

FINANCIAL IMPACT REPORT:  
Analysis of the Costs to Purchase  
Legal Protections in Lieu of  
Domestic Partner Rights in New Mexico

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## Introduction

There are several hundred rights and benefits provided by the State government to married couples that are not available to all New Mexico families. If the proposed New Mexico Domestic Partner Rights and Responsibilities Act (DPRRA) becomes law, some of those State rights and benefits - as well as responsibilities - would be available to registered Domestic Partners.

Currently, couples seeking legal protections draw up contracts and other costly legal instruments in an effort to reduce the uncertainty of not being protected by statute. Without the DPRRA, seniors, people with disabilities, and gay and lesbian couples continue to be required to pay for some protections that are automatically granted to married couples. A short sample of these protections and rights are listed in Table 1. Couples seeking to purchase protections may develop one or more contracts from the menu listed on Table 1. A partial list of state benefits and protections that cannot be contracted for or purchased are listed as well. Many of these protections involve unforeseen circumstances that married couples do not anticipate – leaving unmarried couples in the vulnerable position of having to protect themselves from unpredictable circumstances.

## Relevant Federal Benefits

While the DPRRA only impacts state benefits, it is worth noting that there are several federal benefits that a person would be able to retain if he or she registered with the state as a domestic partner but would lose if he or she entered into a marriage. This is of particular concern to seniors and people with disabilities who rely on federal benefits as substantial supplements to their income.

Some of the federal benefits a person could retain by entering into a domestic partnership as opposed to a marriage are:

- Social Security Spousal Survivor or Divorcee Benefits, 42 U.S.C. Section 402
- Supplemental Security Income (SSI), 42 U.S.C. 1381
- Veterans' benefits including medical care to dependents and survivors, 35 U.S.C. Section 1781

**Table 1 State Benefits and Associated Costs**

Right, Benefit or Responsibility	No DP or Marriage	Marriage	Registered DP
<b>The right to inherit your life partner's property upon death of the partner in the absence of a will<sup>1</sup></b>	No		
<i>Cost to replace this benefit:</i>			
Average cost of simple will: \$500.00 per person or	\$1,000.00	Yes	Yes
Average cost of mutual, revocable living trusts: \$4,000.00 per person	\$8,000.00		
<b>The right to make end of life decisions for a partner and to have the doctors talk to you about partner's health status to manage finances during partner's incapacity<sup>2</sup></b>	Partial*		
<i>Cost to replace this benefit:</i>			
Average cost of Power of Attorney for Financial Decisions, Nomination of Guardian and Conservator (\$50.00 per document, per person)	\$300.00	Yes	Yes
<b>The right to Social Security survivors benefits upon the death of a partner (Federal benefit)<sup>3</sup></b>	No		
<i>Cost to replace this benefit:</i>	Cannot be purchased	Yes	No
<b>The right to file joint state or federal income tax returns, and shift state or federal tax burden to lower earning partner</b>	No		
<i>Cost to replace this benefit:</i>	Cannot be purchased	Yes	No
<b>Ability to collect compensation provided to survivors of victims of violent crimes<sup>4</sup></b>	No		
<i>Cost to replace this benefit:</i>	Cannot be purchased	Yes	Yes
<b>Duty of support<sup>5</sup></b>	No		
<i>Cost to replace this benefit:</i>			
Cost to create a co-habitation agreement and a post-separation agreement varies depending upon complexity.	\$6,000	Yes	Yes
<b>Right to damages for wrongful death<sup>6</sup></b>	No		
<i>Cost to replace this benefit:</i>	Cannot be purchased	Yes	Yes
<b>Continuation of health insurance coverage following death or divorce of a state or municipal employee or retiree<sup>7</sup></b>	No		
<i>Cost to replace this benefit:</i>	Cannot be purchased	Yes	Yes
<b>Acquisition and Division of Community Property<sup>8</sup></b>	No Too		
<i>Cost to replace this benefit:</i>	complicated to contract for**	Yes	Yes
<b>The presumption of parentage in relationship to children born into the partnership<sup>9,10</sup></b>	No		
<i>Cost to replace this benefit:</i>			
Second Parent adoption, average cost per child \$5,000.00	\$5,000.00	Yes	Yes
<b>The right to receive pension benefits upon death of partner<sup>11</sup></b>	No	Yes	No
Employer-sponsored pension plans subject to Employee Retirement Income Security Act (ERISA)	No	Yes	Yes
Plans not subject to ERISA	Cannot be purchased		
<i>Cost to replace this benefit:</i>			
<b>The right to worker's compensation benefits upon the death of a partner<sup>12</sup></b>	No		
<i>Cost to replace this benefit:</i>	Cannot be purchased	Yes	Yes

\* NMSA § 24-7A-5 states that in the event a person is deemed to lack the capacity to make health care decisions and no agent or guardian has been appointed, then the following people in the following order make that decision: 1) spouse; 2) "an individual in a long-term relationship of indefinite duration with the patient in which the individual has demonstrated an actual commitment to the patient similar to the commitment of a spouse and in which the individual and the patient consider themselves to be responsible for each other's well being;" 3) an adult child; 4) parent; 5) brother/sister. We've included this right in this analysis because in the event of either a medical emergency or a partner's incapacity, it would be a difficult time to have to prove that your relationship fits into the second category. To do this you would have to summon a lawyer to explain what appears to be a little known provision of the Uniform Health-Care Decisions Act. Because of the potential for misinterpretation and confusion, it is prudent if not necessary to designate an agent to make health care decisions in the event of incapacity.

\*\* The acquisition and division of community property is complicated to contract for because it would require either a separate contract for each piece of property or household item, or one contract with a list of all persona property including dishes, silverware, picture frames, furniture, etc. The same is true for real property (land, houses etc.).

- Armed Forces benefits including certain annuity plans, 10 U.S.C. Section 1108
- Compensation to Department of Energy employees and employees of DOE contractors for certain types of occupational illnesses including uranium poisoning (survivor benefits), 42 U.S.C. 7834

### Access to Resources in New Mexico

Attaining documents to secure all of the legal protections provided under the DPRRA can be burdensome and cost prohibitive. Lack of access to expertise and resources, especially in rural areas in New Mexico, is also a barrier to ensuring legal protections. This is especially true for vulnerable populations including seniors and low-income residents.

The New Mexico State Bar Foundation Lawyer Referral for the Elderly Program (LREP)<sup>13</sup> provides legal information services to New Mexico residents statewide age 55 and over regardless of income. LREP data for FY08 indicate that some seniors are accessing legal services to attain Power of Attorney documents, advance healthcare directives, engage in estate planning, and access information on abuse and neglect more than any other services (Table 2).

In some areas of the state there are few lawyers who can help prepare documents and advise on legal protection issues. The map below illustrates the number of number of lawyers listed in the 2008 New Mexico Bar directory per county. It is important to note that these are total numbers of attorneys per county and do

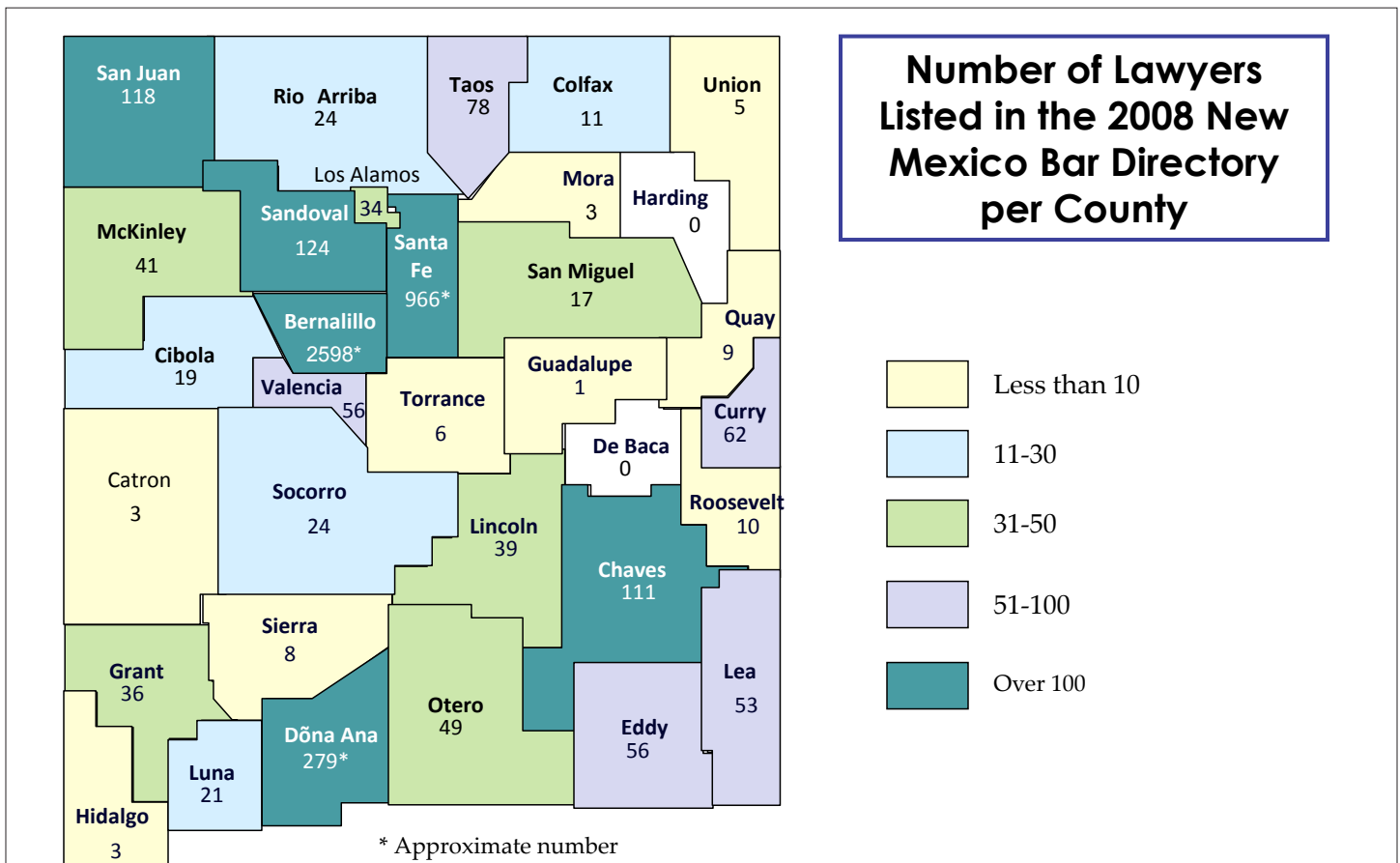
not reflect the number of lawyers who are actually trained in family and contract law in each area.

Table 3 provides U.S. Census income data as it relates to total number of attorneys per county (not reflective of the number of attorneys trained in family and contract law in each area). While there are some legal services available to persons over 55 and under 200% of the federal poverty level, these services are not readily or widely accessible. Many people, especially in rural areas, are dependent on attorneys offering legal services pro-bono.

The DPRRA extends the necessary legal protections to couples that register at the County Clerk’s office with a \$25 fee. This is a one-time fee with one visit to the Clerk’s office as opposed to the multiple meetings with attorneys, expensive fees, and extensive travel that may be required to initiate documents equal to protections provided by the DPRRA.

Case Type	# of services provided	% of total services
Elder Issues*	2895	32.8
Consumer	2478	28.1
Housing	1185	13.4
Public Benefits	699	7.9
Family Law	644	7.3
Employment	459	5.2
Other	390	4.4
Civil Rights	49	0.6
Disability	8	0.1
Immigration	6	0.1
<b>Total Services</b>	<b>8813</b>	<b>100.0</b>

\*Elder issues include abuse and neglect, powers of attorney, advance of healthcare directives, and estate planning.



**Table 3** Population Information from 2005-2007 American Community Survey

County	Lawyers registered w/the NM Bar in '08**	Residents per lawyer***	Residents below poverty level per lawyer**
*DeBaca	0	0	0
*Harding	0	0	0
*Los Alamos	34	537	16
Santa Fe	966	143	20
Bernalillo	2598	234	35
Taos	78	398	67
Lincoln	39	522	75
Sandoval	124	894	98
Chaves	111	538	116
Grant	36	802	116
Eddy	56	879	148
Curry	62	715	151
*Union	5	831	151
San Miguel	42	656	154
Dona Ana	279	675	169
Lea	53	1025	177
San Juan	118	1018	179
*Colfax	11	1251	185
*Quay	9	1105	230
*Socorro	24	729	231
Valencia	56	1208	231
Otero	49	1265	257
*Catron	3	1171	287
Cibola	19	1318	305
*Sierra	8	1620	338
*Roosevelt	10	1727	393
Rio Arriba	24	1670	395
Luna	21	1245	431
*Mora	3	1715	435
*Torrance	6	2720	518
*Hidalgo	3	1946	530
McKinley	41	1712	586
*Guadalupe	1	4167	902

\*Population numbers from the 2000 Census – most recent available  
 \*\*2008 New Mexico Bar Directory  
 \*\*\* Rounded to nearest whole number

## Summary

There are several hundred rights and benefits provided by the State government to married couples that are not available to all New Mexico families. If the proposed New Mexico Domestic Partner Rights and Responsibilities Act (DPRRA) becomes law, some of those State rights and benefits - as well as responsibilities - would be available to registered Domestic Partners.

Some couples seeking legal protections draw up contracts and other costly legal instruments in an effort to reduce the uncertainty of not being protected by statute.

While some protections can be purchased through a patchwork of contracts, the cost to individuals and families is extensive and legal services are not readily available in New Mexico. The process to contract for these protections can also be arduous and complicated. Additionally there are hundreds of protections that cannot be contracted for or are difficult to predict. This potentially leaves New Mexico families in a difficult legal position at times when protections are most needed.

## Acknowledgements

Contributors: New Mexico Coalition for Domestic Partnership and New Mexico Aging & Long Term Services Department. For more information contact Emily Kaltenbach, ALTSD Policy and Planning Director, 505-476-4732 or Lynn Perls, Coalition for Domestic Partnership contributing attorney, 505-891-8918.

## Citations

1. Intestate Succession. In the absence of a will, a decedent's community property passes to spouse as does separate property if there are no children, if there are children, spouse receives ¼ share of separate property, children receive ¾ of the separate property. NMSA 1978, § 45-2-102 (1975).
2. The Uniform Power of Attorney Act, NMSA 1978, § 46B-1-101 et seq. AND The Uniform Health-Care Decisions Act, NMSA 1978, § 24-7A-2. The Power of Attorney Act is for financial decisions and the Health-Care Act is for health-care decisions.
3. 42 U.S.C.S § 402 (e) and (f)
4. Crime Victims Reparations Act. Available to dependents (spouse, parent, grandparent, step parent, child, grandchild...) upon death of victim of violent crime. NMSA, Section 31-22-7 (1993)
5. Duty of Support. A spouse has a duty to support his or her spouse. NMSA 1978, § 40-2-1 (1907)
6. Wrongful Death Proceeds NMSA, Section 41-2-3 (A)
7. Health Maintenance Organization Law NMSA, §59A-46-32 (1993). Nonprofit Healthcare Plan Law, NMSA 1978, § 59A-47-34 (1984). Providing for the continuation of coverage following death or divorce. One would need to continue to pay for health insurance but the insurance carrier must continue to offer coverage to the family. Every individual or group contract entered into by a health care plan shall provide covered family members of subscribers the right to continue such coverage through a contract upon the death of the subscriber or upon divorce.
8. Division of Property. Community property is property acquired by either or both spouses during marriage that is not separate property. NMSA 1978 § 40-3-8(B). Upon divorce, the trial court has a duty to divide community property equally. *Otto v. Otto*, 80 N.M. 331, 455 P. 2<sup>nd</sup> 642 (1969)
9. Presumption of Parentage if Spouse Has Biological Child. A child born to a married couple is presumed to be the child of both parties in the couple, regardless of the parties' biological connection to the child. NMSA 1978, § 40-11-5 (1997)
10. Presumption Of Parentage If a Child Is Born Through Alternative Insemination. Both spouses are also automatically presumed to be legal parents when a child is born as a result of alternative insemination. NMSA 1978, § 40-11-6 (1986)
11. For PERA—NMSA 1978, § 10-11-14.5; also Police, Public Schools, Judicial, Magistrate and Volunteer Firefighter Acts have corresponding statutes naming spouse or estate as beneficiary in absence of designee.
12. NMSA, Section 52-1-45. The New Mexico State Bar Foundation Lawyer Referral for the Elderly Program (LREP) <http://www.nmbar.org/Public/lrep.html>

The following New Mexico attorneys were among those consulted regarding average fees for services:  
 Vickie R. Wilcox, JD LL.M., Barlow & Wilcox, PA, rated one of The Best Lawyers in America in the categories of Tax Law and Trusts and Estates;  
 N. Lynn Perls, JD, Law Office of Lynn Perls, Board Certified Family Law Specialist, member NCLR National Family Law Advisory Council;  
 Julie Sakura, Lopez & Sakura LLP; The Economics of Law Practice in New Mexico Compensation, State Bar of New Mexico Summary of Results, December 2005.