

# ALBUQUERQUE DIVORCE LAWYER BLOG

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## **New Mexico Marital Settlement Agreement is Final, Binding and Very Hard to Modify**

As with most legal disputes, a [divorce](#) in New Mexico can involve a lot of paperwork. Many of these must be filed with the court to have legal effect. Documents that are filed with the Court asking for various types of relief are typically called pleadings and the instructions from the Judge are called orders.

One of the most important pleadings to be filed in a divorce is called a [Marital Settlement Agreement](#), often called an MSA for short. An MSA is an agreement between the parties to a divorce in which they identify their separate and community property and debts and agree who is going to keep what property and be responsible for what debts.

Not every divorce case will require an MSA. For instance, cases that never settle and require full blown trials will result in an [order dividing property and debt](#) from the court. But trials are fairly rare in divorce cases so the vast majority of New Mexico divorce cases will be resolved, at least in part, by an MSA.

As implied by the use of the word Agreement in its title, an MSA is a contract between the divorcing parties and is as binding and enforceable as any other contract. However, unlike other types of contracts, an MSA is often entered as an order of the Court when it is merged with the Court's order finalizing a divorce. This final order is typically called a Final Decree of Dissolution of Marriage, or just a Final Decree.

This merger means that the MSA is no longer just a contract between the parties, but is a judgment of the district court, which means violations may be punishable by finding of contempt and that amounts to be paid between the parties may be subject to collection just like any other debt. What is important to remember when negotiating an MSA is that, because MSAs are contracts and orders of the Court, they are very difficult to change after they have been entered and approved by the Court, unless both parties agree to modification.

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The New Mexico Court of Appeals recently addressed the issue of modification of an MSA that had been merged with a Final Decree in the case of *Gordon v. Gordon, et. al.* 2011-NMCA-044. In the Gordon case, the parties entered into an MSA, which was merged with a Final Decree and approved by the Court. Creditors of the parties then intervened in the case in an attempt to collect debts owed by the divorcing parties. In response to that collection attempt, the parties argued that certain assets addressed by the MSA were exempt from collection based on the statute governing the collection of debts.

The District Court agreed with the parties and concluded that the creditors could not collect the debts. The Court of Appeals found that by finding the debts to be exempt, the District Court had effectively modified the Final Decree and held that such modification is allowed within 30 day of entry of a Final Decree. The Court held that, after the 30 day period for reconsideration has lapsed, a Final Decree, and the MSA incorporated therein, can only be modified under the specific circumstances allowed by New Mexico Rule of Civil Procedure 1-060 (B). Rule 60 modification is narrow and limited to things like fraud or misrepresentation by a party or a mistake made by the parties.

One of the primary lessons to learn from the *Gordon* case is that the Courts have limited ability to modify Marital Settlement Agreements once they have been merged with a Final Decree. It is extremely important for a parties to a divorce action to consult an experienced [divorce attorney](#) before entering into an MSA in order to ensure that they fully understand their rights and responsibilities under that agreement, because it will be very difficult for an MSA to be changed if one party changes their mind.

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