

Domestic Relations Law 4

Is it possible to obtain child support after you become emancipated or when you arrive at adulthood?

In order to better serve those who read our newsletter, we often develop articles from people who ask us questions through our questionnaires, polls, and direct inquiries. A question recently posed to us, involved the issue of the circumstances in which an emancipated child or adult could obtain child support. It just so happens that a case discussing this issue was recently published in the New Mexico Bar Bulletin. In the case of *Diamond v. Diamond*, 2010-NMCA-002, a child sought to be emancipated. The District Court awarded pre-emancipation and post-emancipation child support; mother appealed. The Court of Appeals affirmed in part and reversed in part, holding: The trial court erred when it awarded daughter post-emancipation child support; however, the daughter was entitled to pre-emancipation child support from mother. So, what does this case mean? Generally, emancipation occurs when a child is deemed by the law to be a legal adult. In the above case, the daughter sued her mother for child support. The court ruled that the daughter was entitled to child support for the period of time prior to emancipation. How does this case affect you? This case has a myriad of potential impacts to for parents, children, emancipated children and adults. However since everyone's circumstances are different, it is impossible to provide specific legal advice in an article of this type. However, if you are involved in a situation in which you feel this case law may impact you, please feel welcome to contact us for a comprehensive complimentary legal consultation.

Uniform Premarital Agreement Act

Another question that frequently arises through our questionnaires, polls, and direct inquiries involves Premarital Agreements. Many people ask "if we are in love and trust one another, why should we draft a document that establishes rights in a divorce?" My answer to this is that love and trust have little to do with:

1. How the legislature defines property rights and marriage.
2. How the Courts view love, marriage and property rights.

Many people do not seriously consider Premarital Agreements because they believe that this agreement is made in contemplation of a future divorce. My view is that Premarital Agreements can enhance trust that is the cornerstone of a good marriage. Just as good fences make better neighbors, providing full disclosure of all assets and debts and creating an agreement on how to deal with property and debt can avoid the type of financial disputes that often lead to divorce. In essence, a Premarital Agreement is a written, signed and notarized compact between prospective spouses made in contemplation of marriage and to be effective upon marriage. The Uniform Premarital Agreement Act can be located at 40-3A-1 to 40-3A-10 NMSA 1978. Premarital Agreements normally establish the rights and obligations of both parties to property. A Premarital Agreement cannot violate existing laws regarding the right of a child or spouse to support, anyone's right to child custody/visitation or a party's choices as to where to live or work. As the Court's ability to enforce a Premarital Agreement is determined by conscionability and

voluntariness, strict adherence to statutory and case law is essential. Among other issues that frequently arise is whether or not there has been full and fair disclosure of property interests and timing of execution. It is advisable for both parties contemplating marriage or a Premarital Agreement to seek a licensed attorney who practices in this area of the law, as overreliance on forms without following substantive and procedural requirements may result in Premarital Agreements that are unenforceable.