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### **Division of Property and Debt in Cohabitation Split**

In New Mexico, as around the country, more and more couples are choosing to live together without being married. There can be a variety of emotional, financial and practical reasons for choosing not to marry. Whatever the reason, when these relationships break up, it can feel very much like a divorce. However, there some key differences in the way the law of New Mexico is applied to the break up of a marital relationship versus a relationship between unmarried parties.

If the co-habiting parties have children, the court will apply the same principles as it would in a divorce to determining what sort of child custody and time-sharing arrangement is in the children's best interest. This type of case that is filed is called a parentage action during which the court will evaluate sole versus joint legal custody or decision-making for the children, as well as time-sharing, which is also called physical custody and determines how much time the child spends with each parent.

Likewise, child support is treated the same whether the parents were married or not. Child support will be determined in accordance with the statutory New Mexico Child Support Guidelines based on the gross income of both parents. The Guidelines are applied uniformly to married and non-married parents.

The big difference between a co-habiting couple and a married couple breaking up is that the principles of community property do not apply to co-habiting couples. There is no common law marriage in New Mexico as in some states.

Because the community property laws do not apply in this setting, the division of property and debt will not necessarily be equal. If the parties cannot agree to a division, then a separate civil suit may be necessary to apportion all of the debts and assets.

The civil suit for the division of property and debt is equally akin to the dissolution of a partnership as a marriage. This division can get very complicated, especially if the parties have been co-habiting for a long period of time or have accumulated substantial assets and debts. Thus, it might be wise to consult an attorney to determine how best to protect your rights and your property in the aftermath of a break up.

#### **DISCLAIMER**

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