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Legal Counsel or Not, New Mexico Marital Settlement Agreements are Typically Final!

When couples are looking at separation and/or divorce, there is rarely enough money to go around. In order to reduce costs, parties may think about preparing their court filings themselves rather than hiring an attorney. While the New Mexico courts certainly allow parties to represent themselves, also called Pro Se representation, parties should be very careful in doing so.

One of the primary dangers posed by Pro Se representation is that once the parties have filed documents with the court memorializing their agreement to divide their debts and assets, that agreement is often final and is very difficult to change.

For example, a divorcing couple decides to forgo attorneys and they negotiate their divorce settlement themselves. Because they do not have counsel, they do not conduct formal discovery, which a more formal term for investigation, in order to identify, characterize for the proper division of property and debt.

Instead they may each rely on the other party to honestly report their debt and asset information. More commonly, in the haste to get through the process, neither party conducts an adequate investigation of their assets and debts.

The parties then draft a marital settlement agreement using a form approved by the New Mexico Supreme Court and used throughout the State provides. Once the marital settlement agreement is filed and the parties are divorced, each goes their separate ways taking some property and debts with them.

The availability and use of the form marital settlement agreement often provides false comfort to the pro se parties. Unfortunately, the form is only as good as the information it contains as provided by the parties.

It is not uncommon that the parties either by way of deceit or error have not adequately and accurately accounted for all asset, debts and income. In these cases, the parties can agree to amend the marital settlement agreement to correct the mistakes or errors.

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However, more often than not, one of the parties will refuse to correct the flawed marital settlement agreement. In these cases, the other party must ask the court for the corrections. This is not a simple process.

A marital settlement agreement is a contract. As with any contract, it normally can't be changed after it has been executed absent a showing of ambiguity or fraud. Further, once the courts have entered final judgments, they do not like to go back and disturb those decisions.

When parties sign a document and file it with the Court, the Court expects the parties to understand their rights and responsibilities under the law. Ignorance of the law or facts that could have been revealed during the discovery process is not normally accepted by the Court as a basis for changing a final judgment. It does not matter that the parties did not have legal counsel. They are held largely to the same standard as if they did. Otherwise, there would be no end to pro se divorces.

The law of contracts and the rules of civil procedure do allow for modification of marital settlement agreements. However, the burden imposed on the party seeking modification is very high. As a rule, where possible, it is advisable to consult with a [divorce attorney](#) before executing a marital settlement agreement to avoid irreparable mistakes.

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