

New Mexico does not require notice to the courts if you have primary custody and leave the state with your children. You are required, however, to keep the child's other parent notified of the child's whereabouts. It may be necessary to work out new visitation periods to accommodate the distances involved. Be reasonable. It is in the best interest of your children that they have maximum contact with both parties.

Child Support

The New Mexico statutes provide a schedule that guides the court in this decision. You can see the statute, NMSA §40-4-11.1, at <http://www.nmlegis.gov/lcs/statutes.aspx>. The amount of child support is usually based upon this schedule unless there are unusual circumstances which require the judge to order some lesser or greater amount (such as a physically handicapped child that requires specialized care). The monthly amount is determined by:

- The monthly take home pay of both parties
- Each parties' monthly living expenses;
- Other bills and obligations which either party is responsible for paying;
- The number of children, their ages and their particular needs.

If one parent fails to pay support, the other parent is NOT entitled to deny visitation rights. Likewise, if one parent wrongfully denies visitation, the other is not entitled to withhold support. In addition, you should consult with Finance about the requirements for receiving BAH with the dependants rate after your divorce.

To estimate child support payments, use the following site to calculate: http://www.nmcourts.gov/cgi/prose_lib/

Alimony, Support or Maintenance

New Mexico calls alimony **spousal support**. The purpose of spousal support is to retain the standard of living the dependent spouse enjoyed during the marriage. It can be awarded to either husband or wife. Where both parties are employable and have similar earning capacity, spousal support is usually not awarded. New Mexico sets no limit on spousal support awards. Support generally ceases when the supported spouse remarries, **NOT** when the supporting spouse remarries. Death of either spouse stops the support obligation. Spousal support may be awarded for a "rehabilitative" period to allow one party to finish his or her education or vocational training, or to allow adjustment to being a single parent. The factors New Mexico courts consider in awarding spousal support are:

- The age, health and needs of the spouses;
- The duration of the marriage;
- The current and future earning capacities of the spouses;
- The standard of living established in the marriage;
- Good faith efforts to maintain employment or become self-supporting;
- Amount of property awarded to each spouse;
- The nature of the spouses' assets and liabilities;
- Income produced by property owned by each spouse; and
- Any agreements between the spouses regarding divorce or separation.

Name Change

After a divorce, women often wish to use a former last name or adopt a completely new last name. The District Court that issues the divorce decree will usually issue an order allowing a person to use a name which is different than the person's married name. The woman must petition (request) the court for a name change. In New Mexico, a person must file notice before the petition. The notice of application for a name change must be filed in a newspaper in the county where the divorce was filed and where the applicant lives at least once a week for two consecutive weeks. The applicant must provide the court with proof of publication of this notice. For more information, refer to the *Change of Name*, available with other Preventive Law Series handouts, in the 49 FW Legal Office.

Military Benefits

MPF can answer questions about military benefits. AFI 36-3026(I) (20 Dec 02) *Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel* governs rights to base privileges. Military benefits are tied to a military ID card. Generally, the non-military spouse must turn in the ID card when the divorce is final and all benefits cease. A former spouse is entitled to an ID card and commissary/BX privileges if she or he satisfies the 20/20/20 rule (married to military member during at least 20 years of member's retirement-creditable service) and is not remarried. Former spouses qualify for full medical benefits if they satisfy the 20/20/20 rule, never remarry, and are not covered by an employer-sponsored health insurance plan. Family member children are always entitled to military benefits until they turn 21. See the *Uniformed Services Former Spouses' Protection Act* pamphlet in our office or ask a legal assistance attorney for more information.

Your Lawyer's Role

A lawyer's duty in a domestic divorce case is to inform you of your rights and obligations and assist in negotiating an equitable settlement. If a settlement cannot be reached, your attorney's obligation is to prepare your case for trial and to represent your interests in court. The attorney should advise you of all settlement negotiations and whether a proposed settlement is equitable and in accordance with what the law provides. It is best to have your attorney represent you in all negotiations with your spouse. Never sign any documents without discussing them with your attorney.

DISCLAIMER:

The information contained in this pamphlet is meant for the sole use of active duty members, retirees, their families, and other persons eligible for Legal Assistance from the Holloman AFB, NM, 49 WG/JA Office. The information is general in nature and presented to assist eligible persons in preparing for a Legal Assistance appointment with an attorney in the legal office. It is not an all-inclusive guide to federal or New Mexico law. It is not a substitute for legal advice from an attorney regarding individual situations. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general statements of background information presented here without discussing your specific situation with an attorney prior to taking any action in court. (As of January 2009)



DIVORCE, SEPARATION AND CHILD SUPPORT IN NEW MEXICO

Introduction

Before deciding on a divorce or separation, seek the help of a professional, such as a chaplain, psychologist or marriage counselor. They may be able to help you save your marriage by providing a forum for working through your difficulties. Even when counseling doesn't work, it helps lay the groundwork for your post-divorce relationship. The organizations at Holloman AFB that provide free counseling services for couples experiencing marital difficulties are:

The Base Chapel	572-7211
Family Support Center	572-7754
Mental Health	572-5676

Divorce, Legal Separation and Annulment

Divorce is the legal procedure which ends civil marriage. When a husband and wife agree to the divorce terms, it is *uncontested* or *amicable*. If the court thinks that one spouse does not agree to the divorce terms or doesn't want to divorce, the divorce is contested. In a contested divorce, the court determines the appropriate alimony, child custody, and visitation terms. This process takes longer than uncontested divorces. If contested, each spouse should hire an attorney. Contact the New Mexico Bar Lawyer Referral Service (1-800-876-6227 or 505-797-6066) if you need help finding a lawyer.

Formal separation, or **legal separation**, is **NOT** a divorce. It is a court-ordered arrangement for a husband and wife to live separately. Legal separation is a temporary arrangement that often precedes divorce. When one party wants a separation but the other party won't sign a separation agreement, legal separation is appropriate. A court action may be filed for separation, support and maintenance if the spouses are permanently separated and not living together. All of the issues resolved in a divorce such as custody, child support, alimony and property allocation are also resolved in a legal separation. You can't remarry while legally separated. Some spouses separate informally live apart without court involvement. If you do this, consult an attorney so you don't lose certain property or child custody in a later divorce case.

Annulment is different from both a legal separation and divorce. Annulment does not end a marriage. Rather, it says a marriage never legally existed. New Mexico grants annulments when one or both parties were under 18 or when the parties are close blood relatives.



DIVORCE, SEPARATION AND CHILD SUPPORT IN NEW MEXICO

A lawyer should advise you whether legal separation or divorce is appropriate. Many issues arise after divorce that people, in haste to get out of their marriages, do not consider. For example, if you and your spouse both leave the military, who will pay for health insurance for the children? Bottom line, it is best to consult a lawyer.

[Grounds for Divorce and Legal Separation](#)

In New Mexico you must have a legally sufficient reason to be divorced. This reason is called the grounds for divorce. There are four statutory grounds for divorce in New Mexico: incompatibility, cruel and inhumane treatment, adultery, and abandonment. Incompatibility exists when discord or conflict of personalities thwarts the legitimate ends of marriage and prevents reasonable expectations of reconciliation. In practice, most divorces are granted for reasons of incompatibility. The testimony of either party is sufficient to establish incompatibility. Either party may request a divorce without the consent of the other.

The only ground for **legal separation** is when there has been a permanent physical separation of the spouses. Proceedings for division of property, disposition of children or alimony may be instituted if parties are permanently separated and no longer live together.

[Residency and Costs](#)

A New Mexico district court has jurisdiction to decree dissolution of marriage when at the time of the filing of the petition either spouse has (a) resided in New Mexico for at least six months immediately preceding the date of the filing, and (b) has a domicile in New Mexico.

In other words, to file for divorce, you must have lived here six months. The filing fee for an uncontested divorce is \$137 (money order or cash). If the non-filing spouse doesn't waive service of process, there may be a fee for a process server to serve them. Any attorney's fees would vary depending on the case's complexity.

[Filing for Divorce](#)

A couple may seek a divorce in New Mexico without the assistance of an attorney if both agree to the terms of custody, property distribution and spousal support in the divorce decree. You must file specific forms with the Clerk of the 12th Judicial District Court. You must file one original and two copies. You can obtain these forms from the following four places:

Otero County Courthouse (575-437-7310)
1000 NY Avenue, Room 209
Forms cost \$8-17. Packet B is for Uncontested Divorces w/
Children. Buying the forms from the courthouse is the
safest way to get all the right forms you need.

Alamogordo Public Library (575-439-4140)
920 Oregon Avenue, Alamogordo (copying fees apply)

NM Supreme Court Website,
<http://www.supremecourtlibrary.org/>

An uncontested or amicable divorce will not be granted if there is disagreement among the parties on the terms in the divorce decree. If you can't agree on the terms of your divorce, then you need to hire a civilian attorney. **NOTE:** An attorney can ethically represent only one spouse. If both spouses want a lawyer, both have to hire one.

If there are children involved, New Mexico requires the parents to take a parenting and education class. You can take a civilian class (\$50) or one on base (free). For on-base, contact Family Advocacy at DSN 572-7061. For off-base, call (575) 443-1086. A divorce hearing will usually not be granted until both parents take the class. If you petition for a waiver of the class requirement, the judge may grant it for good cause, [such as your children being 18](#).

[Who Decides My Case?](#)

A judge hears divorce, child support, and custody cases in New Mexico. You may agree to a settlement before trial through arbitration or mediation. You don't need a lawyer for arbitration or mediation. Arbitration is informal and faster than court proceedings, but it's not free. During the divorce, parties may seek an arbitrator. Alternatively, the judge may appoint an arbitrator or special master to help with complex property division. If the parties agree to be bound by the findings of the arbitrator, those findings become part of the final divorce decree. Mediation is commonly used in conjunction with arbitration to narrow areas of dispute. The mediator visits each party separately in an attempt to find common ground between them.

While you may agree to custody, visitation and support, the judge ultimately determines what is in the best interests of the child and the competency of the parents. If he thinks it's in the best interests of your children, the judge will prefer to adopt the agreement you made with your spouse. Reach an agreement with your spouse if you can since it's easier to live with agreements you make than with the decisions a judge makes for you.

[Property Distribution](#)

Community Property is property acquired by either or both spouses during marriage which is not separate property. Each spouse has a 50% ownership interest in all community income or community assets acquired during marriage. Upon divorce, the court divides the property in a way it deems fair and equitable, preferably by dividing it fifty-fifty if fair. If an equal dissolution would prove unfair to one party, the court in its discretion may consider all relevant facts and circumstances to arrive at an equitable dissolution. There is a rebuttable presumption that property acquired during marriage is community property.

Separate Property is all property that each spouse owned prior to the marriage. It also includes all property inherited by one spouse as well as gifts made to one spouse during the marriage. The law requires that separate property be identified and its separate character maintained. If such identification cannot be proved then the evidence of separate property is insufficient to rebut the presumption of community property.

To determine whether property is community or separate, examine when the property was acquired. If it was acquired before marriage, it is that spouse's separate property. However, there may be some reimbursement issues. For example, a spouse who was purchasing a vehicle before he got married and thereafter used community property to make payments on the vehicle, may have to reimburse his ex-spouse for a portion of those payments. You should address these issues with your attorney. The law requires both parties to make a complete disclosure of all assets and to account for any assets disposed of during the separation.

Property agreements or court-ordered distributions of assets usually address division of liability, alimony, health insurance, life insurance, child support, visitation, medical insurance, medical expenses and college costs. Property settlements and spousal support awards are interdependent, so an increase in one may cause a decrease in the other. You can ask the court to approve the property settlement agreement which you and your spouse made. The court usually approves your agreement if it is fair.

The division of personal property (personal effects) is subject to great misunderstanding and disagreement. Each party is entitled to his or her own personal belongings such as clothing, jewelry and personal effects. When you believe the separation is going to be permanent, it is wise to have the personal property divided and exchanged. Failure to do so may lead to misunderstandings over destroyed, damaged or misplaced items.

[Community Debts](#)

Both spouses are liable for community debts. There's a presumption that all debts incurred during the marriage are community debts. Generally, one spouse may incur a community debt even though the other spouse does not participate in the transaction. A separate debt is formed during marriage when the creditor has actual knowledge before the transaction that the debt is a separate debt. The parties may agree as to the allocation of responsibility for the debts, or the court will allocate them in accordance with law. Creditors, however, may not be bound by the parties' or courts' allocation of responsibility and may choose to seek payment from the former spouse in event of default. You should supply your attorney with a complete and accurate list of all obligations.

[Custody of Children](#)

Custody is one of the most difficult decisions a couple faces during divorce. The New Mexico courts usually recognize a custody agreement between husband and wife. If they cannot agree, and the child is under 14, the court will award custody under the "best interests of the child" standard. If the child is 14 or older, the court will consider the child's wishes regarding custody before making the custody award.

In practice, New Mexico courts award joint legal custody with physical custody to the parent best able to meet the child's physical, emotional and other needs. The idea is to maximize the child's contact with each parent consistent with schooling and the emotional need for a stable home life. In determining whether joint legal custody is in the child's best interest, the court will consider (this list is not all-inclusive):

- The wishes of the child's parent or parents as to custody;
- The wishes of the child as to custodian;
- The interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interest;
- The child's adjustment to home, school and community;
- The mental and physical health of all individuals involved;
- Geographic distance between the parents; and
- Willingness or ability of the parent to communicate, cooperate or agree on issues regarding the child's needs.