

YOURS, MINE, OR OURS?

Marital Property in Wisconsin Divorces

1

WHO CARES?

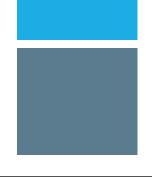
Excellent question!

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!



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...

3

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.

§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 of the parties' children

So that means....

5

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



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"

7

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?





9

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

FINANCIAL DISCLOSURE FORM

Form FA-4139 Listing of assets and debts

begins on page 3

11

PERSONAL PROPERTY

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

Jewelry (gifts between spouses are marital property, including engagement ring)

Collections/antiques

"Toys"

Generally not worth the fight

Ebay, NADA and KBB may be helpful

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

13

LIFE INSURANCE

Must disclose all policies

Only whole life policies have value (not term policies)

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

15

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

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

17

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

CASH AND DEPOSIT ACCOUNTS

Bank accounts
PayPal, Venmo, CashApp
Cryptocurrency

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

19

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

OTHER ASSETS

Cash on hand

Pets are generally categorized as personal property, but bree ding animals may be their own assets

Credit card points

21

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

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

23

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

THE 13 FACTORS.....



25

1. LENGTH OF THE MARRIAGE

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

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 brough debt

This factor erodes over time (The 10% rule)

27

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 <u>Grumbeck v Grumbeck 2006 WI App</u> 215

4.
CONTRIBUTIONS
TO THE
MARRIAGE

All contributions; not just economic contributions

More likely addressed via maintenance or doctrine of marital waste

29

5. AGE AND HEALTH OF EACH

Is assignment of additional assets a better solution than maintenance to provide for support?

Senior divorces are most common scenario for this consideration

Will one spouse out-survive the other and is there an interest in assigning additional assets to that spouse?

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

31

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

Generally addressed via maintenance/alimony

8. ASSIGNMENT OF THE FAMILY HOME

Is it important to keep one party in the house?

33

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

10. OTHER ECONOMIC CIRCUMSTANCES OF EACH PARTY

Lifestyle choices and support from other sources Future benefits:

- Pension
- Unvested assets
- *Business ownership

35

11. TAX CONSEQUENCES

Tax discounts applied to certain retirement assets

Consideration of taxation on unvested assets at vesting

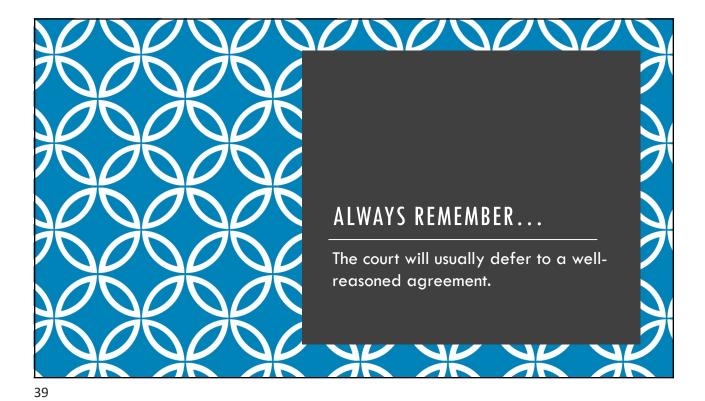
12. MARITAL PROPERTY AGREEMENTS

If a prenup/postnup is found to be enforceable, it is binding on property division

37

AND, BECAUSE IT'S FAMILY LAW.....

13. Any other factors that the court determines are relevant



IMPORTANT DETAILS TO REVIEW REFORE

IMPORTANT DETAILS TO REVIEW BEFORE THE CLIENT LEAVES

- 1. Presumption is that both parties' assets and debts will be divided equally
- 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
- To complete the divorce, both parties need to complete a financial disclosure statement identifying all assets and debts
- 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

