

PROBATE

This information guide is general in nature and is not designed to give legal advice. The court does not guarantee the legal sufficiency of this information guide or that it meets your specific needs. Because the law is constantly changing, this guide may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

For basic information about representing yourself in District Court, see also the opening section of this Self Help Guide

WHAT IS PROBATE?

Probate is the legal process through which a court grants a person the legal authority to handle the legal affairs of a person who has died. **The person who has died is called the “decedent.”**

WHEN IS PROBATE NECESSARY?

Probate is necessary when a person dies leaving property **titled in his/her name** (real estate, bank accounts, vehicles, stocks and bonds, etc.). **This property is called the “decedent’s estate.”**

WHEN IS PROBATE NOT NECESSARY?

Probate is **not** necessary to transfer property that is not “titled,” such as personal items including furniture, jewelry, artwork, and other personal effects.

Probate is **not** necessary if the decedent has arranged for a non-probate transfer of titled property. Examples of non-probate transfers are: real estate held as Joint Tenants, real estate with a recorded Transfer on Death Deed, bank accounts with Payable on Death designations, brokerage accounts with death beneficiary designations, etc.

NO PROBATE REQUIRED FOR A “SMALL ESTATE”

A “small estate” is defined as one where the decedent’s total estate is worth less than \$50,000 **and** does not include any real property (land, a house, a farm, etc.). Read more at [Section 45-3-1201 NMSA 1978](#).

If the decedent’s estate qualifies as a small estate, the decedent’s property can be distributed without probate by using an “Affidavit of Successor in Interest” if:

- At least **30 days** have passed since the decedent’s death; **and**
- No probate has been filed.

The affidavit must be signed by the person entitled to receive the decedent’s property and notarized.

The affidavit can be presented to banks to collect the decedent’s money and other institutions such as the Motor Vehicle Division, to change title to the decedent’s vehicles.

Check with your local Probate Court to find out where to get the forms and instructions to create an Affidavit of Successor in Interest.

NO PROBATE REQUIRED TO TRANSFER DECEDENT'S PRIMARY RESIDENCE TO SURVIVING SPOUSE

The decedent's primary residence can be transferred to the decedent's surviving spouse without probate by using an "Affidavit of Surviving Spouse" (read more at [Section 45-3-1205 NMSA 1978](#)) if:

At least **6 months** have passed since the decedent's death; **and**

No probate has been filed; **and**

The only item required to be transferred from the decedent's estate is the decedent's primary residence; **and**

The decedent and spouse owned the residence as community property **or** the decedent left (by Will) his/her interest in the residence to the spouse; **and**

The full value of the residence, as assessed for property tax purposes, does not exceed \$500,000.

The affidavit must be signed by the surviving spouse and notarized.

The affidavit is then filed with the county clerk in the county in which the residence is located.

Check with your local Probate Court to find out where to get the forms and instructions to create an Affidavit of Surviving Spouse.

WHERE AND WHEN TO FILE A PROBATE CASE

If probate is necessary, the probate case must be filed with the **Probate Court** in the county where the decedent was domiciled (physically living) at the time of his/her death.

Note: In some cases, it may be necessary to file the probate case in District Court. The Probate Court will inform you if this is necessary. If this is the case, you may wish to consult an attorney. That situation is beyond the scope of this guide.

Probate Courts are designed to help non-lawyers with probate cases that do not need to be filed in District Court. The current cost to file probate in Probate Court is \$30.

Many Probate Courts have the forms and instructions necessary to file a probate case. The forms are also available online at <https://nmsupremecourt.nmcourts.gov>.

Probate can be filed any time between 5 days and 3 years after the decedent's death.

Note: A probate case may be filed after the 3 year period for the limited purpose of transferring title to real property from the decedent's name to the decedent's heirs. Read more at [Section 45-3-108 NMSA 1978](#).

FILING A PROBATE CASE WITH A WILL

If the decedent left a valid Will, the person filing the probate case must submit the **original Will** and a certified copy of the decedent's death certificate to the Probate Court along with the necessary forms.

Instructions for filing a probate case with a Will are contained in probate [Forms 4B-021](#) and [4B-022 NMRA](#). These forms are available online at <https://nmsupremecourt.nmcourts.gov>.

The court will appoint the person(s) designated in the Will as "Personal Representative" ("PR") of the decedent's estate. Another name for the Personal Representative is "Executor."

FILING A PROBATE CASE WHERE THERE IS NOT A WILL

People who die without a Will are said to have died “intestate.” New Mexico has specific “Intestacy Laws” that detail who can be appointed PR of the Estate, who is entitled to the decedent’s property, and the share of the property each person receives.

A spouse has the highest priority for being appointed PR, followed by the decedent’s children. A person who wishes to be appointed PR must have the written consent of all other people with the same or higher priority for appointment.

The person filing the probate must submit a certified copy of the decedent’s death certificate and copies of the written consent of other people with the same or higher priority for appointment, along with the necessary probate forms.

Instructions for filing a probate case without a Will are contained in probate [Forms 4B-011](#) and [4B-012 NMRA](#). These forms are available online at <https://nmsupremecourt.nmcourts.gov>.

DUTIES OF THE PERSONAL REPRESENTATIVE

When the Probate Court appoints a person to be the Personal Representative of the decedent’s estate, the court gives the PR a document called “Letters Testamentary.” If the decedent died without a Will (intestate), the document is called “Letters of Administration.” This document gives the PR the legal authority to transact business on the decedent’s behalf.

The PR is responsible for:

- Notifying all of the heirs of the decedent’s estate;
- Gathering and inventorying the decedent’s assets;
- Identifying and paying the decedent’s debts (to the extent that funds are available in the estate to do so);
- Distributing the decedent’s assets in accordance with the decedent’s Will or the intestacy laws if there is no Will; and
- Closing the probate case by filing a sworn statement with the court stating that the PR’s duties are completed (read more at [Section 45-3-1003 NMSA 1978](#)). The probate case must be open for a minimum of 3 months before it can be closed.

The PR is **not** allowed to use funds from the estate for the PR’s personal benefit. But, the PR is entitled to fair compensation from the estate for the time spent administering the estate (read more at [Section 45-3-719 NMSA 1978](#)). The PR should keep a written record of tasks performed and time spent. The PR may also use estate funds to pay for costs of administering the estate (i.e. postage, filing fees, copies, etc.).

If the decedent’s estate includes real property (land, a house, a farm, etc.), the PR may need to execute a “Personal Representative’s deed” in order to transfer the property out of the decedent’s name. Deeds can be very tricky to properly draft and execute, so you may wish to hire an attorney for this portion of the probate.

APPEALS FROM DISTRICT COURT

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Caution: This guide does not cover appeals from magistrate, metropolitan or municipal court, which have shorter deadlines than appeals from district court.

WHERE AM I APPEALING FROM AND WHERE SHOULD I APPEAL TO?

To decide where to appeal, you must first know which court you are trying to appeal **FROM**. If you are trying to appeal **FROM** a decision of the **MAGISTRATE, METROPOLITAN, or MUNICIPAL COURT**, you will appeal **TO** the district court. If that is your situation, there may be a separate information guide available from your local magistrate, metropolitan, or municipal court.

When you are appealing **FROM** a decision of the **DISTRICT COURT**, depending on the kind of appeal it is, the first document you file to start your appeal will either need to be filed with the district court or directly with the New Mexico Court of Appeals. To figure out whether the first document should be filed in the district court or Court of Appeals, see the "How do I Appeal?" section below. But whether you must file the first document in the district court or Court of Appeals, you will eventually need to file most of your paperwork in the Court of Appeals, which is the court that will decide your appeal.

Keep in mind that the New Mexico Court of Appeals has two offices – one in Albuquerque and one in Santa Fe. You can mail your documents to the Court of Appeals at P.O. Box 25306, Albuquerque, NM, 87125-0306 or P.O. Box 2008, Santa Fe, NM 87504. Or, you can file your documents in person at 2211 Tucker NE Albuquerque, NM or 237 Don Gaspar, Santa Fe, NM. The Court of Appeals can be reached by telephone in Albuquerque at 505-841-4618 or in Santa Fe at 505-827-4946.

WHO CAN APPEAL?

If you think the district court made a mistake when deciding your case, you have the right to appeal the district court's decision. An appeal can be a complicated, time-consuming process, and you may wish to hire an attorney to handle your appeal. If you do not know how to find an attorney, or if you cannot afford an attorney, there are a number of organizations that may be able to help you find an attorney. Some of those organizations are listed in the Resource List section of this guide.

WHAT CAN I APPEAL?

In general, you may only appeal a final, written order or judgment from the court. An order or judgment is considered final for purposes of appeal when it has decided all of the issues in the case and there is nothing left for the court to do. Sometimes it is difficult to know if an order of the court is final for purposes of appeal. If you appeal from an order that is not final and appealable, the appellate court may dismiss your appeal, but you will not lose your right to appeal. Once a final, written order is filed by the trial court, you can file a new appeal with the appellate court.

WHEN SHOULD I APPEAL?

In general, you must file an appeal from the district court within 30 days after the court files the final, written order in the case. In some cases, you may be able to get an extension of time from the district court to file your appeal. It is very important that you file your appeal on time. If you file your appeal late, you may lose your right to appeal forever. Because the deadline for an appeal is so important, you must be sure you understand whether you are trying to appeal a decision **FROM** a lower court **TO** the district court or **FROM** the district court **TO** the Court of Appeals because the time for filing each kind of appeal is different. Please see the section headed “Where Am I Appealing From and Where Should I Appeal To?” for more information.

WHY SHOULD I APPEAL?

The court cannot tell you why you should or should not appeal because that would be giving legal advice. If you disagree with the district court's decision and think the court made a mistake, you can appeal. Before deciding whether to appeal, you may wish to talk to an attorney. But you need to act fast so that you do not lose your right to appeal by failing to start your appeal on time.

HOW DO I APPEAL?

In most cases, you begin an appeal by filing a “notice of appeal” in the district court. In some cases, you begin your appeal by filing what is called a “petition for a writ of certiorari” in the New Mexico Court of Appeals. You may contact the Court of Appeals for these forms or visit the Court of Appeals' website at <https://coa.nmcourts.gov> to download and print the forms yourself.

In general, you use a notice of appeal to appeal a decision of district court that started in the district court, and the notice of appeal is filed with the district court itself. But if your case started in an administrative agency and then was appealed to the district court, you use a petition for a writ of certiorari to appeal the district court's decision, and the petition is filed directly with the Court of Appeals.

If you start your appeal by filing a notice of appeal in the district court, you will then need to write and file a “docketing statement” in the Court of Appeals. The docketing statement is due no later than 30 days after you file the notice of appeal, and you will need to pay the Court of Appeals a docket fee of \$125 unless you ask for and are qualified for a fee waiver. After you file the docketing statement, you must send a copy to the district court clerk's office and work with them to get the record proper prepared and sent to the Court of Appeals. The “record proper” is the term used for an official copy of all the documents that were filed with the district court clerk's office. It will also cost you some money to have the record proper prepared, and the amount will depend on the size of the record proper. The district court clerk will notify you of the cost, which must be paid in 10 days.

After the record proper is filed in the Court of Appeals, the court will begin to consider your appeal. You will then receive notice from the appellate court telling you what you must do next.

Resource List: Legal Services and Referral Programs

Civil Legal Service Providers

Civil legal services include consumer, employment and unemployment, family law (child support, custody and visitation, divorce, domestic violence, and guardianships), elder law, housing and landlord-tenant, and public benefits.

Advocacy Inc.

Advocacy Inc. is a nonprofit agency protecting and promoting the interests of at-risk children and youth in New Mexico by providing low- or no-cost legal advocacy and support services. The agency serves children from birth to 18 years and provides guardianship, adoption, and guardian ad litem services.

6301 Fourth NW Suite 3
Albuquerque, NM 87107
866-257-5320
www.nmadvocacy.org

Catholic Charities of Albuquerque and Santa Fe Center for Immigration and Citizenship Legal Assistance

The CICLA is the principal nonprofit provider of immigration legal services in New Mexico. The agency assists U.S. citizens and legal permanent residents in filing legal paperwork with the U.S. Citizenship and Immigration Services to keep families united or reunite families that have been separated. The agency also assists U.S. legal permanent residents to gain U.S. citizenship and refugees to gain U.S. legal permanent resident status.

Albuquerque Office

2010 Bridge Ave SW
Albuquerque, NM 87105
505-724-4670
505-247-0442
citas@ccasfnm.org
8 a.m.-5 p.m., Mon-Fri

Santa Fe Office

4985 Airport Rd
Santa Fe, NM 87507
505-424-9789
citas.sf@ccasfnm.org
8 a.m.-5 p.m., Wed-Fri

Catholic Charities of the Diocese of Las Cruces (CCDLC) Legal Services Program

The CCDLC program provides free and low-cost immigration legal services to residents of the ten southern counties of New Mexico
2215 S Main St., Suite B
Las Cruces, NM 88005
575-527-0500
www.catholiccharitiesdlc.org
9 a.m.-4:30 p.m., Mon-Thurs (closed noon-1 p.m. for lunch)

Disability Rights New Mexico (DRNM)

DRNM seeks to protect, promote, and expand the legal and civil rights of persons with disabilities throughout New Mexico. Offices are located in Albuquerque, Las Cruces, and Las Vegas.

1720 Louisiana NE Suite 204
Albuquerque NM 87110
800-432-4682
info@drnm.org
8:30 a.m.-5 p.m., Mon-Fri

DNA-People's Legal Services

PO Box 116
Crownpoint, NM 87313
505-786-5277
800-789-7936

PO Box 306
Ft. Defiance AZ 86515
928-871-4151
800-789-7287

709 N Butler Ave
Farmington NM 87401
505-325-8886
800-789-7997

PO Box 987
Shiprock NM 87420
505-368-3200
800-789-8994
www.dnalegalservices.org
8 a.m.-5 p.m., Mon-Fri at all locations

Enlace Comunitario

Enlace provides free services to Spanish-speaking immigrants who are victims of domestic violence. Services include direct civil legal services (domestic violence and family law cases, which are accepted in the Albuquerque metropolitan area); case

management; therapy; support groups; parenting classes; and young men's/women's groups.

PO Box 8919
Albuquerque, NM 87198
505-246-8972

www.enlacenm.org

8 a.m.-5 p.m., Mon-Fri

Legal Resources for the Elderly Program (LREP)

LREP is a free legal helpline for New Mexico residents age 55 and older. LREP has no income restrictions and offers assistance in most civil legal matters. If a problem cannot be resolved through the helpline, referrals to private attorneys (pro bono, reduced-fee, or full-fee basis) may be provided.

PO Box 92860
Albuquerque NM 87199-2860
505-797-6005
1-800-876-6657
www.nmbar.org/Public/LREP
8 a.m.-5 p.m., Mon-Fri

Law Access

Law Access provides statewide legal services to New Mexico households with income of 200 percent or less of federal poverty guidelines. Services include advice/counsel, brief services (including third-party negotiations and some self-represented litigant pleadings) and referrals to other legal services organizations within the state, utilizing an advanced telephone system.

505-998-4529
800-340-9771
www.lawhelpnewmexico.org
8:30 a.m.-3:45 p.m., Mon-Fri

Native American Disability Law Center, Inc.

The Native American Disability Law Center is a private nonprofit law firm that provides free legal assistance to Native Americans with disabilities to ensure that they have access to justice and are equal members of their communities. The Law Center uses a coordinated approach of individual representation, systemic advocacy, and community education to address the important issues unique to Native Americans with disabilities.

Main Office

Resource List: Legal Services and Referral Programs

3535 E 30 St, Suite 201
Farmington NM 87402
505-566-5880
1-800-862-7271

Branch Office
207 S. Second St.
Gallup NM 87301
505-863-7455
877-283-3208
505-863-1916 (Fax)

www.nativedisabilitylaw.org

8 a.m.-6 p.m., Mon-Thur
By appointment during non-office hours.

New Mexico Center on Law and Poverty

The Center is a nonprofit law firm and advocacy group that works statewide with low-income New Mexicans to address structural issues of poverty and justice. Generally, the agency does not represent individual clients.

924 10th Street NW
Albuquerque, NM 87102
505-255-2840

www.nmpovertylaw.org

9 a.m.-5 p.m., Mon-Fri

New Mexico Immigrant Law Center (NMILC)

The NMILC provides free and low-cost immigration information and legal assistance to low-income families. The agency helps immigrants keep their families together, gain protection from persecution and domestic violence, attain permanent residency and work authorization, and become U.S. citizens. The NMILC builds stable families and increases opportunities for economic security, allowing New Mexico's immigrants to contribute to their communities for generations to come.

PO Box 7040
Albuquerque NM 87194-7040
505-247-1023

www.nmilc.org

9 a.m.-5 p.m., Mon-Fri

New Mexico Legal Aid

New Mexico Legal Aid is a statewide legal services program that provides free legal services to eligible low-income residents. The agency, with 10 offices throughout New Mexico, provides extended representation, brief services, legal advice, outreach, and community legal education.

Services include domestic violence cases, evictions, foreclosures, public benefits cases (including unemployment benefits and Social Security disability cases), and consumer law cases. The agency does not provide assistance in criminal or juvenile offender cases except for certain limited circumstances in tribal courts.

Main Office

301 Gold SW (87102)
PO Box 25486
Albuquerque NM 87125-5486
505-243-7871

Clovis Office

1012 W Grand (88101)
PO Box 864
Clovis NM 88102
575-769-2326

Gallup Office

211 W Mesa, Suite 5 and 6
PO Box 1475
Gallup NM 87301
505-722-4417

Las Cruces Office

600 E Montana, Suite D
Las Cruces NM 88001-4246
575-541-4800

Las Vegas Office

932 Gallinas St, Suite 109
PO Box 1454
Las Vegas NM 87701
505-425-3514

Roswell Office

200 E Fourth, Suite 2
PO Box 1087
Roswell NM 88202-1087
575-623-9669

Native American Program:

Santa Ana Office

51 Jemez Pueblo Canyon Dam Rd.,
Suite 102, Santa Ana Pueblo
PO Box 817
Bernalillo NM 87004
505-867-3391

Santa Fe Office

901 W Alameda, Suite 20 B
PO Box 5175

Santa Fe NM 87502
505-982-9886

Silver City Office

301 W College Ave, Suite 17
Silver City NM 88061
575-388-0091

Taos Office

214C Kit Carson
Taos NM 87571
575-758-2218

New clients may also contact Law Access at 1-800-340-9771 or apply online at www.nmlegalaid.org
8:30 a.m.-5 p.m., Mon-Fri

Pegasus Legal Services for Children

Pegasus is a private nonprofit agency providing statewide civil legal services to children, youth, and their caregivers, including direct representation, community legal education, and policy advocacy. The agency promotes and defends the rights of children and youth to safe and stable homes and quality education and health care and provides a voice in decisions that affect their lives.

3201 Fourth Street NW
Albuquerque NM 87107
505-244-1101

www.pegasuslaw.org

8:30 a.m.-5 p.m., Mon-Fri

Senior Citizens' Law Office (SCLO)

SCLO provides free legal services to residents of Bernalillo, Sandoval, Torrance, and Valencia counties who are 60 years of age or older.

4317 Lead Ave SE
Albuquerque, NM 87108
505-265-2300

www.sclonm.org

8:30 a.m.-5 p.m., Mon-Fri (closed noon-1 p.m. for lunch)

Southwest Women's Law Center

The Southwest Women's Law Center seeks to create the opportunity for women to realize their full economic and personal potential by:

- eliminating gender bias, discrimination and harassment;
- lifting women and their families out of poverty; and
- ensuring that all women have full control over their reproductive lives through access to

Resource List: Legal Services and Referral Programs

comprehensive reproductive health services and information.

1410 Coal Ave SW
Albuquerque NM 87104
505-244-0502

www.swwomenslaw.com

9 a.m.-5 p.m., Mon-Fri

United South Broadway (USB)

The USB Fair Lending Center provides free legal representation in foreclosure lawsuits to low-income homeowners statewide. The USB, a HUD-certified housing counseling agency, holds monthly foreclosure pro se workshops and provides free assistance to homeowners seeking loan modifications or other loss mitigation options.

1500 Walter SE

Albuquerque NM 87102

505-764-8867

www.unitedsouthbroadway.org

8 a.m.-5:30 p.m, Mon, Tues, Thurs

8 a.m.- 6 p.m, Wednesday

8 a.m.-noon, Friday

Homeless Legal Clinics

The State Bar Young Lawyers Division operates the following homeless legal clinics in Albuquerque, Las Cruces, and Santa Fe. Volunteer attorneys staff the clinics, provide legal information and advice, and refer clients to low-income or pro bono legal service programs:

Healthcare for the Homeless

1217 First St NW (at Mountain Rd)

Albuquerque NM 87102

PO Box 25445 (87125)

505-766-5197

www.abqhch.org

9-11 a.m., Fridays

Mesilla Valley Community of Hope Shelter

999 W Amador Ave

Las Cruces NM 88006

575-523-2219

www.mvcommunityofhope.org

12:30-2:30 p.m., Wednesdays

(Coordinated by the New Mexico Center on Law and Poverty)

St. Elizabeth Shelter Homeless

Legal Clinic

Santa Fe Resource and Opportunity Center

804 Alarid Street
Santa Fe NM 87505

505-982-6611

www.steshelter.org

10 a.m.-1 p.m., Thursdays

Court Services

Provides some court forms and limited information. An * indicates the courthouse has self-help services.

First Judicial District Court

*Santa Fe 505-455-8146

Tierra Amarilla 575-588-0058

<https://firstdistrictcourt.nmcourts.gov>

Second Judicial District Court

*Albuquerque 505-841-6702

seconddistrictcourt.nmcourts.gov

Third Judicial District Court

*Las Cruces 575-528-8326

www.thirddistrictcourt.com

Fourth Judicial District Court

*Las Vegas 505-425-7281

Santa Rosa 575-472-3888

<https://fourthdistrictcourt.nmcourts.gov>

Fifth Judicial District Court

Carlsbad 575-885-4740

Lovington 575-396-8571

Roswell 575-622-2565

<http://fifthdistrictcourt.com>

Sixth Judicial District Court

Deming 575-546-9611

Lordsburg 575-542-3411

Silver City 575-538-3250

Seventh Judicial District Court

Estancia 505-894-7167

Socorro 575-835-0050

Truth or Consequences 575-384-2974

Eighth Judicial District Court

Clayton 575-374-9577

Raton 575-445-5584

Taos 575-758-3173

<http://www.eighthjudicialdistrictcourt.com>

Ninth Judicial District Court

Clovis 575-742-7500

Portales 575-359-6920

www.nmcourts9thjdc.com

Tenth Judicial District Court

Fort Sumner 575-355-2896

Mosquero 575-673-2252

Tucumcari 575-461-2764

Eleventh Judicial District Court

*Aztec 505-334-6151

Farmington 505-326-2256

Gallup 505-863-6816

<https://11thjdc.nmcourts.gov>

Twelfth Judicial District Court

*Alamogordo 575-437-7310 x147

Carrizozo 575-648-2432

www.12thdistrict.net

Thirteenth Judicial District Court

Bernalillo 505-867-2376

Grants 505-287-8831

Los Lunas 505-865-4639

www.13districtcourt.com

Bernalillo County Metropolitan Court

*Albuquerque 505-841-9817

www.metrocourt.state.nm.us

New Mexico Supreme Court

Limited forms, court rules, and procedures and statutes

Santa Fe 505-827-4860

<https://nmsupremecourt.nmcourts.gov>

New Mexico Court of Appeals

Forms, court rules, and procedures and statutes

Santa Fe 505-827-4925

Albuquerque 505-841-4618

<https://coa.nmcourts.gov>

United States Bankruptcy Court

Limited forms, court rules and procedures and statutes

Albuquerque 505-348-2500

Toll-free 866-291-6805

nmb.uscourts.gov

Attorney Referral

Albuquerque Bar Association

Lawyer Referral Service: 30-minute consultation with a private attorney for \$50

201 3rd Street Ste. 500

Albuquerque, NM 87102

505-243-2615

www.abqbar.org

9 a.m.-3 p.m, Mon-Fri

Resource List: Legal Services and Referral Programs

State Bar General Referral Program

30-minute consultation with a private attorney for \$35

PO Box 92860

Albuquerque NM 87199-2860

505-797-6066

800-876-6227 (option 2)

www.nmbar.org

8 a.m.-5 p.m., Mon-Fri