active relationship with both parents. Because of this fact, except in extreme situations, parents will be awarded shared physical custody of the children, with clearly defined periods of visitation.

There are two paths that can be traveled for parents to reach an agreement on the custody and timesharing agreement necessary to complete a Parenting Plan.

The smooth path involves uncontested divorces where the parents agree on all of the necessary terms. This includes an agreement on Legal Custody, as well as the visitation schedule and the specific time that the child[ren] will spend with each parent during a typical week, school breaks, holidays, birthdays, and vacations.

In uncontested divorces the parties must also agree on any other issues addressed in the Parenting Plan. These issues can include which parent claims the child[ren] as a dependent for tax purposes, child support, health insurance costs, and life insurance on behalf of the child[ren].

When parents agree on all of the terms above, the Parenting Plan is a contract that reduces the agreements into writing. The Parenting Plan is filed along with the Marital Settlement Agreement. At this point the assigned judge reviews the documents and assuming that everything is complete, the judge can sign the corresponding Final Decree of Dissolution of Marriage.

The second path that leads to completing the requisite Parenting Plan has far more bumps and hurdles than the first path, and can take significantly longer to travel.

"In contested divorces where the parents are unable to reach an agreement on custody, timesharing, or any other issues contained in the Parenting Plan, several steps can be taken to reach an agreement."



In contested divorces where the parents are unable to reach an agreement on custody, timesharing, or any other issues contained in the Parenting Plan, several steps can be taken to reach an agreement.

New Mexico courts generally take three steps to determine what parenting time is in “the best interests of the child[ren]”:

The first step involves referring the parties to mediation, in the hopes that a trained counselor can help the parents put aside their issues and focus on the needs of the child[ren] — ultimately reaching a mutually agreed upon timesharing arrangement.

In situations where mediation fails, the court may take a second step and refer the parents to Court Clinic for an “Advisory Consultation.” During this Advisory Consultation, a Court Clinician (i.e. Social Worker) interviews the parents, children, and any other relevant parties. The Court Clinician also reviews any important information, and views the bonding between parent and child. Based on all of this information, the Court Clinician then presents the assigned Judge with a recommendation for the appropriate custody and timesharing arrangement.

If a parent disagrees with Court Clinic’s Recommendations they must object within eleven (11) days from the date that the Recommendations are entered. Failure to file Objections will result in the Court adopting the Recommendations as an Order of the Court. When objections are filed, the Court schedules a Hearing that allows the parent to voice the reasons that they are objecting to Court Clinic’s Recommendations. After hearing these reasons, the Judge will either adopt the

Court Clinic's Recommendations as an Order of the Court, or make changes based on the evidence presented. In situations where the assigned Judge has exhausted all of the options above, the Judge may appoint an expert witness (i.e. an 11-706 child custody evaluator).

The 11-706 child custody evaluator conducts a more extensive, and often very expensive child custody evaluation, which provides the assigned Judge with detailed data relevant to the disputed issues. This evaluation also includes clinical judgments about the nature of the parents' conflict, and recommendations about the appropriate timesharing arrangement based on the "best interests of the child[ren]."

The 11-706 evaluator also considers the emotional, psychological, and physical needs of the child[ren], as well as the parents' ability and fitness to care for the child[ren].

11-706 evaluators also consider the ability of one parent to support the relationship between the child[ren] and the other parent. Lastly, the 11-706 evaluator considers the child[ren]'s needs, attachment, and bonding with both parents.

There are no guarantees that the 11-706's recommendations will be any different from Court Clinic's recommendations. In fact, there is a possibility that the 11-706 expert will recommend less time with the children relative to Court Clinic. As such, due to the high expense involved, Judges often try to exhaust all of the steps listed above before appointing an 11-706 custody evaluator.

CONSIDERING THE CHILD'S WISHES

New Mexico courts take great caution before subjecting a child to the psychological harm of litigation. Because of this fact, for children under fourteen years old a Guardian ad Litem (i.e. an attorney that represents the child's desires) may conduct a background investigation of the child, working alone or in tandem with the 11-706 expert to provide recommendations before the Court.

In cases where the child is fourteen (14) years or older, the Court must consider the child's wishes. The child's wishes will heavily influence the Court's decision unless

there is strong evidence to suggest that the child's wishes are contrary to the child's best interests.

As illustrated above, the Court is presented with several options to determine the appropriate custody and timesharing arrangement for a child when parents are unable to reach an amicable decision. Although these options vary in their intensity, scope, and expense, the Court's ultimate goal is to determine "the best interests of the child."

"... parents that are unable to reach an agreement on the appropriate custody and timesharing arrangement place the final decision into a judge's hands."

As you can see, the "best interests of the child[ren]" is the North Star that guides New Mexico courts toward the appropriate time-sharing schedule.

Within each step listed above the following factors are evaluated to reach a determination on the best interests of the child:

1. The wishes of the child's parents or parents;
2. The wishes of the child;
3. The interaction and interrelationship of the child with her parents, her siblings, and any other person who may significantly affect the child's best interest;
4. The child's adjustment to her home, school, and community; and
5. The mental and physical health of all individuals involved.

In the end, parents that are unable to reach an agreement on the appropriate custody and timesharing arrangement place the final decision into a judge's hands. This judge has "broad discretion and great flexibility" to create a custody arrangement that she believes is in the child's best interests. It can be difficult to overturn this judge's decision through appeal. To do so, one must demonstrate that the judge's decision "exceeds the bounds of all reason . . . or that the judicial action taken is arbitrary, fanciful, or unreasonable." Because of this fact, as discussed in a later section — when possible — it is always advisable to take the final decision out of a judge's hands and try to reach an amicable agreement.

CHAPTER 8:

CHILD SUPPORT



Few divorce issues have the ability to slither under one's skin like the topic of child support.

Next to alimony, child support is probably the most feared and hated word in all of divorce. Some of these intense feelings are created by fuzzy explanations, urban legends, and horror stories that one hears floating through New Mexico like ghost stories being told over a campfire in the darkest hours of the night.

Let's shine the light of reason on some of the confusion.

Each divorce involving children must contain an agreement on child support. In most divorces, child support is addressed in the Parenting Plan. In every case a completed Child Support Obligation Guideline must be attached to the order that either establishes or waives child support. This means that even when parents agree that no child support will be exchanged, based on some degree of substantial hardship, the parents are still required to attach a completed Child Support Obligation Guideline to the Parenting Plan. This attached Guideline puts both parents on notice of the total amount in child support that one parent is entitled to receive under New Mexico law.

In New Mexico, the child support guidelines mentioned above are created by the New Mexico legislature. The amount of child support that a parent is required to pay is calculated based on the timesharing arrangement, each parent's gross income, and other monthly expenses such as insurance premiums, childcare expenses, etc. The two major factors affecting child support are Timesharing and Gross Income.

The calculation regarding Timesharing is relatively straightforward. A parent that has the child[ren] for less than 35% of the time (i.e. less than 128 days a year) will pay a higher percentage of child support that is based on a Worksheet A.



The percentage of child support is higher with a Worksheet A because the court presumes that the primary-custodian (i.e the parent with 65% of time or more) is covering the majority of the child's everyday living expenses.

On the other hand, New Mexico courts will use a Worksheet B if both parents have the child[ren] for 35% of the time or more (i.e. each parent has the child for 128 days or more in the calendar year).

The amount of child support that one is required to pay is lower with a Worksheet B, because New Mexico court's assume that the parents are sharing the duties, responsibilities, and expenses of parenting.

The second major factor affecting child support is Gross Income. Calculating Gross Income is more complex and multifaceted than Timesharing where a parent either has the child for 128 days or more each year, or does not.

New Mexico law defines "Gross Income" as income from any source. This broad definition essentially means a parent's fixed monthly income, or income that a parent receives on a fixed basis. This income includes a parent's salaries, wages, tips, commissions, bonuses, dividends, fixed profit on rental properties, severance pay, pensions, interest, annuities, social security benefits, worker's compensation, unemployment/disability benefits, and significant in-kind benefits (such as Basic Housing Allowances).

New Mexico's definition of Gross Income does not include the following: income received from means-tested public assistance programs (i.e. TANF, welfare), child

support received for the support of other children, the income of one's current spouse, and court ordered child support payments for *prior born* children. Finally, Gross Income does not include any gifts that one receives.

Calculating Gross Income is relatively straight forward when a parent's income is composed of a fixed, monthly wage. Conversely, determining one's Gross Income is a bit more complex in the following situations:

- Unemployment;
- Underemployment; and
- Disability.

UNEMPLOYMENT

New Mexico Courts presume that a parent will earn income based on full-time employment. Based on this presumption, New Mexico Courts will impute (i.e. calculate) an unemployed parent's gross income at minimum wage — \$1,517 in Albuquerque — for parent's that are caring for children *six years or older*. On the other hand, New Mexico Courts will not impute a parent at minimum wage if the unemployed parent is the primary custodial parent actively caring for a child that is *under the age of six*.

UNDEREMPLOYMENT

The New Mexico child support guidelines offer little guidance for courts to determine when a parent is purposefully reducing one's income with the aim of reducing one's corresponding child support obligation. Similar to many other divorce topics, assuming that the parents are unable to reach an agreement and choose to place the ultimate decision in the assigned Judge's hands, that Judge will have wide discretion to decide if one parent is not generating income at their full potential.

New Mexico Courts can determine and then impute potential income to an underemployed parent in order to discourage parents from dodging the obligation to support one's children. Often imputing a parent at their potential income goads the parent into full employment by attaching an unpleasant consequence

(i.e. a mounting child support payment that is based on a higher income than one is actually earning).

New Mexico Judge's consider several factors when determining whether a parent's income should be imputed at a higher amount based on underemployment. Judge's consider the credibility of the allegedly underemployed parent and determine whether that parent has acted in "good faith" with their career choices. "Good faith" typically means that the parent is acting for a purpose other than to reduce or avoid one's child support obligation.

"New Mexico Courts can determine and then impute potential income to an underemployed parent in order to discourage parents from dodging the obligation to support one's children."

In cases where the Court finds that a parent's career choices are not primarily motivated by a desire to reduce one's child support obligation, the Court then examines the reasonableness of the career choice. Once again, the Judge has wide discretion to decide if the parent's career choices are reasonable, or if the choice is being guided with an eye focused on reducing one's child support obligation.

DISABILITY

Individuals that are drawing disability benefits are still required to pay child support. In this situation, the disabled person's Gross Income is determined by the total amount that one receives in disability.

There are two types of Social Security Disability Benefits: Social Security Disability Insurance (SSDI), and Supplemental Insurance Income (SSI).

SSDI is only received by individuals that have worked enough years and have paid enough money into the system to qualify for acceptance.

Conversely, one is not required to have worked a certain amount of time to qualify for SSI.

The key distinction between these two types of disability benefits is the fact that children whose parents are eligible for SSDI benefits may draw from those benefits. In other words, dependent children of family members that are receiving SSDI can

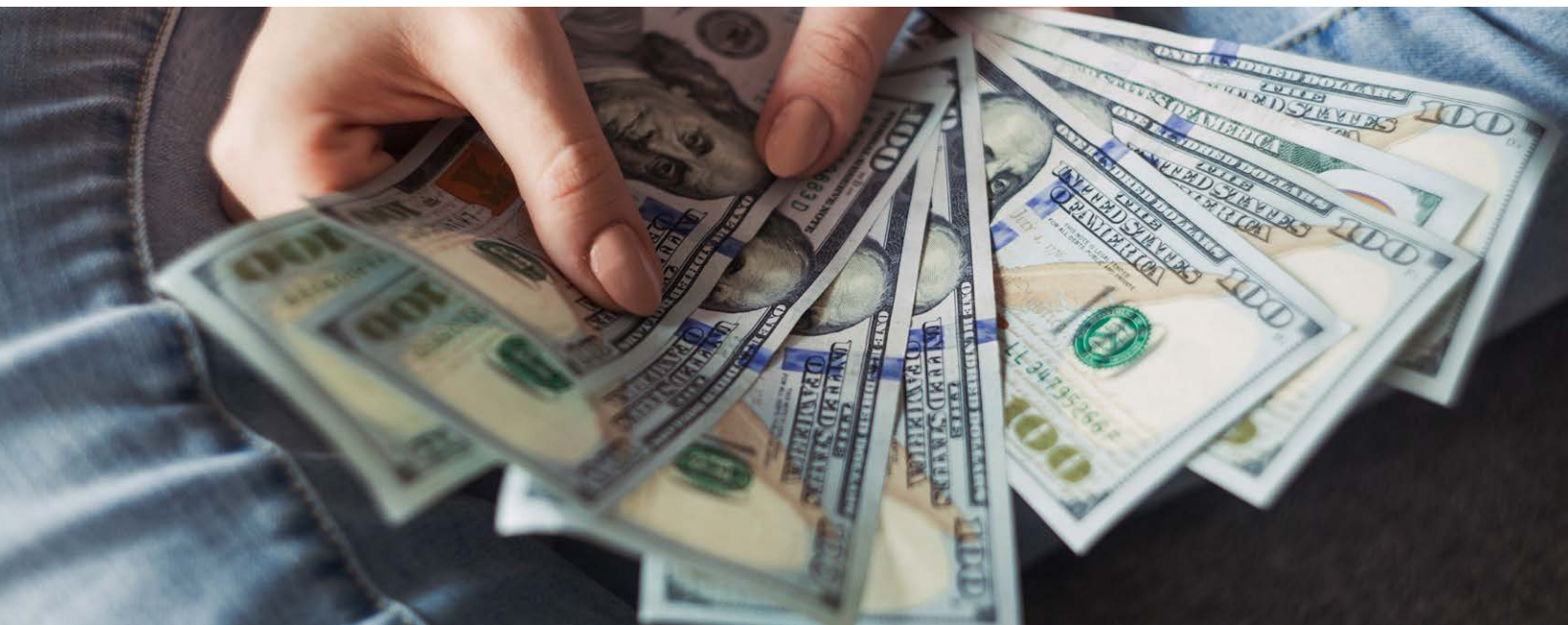
receive money on behalf of the parent drawing SSDI benefits. In situations where the custodial parent receives Social Security payments on behalf of the child, the non-custodial parent may receive a credit against his/her support obligation — but only up to the amount of the total court ordered obligation.

For example, if the non-custodial parent owes \$300 a month in child support and the child receives \$250 a month through SSDI, then the non-custodial parent's child support obligation would be reduced by the \$250 received through SSDI. Based on this credit/reduction, the non-custodial parent would be required to pay the shortage of \$50. In the event that the child receives more money each month through SSDI than the court ordered support obligation, the paying parent is not entitled to a reduction/offset over and above the court ordered support payment.

In other words, this additional amount cannot be used as a credit/offset against any delinquent support payments. See *Mask v. Mask*, 95 N.M. 229, 620 P.2d 883.

Unlike SSDI, dependents of SSI recipients are not entitled to receive auxiliary/derivative benefits on their children's behalf. Nevertheless, the total amount one receives in SSI benefits will be used as the individual's Gross Income for the purpose of calculating one's child support obligation even if the total amount received is less than minimum wage.

Parents receiving Social Security Disability should always check if their child is entitled to Derivative Benefits.



TOP 10 QUESTIONS

To close out the topic of child support, I will answer the Top Ten questions that I commonly hear regarding child support:

1. **Do I get credit for the child support payments that I'm making for other children?**

Yes and no. A parent can only deduct child support payments from their gross monthly income if child support is being paid for a child that was born before the child at issue. As such, the court only allows deductions for *prior born* children.

2. **Are gifts considered gross income when calculating child support?**

No. Gross Income does not include gifts under Section 40-4-11.1[C][2].

3. **Can I modify the child support that is ordered?**

Yes. However, in order to ask the Court to modify child support a parent must first demonstrate a "substantial change in circumstances." There is a presumption that this substantial change in circumstances is present if the overall support has increased or decreased by at least 20% and the motion to modify is filed one year after the preexisting order was entered. If the monthly child support does not increase or decrease by 20%, then the child support will remain the same.

4. **Will child support be modified to the date that my income decreased and/or that I lost my job?**

The answer to this question depends on the date that one files a Motion to Modify Child Support — not the date that income increases or decreases. Modification of child support is only permitted from the date that the Petition or Motion is filed. This means that the child support will only be modified back to the date that the *Petition/Motion to Modify Child Support* was filed. See *Zabolzadeh*, 2009-NMCA-046, 146 N.M. 125, ¶7, 207 P.3d 359.

5. **What income is used for a parent that is unemployed?**

When that parent is unemployed, and the child is at least six years old, New Mexico courts can impute a parent's gross income to be \$1,517 per month. The \$1,517 figure is based on Albuquerque's minimum wage rate, and varies

from court to court based on the minimum wage of each jurisdiction. Note that this amount varies as minimum wage increases.

6. When does child support end?

Child support ends when the child is legally emancipated, either by court order or when the child reaches the age of 18 (or up to age 19 and until graduation from high school — whichever occurs first). Child support also ends if the child joins the military, dies, or gets married. Child support can continue indefinitely in situations where the child has a disability that makes it impossible for the child to become self-sufficient.

7. Does child support automatically end when a child reaches majority or becomes emancipated?

No. Termination of child support must be made by court order.

8. My ex refuses to let me see my children. Can I stop paying child support?

No.

9. Is child support tax deductible?

No.

10. Can the parents agree to a lower child support payment than what is required under the New Mexico Child Support Guidelines?

Yes. The court can deviate from the Child Support Guidelines if there is a written finding in the decree, judgement, or order of child support that applying the guidelines would be unjust or inappropriate. Moreover, circumstances creating a substantial hardship for a parent may justify the court to adjust the child support. Nevertheless, every decree or child support order that deviates from the guideline amount must contain a statement of the reasons for the deviation (e.g. substantial hardship). Additionally, both parents must agree to the modified amount.

CHAPTER 9:

CLAIMING CHILDREN AS DEPENDENTS FOR TAXES

For many New Mexicans tax season is a joyous occasion filled with cheers, thanksgivings, and endless Audio Express commercials on the airwaves that advertise stereos, amplifiers, and sub-woofers that can be purchased for the small price of one's beloved tax return. For others, the tax man cometh and this season is a dark period of the year festering with fear and loathing at the thought of the IRS greedily rubbing its hands together while breathing down one's back for a bigger chunk of one's hard earned money.

Whether a person falls on the love or loathing end of the spectrum often turns on whether that person is able to claim a qualifying child as a dependent for tax exemption purposes. For parents that are filing separately, the ability to claim dependent children substantially impacts the bottom line of one's individual taxes.

There are several tax benefits involved with claiming a qualified child as a dependent. For the calendar year of 2016, claiming one's child as a dependent reduces one's taxable income by \$4,000. Another possible tax benefit is the Child Tax Credit, which is worth up to \$1,000 for each child under the age of 17 — provided that the parent meets eligibility requirements that are based on adjusted gross income. The final tax benefit includes an ability to claim a credit of up to \$2,100 for qualified dependent child care costs.

Parents filing separate taxes face a potential obstacle because only one parent can ultimately claim the child. Because of this fact, single parents, and married parents that are going through a divorce and choose to file separately, often disagree on which parent can claim the child or children as a tax deduction.

Most red blooded Americans cower and tremble before the IRS, treating anything that the IRS says like it is an immutable law that has been decreed in stone on the top of a mountain. Unlike most American's — at times — New Mexico Courts will

boldly disagree with the IRS' statement on which parent can claim a qualified child as a tax deduction.

IRS Publication 501 which deals with exemptions, standard deductions, and filing information, clearly states that an individual may claim a child as a dependent on their tax return if the child resides with them "for more than half of the year." Therefore, according to the IRS, the parent with greater time-sharing can always claim the child.

New Mexico courts swagger across the clear line that the IRS draws in the sand. Generally speaking, New Mexico courts allow single parents to alternate the years that each parent can claim the child as a dependent provided that the parents have joint legal custody/shared physical custody, and the parent ordered to pay child support is current on child support for the calendar year at issue.

New Mexico's ability to ignore IRS Publication 501 was showcased in the case of *Macias v. Macias*, 126 N.M. 303. In *Macias*, the trial court awarded Mother primary custody of the parties' three children, ordering Father to pay child support. The court also allowed Father to claim two of the three children for tax deduction purposes, despite the fact that Mother had primary physical custody of the children. Mother appealed the trial court's ruling, arguing that "... federal law controls and that the court had no choice but to allow Wife, as the custodial parent of all three children, to receive the exemptions for each child regardless of support payments." See ¶ 2.

The court of appeals ultimately upheld the trial court's ruling, reasoning that the federal law does not prevent a state court from alternating or distributing the right for parents to claim children as dependents for tax purposes. In other words, New Mexico courts are not shackled by the IRS and have the power to reach a decision based on what it believes is fair, equitable, and in the best interests of the children.

"... single parents, and married parents that are going through a divorce and choose to file separately, often disagree on which parent can claim the child or children as a tax deduction."

CHAPTER 10: REQUESTING TEMPORARY ORDERS



In many cases, after the Petition for Dissolution of Marriage is filed the parties are unable to reach a quick and amicable agreement on the terms of the divorce and are in need of immediate guidance in the form of a Temporary Order. The issues addressed within a Temporary Order include financial support, timesharing with one's children, or any number of issues that cannot be resolved between the parties.

As previously mentioned, once the Petition is filed, New Mexico courts will generally issue a Temporary Domestic Order ("TDO"). A TDO freezes one's finances, the overall status quo, and prevents both parent's from interfering with the other parent's relationship with the child[ren]. For all of its virtues, the TDO fails to provide specific guidance on issues such as financial support, timesharing with one's children, or any other specific issues that may arise from the time that the Petition is filed, until the date that a final resolution is entered.

Because of this lack of clarity and guidance, often one party requires the court to issue a clear and unambiguous Temporary Order that dictates the parties' behavior until a final resolution of the case — either by mediation, settlement, or Final Decree.

TEMPORARY FINANCIAL SUPPORT (INTERIM SUPPORT)

The road from separation to a final decree of dissolution of marriage can take several days — or it can take several years. In situations where the parties are separated for extended periods of time, bills still need to be paid and therefore

community income needs to be distributed. A distribution of community income places both parties on a level playing field until the divorce is finalized.

Although separated, the parties are still legally married until the divorce is finalized. As such, any income and expenses that the couple accumulates during this period is still community property that must be equally divided. In other words, from the date of separation to the date of divorce the court can split and equalize the income and expenses that the couple accumulates, providing support for either party when the court deems the support to be just and proper.

Interim Support is similar in nature to Alimony. Interim Support is financial support that one party provides the other party while the divorce is pending. Alimony is support that one party pays once the divorce is finalized. Interim Support also includes child support while the divorce is pending. Child support that is based on the Child Support Guidelines only goes into effect once the divorce is finalized.

NMSA 1978, § 40-4-7(A) and NMRA 1-122 provide New Mexico courts with the power to divide income and expenses between the parties, awarding Interim Support until the divorce is finalized.

New Mexico courts determine the necessary level of Interim Support by completing a Interim Monthly Income and Expense Statement. This Statement calculates the appropriate level of support by considering each of the following factors: (1) Total Gross Monthly Income, (2) Total Payroll Deductions, (3) Net Monthly Income, (4) Total Fixed Monthly Expenses, (5) Net Spendable Income, (6) Number of Children [if any].

The first element considered by the court is each party's Gross Monthly Income. Gross Monthly Income is the total income that each party receives from all sources except child support received from a prior court order. The Court takes the Gross Monthly Income, deducting any Payroll Deductions such as: (1) Federal & State Withholdings, (2) FICA, (3) Medicare, (4) Health Insurance, etc.

Net Monthly Income is the income left over after Payroll Deductions have been subtracted from one's Gross Monthly Income. The Court then takes the Net Monthly Income, deducting any Monthly Fixed Expenses, which are regular and

fixed expenses such as: (1) Residence, (2) Utilities, (3) Car Payments, (4) Insurance Premiums, (5) Credit Card Payments, (6) Child Care, (7) Phone, etc.

Any money that remains after deducting Monthly Fixed Expenses from Net Monthly Income is considered Net Spendable Income. This figure tells the court how much disposable income each party has available on a typical month.

If the number for the couples' combined Net Spendable Income is positive, then the party with the larger Net Spendable Income will transfer an equalizing amount to the party with the smaller Net Spendable Amount. If the number is negative then no money will be exchanged.

"The first element considered by the court is each party's Gross Monthly Income."

Generally speaking, the court does not award Interim Support when both parties are left with a negative, or minimal amount of Net Spendable Income. Essentially, the Court equalizes the couples' Net Spendable Income in order to put both parties on an equal playing field.

When children are involved, an additional amount is awarded to the parent that is the primary care-giver, and therefore has a greater percentage of timesharing with the child[ren]. With one child the court adds an additional 10%. Two children is an additional 15%. Three children is an additional 19%. Four children is an additional 22%.

All of the figures listed above are considered within the Interim Monthly Income and Expenses Statement to calculate the appropriate level of Interim Support.

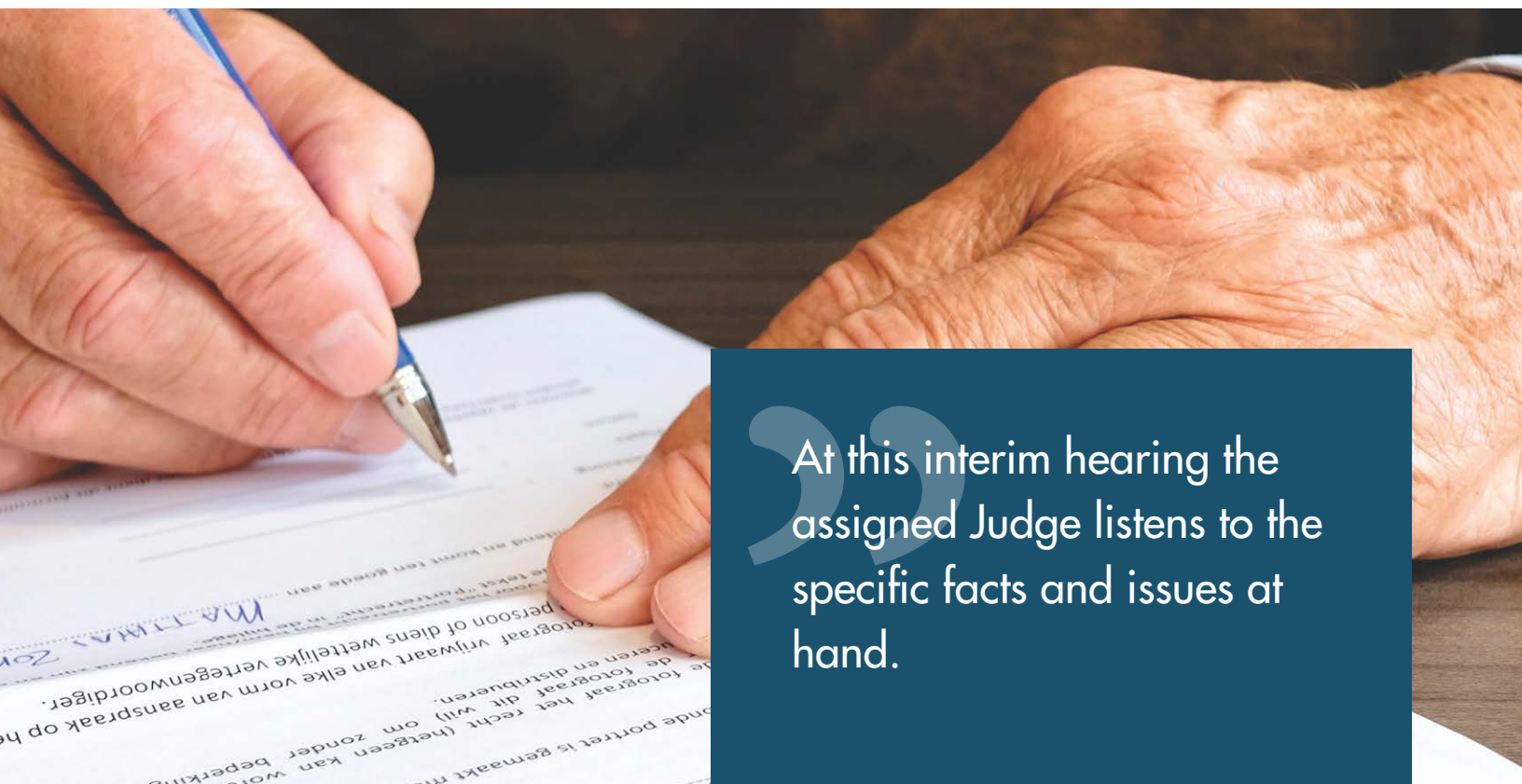
As you can see, Interim Support is based on a number of factors that are addressed above. Although the formula itself is relatively straight forward, Interim Support is one of the more contentious issues within a divorce, based on the number of factors that must be verified before reaching a final number. It is very common for the parties' to disagree on each of the individual factors listed above — with both parties' potentially presenting income and expenses sheets that contain wildly different figures.

TEMPORARY PARENTING PLANS

As mentioned previously, TDOs are generally issued in tandem with the filing of a Petition for Dissolution of Marriage. This TDO specifically states: “Do not interfere with the relationship of your spouse with any child of either party. If you are living apart, you shall each continue to have frequent contact and communication with any minor child of both parties, personally and by telephone.”

Despite the best of intentions, the TDO fails to clearly outline how and when the communication and visitation shall occur while the divorce is pending. Moreover, often parents have contrasting memories about the “status quo” for the child[ren] prior to one party filing a Petition for Dissolution of Marriage. Because of these potential issues, some parents disagree on the appropriate system of timesharing and communication while the divorce is pending. In these situations a parent can file a Motion requesting an interim, Temporary Order that specifically outlines parenting time, communication, and timesharing.

At this interim hearing the assigned Judge listens to the specific facts and issues at hand. After hearing all of the facts and circumstances, the assigned Judge generally issues a Temporary Order that establishes the parenting time, communication, and resolves any other issues relating to the children. This Temporary Order remains in effect until either modified by a subsequent Temporary Order, or by a



At this interim hearing the assigned Judge listens to the specific facts and issues at hand.

final resolution of the divorce through mediation, custody evaluation, settlement, or trial on the merits.

Generally speaking, the court has several goals in mind when issuing a Temporary Order regarding custody and timesharing. These goals include providing stability in the child's life and providing a clear outline of each parent's responsibilities in the parent-child relationship.

OTHER ISSUES

Financial Support and issues relating to custody and timesharing with the children are by far the two most common issues that must be addressed by the court through a Temporary Order. Nevertheless, other issues may arise between the date that the Petition is filed until the date that a Final Decree is entered.

Another common issue that needs to be addressed through a Temporary Order involves the exclusive use of the parties' marital residence. Assuming that both parties are living in the marital home when the Petition is filed, the TDO clearly states: "Do not make the other party leave the family home, whether it is community or separate property, without court order." Despite this clear language, in some instances it is unrealistic for both parties to remain in the home.

"In some situations one party to the marriage voluntarily leaves the marital home before the Petition is filed."

In some situations one party to the marriage voluntarily leaves the marital home before the Petition is filed. In other cases, both parties refuse to leave the home and a friction slowly builds in the home until there's a tension below the roof that is ready to explode with the slightest touch.


As explained in a later section — Ten Bad Divorce Decisions — at times one party to the marriage will file a Petition for Order of Protection (i.e. Restraining Order), claiming that an act of domestic abuse has occurred.

Because the court errs on the side of caution, generally a Temporary Order of Protection will be entered, setting a hearing for a later date to address the

allegations of abuse. In the meantime, this Temporary Order prevents the alleged abuser from coming within 100 yards of the alleged victim. The Temporary Order can also grant the requesting parent sole legal and physical custody of the children until a hearing takes place. As a result, the accused parent finds themselves evicted from the marital home and unable to contact or see their spouse and/or children until the allegations can be addressed by a Special Commissioner.

In the interest of preventing this ugly scenario from taking place, New Mexico judges generally require one party to move out of the marital residence, when both parties remaining in the home becomes unrealistic and intolerable. Because the person forced to move out of the home will incur housing costs, these necessary expenses will be factored into the Interim Support that was previously discussed.

Other common reasons for filing a Motion for Temporary Order includes one party being prevented from retrieving personal belongings, or being denied access to examine the contents of the marital residence.



...Temporary Order prevents the alleged abuser from coming within 100 yards of the alleged victim.

CHAPTER 11:

SETTLEMENT FACILITATION

The process of reaching a divorce settlement is similar to bringing the opposite ends of a teeter-totter onto the same level. With some divorces, from the very beginning both sides agree on all of the terms necessary to complete the divorce and merely need their agreement recorded with the proper documents (i.e. the MSA, PP and FD discussed above). At other times, the two sides are a bit uneven and need a slight push to reach an equilibrium. Finally, there are times when the parties are so far apart that it seems that no amount of pushing can get them to see eye-to-eye.

In these situations, New Mexico courts generally refer the parties to a settlement facilitation. This settlement facilitation involves a neutral and detached facilitator that helps the parties reach a level playing field with the ultimate goal of avoiding the varied costs of fighting each other in court.

Virtually every judge in New Mexico requires the parties to participate in some form of settlement facilitation before giving the parties their “day in court.” This “requirement” is more of a benefit than a burden because the majority of divorce cases *can* and *should* be settled outside of court.

Settlement facilitation involves the process of both parties — and their attorneys if any— sitting down with a neutral and detached settlement facilitator that guides both sides towards a fair resolution. The average settlement facilitation takes about half of a day — or a total of about four hours. In most cases, both sides share the total expense involved with the facilitation. Not all settlement facilitators are created equally.

A good settlement facilitator has extensive knowledge and trial experience, and is familiar with the appointed judge and how that judge typically rules on a wide variety of legal issues. A skilled facilitator often provides both sides with a harsh but necessary “reality check.” This reality check takes into account the reasonableness of one’s overall demands, the strengths and weaknesses of one’s case, and the



potential drawbacks of demanding a trial and in the process placing one's future into a judge's hands.

An unskilled facilitator typically lacks trial experience and the ability to "talk sense" into a party that is making unreasonable demands. An unskilled facilitator lacks the necessary experience to skillfully play with all of the factors involved with the divorce, guiding the parties' towards a reasonable settlement under New Mexico law. An unskilled facilitator lives in "theory land," a place where their knowledge is grounded on theory, rather than actual courtroom experience that enables the facilitator to discern how an individual judge will likely rule on a particular issue.

At times, both parties need a neutral and unbiased third party to explain why one's demands are unreasonable, and the potential drawbacks of brining those demands before a judge with limited courtroom time and possibly less patience. These drawbacks not only include the financial and emotional stress of stretching out the divorce, but also include the very real potential that the outcome of a trial will be worse than the outcome achieved through settlement.

The issues addressed at settlement facilitation include any legal issue that prevents the parties' from reaching a complete agreement.

These potential issues include anything that was mentioned under the sections on Marital Settlement Agreements and Parenting Plans that are necessary to finalize a divorce.

A successful settlement facilitation can save the parties thousands in attorney fees, the unnecessary stress of trial, and valuable time and energy that could be used in more productive areas. Most importantly, a successful settlement facilitation puts

the power in both parties' hands to decide exactly how all of the issues with their case will be resolved.

Most settlement facilitation's can resolve every issue necessary to complete the divorce. In other instances the parties can resolve the majority of issues, with a few lingering issues that need to be ironed out at trial. For instance, possibly the parties can resolve all of the financial issues necessary to complete the Marital Settlement Agreement, but cannot reach an agreement on the appropriate custody and timesharing arrangement necessary to complete the Parenting Plan. This incomplete resolution is still better than zero resolutions, because every issue that is removed from the table ultimately reduces the overall time and expense of arguing the case before a judge.

"A successful settlement facilitation can save the parties thousands in attorney fees, the unnecessary stress of trial, and valuable time and energy that could be used in more productive areas."

The average divorce should settle before trial. In many cases the parties have issues that are clearly addressed by New Mexico law and need a skilled hand to guide them towards a resolution based on this law.

Judges are not happy when a case that should have settled at facilitation clogs up the court's docket and the court's valuable time. I can assure you that this disgruntled judge will not greet your case with open arms and smiles. Simply put, our current court system could not operate efficiently and effectively if every divorce required a trial. For this reason, judges insist on exhausting all options before reluctantly granting a trial.

But realistically not all cases can settle outside of court.

The majority of cases that fail to settle at settlement facilitation generally involve parties that go into the facilitation unprepared or fail to fully disclose all of the relevant assets/debts. In other situations, one party refuses to "play ball" and work towards a settlement that reflects New Mexico law. Even the best facilitator in New Mexico is helpless against an unreasonable party that refuses to take the facilitation seriously and work in good faith towards a resolution. Such a breakdown during the settlement facilitation process will ultimately force the couple to walk down the aisle towards a trial on the merits — *for better or for worse*.

CHAPTER 12:

LET'S TAKE THIS CASE TO TRIAL?



To go to trial, or not to go to trial — ‘tis the question. Unfortunately, the question rolls from the tongue far smoother than the answer. No two divorces are created the same and there is a wide umbrella of possibilities that each case can fall underneath.

On the relatively sunny side of the continuum there are uncontested divorces where the parties can reach an amicable agreement on the elements that are required to complete the Marital Settlement Agreement and Parenting Plan — with the “PP” being necessary if there are children from the marriage.

In the middle of the curve there are cases where the parties need the assistance of a settlement facilitator to guide the process. The facilitator acts as a helpful and unbiased third-party to usher the conflicted parties towards an agreement on all of the essential terms for the divorce.

The rainy side of the path is traveled when the two parties are traveling on different roads. At times these roads are so far apart that the parties are unable to reach common ground on the necessary terms for the court to grant a Final Decree of Dissolution of Marriage. In these cases the parties ultimately find themselves traveling the bumpy road towards a trial on the merits.

The power to decide the exact terms of one’s divorce is stripped away from the parties and placed into the presiding judge’s hands when the parties cannot reach a resolution outside of court. In these situations the judge possesses broad discretion and great flexibility to paint the end result that the judge believes to be fair and equitable — provided that the decision doesn’t run outside of the

lines drawn by New Mexico law. In other words, the judge has immense power to dictate the terms of the divorce.

Generally speaking, the judge's ultimate ruling will only be overturned when a "abuse of discretion" occurs, and the holding will not be touched if it is supported by substantial evidence. "To reverse the [judge's decision] under an abuse-of-discretion standard, 'it must be shown that the [judge's] ruling exceeds the bounds of all reason...or that the judicial action taken is arbitrary, fanciful, or unreasonable.'"

Edens v. Edens, 2005 NMCA-033, ¶ 13, 137

N.M. 207, 109 P.3d 295. Basically this legal mumbo-jumbo means that it is generally very difficult to overturn a judge's final decision. The process of trying to overturn a judge's decisions is time-consuming, expensive, and will ultimately prove to be unsuccessful unless the judge's decision clearly violates New Mexico law.

There's a number of reasons why it's preferable to reach an agreement outside of the courthouse's hallowed halls, removing

the power to decide the end result from the judge's hands. The drawbacks to trial include the time, cost, emotional anguish, anxiety and overall uncertainty of placing the ultimate decision in another person's hands. As one judge aptly said during a divorce trial: "There is no winning in divorce, only degrees of losing." Divorce is different from a criminal trial where there is a yin and yang — guilty and not guilty — clear winner and loser with the jury and judge rendering a resounding yes or no.


Usually no one leaves a divorce trial jumping up and down, pumping their fists into the air like Rocky Balboa — with Eye of the Tiger triumphantly blaring in the background. Because New Mexico is a community property state, the assigned judge generally will "split the baby" dividing property and debts in half — or

"Usually no one leaves a divorce trial jumping up and down, pumping their fists into the air like Rocky Balboa — with Eye of the Tiger triumphantly blaring in the background."

fashioning a ruling that divides the estate in a manner that may prove problematic to either party to the case.

Additionally, issues regarding timesharing will likely be deferred to either Court Clinic, an 11-706 custody evaluator, or GAL for downstream recommendations on the appropriate timesharing based on the “best interests of the child[ren].” This recommendation could take months to complete. Once the process is complete, a hearing will then be scheduled to address the recommendations. At this hearing, the emotional scab that has formed since the divorce trial ended will once again be ripped off the wound.

It is common for both parties to leave the courthouse emotionally drained and exhausted by the process of battling the person that they once believed to be the love of their life. Additionally, the time, cost, and stress of a trial on the merits generally leaves both parties with a sour taste about the process as a whole, including: New Mexico laws, the court system, judges, attorneys, marriages in



It is common for both parties to leave the courthouse emotionally drained and exhausted by the process of battling the person that they once believed to be the love of their life.



general, and a resulting desire to finally move forward to the next chapter in their lives.

Despite the high number of drawbacks, at times bringing a divorce to a trial on the merits is an unavoidable necessity. In certain cases the opposing party makes unreasonable demands, hides assets, overstates debts, voluntarily reduces their income through unemployment or underemployment — or flat out refuses to offer a proposal that remotely reflects New Mexico law.

In other cases the opposing party desires to drag the process out as long as possible because of deep-seated resentment and a perceived way to strike back. In some cases, the unreasonable party experiences a lost sense of power over a person that they previously controlled and views the legal system as a weapon to perpetuate the pattern of manipulation and sense of control.

Finally, in some cases a party feels that the governing laws are inherently immoral or unjust. Based on this feeling of injustice, the party refuses to reach a settlement based on the “unfair” laws at play — opting instead to play their hand and have their day in court, telling the judge their story, and placing the ultimate decision in the judge’s hands with an attitude of “come what may, but at least I had my day.”

CHAPTER 13:

TEN HORRIBLE DIVORCE DECISIONS



We all make mistakes. Just look at your grade school pictures, if you believe that you're immune to bad decisions. That shirt. Those black suspenders. Don't even get me started on the mangled, self-inflicted haircut. They all seemed like bulletproof ideas at the time — *right*? Sometimes what feels so *right* can be all *wrong*.

Similar to life, there are a number of bad decisions that may feel right when one is facing a divorce, but are completely wrong. Let's take a look at ten bad decisions that should be avoided when confronted by a divorce.

1. REACTING AGGRESSIVELY

Every breakup and divorce entails a certain degree of tension and conflict. Generally speaking, happy and harmonious relationships don't end in divorce. Nevertheless, any tension and conflict should never spill-over into threats, harassment, stalking, insults, or any other act that rises to the level of abuse. Remember that the insulting texts that you sent, and the statements that you email or post on Facebook will come back to haunt you, in the form of a courtroom exhibit.

In New Mexico, the simple act of touching a person in a rude, angry, or insolent manner can result in criminal, domestic violence charges being filed. Any degree of touching, or causing an object to touch a household member is enough. If the police are called, they will determine who is the "primary aggressor" and in Albuquerque that person will be booked into the Metropolitan Detention Center.

A conviction for domestic violence permanently stains one's record, and forever strips one of the right to own or possess a gun.

Moreover, even when criminal charges are not filed, any threats, insults, physical abuse, stalking, or harassment can be used as ammunition to file a Petition for



Order of Protection (i.e. “Restraining Order”). New Mexico courts tend to lean on the side of caution and often find the necessary probable cause to enter a temporary order of protection, setting a hearing within ten days.

When children are involved, this temporary order can grant the requesting parent sole custody of the children until the matter is resolved by a Special Commissioner. After the temporary order is issued and before the hearing is ultimately held, the accused party can be prevented from having any contact or communication with their children. If the Special Commissioner finds that an act of abuse occurred, the temporary order can be extended, with the Special Commissioner dictating the custody, time-sharing arrangement, and often additional counseling requirements during their six months of jurisdiction over custody and time-sharing.

If granted, the Order of Protection can also include findings of abuse that can follow one downstream when attempting to achieve more time with one’s children in the divorce case.

2. FORGETTING THE KIDS

When facing a divorce, become more involved with your children — not less. Becoming more involved with your children is not only better for their overall well-being, but also creates a “status quo” that will largely determine what custody and time-sharing arrangement the court will award in the event that both parties are unable to reach an amicable agreement.

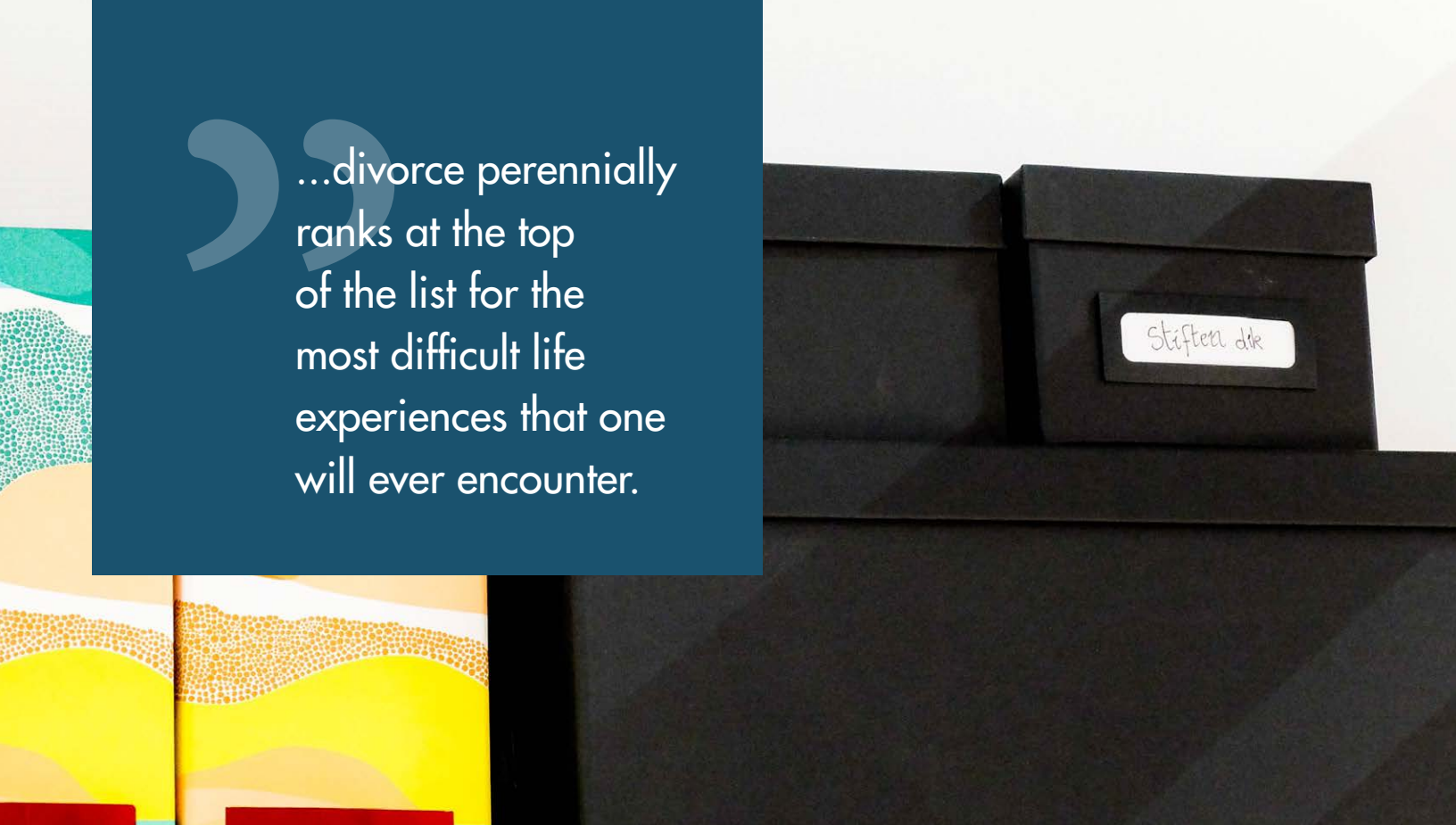
The best predictor of the future is the past, and judges generally look at family history to determine what is best for the children. New Mexico courts generally like to see children stay in the same house, neighborhood, and school — if possible. New Mexico courts believe that consistency is the best policy for young children, and are reluctant to alter the “status quo,” or what the parents have done in the past. New Mexico courts reach decisions based on what it believes is in the best interests of the children, and often this decision prevents uprooting the children from a lifestyle that they have grown within. Ultimately, New Mexico courts tend to believe that children blossom in the community where they are planted.

If you’ve always been involved with your children and your ultimate goal is primary custody of the children after the divorce, then become *even more* involved with the child[ren]. Learn your children’s schedules. Get involved with their extra curricular activities, appointments, school work, and day-to-day life. Spend as much time with your children as possible. This not only helps *your children’s future*, but also helps *your future time* with your children.

3. IMMEDIATELY MOVING OUT OF THE MARITAL RESIDENCE

Breakups and divorces are hard. In fact, divorce perennially ranks at the top of the list for the most difficult life experiences that one will ever encounter. Living in the same area with the person with whom you’ve fallen out of love can be awkward at best, and seemingly unbearable at worst. Nevertheless, when children are involved, it is a horrible decision to immediately move out of the marital residence. This is a bad decision because it essentially creates a “status quo” where the parent remaining in the home becomes the primary care-giver, potentially placing that parent in the position to be awarded primary custody of the child or children.

“Status quo” is a phrase that New Mexico courts’ use to describe the time-sharing arrangement that was in place prior to a court ordered custody and visitation schedule being entered. In situations where both parties are unable to agree on the terms of a Parenting Plan (outlining the custody & visitation schedule) the court makes the final decision on what time-sharing schedule it believes is in the “best interests of the child.” Generally speaking, the court opts for consistency and generally believes that continuing the “status quo” is best for the child. Therefore, expect the judge’s decision to be similar to the time-sharing arrangement that took place prior to the divorce. Because of this fact, by moving out of the marital



...divorce perennially ranks at the top of the list for the most difficult life experiences that one will ever encounter.

residence and leaving the children with the other parent, you are creating a “status quo” that could become difficult to change in the future.

Another problem with immediately leaving the marital residence is that in New Mexico, if one party leaves the house before a divorce is filed and a Temporary Domestic Order issued, it will be very difficult to get back into the house if the locks have been changed and/or the other party says “no.” In this situation, one would be forced to file a Motion for Temporary Order, requesting the court to grant one primary use of the home.

On the other hand, if one stays in the home after the divorce is filed and a Temporary Domestic Order is issued while the individual is still in the home, the other party will be forced to file a Motion for exclusive use of the marital residence.

As discussed above, in some situations one party will attempt to file a Petition for Order of Protection — claiming that an act of abuse has occurred — in order to force the other person out of the marital residence. This is prime example of why one should never react violently or aggressively during a divorce. Acting in a manner that could be defined as an “act of abuse” under the family violence protection act provides the other party with a card to play that could stack the deck in their favor.

4. THINKING EMOTIONALLY & NOT FINANCIALLY

In some divorces, one or both parties let their emotions short-circuit logical decisions. Maybe one person was cheating and now the other side wants to even the score. Possibly one party was very controlling during the relationship and now wants to use the legal system to continue their pattern of control. In some instances, one party feels wronged — for whatever reason — and is willing to sink their own financial situation in an effort to cause both sides to go down with the ship.

A common example of one or both sides thinking emotionally rather than financially is spending thousands to fight over property worth a few dollars. Spending thousands of dollars in legal fees to fight over items that can be replaced at pennies on the dollar is not a financially savvy decision. *Savvy?*

Another example occurs when one side rejects settlement offers that are better or equal to what one would expect to receive under New Mexico law. In these situations one rejects the reasonable offer, opting instead to put all of the issues into the judge's hands for the final decision. Generally speaking, an overly contentious approach prolongs the time and pain of divorce, increases legal fees, and can have long-term emotional consequences for everyone involved — primarily the children.

On the positive end of the spectrum, one ends up with a substantially similar outcome relative to the settlement offer, but adds the time, expense, and stress of a trial on the merits. On the negative end of the spectrum, one runs the risk of not only receiving a worse final judgment relative to the reasonable settlement offer, but also of incurring the additional time, stress, and expense of a trial on the merits — and the potential of the other side being awarded attorney fees for the cost of trial.

At times a trial on the merits is unavoidable — especially when the other party is making unreasonable demands that are not supported by New Mexico laws. However, in many instances, the benefits of settling the terms of the divorce outside of court outweigh the potential costs of moving the case forward to a trial on the merits. A trial takes the power to decide your future out of your hands and places that power into a judge's hands. This same judge generally knows little about you and your family, has an overflowing docket, is continually pressed for time, and could be having a horrible day for any number of reasons. Because judge's have wide discretion to determine the final outcome of the case, placing the final decision solely into the judge's hands can be a horrible decision.

5. PRETENDING A DIVORCE WILL GO AWAY

Not all divorces are the result of a considered decision between two parties. Sometimes one person is in denial that the relationship has reached the end of the road and refuses to take action with the ultimate hope that the parties will reconcile. In some instances the divorce can be cancelled by the parties' mutual agreement.

I'm certainly not saying that every Petition should end in a divorce, and the parties should never reconcile. However, I am saying that the strategy of complete non-action is generally never a good idea. This strategy could ultimately lead to the court granting a default final decree, whereby one party receives everything that they have requested. Although a default final decree can sometimes be set aside — for a number of reasons and if the request to set aside is filed in the requisite time — it is never a good idea to rely on the court setting aside the final decree.

Take action in your divorce. Never pretend the divorce will simply go away.

6. TREATING YOUR LAWYER LIKE AN ANNOYANCE

Divorce is a team sport. A divorce case is unlike a criminal case or personal injury case, where the lawyer can request and complete discovery largely without the client's interaction. In the typical divorce case, both parties will need to work with the lawyer to complete the interrogatories and request for production of documents requested by the opposing party. Failing to provide these documents



on time, or providing only some of the necessary documents, can prejudice your case in the short-term and long-term.

Unfortunately, some clients either refuse to provide the information that has been requested over and over and over again, or must be stalked and harassed into providing any information. Maybe the person that is stalling the process wants to remain married. Possibly this person is in denial and believes that dragging out the process will stop the divorce. In reality, the act of dragging one's feet on the discovery process often results in the overall divorce costing far more than would be the case if the information was provided quickly.

7. ROLLING OVER BECAUSE OF GUILT

We have already established that it is a bad decision to unnecessarily litigate a divorce, spending thousands on legal fees for items worth pennies. It's also a bad decision to fall on the opposite end of the spectrum, giving the other party more than they deserve because of guilty feelings. In some situations one party feels bad about how or why the relationship ended and feels compelled to give more than the other party deserves because of nagging guilt. Bad decision.

New Mexico courts do not care why the relationship fell apart. New Mexico is a "no-fault state," and one is entitled to the same distribution of assets and liabilities no matter who is "responsible" for the divorce — provided that marital funds were not misused.


In this same vein, never sign divorce papers without first consulting with an experienced attorney. In some instances, a person comes into my office after signing divorce papers on a whim, or signed the divorce papers due to emotional manipulation, without having the opportunity to first speak with an attorney. Although it is possible to set aside the divorce — for several reasons and if done within a certain period of time — the process of overturning the divorce will likely lead to the divorce costing significantly more than if the person simply consulted with an experienced attorney before signing the papers.

Do not let guilt lead you down the road of making bad divorce decisions. Do not give the other person more 401K, bank accounts, or any other assets because of guilt. Do not take more debt than you are required to assume because you feel bad about why the relationship ended. At an absolute minimum, always consult with an attorney before signing papers that could substantially affect the life that you will live after the guilty feelings have passed away.

8. WAITING FOR THE OTHER PERSON TO FILE FOR DIVORCE

There are many reasons why it's a bad decision to wait for the other party to file a Petition for Dissolution of Marriage. The first reason is that it gives the other party time to dump money out of jointly held bank accounts and/or rack up credit card debt before the Temporary Domestic Order is issued. As discussed above, the Temporary Domestic Order freezes the status quo and prevents either party from removing money from accounts. Filing first allows one to take the matter into their own hands and dictate when the Temporary Domestic Order is entered. This diligence prevents any changes in the status quo, such as changing locks to the marital residence, removing a party from insurance, joint accounts, removing children from the state, etc.

Another important reason for filing first is that it can help prevent the other party from claiming that an act of abuse has occurred, blind-siding one with both a Petition for Dissolution of Marriage *and* a Temporary Order of Protection that requires one to leave the marital residence, or prevents communication with one's children, based on claims of domestic abuse. Ultimately a claim of abuse loses weight and credibility when it is filed *after* one is served with divorce papers. As discussed above, when a temporary order of protection is granted, forcing a parent to leave the marital residence, this act of leaving the marital residence can create a "status quo" that leads to the other parent having a better chance of being awarded primary custody of the children.



A claim of abuse loses weight and credibility when it is filed after one is served with divorce papers.

Never wait for the other person to file first after they have left New Mexico. Many times parties will separate and one may move to another state. Maybe the person remaining in New Mexico still has the flame of love in their heart and is hoping that the parties will reconcile. No matter one's reason for failing to file first, once the person that left New Mexico has lived in the other state for six consecutive months, they have the potential to file a Petition for Dissolution of Marriage in that state.

“Court orders are not recommendations or suggestions — they’re orders. Court orders should be treated like they’re being screamed at you by a Drill Instructor that is foaming at the mouth.”

This act could force one to litigate the divorce in the other state, which could have laws benefitting the other party. Moreover, the divorce taking place in another state could result in the additional time and expense of requiring one to retain an attorney in the other state, and travel to that state for hearings and trial.

Additionally, if children are involved, and one allows the other person to reside in another state for six consecutive months with the children, that state then becomes the “home state of the children.” By becoming the “home state” the other state will then have jurisdiction (“power”) to decide any issues regarding custody, time-sharing, and child support. On the other hand, if one files in New Mexico first, the Temporary Domestic Order prevents the other person from leaving New Mexico with the children without express written consent. In other words, the Temporary Domestic Order will prevent both parties from removing the child from New Mexico, with New Mexico retaining jurisdiction over the parties.

9. NOT FOLLOWING COURT ORDERS

Court orders are not recommendations or suggestions — *they’re orders.*

Court orders should be treated like they’re being screamed at you by a Drill Instructor that is foaming at the mouth. Unfortunately, in some divorces one party chooses to march to their own drum, rather than following the court’s clear and unequivocal order. Maybe the person never read the court order and doesn’t even know that their actions are in direct violation of the order. Possibly the person believes that they have the “gist” of the order and have followed it “enough.”

No matter the reason, failing to follow a court order can have many negative effects. Best case scenario, the judge will demand a reason for violating the court order, and if they believe that the reason was in “good faith,” the judge might admonish the individual for failing to follow the order, and lecture the person about subsequent violations. Somewhere in the middle, the judge could award the other party their fees for bringing the violation before the judge’s attention. On the negative end of the spectrum, the judge could hold the party in contempt of court, order attorney fees, dramatically alter the status quo, and possibly even incarcerate if the violation is especially egregious.

Long story short — always follow court orders.

10. LOOSE LIPS SINK SHIPS

Divorce is similar to criminal law in one important way — anything that you say can and will be used against you. Every picture and post that you publish on Facebook, or on any other social media for that matter, could end up as an exhibit being introduced into evidence against your interests. The pictures of you partying with friends and posts about how drunk and/or high you were on Saturday night could destroy your chances of being awarded primary custody over your child.

The insulting and/or threatening text message that you sent, laced with four letter words, could be used by the Special Commissioner to find that an act of abuse occurred, leading to a permanent order of protection being entered against you.

Possibly the Special Commissioner is a rookie that doesn’t know that the term “permanent” is an illusory word, and enters the Order of Protection for ten years, rather than the typical order of six months to one year. After the Order of Protection is entered the person then discovers that the Order prevents the person from owning or possessing a firearm while the order is in place, thereby preventing the person from engaging in a job that requires a firearm.

Everything that you write on the internet, text messages, and email can come back to haunt you. For this reason I’ll finish this section with a few wise words.

When I was a wee little lad my mother imparted words of wisdom on me, and now is an appropriate time to return the favor — “if you don’t have anything good to say, then don’t say anything at all.”

CLOSING STATEMENT

F. Scott Fitzgerald once wrote:

*“Life starts all over again
when it gets crisp in the fall.”*

As I’m typing these words it is the middle of January — the coldest month in one of the coldest winters in recent memory. This year El Niño can be found blowing a wintry wrath upon the 505 that chills one’s blood and makes life feel like it has been frozen in time. But eventually night turns to day and one season transforms into the next. During cold and difficult times it’s easy to look through gray colored lenses — focusing on all of the negative aspects present in one’s life and losing sight of everything positive that life presents.

I began this eBook with a story about the horrible year that I experienced in the third grade when my parents divorced. Similar to winter — life felt like it was placed on hold.

What I conveniently failed to mention is that the days kept moving forward and that my parent’s divorce eventually lead to a new chapter in my life. The next year I moved to a new neighborhood that was feet away from my new school — Zia elementary school. The change caused a dramatic improvement in my life. I made new friends that I still see to this very day. My life got better after the divorce — not worse. As difficult as a divorce may be, even the divorce process itself could be worse.

A news report was recently released that ranks the seven worst states for requesting a divorce. Let’s compare New Mexico against these seven states, to give one a better perspective on the process as a whole, and how even the divorce process itself could always be worse.

1. Vermont	Couples are required to live completely apart during the mandatory six-month separation period. One year residency is required before the divorce is finalized, and there is a three month waiting period before the judge's approval is absolute.
2. Rhode Island	Rhode Island has a minimum processing time of 510 days. After filing the petition, there is a "cooling down" period of another five months.
3. South Carolina	One year separation before parties are allowed to file for divorce. Residency in the state is required, with a minimum of three months for couples when both live in the state. When only one party lives in South Carolina, the residency requirement increases to one year.
4. Arkansas	Filing fee of \$165. Minimum process time of 540 days. A mandatory 18 month period of separation, with any co-habitation during the 18 months resetting the mandatory time.
5. California	360 days to process the paperwork, a filing fee of \$395, and a mandatory six month "cooling off" period after filing.
6. New York	Filing fee of \$335 and a minimum processing time of 360 days. New York also requires a marital "break down" of six months.
7. Nebraska	Requires a filing fee of \$157 and 420 days to process the divorce. Additionally, a one year residency is required, followed by a two month "cooling off" period.



Now comes the time when New Mexicans can bask in the sunshine of living in the Land of Enchantment, closing this eBook with a positive page.

In comparison to the states listed above, the cost of filing for a divorce in New Mexico is only \$137, for *pro se* litigants. Unlike several of the states listed above, New Mexico does not have a waiting period or cooling off period. Nevertheless, similar to almost every other state in the nation, New Mexico has a jurisdictional requirement that demands one or both of the parties to live in New Mexico for a minimum of six months before a divorce can be filed in New Mexico. Provided that the six month requirement is met, either party to the marriage can file for a divorce at any time — and for any reason. Most importantly, in situations where the divorce is truly uncontested, the Petition and accompanying documents generally can be processed, signed by the presiding judge, and then filed by the parties in about one week.

Since I started this last section with a quote by F. Scott Fitzgerald, it's fitting to tie a bow on this eBook with a few more of his inspired words:

*"It's never too late to be whoever you want to be.
I hope you live a life that you're proud of, and if you find that
you're not, I hope that you have the strength to start over."*

ABOUT THE AUTHOR



Matthew Legan Sanchez was born, raised, and educated in Albuquerque. Mr. Sanchez specializes in a wide range of family law issues affecting people all across New Mexico.

With over a decade of legal experience in New Mexico, Mr. Sanchez is the attorney that you need standing by your side and fighting for your legal rights. Mr. Sanchez has represented hundreds of hard working New Mexicans, protecting the assets and people that they hold dear.

Don't place your life and case into the hands of an inexperienced or ineffective attorney. You and your family deserve an attorney that has earned a reputation for protecting families, assets, and making the legal process as painless as possible.

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*More information and reading material
can be found at 505sanchez.com.*