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## **Default Divorces: The Last Resort in New Mexico**

Family law may be the most emotionally fraught area of the law. Parties to a divorce, paternity, child custody or child support action may be dealing with major changes to the most basic aspects of their family and financial lives. This level of emotion can lead parties to simply refuse to respond to documents filed by their spouse or the parent of their child. Of course, sometimes parties fail to respond for other reasons, but whatever the cause the result can be a real pain to deal with for both the courts and the party filing the court action.

When a party fails to respond to an action filed with the court, the party who filed the action can ask that the court grant what is called a default order of dissolution of marriage. As part of the application for a default order, the party seeking the relief of the court must first show that the non-answering party received proper notice through service of process, and has still failed to respond.

Defaults are not favored in the courts. This is particularly true in family law matters. The default process can be very time consuming process. Even with proof of service, the court may order that the party seeking relief publish notice in the newspaper to make sure that the non-answering party had an ample opportunity to respond.

Even then, the court may require that the filing party come to a hearing and tell the court all of the steps taken to try to reach the other party. If the court is satisfied that good faith steps were taken to apprise the non-answering party of the court's proposed action and the non-answering party still refuses to answer, the court will most likely issue a default order granting the filing party whatever relief it has sought from the court, as long as that relief is allowed by law.

Then comes the bad news. Default orders in family law proceedings often get set aside. Again the courts do not favor defaults. Default judgments are generally disfavored in New Mexico because they deny the non-responding party his or her basic constitutional right to notice and an opportunity to be heard. They are even more disfavored in family law cases due to the issues that are involved such as a child custody and child support which are by definition modifiable. Thus, even when the default order is upheld, much of the order may be modifiable anyway.

It is best to avoid the default order if at all possible. The attorney fees and costs can be significant and in the end, the order may be set aside or modified. However, if it is unavoidable then it is imperative that all of the proper procedural steps be followed when obtaining a default order. To avoid missteps, it is important to seek the advice of an experienced divorce and family law attorney.

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