

## ARTICLE 1

### Marriage in General

#### Section

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#### **40-1-1. [Marriage is civil contract requiring consent of parties.]**

Marriage is contemplated by the law as a civil contract, for which the consent of the contracting parties, capable in law of contracting, is essential.

**History:** Laws 1862-1863, p. 64; C.L. 1865, ch. 75, § 2; C.L. 1884, § 978; C.L. 1897, § 1415; Code 1915, § 3425; C.S. 1929, § 87-101; 1941 Comp., § 65-101; 1953 Comp., § 57-1-1.

#### **40-1-2. Marriages solemnized; ordained clergy or civil magistrates may solemnize.**

A. The civil contract of marriage is entered into when solemnized as provided in Chapter 40, Article 1 NMSA 1978. As used in Chapter 40, Article 1 NMSA 1978, "solemnize" means to join in marriage before witnesses by means of a ceremony.

B. A person who is an ordained member of the clergy or who is an authorized representative of a federally recognized Indian nation, tribe or pueblo may solemnize the contract of marriage without regard to sect or rites and customs the person may practice.

C. Active or retired judges, justices and magistrates of any of the courts established by the constitution of New Mexico, United States constitution, laws of the state or laws of the United States are civil magistrates having authority to solemnize contracts of marriage. Civil

magistrates solemnizing contracts of marriage shall charge no fee therefor.

**History:** Laws 1859-1860, p. 120; C.L. 1865, ch. 75, § 1; C.L. 1884, § 977; C.L. 1897, § 1414; Code 1915, § 3426; C.S. 1929, § 87-102; 1941 Comp., § 65-102; 1953 Comp., § 57-1-2; Laws 1983, ch. 193, § 1; 1989, ch. 78, § 1; 2001, ch. 99, § 1; 2013, ch. 144, § 2.

#### **40-1-3. Ceremony by religious society.**

It is lawful for any religious society or federally recognized Indian nation, tribe or pueblo to solemnize marriage conformably with its rites and customs, and the secretary of the society or the person authorized by the society or federally recognized Indian nation, tribe or pueblo shall make and transmit a transcript to the county clerk certifying to the marriages solemnized.

**History:** Laws 1862-1863, p. 66; C.L. 1865, ch. 75, § 8; C.L. 1884, § 984; C.L. 1897, § 1421; Code 1915, § 3428; C.S. 1929, § 87-104; 1941 Comp., § 65-103; 1953 Comp., § 57-1-3; Laws 1983, ch. 193, § 2; 1989, ch. 78, § 2; 2013, ch. 144, § 3.

#### **40-1-4. [Lawful marriages without the state recognized.]**

All marriages celebrated beyond the limits of this state, which are valid according to the laws of the country wherein they were celebrated or contracted, shall be likewise valid in this state, and shall have the same force as if they had been celebrated in accordance with the laws in force in this state.

**History:** Laws 1862-1863, p. 64; C.L. 1865, ch. 75, § 10; C.L. 1884, § 986; C.L. 1897, § 1423; Code 1915, § 3429; C.S. 1929, § 87-105; 1941 Comp., § 65-104; 1953 Comp., § 57-1-4.

#### **40-1-5. Repealed.**

#### **40-1-6. Restrictions on marriage of minors.**

A. The county clerk shall not issue a marriage license to an unemancipated person sixteen or seventeen years of age, and no person authorized by the laws of this state to solemnize marriages shall knowingly unite in marriage any person sixteen or seventeen years of age, unless the minor first receives the written consent of each of the minor's living parents as shown on the minor's certificate of birth, or the district court has authorized the marriage of such person upon request of a parent or legal guardian of the person for good cause shown, and a certified copy of the judicial authorization is filed with the county clerk.

B. The county clerk shall not issue a marriage license to any person under sixteen years of age, and no person authorized by the laws of this state to solemnize marriages shall knowingly unite in marriage any person under sixteen years of age, unless the children's or family court division of the district court has first authorized the marriage of the person upon request of a

parent or legal guardian of the person in settlement of proceedings to compel support and establish parentage, or where an applicant for the marriage license is pregnant, and a certified copy of the judicial authorization is filed with the county clerk.

**History:** Laws 1876, ch. 31, § 2; C.L. 1884, § 993; C.L. 1897, § 1426; Code 1915, § 3431; Laws 1923, ch. 100, § 2; C.S. 1929, § 87-107; 1941 Comp., § 65-106; Laws 1953, ch. 112, § 1; 1953 Comp., § 57-1-6; Laws 1972, ch. 97, § 70; 1975, ch. 32, § 2; repealed and reenacted by Laws 2013, ch. 144, § 4.

#### **40-1-7. Incestuous marriages.**

All marriages between relations and children, including grandparents and grandchildren of all degrees; between brothers and sisters of full blood or of half blood; between uncles and nieces; and between aunts and nephews are declared incestuous and absolutely void.

**History:** Laws 1876, ch. 31, § 1; C.L. 1884, § 992; C.L. 1897, § 1425; Code 1915, § 3430; C.S. 1929, § 87-106; 1941 Comp., § 65-107; 1953 Comp., § 57-1-7; 2013, ch. 144, § 5.

#### **40-1-8. Repealed.**

#### **40-1-9. Prohibited marriages.**

No marriage between relatives within the prohibited degrees or between or with persons under the prohibited ages shall be declared void except by a decree of the district court upon proper proceedings. A cause of action may be instituted by the minor, by next friend, by either parent or legal guardian of the minor or by the district attorney. In the case of minors, no party to the marriage who may be over the prohibited age shall be allowed to apply for or obtain a decree of the court declaring the marriage void; but the minor may do so, and the court may, in its discretion, grant alimony until the minor becomes of age or remarries. If the parties should live together until they arrive at the age under which marriage is permitted by statute, then the marriage shall be deemed legal and binding.

**History:** Laws 1876, ch. 32, § 1; C.L. 1884, § 997; C.L. 1897, § 1430; Code 1915, § 3434; Laws 1927, ch. 110, § 1; C.S. 1929, § 87-110; 1941 Comp., § 65-109; 1953 Comp., § 57-1-9; Laws 1973, ch. 51, § 2; 2013, ch. 144, § 6.

#### **40-1-10. License required; county clerk.**

A. Each couple desiring to marry pursuant to the laws of New Mexico shall first obtain a license from a county clerk of this state and following a ceremony conducted in this state file the license for recording in the county issuing the license.

B. To obtain a marriage license, the couple shall personally appear at the office of the county

clerk issuing the license and provide sufficient identification to satisfy the county clerk as to each person's identity and qualification to receive a marriage license pursuant to Chapter 40, Article 1 NMSA 1978. On application to a judge of the district court, the court, for good cause, may authorize a person unable to appear personally to obtain a license from the county clerk, and a certified copy of the judicial authorization shall be filed with the county clerk.

C. The county clerk:

(1) shall collect the social security number of an applicant for a marriage license only as provided for in Section 27-1-10 NMSA 1978;

(2) shall not make available a social security number to another person except as provided for in Section 27-1-10 NMSA 1978; and

(3) may, thirty days after the commencement of each fiscal year, dispose of, in a secure manner, those social security numbers collected in the previous fiscal year that have not been requested as provided for in Section 27-1-10 NMSA 1978.

**History:** Laws 1905, ch. 65, § 1; Code 1915, § 3435; C.S. 1929, § 87-111; Laws 1939, ch. 25, § 1; 1941 Comp., § 65-110; 1953 Comp., § 57-1-10; Laws 1969, ch. 104, § 1; 1973, ch. 51, § 3; 2013, ch. 144, § 7.

**40-1-11. Fees; disposition.**

The county clerk shall receive a fee of twenty-five dollars (\$25.00) for issuing, acknowledging and recording a marriage license and marriage certificate. Fifteen dollars (\$15.00) of each fee shall be remitted by the county treasurer to the state treasurer, within fifteen days of the last day of each month, for credit to the children's trust fund.

**History:** 1953 Comp., § 57-1-10.1, enacted by Laws 1957, ch. 33, § 1; 1977, ch. 253, § 64; 1979, ch. 131, § 1; 1985, ch. 52, § 1; 1986, ch. 15, § 10; 2013, ch. 144, § 8.

**40-1-12. Repealed.**

**40-1-13. Repealed.**

**40-1-14. Production of license and proof of legal qualifications.**

Prior to a ceremony, all persons authorized to solemnize marriage shall require the parties contemplating marriage to produce a license signed and sealed by the county clerk issuing the license. Nothing in Chapter 40, Article 1 NMSA 1978 shall excuse any person authorized by the laws of this state to solemnize the contract of marriage from being satisfied as to the legal qualifications of any parties desiring to be married, in addition to the authority conferred by the license.

**History:** Laws 1905, ch. 65, § 3; Code 1915, § 3437; C.S. 1929, § 87-113; 1941 Comp., § 65-112; 1953 Comp., § 57-1-12; 2013, ch. 144, § 9.

#### **40-1-15. Certification of marriage; recording and indexing.**

A. It is the duty of all persons solemnizing the contract of marriage in this state to certify the marriage to the county clerk within ninety days from the date of the marriage ceremony. Upon ensuring the information on the certificate is complete and legible, the county clerk shall immediately upon receipt of the certificate cause it to be properly recorded and indexed in a permanent record as a part of the county records.

B. The county clerk may issue a certificate of correction or correct or reissue an application for a marriage license, a marriage license or a certificate of marriage as a result of a typographical or data entry error by the office of the county clerk. The county clerk shall issue a certificate of correction or correct or reissue an application for a marriage license, a marriage license or a certificate of marriage to correct an error on the document upon order of the district court.

**History:** Laws 1905, ch. 65, § 4; Code 1915, § 3438; C.S. 1929, § 87-114; 1941 Comp., § 65-113; 1953 Comp., § 57-1-13; 2013, ch. 144, § 10.

#### **40-1-16. Application of law.**

A. A child born to parents who are not married to each other has the same rights pursuant to the law as a child born to parents who are married to each other.

B. Nothing in Chapter 40, Article 1 NMSA 1978 shall be construed to in any manner interfere with the records kept by any civil magistrate, religious society, church organization or federally recognized Indian nation, tribe or pueblo or with any additional form of ceremony, regulation or requirement prescribed by them.

**History:** Laws 1905, ch. 65, § 5; Code 1915, § 3439; C.S. 1929, § 87-118; 1941 Comp., § 65-114; 1953 Comp., § 57-1-14; 2013, ch. 144, § 11.

#### **40-1-17. Uniform use form.**

To ensure a uniform system of records of all marriages contracted and the better preservation of the records for future reference, the form of application, license and certificate shall be substantially as provided in Section 40-1-18 NMSA 1978, each blank to be numbered consecutively corresponding with the page number of the record book in the clerk's office; provided that the medical evaluation language shall not be printed on the application until such time as the secretary of health deems such evaluation necessary through the issuance of rules.

**History:** Laws 1905, ch. 65, § 7; Code 1915, § 3441; C.S. 1929, § 87-120; 1941 Comp., § 65-116; 1953 Comp., § 57-1-15; 2013, ch. 144, § 12.

**40-1-18. Form of application, license and certificate.**

(1)

APPLICATION FOR MARRIAGE LICENSE

STATEMENTS  
RECEIVED AND FILED  
IN COUNTY CLERK'S OFFICE  
at \_\_\_\_\_ o'clock \_\_\_\_\_ .M.  
\_\_\_\_\_ 19 \_\_\_\_\_

DATE OF PREMARITAL PHYSICAL EXAMINATION

Bride \_\_\_\_\_  
Groom \_\_\_\_\_  
COUNTY CLERK \_\_\_\_\_ COUNTY  
By \_\_\_\_\_ Deputy

To the County Clerk: We the undersigned hereby make application to be united in marriage and certify that we are not related within the degree prohibited by the laws of this state; that neither is bound by marriage to another; that there exists no legal impediment to this marriage; and that the information contained herein is correct.

Male Applicant	Female Applicant
Date of Birth _____	Date of Birth _____
Place of Birth _____	Place of Birth _____
Present Address _____	Present Address _____
_____ Signature	_____ Signature
Subscribed and sworn to before me this _____ day of _____ A.D. 19 ____	
(seal)	
By _____ Deputy	
_____ Signature County Clerk	

CONSENT OF PARENT OR GUARDIAN  
(Where either party is under age)

I, the parent (guardian) of \_\_\_\_\_, hereby consent to the granting of a license to marry, waiving the question of minority.

\_\_\_\_\_  
Signature Parent (Guardian)

I, the parent (guardian) of \_\_\_\_\_, hereby consent to the granting of a license to marry, waiving the question of minority.

\_\_\_\_\_  
Signature Parent (Guardian)

MARRIAGE LICENSE

State of New Mexico,

ss.

County of \_\_\_\_\_.

To any Person Authorized by Law to Perform the Marriage Ceremony:

Greeting:

You are hereby authorized to join in marriage \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ and of this license you will make due return to my office within the time prescribed by law.

Witness my hand and the seal of said court at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
County Clerk

Recorded \_\_\_\_\_, 19 \_\_\_\_, at \_\_\_\_ .M.

In marriage record book no. \_\_\_\_, page \_\_\_\_.

\_\_\_\_\_  
County Clerk

MARRIAGE CERTIFICATE

State of New Mexico,

ss.

County of \_\_\_\_\_.

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19 \_\_\_\_, at \_\_\_\_\_

in said county and state, I, the undersigned, a \_\_\_\_\_, did join in the Holy Bonds of Matrimony in accordance with the laws of the state of New Mexico and the authorization of the foregoing license \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and seal the day and year last above written.

\_\_\_\_\_  
(Official Title)

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

Signed \_\_\_\_\_ Groom      Signed \_\_\_\_\_  
Bride.

Recorded this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19 \_\_\_\_, at \_\_\_\_ M.

Marriage Record Book No. \_\_\_\_, Page No. \_\_\_\_.

\_\_\_\_\_  
County Clerk

**History:** 1953 Comp., § 57-1-16, enacted by Laws 1961, ch. 99, § 1.

**40-1-19. Offenses; penalties.**

A. For failure to perform the county clerk's responsibilities and duties pursuant to Chapter 40, Article 1 NMSA 1978, a county clerk is responsible on the county clerk's official bond for damages suffered by the injured party.

B. A person who performs the marriage ceremony or certifies a marriage to the county clerk, who neglects or fails to comply with the provisions of Chapter 40, Article 1 NMSA 1978 and any person who willfully violates the law by deceiving or attempting to deceive or mislead any officer or person in order to obtain a marriage license or to be married contrary to law is upon conviction guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1905, ch. 65, § 9; Code 1915, § 3443; C.S. 1929, § 87-122; 1941 Comp., § 65-118; 1953 Comp., § 57-1-17; 2013, ch. 144, § 13.

**40-1-20. [Marriages without license in 1905 validated.]**

All marriages celebrated or contracted in the territory of New Mexico, during the year A.D. 1905, without the persons entering into the marriage relation, having first obtained a license from the probate clerk of the proper county, but which marriages were valid according to the law as it



existed prior to April 13, 1905, are hereby validated and legalized and shall have the same force and effect as if such marriages had been celebrated or contracted after the parties contracting such marriage had first obtained a license to marry from the probate clerk of the county wherein such marriage occurred.

**History:** Laws 1909, ch. 91, § 1; Code 1915, § 3444; C.S. 1929, § 87-123; 1941 Comp., § 65-119; 1953 Comp., § 57-1-18.