



YOURS, MINE, OR OURS?

Marital Property in Wisconsin Divorces

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WHO CARES?

Excellent question!

Marital property matters at three points in a person's life:

- Before marriage
- At dissolution of marriage
- At death

In 2021, 34% of American adults aged 15 and over had never been married (US Census Bureau 11/30/2021)

- This means that 66% of Americans will marry at some point
- If you marry, divorce, or die a married person in Louisiana, Arizona, California, Texas, Washington, Idaho, Nevada, New Mexico, or Wisconsin, marital property law matters...a LOT!



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TODAY'S FOCUS AND HOW IT WILL PRESENT

Goal: To help married MVLC clients to understand their property rights and responsibilities in divorce

What you will hear:

I'm getting divorced...

- Do I have a right to...
- Do they have a right to
- I'm not giving them any of my...

I got divorced and...

- I need to give them half of this account...
- I need to get them off this...

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RELEVANT STATUTES

Chapter 766: Property Rights of Marital Persons; Marital Property

- §766.31(2) Presumption. All property of spouses is presumed to be marital property.
- §766.31(3) Spouse's Interest in Marital Property. Each spouse has a present undivided one-half interest in each item of marital property...
- You could do a whole lot of digging in to §766...we won't!

Chapter 767: Actions Affecting the Family (the dreaded divorce chapter...)

- §767.61 Property Division.
- Good news! For 98% of clinic clients this one statute is what you'll need
- Bad news! Most clients will be unhappy to learn about this statute.

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§767.61 PROPERTY DIVISION

§767.61(2)(a) Except as provided in par. (b), any property shown to have been acquired by either party prior to or during the marriage in any of the following ways shall remain the property of that party and is not subject to a property division...

- Typical response: Yay! I get to keep my stuff

But then...

"Any of the following ways" are listed:

1. As a gift from a person other than the other party
2. By reason of the death of another
3. AND...these exceptions do not apply if refusal to divide the property would cause a hardship to the other party or the parties' children

So that means....

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UNLESS YOU CAN PROVE THAT AN ASSET WAS PURELY
GIFTED OR INHERITED, IT IS DIVISIBLE IN DIVORCE



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AT DIVORCE, MOST ASSETS WILL BE DIVIDED EQUALLY

Exceptions:

- Agreement of the parties
- Court's discretion (see §767.61)
- 13 factors, including: Such other factors as the court may in each individual case determine to be relevant"

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HOW CAN I HELP?

Do you and your spouse have an agreement on how you will divide your property?

- Are all assets and debts accounted for?
- If yes, then discuss "fairness" in consideration of the law
- Help them complete a Marital Settlement Agreement

Are you prepared to walk through your assets and debts today?

- If yes, then complete Financial Disclosure Statement

Do you also have the details of your spouses' assets and debts with you?

- If yes, then illustrate a rough idea of equal property division and discuss any applicable factors deviating from presumption of equal division

OR – Are you already divorced and need to logistically finalize property division?

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FIRST, DISCLOSURES



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WHERE TO START WITH THE CLIENT - GOALS

Identify all assets and debts and complete financial disclosure form

Identify the gifted and inherited assets (client will need documentation to prove how these assets were acquired and to show that they were not commingled)

Identify any premarital values (client will need documentation to prove value at marriage)

Create "to do" list of documents to gather

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<h1>FINANCIAL DISCLOSURE FORM</h1>	<p>Form FA-4139 Listing of assets and debts begins on page 3</p>
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<h2>PERSONAL PROPERTY</h2> <p>Generally \$0 value or everything is valued via appraisal Value is fair market value, not replacement value Certain assets may appraised without appraising all if there is only disagreement as to those items</p> <ul style="list-style-type: none">Jewelry (gifts between spouses are marital property, including engagement ring)Collections/antiques"Toys" <p>Generally not worth the fight Ebay, NADA and KBB may be helpful</p>
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VEHICLES

No value to leased vehicles

Owned vehicles are valued by equity (FMV minus debt)

FMV determined most often by using KBB private party value

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LIFE INSURANCE

Must disclose all policies

Only whole life policies have value (not term policies)

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BUSINESS INTERESTS

Is there fair market value? Would the business have value to a buyer?

This is an area where you would want to refer to a family law attorney for further analysis

Business valuation can be pricy and complicated or fairly straightforward, depending on the business

Hard assets

Goodwill

Cash flow/Collectibles

Combination

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SECURITIES AND INVESTMENTS

Stocks

Investment accounts

Employee stock programs

These can be tricky

Vested v. unvested

Vesting schedule and outcome at vesting

Tax effects

If employee stock plan, may want to refer to a family law attorney

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DEFINED CONTRIBUTION PLANS

401(k), 403(b), etc

- Generally a 20% tax discount is applied
- Confirm 100% vested
- Can be used to as a tool to pay off debt but this requires some tax consideration and is likely beyond clinic-level advice
- If divided or assigned to a spouse, must be assigned via a Qualified Domestic Relations Order which is a separate order that must be filed after the divorce

IRA

- 20 % discount applied
- Generally divided through plan administrator without need for separate order

ROTH IRA

No tax discount, generally does not require division order

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PENSIONS

Most are divided by Qualified Domestic Relations Order or by determining present value

Some plans do not allow division by QDRO (Milwaukee police and fire)

Can be really tricky depending on terms – survivorship benefits, COLA adjustments, when it may be collected

May need to consult with attorney or pension specialist (Divorce Financial Solutions or Delphi Consulting)

WRS is very simple to divide by QDRO using checkbox form available online

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CASH AND DEPOSIT ACCOUNTS

Bank accounts

PayPal, Venmo, CashApp

Cryptocurrency

Check statements for accounts linked to loans or investment accounts (cash sweep account)

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REAL ESTATE

Fair market value minus debt (mortgage and HELOC)

- Agreement can be based on real estate agent's market analysis, property tax records, purchase price, mortgage or refi appraisals, independent research
- If no agreement, must obtain appraisal
- The party that keeps the house must be able to refinance
- Considerations: no discounts for refi fees or realtor fees and costs off sale

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OTHER ASSETS

- Cash on hand
- Pets are generally categorized as personal property, but breeding animals may be their own assets
- Credit card points

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GIFTED AND INHERITED ASSETS

- Wise to consult with an attorney
- Determine whether “pure” or commingled
- Income from gifted and inherited assets may be marital property
- Appreciation may be marital property

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DEBTS

Credit cards

Personal loans

Student loans may or may not be included

Vehicle loans and real estate loans (make sure not to double count)

Medical bills

Need to refinance – divorce not binding on creditors

Potential for bankruptcy – file before divorce

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IF A CLIENT HAS COMPLETED FINANCIALS FOR SELF AND SPOUSE

You could begin to look at what division may look like in very rough terms

Forms can be found online by searching “Wisconsin property division worksheet” or you can just make two columns (spouse and client)

Start with the presumption of 50/50 to illustrate what the default may look like, then discuss the 13 factors that the court will assess in determining property division

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THE 13 FACTORS.....



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1. LENGTH OF THE MARRIAGE

The shorter the marriage, the more likely the court is to return parties to their premarital status

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2. PROPERTY BROUGHT TO THE MARRIAGE BY EACH PARTY

A party may receive a credit if they brought assets to the marriage and/or the other party brought debt

This factor erodes over time (The 10% rule)

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3. ONE PARTY'S SUBSTANTIAL ASSETS NOT SUBJECT TO DIVISION

Case law is in opposition to this consideration – you cannot offset property division based on one party's individual assets.

There must also be special circumstances or hardship

See [Grumbeck v Grumbeck 2006 WI App 215](#)

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<p>4. CONTRIBUTIONS TO THE MARRIAGE</p>	<p>All contributions; not just economic contributions</p> <p>More likely addressed via maintenance or doctrine of marital waste</p>
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<p>5. AGE AND HEALTH OF EACH</p>	<p>Is assignment of additional assets a better solution than maintenance to provide for support?</p> <p>Senior divorces are most common scenario for this consideration</p> <p>Will one spouse out-survive the other and is there an interest in assigning additional assets to that spouse?</p>
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6.
CONTRIBUTIONS
OF ONE PARTY
TO THE
EDUCATION OF
THE OTHER

Common scenario: Payment of student loans during the marriage.

Often overlaps with the factor considering property brought to the marriage

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7. EARNING CAPACITY OF EACH PARTY AND ABILITY TO SELF
SUPPORT AT STANDARD SIMILAR TO THAT DURING THE MARRIAGE

Generally addressed via maintenance/alimony

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8. ASSIGNMENT OF THE FAMILY HOME

Is it important to keep one party in the house?

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9. AMOUNT AND DURATION OF MAINTENANCE

Sometimes linked to terms of property division – assignment of retirement benefits or house or linked to the logistics of paying equalization of property division

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10. OTHER ECONOMIC CIRCUMSTANCES OF EACH PARTY

Lifestyle choices and support from other sources

Future benefits:

- Pension
- Unvested assets
- Business ownership

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11. TAX CONSEQUENCES

Tax discounts
applied to certain
retirement assets

Consideration of
taxation on unvested
assets at vesting

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<p>12. MARITAL PROPERTY AGREEMENTS</p>	<p>If a prenup/postnup is found to be enforceable, it is binding on property division</p>
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AND, BECAUSE IT'S FAMILY LAW.....

13. Any other factors that the court determines are relevant

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IMPORTANT DETAILS TO REVIEW BEFORE THE CLIENT LEAVES

1. Presumption is that both parties' assets and debts will be divided equally
2. Property division values assets as of the date of divorce (from a practical perspective this often means the close of the most recent quarter), but the parties can agree to whatever division date they wish
3. To complete the divorce, both parties need to complete a financial disclosure statement identifying all assets and debts
4. Clients should work on collecting statements or other documents to support the balances identified on their financial statement
5. If there are complicated or substantial assets or significant debt, it's wise to invest in representation or mediation

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QUESTIONS?

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