

Law Access New Mexico

Making justice simple, easy, & accessible for all New Mexicans

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I want to get a divorce in New Mexico

What do I have to do to begin the divorce process in New Mexico?

- 1) **Establish residency** – Establishing residency means that either you or your spouse must have lived in New Mexico at least six months before filing for divorce, regardless of where you were married.
- 2) **Complete the paperwork** - Some courts have a "divorce packet" that can be purchased for a fee from the District Court Clerk's Office. If the court does not have a packet for sale, then attorneys at Law Access New Mexico may be able to help prepare the divorce paperwork for you. Call Law Access New Mexico at 1-800-340-9771 to complete an intake and find out additional information.
- 3) **Pay the filing fee** - Before divorce papers can be filed, a fee has to be paid to the District Court. If you cannot afford the fee and other costs, you may ask the District Court for "free process." Depending on which judicial district court you file with, either the entire amount or a portion of the fee and costs may be waived. The District Court Judge makes the final decision as to whether you qualify for free process.
- 4) **Certify service of process** - Once you complete the paperwork in the packet and file the paperwork with the District Court, your spouse must be given the necessary papers by someone other than yourself who is over the age of 18 and not a party to your case. The person who gives (or "serves") your spouse the papers must complete a form included in the divorce packet which essentially states that he/she gave your spouse the papers. Make sure that the person serving your spouse lists all of the documents that your spouse is served with. That form must be filed with the District Court. It is okay for you to file the form; however, the person who served your spouse must complete the form.

What does my spouse have to do after he/she receives the Petition for Dissolution?

Once your spouse is served with the divorce paperwork, your spouse has thirty (30) days to file a Response (or "Answer") with the court. Whether your spouse agrees with what you requested or not, your spouse needs to file an Answer. The Answer is your spouse's chance to tell the court his/her side of what you have said in the Petition.

If your spouse agrees with everything you have said in the Petition for Dissolution and if there are no issues to be decided by the District Court (such as how the property should be divided or child custody), then you and your spouse can sign a Marital Settlement Agreement and prepare a

Final Decree (also part of the divorce packet) for the court. The Marital Settlement Agreement must be signed and notarized by both you and your spouse and then filed with the District Court. The divorce will often be finalized in a matter of days; however, that depends on where the divorce was filed.

What happens if my spouse does not file an Answer or Response?

If after 30 days from receiving the Petition, your spouse has not filed an Answer or Response, you may ask the District Court for a Default Judgment. In order to do that, you have to prove that you have filed all of the necessary paperwork, including proof that your spouse was given the Petition for Dissolution. If the District Court gives you a Default Judgment, usually everything you asked for in your Petition for Dissolution will be given to you. Default judgments are not granted if your spouse convinces the court that he/she had a good excuse for not filing an Answer or Response within 30 days.

What is community property?

1. Real estate bought during the marriage and maybe some property bought before the marriage but used for the community.
2. Things bought during the marriage by either you or your spouse (regardless of whether you or your spouse paid for or used the item). Even if title to the item is not in both your name and your spouse's name, New Mexico law assumes that the item is community property.
3. Income that you or your spouse earned during the marriage.
4. Many retirement, pension, and disability benefits.

What is separate property?

1. Property that you owned before you were married and that you have kept in your own name throughout the marriage.
2. Property you inherited or received as a gift, either before or after you were married.
3. Property you and your spouse have agreed is separate property.
4. Property you or your spouse gets after legally separating but before divorcing, under certain circumstances.
5. Certain veteran's benefits.

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