

ALBUQUERQUE DIVORCE LAWYER BLOG

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Lack of Common Law Marriage in New Mexico Creates Property Division Challenges in Breakup of Unmarried Couples

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As the song says, breaking up is hard to do and that adage is true in any situation. It can be even more difficult when the parties who are breaking up have children or own property together. The New Mexico statutes governing [child custody](#) and [child support](#) provide that the same rules apply to the children of married couples and unmarried couples. However, given that the state of New Mexico does not recognize common law marriage, [dividing property and debt](#) can be very difficult for unmarried couples.

With respect to custody, when an unmarried couple breaks up, one of the parties will generally need to file what is called a parentage action in order to formally adjudicate the maternity and paternity of the parties' child. The parentage action should result in the court entering a parenting plan that provides the details of custody, timesharing and child support. This sounds simple and it can be when the parties' break up is amicable, but, of course, there are countless complications that can arise when the parties dispute custody. One common complication arises when the parties who are breaking up are the biological parents of one child, but have also been raising a child from one party's previous relationship. In other words, when one of the parties has been essentially acting as a step-parent to a child, although the parties aren't married. Upon a break up, the non-biological parent may want to establish visitation with their de facto step child, but don't technically have any rights to visitation because they are not a parent. However, there is New Mexico case law protecting a right to visitation, not full custody, for parties that have developed a close relationship with a child as long as that visitation is in the child's best interest.

In turn, division of property and debts can be very difficult when parties aren't married. Because the rules of community property do not apply to unmarried couples, the property will generally be kept by

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the party whose name is on the property, even if both parties paid for the property. Similarly, in the case of debts, both parties may have contributed to incurring a debt (for example, both making charges on a credit card) but the debt will generally remain the responsibility of the person whose name is associated with the loan or account. This division can get even more complicated when the parties have actually put both names on a piece of property or debt. If they can't agree on a division, they may have to file a separate civil suit using theories of contract or unjust enrichment. Further, if the parties aren't married, neither party is entitled to spousal support or alimony. So, while the same child support rules apply to unmarried couples, the additional financial support sometimes awarded in divorces does not apply to unmarried couples.

Again, ending a relationship is hard no matter the circumstances. However, when there are children or substantial assets and debts involved, consulting an experienced family law attorney can help protect the rights and enforce the responsibilities of the parties in a break up. This protection and enforcement is especially important when parties aren't married because the principles of community property do not apply.

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