

4A-301. Marital settlement agreement.

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____,
Petitioner,

v. _____ No. _____

_____,
Respondent.

MARITAL SETTLEMENT AGREEMENT¹

_____ (*Petitioner's name*) and _____
(*Respondent's name*) are married and agree to follow this agreement beginning on the day we both sign it. We understand that the judge may make changes to this agreement and that we must comply with any changes made.

I. PROPERTY WE ARE DIVIDING²

A. Personal property (*such as clothing, furniture, jewelry, or artwork*). We have agreed how we will divide our property. We have attached a Personal Property List (Attachment A) showing all our property and which of us will receive that property.

(*Choose 1 or 2*)

1. Each of us already has possession of all the personal property we each expect to receive.

(*Or*)

2. We will make sure we each have our own property by _____ (*date*).

B. Real Property (*such as a home, mobile home, condominium, lot, or commercial building*).³

(*Choose all that apply*)

1. Neither of us has real property.

2. We have a marital home, which is located at _____
_____ (*street address*), and we agree to

do the following:

(Complete the correct section: a. Keep the home; b. Sell the home; or c. Other plan.)

a. **Keep the home.** We agree to the following:

(Choose i or ii)

i. Petitioner shall keep the home and be responsible for all debts related to the home.

(Or)

ii. Respondent shall keep the home and be responsible for all debts related to the home.

The person who keeps the home is called the “homeowner.” The other person is called the “moving spouse.”

We further agree to the following:

(Choose all that apply)

iii. The amount owed to the moving spouse to buy out that person’s interest is \$ _____, which is included in the calculation of the Cash Payment, Section III, below.

iv. The homeowner will apply to refinance the debt owed on the home no later than _____ *(date)*.

v. This is our plan for the homeowner to buy out the moving spouse’s interest in the home or to get the moving spouse off of the loan papers:⁴

b. **Sell the home.** We are going to sell the home and divide the money from the sale as follows:

_____.

While the home is being sold, Petitioner *(or)* Respondent *(choose one)* will stay in the home.

Until the home sells, we will pay expenses, including mortgage, taxes and insurance, utility bills, and repairs for the home as follows (*describe who is to pay and how much each person will pay*):

We both will cooperate with the showing of the home and the sale of the home, including signing all paperwork needed in order to sell it and transfer title. Both of us will preserve the home in a reasonable way including the following things:

c. **Other plan.** We have attached a separate sheet with our plan regarding the home.

3. One or both of us has other real property as set forth in the attached Real Property List (Attachment B), and we have agreed to divide that property as set forth in the attachment. If one party owes the other money for the division of the other real property, that amount should be included in the calculation of the Cash Payment, Section III, below.

C. Bank and investment accounts (*such as checking accounts, savings accounts, stocks, bonds, certificates of deposit, mutual funds, or life insurance policies with cash value*).

(Choose 1 or 2)

1. We do not have any bank or investment accounts.

(Or)

2. We have the following bank or investment accounts and will divide them as follows:

Petitioner will have the following bank or investment accounts:

Name of institution	Last four (4) digits of account number
_____	_____
_____	_____
_____	_____

Respondent will have the following bank or investment accounts:

Name of institution

Last four (4) digits
of account number

_____	_____
_____	_____
_____	_____

D. Retirement Plans (such as IRAs, retirement accounts, pension plans, or 401(k) plans).⁵

(Choose 1 or 2)

1. Neither of us has a retirement plan.

(Or)

2. We will be dividing our retirement plan(s) as follows:

Petitioner has the following retirement plan(s):	(Circle one to show whether Petitioner will KEEP the entire plan, DIVIDE the plan with Respondent, or TRANSFER the entire plan to Respondent)	If plan will be DIVIDED, the amount or % to be given to Respondent:
	[KEEP] [DIVIDE] [TRANSFER]	
	[KEEP] [DIVIDE] [TRANSFER]	
	[KEEP] [DIVIDE] [TRANSFER]	

Respondent has the following retirement plan(s):	(Circle one to show whether Respondent will KEEP the entire plan, DIVIDE the plan with Petitioner, or TRANSFER the entire plan to Petitioner)	If plan will be DIVIDED, the amount or % to be given to Petitioner:
	[KEEP] [DIVIDE] [TRANSFER]	
	[KEEP] [DIVIDE] [TRANSFER]	
	[KEEP] [DIVIDE] [TRANSFER]	

(Check and complete if retirement plan(s) will be divided)

For the following retirement plans that will be divided, Petitioner shall prepare a Qualified Domestic Relations Order (“QDRO”), obtain the signature of the other party, and submit the QDRO to the Court by _____ (date).⁶ (List the

plans)

- For the following retirement plans that will be divided, Respondent shall prepare a Qualified Domestic Relations Order (“QDRO”), obtain the signature of the other party, and submit the QDRO to the Court by _____ (date).⁶ (List the plans)

E. Vehicles (such as cars, trucks, motorcycles, recreational vehicles, boats, tractors, or trailers).⁷

(Choose 1 or 2)

1. We do not have any vehicles.

(Or)

2. We have vehicles and are dividing them as follows:

Petitioner will keep the following vehicles and assume any debt relating to each vehicle (provide the make, model, and year of each vehicle and list the vehicle identification number):

Vehicle description

Vehicle Identification No.

Respondent will keep the following vehicles and assume any debt relating to each vehicle (provide the make, model, and year of each vehicle and list the vehicle identification number):

Vehicle description

Vehicle Identification No.

Each person listed above as keeping the vehicles will pay for the costs of the vehicles, including insurance. The parties will transfer title by the following date:

- _____ (date).

(Or)

when the vehicle is paid off.

F. Other property (such as business interests, patents, trademarks, copyrights, royalties, manuscripts, or any other property).

(Choose 1 or 2)

1. Neither party has any other property.

(Or)

2. One or both parties has the other property listed below, and we have agreed to divide it as follows:

II. DEBTS WE ARE DIVIDING⁸

A. Debt. We attach a Debt List (Attachment C) which lists all of our debts, including mortgages, vehicle payments, taxes, credit cards, student loans, medical debts, judgments, and any other debts we may have. Any debt not listed is the responsibility of the person who created it. Each of us will pay debts we created prior to our marriage, unless we state differently here. Unless we state differently here, a person who takes property (such as a house or car) with a debt associated with it, will take the debt.

(Choose all that apply)

We have no debt from our marriage.

We will pay our debts as listed on Attachment C.

The amount owed from _____ to _____ for the division of the debts is \$ _____, which is included in the calculation of the Cash Payment, Section III, below.

B. Credit cards and charge cards. Each of us will turn in and cancel all joint credit cards, or we will have the credit card company take the other person's name off of the account.

C. Taxes. We will share information necessary to correctly file our income tax returns. We will get the help we need to file our taxes.

D. Problem with tax returns. If any of our returns that we filed together are audited or

contested, we will meet to decide what to do. If we cannot decide who pays the taxes owed or who gets any refund, we will ask a judge to decide at the time the problem comes up.

E. Legal promise. We understand that if either of us fails to pay the debts we have promised to pay, the other party may end up making that payment. If that happens, the party who should have paid promises to repay the other party, including any other extra costs caused by the failure to pay, such as attorney fees, late fees, and interest charged by the creditor.

III. CASH PAYMENT

(If the parties have agreed that one party should pay money to the other in any of the preceding sections, those amounts should be included in this section.)

In order to settle the division of property and debts, we agree that _____ (name) shall pay _____ (name) the amount of \$ _____ no later than _____ (date). We agree that judgment shall enter in this amount for _____ (name). The statutory interest rate shall apply as provided in Section 56-8-4(A) NMSA 1978.

IV. SPOUSAL SUPPORT⁹

A. We agree to spousal support as follows:

(Choose 1 or 2)

1. **No spousal support.** Each of us can support ourselves and neither will pay spousal support to the other.

(Or)

2. **Spousal support.** Petitioner *(or)* Respondent *(choose one)* will pay spousal support to the other spouse.

a. Spousal support will be paid as follows:

(Choose i, ii, or iii)

i. \$ _____ per month on the _____ (date) of each month for _____ (period of time), which is not modifiable.

(Or)

ii. \$ _____ per month on the _____ (date) of each month until modified by the court.

iii. This is our other plan:

b. For tax purposes, we will treat spousal support as follows:

(Choose i or ii)

i. The person paying spousal support will deduct the payments on [his] [her] income tax return. The person receiving support will show the support as income on [his] [her] income tax return. Spousal support will end if the person to receive the support dies.

(Or)

ii. The person paying spousal support will not deduct the payments on [his] [her] income tax return. The person receiving spousal support will not include the payment as income on [his] [her] income tax return.

V. OTHER STATEMENTS BY PARTIES

A. Documents. We will each sign the documents we need to divide the property and debts, and each will deliver to the other party all documents related to property and debt awarded to the other.

B. Future issues.¹⁰

1. Either of us may ask the judge for help if
 - a. one of us does not do what we said in this agreement; or
 - b. we cannot agree on what this agreement says.

We understand that the judge may make one party pay costs such as attorney fees.

2. If we forgot or failed to list any property or debt, we will seek the help we need to divide that property or debt.¹¹

C. Final agreement. This is the final and entire agreement of the parties. Neither party is

relying on other promises or statements that are not specifically included in this document.

VERIFICATION

I affirm under oath and penalty of perjury under the laws of the State of New Mexico the following:

I have read this agreement and agree with everything in it; I have read the warnings and cautions listed in this agreement;

I have disclosed all assets and debts known to me, and I understand that the other party is relying on my disclosures;

I have gotten the help I needed before signing this agreement; and this document and the statements in it are true and correct to the best of my knowledge and belief.

I understand that I can be punished both civilly and criminally if any information in this agreement is false.

Petitioner's signature
Date: _____
Mailing address: _____

Telephone: _____

Respondent's signature
Date: _____
Mailing address: _____

Telephone: _____

STATE OF NEW MEXICO)
COUNTY OF _____) ss.

Acknowledged, signed and sworn to before me this _____ day of _____, _____
by _____, the petitioner.

Notary public

My commission expires: _____.

STATE OF NEW MEXICO)
COUNTY OF _____) ss.

Acknowledged, signed and sworn to before me this _____ day of _____, _____
by _____, the respondent.

Notary public

My commission expires: _____.

ATTACHMENT A: PERSONAL PROPERTY LIST
(Attach additional pages if needed)

List all items of value to you, such as furniture, household items, electronics, art, jewelry, and tools.

Item	Dollar Value	Will belong to <i>(check box for each item)</i> :	
		Petitioner	Respondent

ATTACHMENT B: REAL PROPERTY LIST
(Attach additional pages if needed)

List all homes (other than the marital home), land, or other real property owned by Petitioner or Respondent.

Other Real Property

1. Address/Description of property: _____

We agree to do the following with the property after the divorce:

(Choose all that apply)

_____ Petitioner will keep the property;

_____ Respondent will keep the property;

_____ [] Petitioner [] Respondent shall pay the other party \$_____.

_____ The property will be sold and the proceeds divided as follows:

_____ Other plan:

2. Address/Description of property: _____

We agree to do the following with the property after the divorce:

(Choose all that apply)

_____ Petitioner will keep the property;

_____ Respondent will keep the property;

_____ [] Petitioner [] Respondent shall pay the other party \$_____.

_____ The property will be sold and the proceeds divided as follows:

_____ Other plan:

ATTACHMENT C: DEBT LIST

(Attach additional pages if needed)

(NOTE: This document is a public document. DO NOT list the full account number for any credit card or other loan information that you would not want to make public.)

We understand that this agreement may not bind creditors.

Creditor	Last four (4) numbers on account	Amount owed	Will be paid by (check box):	
			Petitioner	Respondent

USE NOTE

1. A marital settlement agreement must be filed in every dissolution of marriage cause. *See* Forms 4A-100, -200, and -300 NMRA for additional information about completing and filing this form.
2. It is highly recommended that you consult with an attorney. Whether property is separate or community is a complicated issue. There can be serious consequences, including tax consequences, for the division of property and for not properly transferring property, including retirement accounts. You may need separate documents to transfer divided property.
3. To transfer land, a building or a home other than a mobile home, the parties must prepare, sign and record a deed in the real property records where the property is located. To transfer a mobile home, contact the Motor Vehicle Division.
4. If both parties are listed on the mortgage, you must seek lender approval to remove the moving spouse from the mortgage and from responsibility for payment.
5. If the parties are going to divide a retirement plan, contact the retirement plan before completing and filing this form. Depending on the plan, a QDRO may be necessary. If the parties cannot agree on the terms of the QDRO, they should request a hearing.
6. **CAUTION:** You may want to consult an attorney about your retirement, pension,

deferred compensation, 401k plans, and/or benefits. If you do not see an attorney regarding these assets, you risk losing any interest you have in these plans and/or benefits. There are certain documents the plan administrator must have. An attorney can help you prepare these documents.

7. To transfer vehicles or a mobile home, contact the Motor Vehicle Division.

8. This agreement may not affect the rights of creditors even when approved by the Court as part of the final decree. The creditor may expect payment from you no matter who agrees to pay the debt in this agreement. See an attorney if you have questions about separate and community debts and separate and community property.

9. There can be serious consequences resulting from spousal support awards. If your agreement includes spousal support, you should consult with an attorney.

10. Consult with an attorney if problems arise later.

11. To divide property or debts left out of this agreement, *see* Section 40-4-20(A) NMSA 1978.

[Approved by Supreme Court Order No. 13-8300-010, effective for all pleadings and papers filed on or after May 31, 2013, in all cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No. 14-8300-011, effective for all pleadings and papers filed on or after December 31, 2014, in all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-024, effective for all pleadings and papers filed after November 18, 2015.]