

4A-315. Default judgment and final decree of dissolution of marriage (with children).

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

Petitioner,

v. No. _____

Respondent.

**DEFAULT JUDGMENT AND
FINAL DECREE OF DISSOLUTION OF MARRIAGE
(with children)¹**

_____ (*Petitioner's name*) and _____
(*Respondent's name*) are married. Respondent failed to respond to the petition for dissolution of marriage after being served. The judge may make changes to this default decree and both parties must comply with any changes made.

The parties were married on _____ (*date of marriage*).

I. PROPERTY BEING DIVIDED²

A. Personal property (*such as clothing, furniture, jewelry, or artwork*). Attached is a Personal Property List (Attachment A) showing all property and which party shall receive that property.

(*Choose 1 or 2*)

1. Each party already has possession of all the personal property each party will receive in this judgment.

(*or*)

2. The party in possession of personal property to be received by the other party shall give that property to the receiving party within ____ days after this default judgment is signed by the judge and filed in the court.

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

(Choose all that apply)

1. Neither party owns real property.

2. The parties own a marital home, which is located at _____ (street address), and with which they shall do the following:

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

a. **Keep the home.**

_____ (name of Petitioner or Respondent) shall keep the home and shall 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.”

(Choose all that apply)

i. 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.

ii. The homeowner shall apply to refinance the debt owed on the home no later than _____ (date).

iii. The homeowner shall buy out the moving spouse’s interest in the home or get the moving spouse off of the loan papers as follows:⁴

b. **Sell the home.** The home shall be sold and the money from the sale shall be divided as follows:

_____.

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

Until the home sells, the parties shall 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):

_____.

The parties shall 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 parties shall preserve the home in a reasonable way including the following things:

_____.

c. **Other plan.** Attached is a separate sheet with the plan regarding the home.

3. One or both of the parties has other real property as set forth in the attached Real Property List (Attachment B), and that property shall be divided as set forth in the attachment. If one party owes the other money for the division of the other real property, that amount is 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. The parties do not have any bank or investment accounts.

(or)

2. The parties have the following bank or investment accounts and shall divide them as follows:

Petitioner shall have the following bank or investment accounts:

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

Respondent shall 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 party has a retirement plan.
(or)
2. The parties shall divide the 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]	

If any retirement plan will be divided, a Qualified Domestic Relations Order (“QDRO”) shall be prepared and submitted to the Court by Petitioner by _____ (date).⁶

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

(Choose 1 or 2)

1. The parties do not have any vehicles.

(or)

2. The parties have vehicles and shall divide them as follows:

Petitioner shall 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. (last six digits)
_____	_____
_____	_____
_____	_____

Respondent shall 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. (last six digits)
_____	_____
_____	_____
_____	_____

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

_____ (date).

(or)

when the vehicle is paid off.

(or)

the party who is keeping the vehicle already has the title in his/her name.

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 shall divide it as follows:

II. DEBTS BEING DIVIDED⁸

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

(Choose all that apply)

The parties have no debt from the marriage.

Each party shall pay the 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 party shall turn in and cancel all joint credit cards, or shall have the credit card company take the other party's name off of the account.

C. Taxes. The parties shall share information necessary to correctly file income tax returns. Each party will get the help needed to file taxes.

D. Problem with tax returns. If any tax returns that the parties filed jointly are audited or contested, the parties should meet to decide what to do. If the parties cannot decide who pays the taxes owed or who gets any refund, they will ask a judge to decide at the time the problem comes up.

E. Failure to pay debts. If either party fails to pay the debts each is ordered to pay, the other party may end up making that payment. If that happens, the party who should have paid may have 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

To equalize the division of property and debts, _____ (name) shall pay _____ (name) the amount of \$ _____ no later than _____ (date). Judgment shall enter in this amount for _____ (name of person owed money). The statutory interest rate shall apply as provided in Section 56-8-4(A) NMSA 1978.

IV. SPOUSAL SUPPORT⁹

(Choose 1 or 2)

1. **No spousal support.** Each party can support himself or herself and neither shall pay spousal support to the other.

(or)

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

Spousal support shall 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. Other plan:

V. CUSTODY PLAN¹⁰

(Provide identification and contact information for each parent and child)

Parent's name

Physical address and phone number

Place of employment and phone number

Child's name	Year of birth	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

[] The parties shall advise each other of any change to this contact information within ten (10) days of new information becoming available.

(Choose either Option A, Sole legal custody, or Option B, Joint legal custody)

[] A. **Sole legal custody and visitation plan.** *(Do not fill out Option B if you choose this option)*

(Complete 1, 2, and 3)

1. _____ *(name of parent with sole custody)* shall have sole legal custody of the children. The parent with sole custody shall make the important decisions regarding the children.

2. The reason that sole custody is in the best interest of the children is because:

3. This is the visitation plan:

(Choose a, b, or c)

[] a. There shall be **no visitation** until further order of the Court.
(or)

[] b. _____ *(name of other parent)* shall have **unsupervised visitation** with the children as follows: *(Fully describe visitation plan to include who shall transport the children and where and when the visitation shall occur. Attach additional sheets if necessary.)*

(or)

- [] c. _____ (name of other parent) shall have **supervised visitation** with the children as follows: (Fully describe visitation plan to include who shall supervise the visitation, who shall transport the children, and where and when the visitation shall occur. Attach additional sheets if necessary.)

[] B. **Joint legal custody and parenting plan.** (Do not fill out Option A if you choose this option)

1. **Important decisions.** The parents shall share joint legal custody of the children and shall make important decisions about the children together. No change regarding any of the following shall happen unless the parents both agree to the change in writing or the court changes it:

- a. City and county of residence: _____
b. Religion: _____
c. Activities: _____

	Name	Address and telephone
d. Doctor	_____	_____
e. Dentist	_____	_____
f. School	_____	_____
g. Child care	_____	_____
h. Other	_____	_____

2. **Solving arguments.** The parents shall resolve any parenting or time-sharing disputes regarding the children by talking together or communicating in writing. If a parent requests a change to the plan and gives reasons for the change, the answering parent should respond within five (5) days. If the answering parent does not agree to the change, that parent must say why, and if possible make a new proposal.

3. **Timesharing schedule.**

(Complete "Schedule 1" or "Schedule 2" below.)

- [] **Schedule 1. Same schedule each week or every two weeks.**

(Set out the time that each parent shall have the children for that day.)

Week 1	_____’s time (name of parent)	_____’s time (name of parent)
Monday	_____	_____
Tuesday	_____	_____
Wednesday	_____	_____
Thursday	_____	_____
Friday	_____	_____
Saturday	_____	_____
Sunday	_____	_____

Week 2	_____’s time (name of parent)	_____’s time (name of parent)
Monday	_____	_____
Tuesday	_____	_____
Wednesday	_____	_____
Thursday	_____	_____
Friday	_____	_____
Saturday	_____	_____
Sunday	_____	_____

[] **Schedule 2. Write your own schedule.** (Write your own schedule here or attach a separate sheet or calendar or make additions to Schedule 1.)

4. **Vacation and holiday plan.**

- a. **Vacations.** The parents shall each have ____ [days] [weeks] (*circle one*) of uninterrupted time with the children each year. Each parent shall give the other parent at least ____ [days] [weeks] (*circle one*) notice of the vacation time.
- b. **Holidays.** Regardless of the day of the week, the children shall spend holidays as follows: (*Insert name of parent who will have the children on each holiday*)

Holidays:	Even year	Odd year	Times (if split)
Mother’s Day	_____	_____	From _____ To _____
Father’s Day	_____	_____	From _____ To _____
Child’s Birthday	_____	_____	From _____

Halloween	_____	_____	To _____ From _____ To _____
Thanksgiving break	_____	_____	From _____ To _____
Winter religious holidays	_____	_____	From _____ To _____
1st 1/2 winter break	_____	_____	From _____ To _____
2nd 1/2 winter break	_____	_____	From _____ To _____
Spring Break	_____	_____	From _____ To _____
July 4th	_____	_____	From _____ To _____
Other religious holidays	_____	_____	From _____ To _____
Others:	_____	_____	From _____ To _____

The Monday of a 3-day weekend due to a school, federal, or state holiday is the same as the Sunday schedule unless the parents both agree differently in writing or the court orders a different arrangement.

5. ***Details about the timesharing.***

a. **Communication.** Each parent may have reasonable communication with the children at all times. Neither parent shall unreasonably interfere with the children's communications with the other parent.

b. **Transfer of children.** Responsibility for transferring the children from one parent to the other shall be as follows (*write what the parents will do here*):

_____.

c. **Long-distance transfer of children.** Responsibility for transferring the children from one parent to the other in long-distance arrangements shall be as follows (*write down what the parents will do here*):

_____.

- d. **Emergencies.** If there is a medical emergency, the parent with the children shall try to call the other parent about the emergency. If the other parent cannot be reached, any decision for emergency medical treatment shall be made by the available parent in the best interest of the children.
- e. **Changes.** Each parent may ask the other for changes to this schedule. The other parent has the right to say “no.” If the other parent says “no,” the parent asking for changes shall not argue or criticize the other parent’s decision.

VI. CHILD SUPPORT OBLIGATION.¹¹

A. **Child Support Worksheet.¹²** A signed child support worksheet is attached to this plan. *(Complete and sign a child support worksheet prior to completing this section.)*

Child support: _____ pays _____
 \$_____ per month. Payments shall begin on _____ *(date)*
 and shall be paid in the amount of \$_____ every [] week [] two weeks []
 month. Payments shall continue each month until the youngest child turns eighteen (18);
 however, if the youngest child turns eighteen (18) while still attending high school,
 payments shall continue until the month the child graduates or turns nineteen (19),
 whichever occurs first.¹³

(Choose 1 or 2)

[] 1. This amount is the amount shown on the worksheet;

(or)

[] 2. This is a deviation from the amount shown on the child support worksheet
 because *(fill in the reason here)*¹⁴

B. **Health insurance coverage¹⁵**

(Choose 1, 2, or 3)

[] 1. _____ *(name of parent)* shall keep the minor children covered
 by health and dental insurance under the policy of insurance available from his or
 her employer or other group health care insurance plan.

(or)

[] 2. Neither parent has private health or dental insurance coverage available at a
 reasonable cost. If the children are covered under Medicaid, the child support
 obligor shall pay a cash medical support payment as determined at a subsequent
 hearing in which the State of New Mexico, Child Support Enforcement Division

(“CSED”), has been given sufficient notice, or upon the stipulation of the parties and with the agreement of CSED. The notification to and agreement of CSED is required only for cash medical support.

(or)

[] 3. Other health insurance coverage shall be provided as follows:

_____.

C. **Additional healthcare expenses to be determined by percentage.** The parents shall split the cost of uncovered necessary healthcare expenses in proportion to their income on the child support worksheet.

D. **Wage withholding of child support.**

(Choose and complete 1 or 2)

[] 1. **Withhold wages for child support.** Child support payment shall be withheld from _____’s paycheck.¹⁶

(Choose a or b)

[] a. Attached is a completed Form 4A-304 NMRA Wage Withholding Order which directs all withheld payments to the Child Support Enforcement Division (“CSED”).

(or)

[] b. _____ (name of parent) shall I take a copy of this child support obligation after it is signed by the Court to CSED to open a case and to request that CSED issue a notice of wage withholding on [his] [her] behalf.

(or)

[] 2. **Other plan.** Wage withholding is not appropriate at this time as the parties have made the following alternate arrangements for the payment of support (*describe alternate payment arrangements, subject to approval by the Court*):

_____.

E. **Health and dental insurance.** The parents shall do the following:

- 1. follow the insurance plan in selecting a doctor or dentist;

2. use doctors and dentists who are part of the insurance plan;
3. make sure each parent has a copy of the insurance card and policy; and
4. cooperate and work together to promptly submit all insurance forms.

F. **Exchange of information.** Once a year either parent can ask, in writing, for both parties to exchange the following information (*this paragraph is required by statute, Section 40-4-11.4 NMSA 1978*):¹⁷

1. federal and state tax returns for the prior year;
2. W-2 statements for the prior year;
3. IRS form 1099s for the prior year;
4. work related day care statements for the prior year;
5. dependent medical insurance premiums for the prior year; and
6. wage and payroll statements for the four months prior to the request.

G. **Tax issues.**¹⁸ The parents shall address tax issues, such as the dependency exemption, that relate to the children as follows:

Follow IRS regulations; or

Adopt another plan as follows:

_____.

H. **Other expenses.** Each parent shall provide the children with items that they need while they are with that parent.

The Court, having considered the evidence FINDS AND CONCLUDES:

1. The Court has jurisdiction over the subject matter of this action and over the parties and the children.
2. The parties are incompatible.
3. The division of property and debts in this Default Judgment and Final Decree of Dissolution of Marriage is fair and reasonable.
4. The Custody Plan in this Default Judgment and Final Decree of Dissolution of Marriage is fair, reasonable, and in the best interests of the children.
5. The Child Support Obligation in this Default Judgment and Final Decree of Dissolution of Marriage is fair, reasonable, and in the best interests of the children.
6. Respondent's default has been certified by the Court.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. The marriage of Petitioner and Respondent is dissolved on the grounds of incompatibility.
2. The parties are ordered to comply with the terms of this Default Judgment and Final Decree of Dissolution of Marriage.
3. The Court has continuing jurisdiction over issues relating to the children of the marriage until the children reach the age of majority as provided by law.

(Select and complete the following paragraphs if applicable)

4. The Court retains jurisdiction to enter QDROs or other orders dividing the retirement plans referenced in this Default Judgment and Final Decree of Dissolution of Marriage.
5. Judgment in favor of Petitioner *(or)* Respondent is awarded in the amount of \$ _____, as set forth in Section III (Cash Payment) of this Default Judgment and Final Decree of Dissolution of Marriage. The statutory interest rate shall apply as provided in Section 56-8-4(A) NMSA 1978.
6. Petitioner's name is restored to the former name of _____ *(write full legal name)*.

SO ORDERED:

Date

District Court Judge

VERIFICATION

I, _____, am the Petitioner, and I affirm under oath and penalty of perjury under the laws of the State of New Mexico the following:

I am signing this document alone because Respondent is in default;

I have disclosed all assets and debts known to me;

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 document is false.

Submitted/Approved by

Petitioner
Date _____

Mailing address

City, state, and zip code

Telephone number

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: _____

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: _____

The parties shall 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: _____

The parties shall 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: _____

DO NOT FILE: THIS PAGE FOR PARTY USE ONLY

USE NOTES

1. This form may be used anywhere in this state to enter a default judgment and final decree of dissolution of marriage when the parties have minor children or a child under nineteen years of age who is attending high school.

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.

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. Only an attorney can help you prepare these documents.

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

8. This default judgment 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 default judgment. See an attorney if you have questions about separate and community debts and separate and community property.

9. Consult with an attorney if problems arise later.

10. You should understand the difference between the rights and obligations of joint custodians and a sole custodian. Descriptions of these terms are set out in NMSA 1978, Section 40-4-9.1. See an attorney with questions you may have. Joint custody does not imply an equal division of the child's time between the parents or an equal division of financial responsibility for the child.

11. If child support is not paid in a timely manner, interest will be added to the amount owed at the rate provided by law. See NMSA 1978, Section 40-4-7.3 for accrual of interest on delinquent child support.

12. See NMSA 1978, Section 40-4-11.1 for the child support worksheet. An interactive version of this worksheet may be found at www.nmcourts.com, click on "Family Law Forms." See also Form 4A-300 NMRA for a further explanation of the child support worksheet. The child support worksheet is used to determine the monthly child support obligation.

13. If child support is being paid for more than one child, the end of a child support obligation for a child may be a change of circumstances that justifies a different child support amount. A new child support worksheet must be completed and adopted by the court. If your child has an intellectual or physical disability, you should consult with an attorney.

14. The judge may or may not accept a proposed change from the worksheet amount.

Proposed changes may be appropriate if application of the child support guidelines would be unjust or inappropriate, or create a substantial hardship. If child support has been ordered in another proceeding, tell the court about it here and attach that child support worksheet.

15. See NMSA 1978, Section 40-4C-4 for medical support orders. In some circumstances the court may order both parties to provide employer-provided health insurance.

16. See Form 4A-304 NMRA for the Wage Withholding Order. Wage withholding is required unless the parties show good cause and make alternate payment arrangements. Wage withholding is mandatory if the children are receiving public assistance. Payments made by wage withholding go through the Title IV-D agency (CSED) and cannot be directly sent by the employer to a party. Either party may request the court to enter a Wage Withholding Order. See also Form 4A-300 NMRA for a further explanation of the Wage Withholding Order.

17. You need a court order to adjust child support payments.

18. Consult with a professional about tax issues that relate to any children.

[Approved by Supreme Court Order No. 14-8300-011, effective for all pleadings and papers filed on or after December 31, 2014, in all cases pending or filed 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; as amended by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 19-8300-006, effective for all pleadings and papers filed on or after July 1, 2019.]