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Enforcement of an Out-of-State Marital Settlement Agreement

One of the final steps in completing a divorce is the entry of the Marital Settlement Agreement. The Marital Settlement Agreement provides the formal division of the parties' property, assets and debt. It also addresses alimony, spousal support, taxes, and other financial issues affecting the parties.

In New Mexico, the Marital Settlement Agreement must be signed by both parties. The Marital Settlement Agreement is typically adopted as an Order of the Court through the Final Decree of Divorce. Problems often arise as a result of one or both parties' refusal to abide by the terms of the Marital Settlement Agreement.

In cases where the divorce was granted and the Final Decree of Divorce was filed in the New Mexico Courts, either party may file a Motion to Enforce the Marital Settlement Agreement in the court where the divorce was granted. The District Courts in Albuquerque, Rio Rancho, Santa Fe and several of the other courts throughout New Mexico have a self-help divisions that will provide forms for this process in case the parties cannot afford legal counsel. The forms are also available online.

Problems often arise out of property and debt divisions from other States. Many New Mexico residents are faced with the breach of an out-of-state Marital Settlement Agreement. Unfortunately, enforcement of another state's orders can be complicated. An out-of-state Order addressing the division of property, assets and debt must typically be addressed in the court with original jurisdiction over those issues. Unlike many cases where a civil judgment may be domesticated in New Mexico for enforcement purposes, domestication of a family law Order is often not an option in family law.

The general rule is that the state court that grants your divorce maintains jurisdiction over the enforcement of any orders and decrees associated with the divorce. There are as always some exceptions. There is an exception for child support where the state in which the child resides may enforce child support obligations. Likewise, child custody jurisdiction may vest in another jurisdiction after the child has resided in the new state for 6 months. With those exceptions, the original court maintains jurisdiction over most matters related to the divorce such as the division of property and debt, spousal support and alimony.

In case of problems with enforcement, it will typically be required that a proceeding in the state of original jurisdiction be initiated. In that instance, it would be important that the obligations under the Marital Settlement Agreement be

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found by the Court to be a judgment. Once this is done, and the amount is fixed, the judgment may then typically be domesticated in New Mexico for future enforcement.

These issues can become very complicated very quickly. It is important to determine the proper way to proceed prior to seeking court relief. False steps could become extremely costly if the Court refuses to hear the claims due to lack of jurisdiction.

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