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No Common Law Marriage in New Mexico

Unlike some other states, New Mexico does not recognize common law marriage. Thus, there is no need for a divorce action when the parties separate. However, there may still remain issues related to a division of property and debt of the parties.

This division of property and debt will not take place in the New Mexico family courts as these courts will lack jurisdiction due to the lack of a legal marriage. Instead, the issues will be addressed in civil court.

The idea behind the doctrine of common law marriage is that if a man and woman have lived together and held themselves out to be man and wife for a certain period of time (usually several years) the courts will view the parties as married and grant them the same benefits and responsibilities as couples who get married in a formal ceremony.

The issue of common law marriage often comes up when parties have cohabitated (lived together) for a long period of time and then they break up. Often, the parties have purchased property together or co-signed for loans for each other and they must determine how to divide those assets and debts. In New Mexico, the rules of family law, including the principal of community property, will not apply unless with parties were formally married. Thus, the rule that both parties have an equal interest and responsibility for all property or debts acquired during the marriage does not apply to couples that cohabitate without being married. Likewise, there can be no award of alimony or spousal support in New Mexico in co-habitation cases.

On the other hand, where children are born to the relationship, each parent is responsible for the support of the children, and child support will remain an issue even in the absence of a marriage. In addition, the parties will still need to create a parenting plan to for child custody and time-sharing of the children.

Generally, any debt or property held in a party's sole name will remain their debt or property. However, problems may arise when it comes time for the parties to divide assets or debts held in both of their names, or when an asset is held in only one party's name but the other party has paid a substantial portion of the cost of that asset. In these situations, the parties may still turn to the courts for a ruling as to who gets what asset, but that suit would need to be filed in the general civil court, not the family law court.

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These situations can be very difficult, not just emotionally, but legally because different theories of law may apply to various debts and assets. Given the complications presented by this type of break-up, it is a very good idea for any party in such a situation to consult an attorney about his or her rights and responsibilities and the options for protecting those rights.

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