

GETTING A DIVORCE: STAGE 3 INSTRUCTIONS

THIS PACKET CONTAINS:

- **Advisory:** Please Read This Carefully!
- **Step by Step Flowchart:** A step by step guide with notes and explanations for the information required in each document and what to do next. This includes instructions for:
 - **Marriage Settlement Agreement**
(Parenting Plan Instructions are in a separate document)
 - **Final Decree**

You can find all the Statutes and Forms listed in these instructions at:

<http://public.nmcompcomm.us/nmnxtadmin/NMPublic.aspx>

Follow the instructions and you can review all statutes and rules.

Statutes are noted, or cited, in the following form: §40-1-1 NMSA 1978

Forms are cited in the following form: Form 4A-101 NMRA

DISCLAIMER: This instruction set is for informational purposes only. Every effort has been made to ensure that the information available here is correct and up to date. However, this document is not a substitute for legal advice, and nothing contained in the site should be construed as legal advice. If you require legal assistance you should CONSULT AN ATTORNEY. The 7th Judicial District Court of the State of New Mexico is not liable for any errors or omissions in the information provided.

ADVISORY

Please read the following carefully!

When you represent yourself, **YOU ARE RESPONSIBLE FOR YOUR CASE!** You are the one responsible for making sure the paperwork is filled out correctly. You are responsible for making sure the other party has NOTICE. You are responsible for making sure that all paperwork is filed by the deadlines. You are responsible for requesting **AND** attending all hearings.

ALWAYS USE YOUR CASE CAPTION. Any document you file with the court requires a case caption. The caption is supposed to look like:

STATE OF NEW MEXICO
COUNTY OF SOCORRO
SEVENTH JUDICIAL DISTRICT COURT

John Doe,
Petitioner,

v.

D-725-DM-_____

Jane Doe,
Respondent.

The caption has to have the name of the court, the names of the parties and the case number for it to be correct. If it is wrong it will not be filed, or may be filed in the wrong case, and you will have to correct it before the court will file it or act on it.

Please read and follow all the instructions. Take your time. These are legal documents. They will affect your life. What they say is what the court will enforce. Mistakes have consequences.

IF YOU DO NOT UNDERSTAND SOMETHING OR YOU ARE NOT SURE WHAT YOU SHOULD PUT IN YOUR DOCUMENTS, PLEASE CONSULT AN ATTORNEY!

Need legal Assistance? The New Mexico State Bar website contains a list of resources for legal assistance and can be found at:

http://www.nmbar.org/nmstatebar/Directory/Other_Legal_Service_Providers/Nmstatebar/For_Public/Other_Legal_Service_Providers.aspx

The 7th Judicial District offers assistance in what documents you need to file in your case. Contact the court clerks for the date of the next clinic or how to arrange an appointment with the 7th District Staff Attorney

<p><u>Step 1</u></p> <p><i>Final Documents</i></p> <p>Form 4A-300 NMRA</p>	<p>Once the Marriage Settlement Agreement (MSA), Parenting Plan if you have children, and the Final Decree are signed by both parties and the Judge you will be divorced. The MSA and other documents then become contracts that are binding on both parties. The basic instructions are listed in Form 4A-300 NMRA.</p> <p>The MSA covers division of property, division of debt, any cash payments one party pays to the other for the settlement of the asset/debt division, and spousal support. It is the agreement of how you are dividing everything up. It is an agreement to assist the other party by signing the necessary documents to carry out the division. It contains a statement that you know what the agreement says, that it is true and that you know there are consequences if you lied.</p> <p>The Custody Plan and Order is the next document. It specifies who has custody, what type of custody, who has visitation when, who pays child support, who provides health insurance,...</p> <p>The final Document is the Final Decree of Dissolution of Marriage. There are two possibilities: 1.) Uncontested where both parties agree to everything in the MSA and Custody Agreement, or 2.) Contested where some term or terms are not agreed to.</p> <p>For Uncontested proceed to Step 2. Otherwise, go to Step 3.</p>
<p><u>Step 2</u></p> <p><i>Uncontested MSA and Parenting Plans</i></p> <p><i>Filing for Final Decree</i></p> <p>Form 4A-214 NMRA Form 4A-215 NMRA Form 4A-301 NMRA Form 4A-305 NMRA Form 4A-306 NMRA</p>	<p>IF both parties agree on all terms in the agreements the documents may be submitted to the Court. If the judge reviews all the documents and signs the Final Decree your divorce will be final and the terms of the MSA and other documents will be enforceable.</p> <p>If there are no minor children you will need a completed Marriage Settlement Agreement, Form 4A-301 NMRA, (MSA), and a completed Final Decree, Form 4A-305 NMRA.</p> <p>The first section in the MSA is for property. There are two main types of property, real property and everything else. The property section starts with section A, personal property. In the Stage 2 forms there are 2 forms that will help with this section. They are Forms 4A-214 and 4A-215 NMRA, the Community and Separate property and liability schedules. The MSA requires a Personal Property List be attached and gives two choices: the property is already divided, or we will divide it by the date specified.</p> <p>Next is the section for Real Property. Real property is defined as land and immovable property on land such as buildings. If you own the home you have been living in or own other real property there are places to explain what is to be done with the property. If there is real property other than the home the form requires that property to be listed in Attachment B.</p>

Step 2
(Continued)

***Uncontested
MSA and
Parenting
Plans***

***Filing for
Final
Decree***

Form 4A-214
NMRA

Form 4A-215
NMRA

Form 4A-301
NMRA

Form 4A-305
NMRA

Form 4A-306
NMRA

§40-4-7
NMSA 1978

Section C of the MSA covers bank and investment accounts and how the parties will divide them up. Sections D and E are where you will list retirement accounts and vehicles. Section F is for any property that is not listed already, such as intellectual property, businesses, royalties, or anything else that is not listed in any section above.

The next section of the MSA is “Debts We Are Dividing.” Form 4A-300(B)(2) NMRA explains that “[t]his is where you describe how you will divide your debts,…” Again, if you filled out the Community and Separate property and liability schedules completely you will have a good start on this part. Like community property, both parties share the community debt. §40-3-9 NMSA 1978 defines community and separate debts. Unless the debt falls into one of the 6 categories of separate debt, or is a gambling debt, it is a community debt.

The Cash payment section of the MSA is where the balance is made. Once the property and debts are added up, any imbalance is to be made in a cash payment. As Form 4A-300(B)(3) NMRA says, “This amount will be included in the Final Decree of Dissolution of Marriage as a judgment in favor of the party who is to receive the cash payment. This judgment may be enforced as provided by law.”

Next is the Spousal Support section of the MSA. This can be mandated for a number of reasons, and can be done in a number of ways. These are specified in §40-4-7 NMSA 1978. §40-4-7(B)(1) NMSA 1978 lists 5 possibilities. Paragraph (E) of the statute gives a list of 10 considerations for the Court in making an award of spousal support. The form gives you 4 possibilities.

The final sections of the MSA are statements that both parties need to read very carefully. Section V is “Other Statements by Parties.” Like any contract, read all the fine print. There may be criminal or civil penalties for false information.

The Custody Plan and Order, Form 4A-302 NMRA, also needs to be filled out very carefully. Please see the instructions for filling out a parenting plan. Please keep in mind that the needs and concerns of the children are the most important consideration here. If you want help and/or advice the instructions please consult an attorney or one of the organizations listed in the “legal Resources” links in these instructions.

If either party does not agree to everything, it is contested and you need to follow the procedures for a contested divorce.

Step 3

***Contested
MSA and
Parenting
Plans***

***Filing for
Final
Decree***

Form 4A-300(E)(2) NMRA states that if either party disagrees with any of the terms in the MSA, (or the Child Support Obligation and Order or Custody Plan and Order in the event there are minor children), the forms cannot be submitted to the Court and you should request a trial. The Form refers you to Form 4A-200(E)(1) NMRA and states that you should use Form 4A-206 NMRA to request the hearing.

Forms 4A-204 and 4A-205 NMRA are the forms for a referral to Mediation. The 7th District Court's website has information about mediation. Because you have to have agreement for the MSA and other documents if you have children, requesting mediation can be one possibility for coming to an agreement. What is said in mediation is confidential. That means that any information disclosed in mediation stays in mediation. Of course there are exceptions, and the exceptions are explained in §44-7B-5 NMSA 1978.

Also, if there are minor children from the marriage and the custody and visitation is being contested, or you cannot come to an agreement, there is a packet for Contested Custody and Visitation on the 7th District's website. As always, if you have questions, *CONSULT an ATTORNEY!*

The idea is simple enough. The MSA is essentially a contract, and any litigation after the divorce is finalized will be for enforcement or modification of terms in the MSA. In order to finalize the divorce all the terms of the MSA have to be agreed to so that there is an enforceable contract in the event there are any further disputes. If the parties cannot come to an agreement the Court will set the terms. This is described in Form 4A-300(E)(2) NMRA. Both parties are to fill out the forms and bring them to the hearing. The instruction goes on to say that "Once the Court has decided the terms of the MSA (and the Custody Plan and Order and Child Support Obligation and Order if you have children), it will sign and file a Final Decree of Dissolution of Marriage, and you will be divorced from the other party;" So if you cannot agree, the Court will decide the terms for you.

More information is also available for getting help coming to an agreement in the Stage 2 Instructions for the 7th District, as well as links to legal resources for getting advice.