WISCONSIN'S MARITAL PROPERTY LAW

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I. What is Wisconsin's Marital Property Law and What Does It Provide?

Wisconsin's Marital Property Act (WMPA) became the law January 1, 1986. The Marital Property Act is a set of rules explaining who owns and who manages and controls property during the marriage. It also determines to whom property belongs during the marriage or if one or both of the spouses die. **Marital Property laws do not determine what happens to property if the married couple seeks a divorce or legal separation.** Once a spouse files for divorce, WMPA is generally not applicable. The statutes governing Marital Property Law are available in Chapter 766.

II. What is Classification of Property Under Wisconsin's Marital Property Law?

Classification determines property ownership. Property can be classified as individual property (belonging to one spouse) or marital property (equally owned by the spouses together). Income is also considered marital property. Income, whether earned or unearned, is marital property.

All property belonging to both spouses is presumed to be marital property, according to WMPA. But there are exceptions. Some of these exceptions include:

1. Property owned by a spouse before a marriage remains the individual property of that spouse.
2. Property given or willed to a spouse by a 3rd party belongs to that spouse. However, **income** derived from that gift or inheritance is marital property.
3. Property subject to a marital property agreement and designated as individual property remains individual property.
4. Property acquired by one spouse as a recovery for personal injury, except for expenses paid out marital property, is individual property.
5. Individual property acquired before the determination date or income derived from that property after the determination date is individual property, unless it is commingled.
6. Property given by one spouse to another is individual property of the receiving spouse.

The "determination date" is the last to occur of the following:

1. The date of the marriage;
2. The day that both spouses were living in the state of Wisconsin;
3. January 1, 1986.

Income during the marriage and after the determination date is marital property. "Deferred marital property" is property acquired before the determination date which would have been marital property under Wisconsin's Marital Property Act.

Commonly asked questions regarding classification of property under WMPA:

Who is entitled to the property during the marriage?
Both spouses are to share income and property during the marriage. If one spouse mismanages money or does not act in good faith, the other spouse can bring a court action to enforce the law.

Who is entitled to the property if one spouse dies?
All property is presumed to be marital property, unless records can show the property is classified as either individual or unclassified property. **Each spouse has an automatic, one-half interest in each item of marital property**, such as income, the fringe benefits of either spouse's employment, interest, dividends and net rents from all property.

What is individual property and how can I keep my property as individual property?
Individual property generally consists of property acquired before marriage, or by gift or inheritance during the marriage. A spouse who wishes to maintain an asset as her individual property must keep records - such as receipts, canceled checks, title transfer documents, or proof of purchase - to show the property has been kept totally separate from all marital property. If the spouse cannot show the property is individual, it is presumed to be marital. "Mixing" and "commingling" occurs if individual property is pooled with individual property of the other spouse or with marital property. Once individual property is "mixed" or "commingled" it becomes marital property unless the person can trace and account for the individual property.

How is property classified if my spouse and I were married prior to January 1, 1986?
Property belonging to couples who were already married on January 1, 1986 which was owned prior to January 1, 1986 is considered **unclassified property**. During the marriage, unclassified property is treated as individual property. However, at the time of death of the owning spouse, most unclassified property which would have been marital property if the law had been in effect at the time is now classified as deferred marital property.

What happens to the spouses' home if one spouse dies?
If one spouse has died, the marital property laws apply. If spouses hold the title as joint tenants, the surviving spouse automatically receives all of the property (the marital home). After January 1, 1986, if the spouses do not indicate on the deed how the residence is to be classified, it is presumed to be survivorship marital property. This means the surviving spouse will automatically own the entire residence upon death of the other spouse.

In contrast to joint tenancy and survivorship marital property, if property is held by the married couple as tenants in common or marital property, each spouse has an equal interest in the property and the right to will one-half interest at death. If there is no will at the time one spouse dies, the deceased's spouse's one-half interest in property as tenants in common or as marital property will be passed along by the probate court according to certain rules. If spouses owned property as tenants in common or as joint tenants prior to December 31, 1985, there is no change in their ownership rights. **After December 31, 1985, if a married couple attempts to create a tenancy in common between themselves, it is classified as marital property.**

III. Who Has Management and Control Rights Over the Couple's Property?

Management and control refers to the ability of a spouse to buy, sell, transfer, exchange, give, lease, mortgage, or otherwise manage property. A spouse has the right to manage and control property which is that spouse's individual property, marital property which is titled in that spouse's name, and marital property which is titled in the alternative - for example, a checking account that is titled "John Doe (or) Jane Doe". Property which is titled to both spouses using the word "and" requires that both spouses act together in managing that property. For example, real estate titled to both spouses (John Doe and Jane Doe) cannot be sold unless both spouses sign the document.

Title does not determine ownership. For example, a car titled to "John Doe" is owned by both John Doe and his wife, Jane Doe (unless the car was a gift to John). "John Doe" has management and control of that car, however. Each spouse has an obligation to "act in good faith" regarding management and control of marital property.

Commonly asked questions regarding management and control rights under WMPA:

Is there anything I can do if my spouse mismanages our property?
Yes. The law requires both spouses to act in good faith when managing marital property. A non-managing spouse can bring an action in court if the managing spouse financially injures the other spouse. See Section V. below for information on Remedies.

May I stop my spouse from giving things away?
A spouse who has management and control rights may make a gift without the consent of the other spouse to a third party for no more than $1,000.00 per calendar year, or a larger amount if it is reasonable in light of the spouse's economic position. For any other gifts, the spouses must agree, either when the gift is given or at a later time. If a spouse violates these rules, you may bring a court action against your spouse, the recipient of the gift, or both. This suit must be filed within one year of notice of the gift, or one year after dissolution of the marriage.

Is it legal for my spouse to change accounts from joint to individual?

It depends. If the original joint account is titled with both of your names using the word "or" your spouse may manage, or close, the account and deposit the funds in an individual account and it is legal. Since the funds used to open the new account are marital property, the new account is marital property. However, your spouse has now gained management and control of the account.

If the original joint account is titled with both of your names using the word "and," your spouse cannot legally manage the account alone. Unless you agree in writing or the court orders your name removed from the account, the institution has no authority to remove your name from the account.

Can I cash a check made out to my spouse?
No. Your spouse has management and control of that check because it is titled to him or her.

Can I get into my spouse's bank box?
If the box is registered in his or her name only, no. You may not, legally, have access to the spouse's bank box or bank accounts unless your spouse has listed you as a person who may have access to the box.

Can I take my spouse's (our) money out of the bank?
It depends. If you are named as an owner in the alternative (John Doe or Jane Doe) on the account, you may withdraw any amount from the account without the spouse's permission. If the account is in your spouse's name only, you may not withdraw money from the account. If the account is in both your names (John and Jane Doe), you both must act together.

Can I write a check out of my spouse's individual account?
No. Unless you are named as an owner of the account, you may not withdraw money from the account.

IV. Who Can Obtain/Who is Responsible for Credit and Debt Under WMPA?

Wisconsin's Marital Property Act permits spouses to obtain credit on equal terms. It also creates rules for dealing with debts.

According to Understanding Wisconsin's Marital Property Law (Langer and Roberson, 1985, reprinted with permission):

> Access to credit is of particular importance to homemakers and lesser wage-earners, and was a focal point of the reform movement. The result is a two-pronged "100 percent rule" which governs spousal rights and obligations with respect to the ability to obtain credit and the responsibility to repay debt. This "100 percent rule" ...constitutes a major exception to the general title management rule. It provides that each spouse, irrespective of title, may manage and control 100 percent of the marital estate *for the purpose of*

obtaining unsecured credit. Business property, as defined in the new law, is excluded from the "100 percent rule." A spouse with management and control rights (i.e., title) to marital property may pledge or encumber that property as security for the credit. When credit is extended for a "family purpose" ...and only one spouse has applied for that credit, the creditor must notify the non-applicant spouse in writing of the extension of credit prior to the date upon which any payment is due.

Commonly asked questions regarding credit and debt under WMPA:

Am I entitled to obtain credit if I am married?
Each spouse has equal management and control of any **marital property** to obtain unsecured credit or credit where the security is the item purchased and the obligation is a marital obligation. A marital obligation is one incurred by a spouse in the interest of the marriage of family.

What property must a creditor consider when deciding whether to offer me credit?
If the credit is requested for a marital obligation, the creditor **must** consider all marital property available to satisfy the debt to determine whether to grant the credit.

Can my spouse include a condition in a premarital agreement which takes away my right to obtain credit with marital property?
Yes. A Marital Property or Premarital Agreement could reclassify property which would be marital property so it is individual property only. A creditor must honor a Marital Property or Premarital Agreement provided the applicant spouse gives the creditor a copy of any agreement or court decree prior to the time credit is given.

Must I receive notice if my spouse tries to obtain credit for a marital obligation?
Yes. If credit is given for a marital obligation, the creditor is to provide written notice to the non-applicant spouse **prior to when the first payment is due**.

Can I cancel the credit if I do not approve of what my spouse did, or can he cancel credit for which I applied?
Yes. The nonapplicant spouse has the right to terminate the account. However, even if it is canceled, any credit already used must be repaid. The non-applicant spouse may also have remedies available under the Wisconsin Consumer Act.

May I use credit cards which are in my spouse's name only or may my spouse use credit cards which are in my name only?
Not legally. However, keep in mind you may still be responsible for your spouse's debts and he for yours if the item is purchased for the interest of the family or marriage.

Who may remove a name from a credit card or cancel the credit card?

The individual who opens the credit card account is known as the "primary card holder." This individual, whether married or not, may hold the credit card in his or her name only or may choose to add "authorized users." The primary card holder can close the credit card account or remove the name of an authorized user without the permission of the authorized user. However, an authorized user cannot close the account or remove the primary card holder's name from the account. The authorized user can only remove his or her name from the credit card account.

Am I responsible for debts which my spouse incurs or is he responsible for the debts I incur?

In some cases, yes. Obligations arising from a spouse's duty to support the other spouse or a child of the marriage may be satisfied from all **marital property** and all other property of the spouse who incurred the debt. Obligations incurred by a spouse in the interest of the marriage or family may be satisfied from all **marital property** and all other property of the incurring spouse. This means if one spouse incurs a marital obligation, both spouses incomes are available to satisfy that debt.

Am I responsible for debts which my non-spouse partner incurs or is he or she responsible for debts I incur?

In some cases, yes. If you are both listed on the credit card, you are both responsible for the debts.

Can either my spouse or myself incur a debt for a marital obligation even if the other spouse does not think it is necessary?

Yes. An obligation incurred by a spouse during a marriage is presumed to be incurred in the interests of the marriage and family. If one spouse signs an agreement with a creditor saying the obligation is in the interest of the family or marriage, this statement is proof for the creditor that the obligation is marital. If the other spouse disagrees, he or she will need to take court action.

Is there anything I can do if my spouse pays a debt which was only his with marital property?

Yes. If marital property is used to satisfy a nonmarital debt, the non-debtor spouse may have an equal amount of marital property reclassified as his or her individual property by asking for this remedy in court.

Am I responsible for debts my spouse incurred before our marriage or is he responsible for my pre-marriage debts once we are married?

An obligation incurred by a spouse before marriage may be satisfied from nonmarital property of the incurring spouse and from that part of marital property which would have been the incurring spouse's property but for the marriage or the new law. In other words, creditors may get no more or less property under the new law than they would have previously. **None of the non-incurring spouse's wages are available to satisfy pre-**

marital debts. However, a premarital or Marital Property Agreement could change these rules.

If we are in the process of a divorce, am I still responsible for debts he incurs or is he responsible for debts I incur?
Possibly. Until the divorce is settled, obligations are presumed to be for the family or marriage. Your temporary divorce order needs to state who is responsible for any current debts and needs to state that any further debts are the sole responsibility of the incurring spouse.

Once we are divorced, can marital debts still be satisfied from my income?
Following a divorce, no income of the non-incurring spouse may be used to satisfy obligations incurred by the other spouse during the marriage, **unless the court decree so states**. If you are held responsible for debts incurred during the time of marriage, marital property assigned to either spouse is available to satisfy these debts, but only to the extent of the property's value at the time of the divorce.

V. What is A Premarital or Marital Property Agreement?

A premarital or marital property agreement is a written and signed statement made between spouses prior to the marriage which specifies certain conditions, such as how property is classified or who has the right to manage and control certain property.

Commonly asked questions regarding marital property agreements under WMPA:

If I signed a premarital agreement, can I get out of it?
The marital property law allows spouses to enter into a Marital Property Agreement, or a premarital agreement, which allows them to vary many of the property ownership and management rules. You can only get out of the agreement if it did not meet all the necessary requirements at the time the agreement was signed.

How do I know if I signed a valid premarital agreement?
These requirements must be in effect when the agreement is signed:

-The agreement was written and signed by both spouses.
-Each spouse disclosed her or his assets and obligations. Disclosure must be fair and reasonable under the circumstances.
-The agreement must not be grossly unfair or unjust. A court must decide whether it is.
-Both parties must enter into the agreement voluntarily.
-A Marital Property Agreement may not alter any child support obligation.
-Modification of spousal support/maintenance by a Marital Property Agreement cannot result in a spouse having less than necessary and adequate support.

VI. What kinds of remedies are available under WMPA?

Remedies are the actions a spouse has available during the course of a marriage. Each spouse has an obligation to "act in good faith" regarding marital property. If a spouse is concerned that mismanagement has occurred, there are several circumstances under which you may file suit against your spouse in order to protect yourself financially.

Commonly asked questions regarding remedies under WMPA:

What kinds of remedies are available under WMPA?

If you would like an accounting of your assets, income and debts...
You can ask the court to have your spouse give an accounting of all marital property.

If you would like property to be classified or to change classification...
You can ask the court to classify all property.

If you would like your name added to the title of property...
You may ask the court to add your name to the title of marital property.

If you believe it is necessary to remove your spouse's management and control rights...
You may ask the court to remove your spouse's name from the title of property.

If you believe your spouse has mismanaged marital property...
You may ask for compensation, which will result in the marital property being classified as your individual property.

If your spouse satisfies a debt which debt belonged solely to that spouse...
You may ask the court for compensation.

If your spouse gifts more than $1,000.00 to a third party without your permission...
You may file suit against your spouse, the recipient of the gift or both to recover the property.

Can I access information about my spouse's assets?

Unless your spouse is willing to disclose his or her assets, your only recourse is to petition the court for an accounting and classification under 766.70 (recovery under WMPA).

Can I find out what assets and income my spouse and I own or receive?

If you are aware of an account and you are named as an owner of the account, you are entitled to receive information from the institution in which the asset is held. If you believe your spouse has assets of which you are unaware, and your spouse is unwilling to disclose this information, your only recourse is to petition the court for an accounting and classification under the law.

How likely is it that I will be successful if I file for a remedy under WMPA?
There has never been a remedy granted by a court in the state of Wisconsin because when a spouse files for a remedy, the response has been that the other spouse files for divorce. If an action under "remedies" has been filed, and a divorce action is then filed by a spouse, the suits will be consolidated by the courts. In effect, this eliminates the "remedy" suit because the laws governing property division at the time of divorce will rule. Further, no action under "remedies" may be filed while a divorce action is pending.