

# Property Issues

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**Wisconsin Coalition Against Domestic Violence**



Tess Talks  
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## Issues Covered in This Overview

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- I. Retrieval and Disposal of Property for Unmarried Persons
  - How does an unmarried person retrieve property which is stored or left in the residence of the abusive party?
  - What may an unmarried person do with property which is stored or left in their residence by the abusive party?
- II. Property at Marriage, Divorce and Death for Married Persons
  - What is the difference between Marital Property and Property Subject to Division?
- III. Select credit/debt issues to discuss with clients

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## I. Retrieval of Property-On Lease

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Start by learning whether the person is on the lease or title of the residence where the property is stored.

IF the person is on the lease, that person has the right to enter and retrieve property provided there is no other order which prohibits entry such as a restraining order.

The person may wish to request a police escort. Police may be limited in how much time they can do a stand-by and may ask for proof of ownership.

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## Retrieval of Property-No Lease

- Start by determining if the client is a petitioner in restraining order granted against respondent who has the property stored in his or her residence
- IF respondent is subject to restraining order, client can request law enforcement to accompany him or her to retrieve property. Limited to only taking personal property in a short timeframe.
- IF not granted a restraining order, the only other legal option is replevin if that remedy applies.

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## Retrieval of Property: Replevin

- A person can file a replevin action in small claims court IF the property is valued at less than \$10,000 and was left behind within six years of the time the action is filed.
- The client must prove to the court he or she is the rightful owner of the property by showing receipts or other proof.
- The client must also prove the property is wrongfully detained. This might require showing letters or emails in which the client asked for the return of the property.
- The client must also show the value and the location of the property.
- Used when client is not on lease of place property is stored

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## Disposal of Property: Unmarried

- I. Greatest Risk: Dispose of Immediately
- IF the owner can show the value of the property, the owner could pursue an action in replevin.
- II. Possible Risk: Certified Mail Notice
- Notify the abuser of intent to dispose of property unless it retrieved within specified time and how to retrieve
- II. Avoid an Action in Replevin
- Hold the property for six years until statute of limitations passes. After 6 years can dispose without action in replevin.

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### Summary: Determine How Risk Adverse

There is no guaranteed means **to retrieve property** unless on the lease and can safely do so.  
Risk is greater if not on lease. Options are limited.  
An action in replevin can be sought if fit legal criteria.

There is no legal means **to dispose of property** unless meet the legal criteria of an action in replevin.  
Options are on a scale of greater/lesser risk of legal action. See handout outlining the spectrum.

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### II. Property Issues-Married Persons

- ❑ **Marital Property** means property presumed to belong equally (one half) to each spouse. There may be some property which can remain individual property of one spouse. Applies during marriage and at death.
- ❑ **Property subject to division** at divorce means spousal property divided by divorce court. All property & debt generally divided equally.

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### What is WI Marital Property Act?

- ❑ Act explains how property is to be treated **during marriage or upon death of one or both spouses**. General rule: each spouse has one-half interest in all property.
- ❑ The Marital Property Act creates two types of property.
- ❑ Marital property is all property in which each spouse has one-half interest. Most **property is marital property**: cash, bank & retirement account, real estate & personal property
- ❑ **Individual property is owned solely by one spouse**. Law presumes things such as gifts and inheritances are individual. However, must keep the property separate and never co-mingle or becomes marital property.

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### And then there is unclassified property

Property which does not fit within the legal definition of marital or individual property is called unclassified. An example:

IF a couple marries in another state before moving to WI, or if married before Marital Property Law took effect, property is unclassified. It will be treated as **individual property during marriage BUT will be subject to division at divorce**. Check: is state from which moved individual property or community property state? Can change these presumptions.

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### Marital Property Agreement or Pre-Nup

- Spouses can sign an agreement prior to marriage called a Marital Property Agreement (or Pre-Nup) in which they agree as to which property is marital or individual, who can manage and control the property and what happens to the property when one or both spouses die.
- A marital property agreement **cannot**:  
Waive child support; stop creditor from seeking payment; leave one without support; violate laws.

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### Unilateral Statement: Marriage, Divorce

- A unilateral statement is statement signed by one spouse which notifies other spouse and creditors of intention to keep all or some of his or her property classified as individual property.
- This is treated as Marital Property Agreement during the marriage.
- However, at divorce this statement is not effective. Property at time of divorce is subject to division.

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### Property Subject to Division at Divorce

- In general, courts divide the spouses' property equally at divorce - unless spouses signed a Marital Property Agreement or Pre-Nup.
- Must file Financial Disclosure Statement. Property sold/given away one year prior subject to division.
- Courts will assign debts or property to equal half of value of marital estate to each spouse.
- Gifts, bequests and inheritances received by one spouse are usually exempt from division.

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### Court Might Not Divide Property Equally in all Divorce cases.

- Court has final discretion over division of property at divorce. Law provides guidance as to how court may deviate from equal division, if at all.
- Things which court can consider include: length of marriage, property brought to the marriage, and total contribution to marital estate.
- Court may not consider marital misconduct when deviating from equal division.
- If misconduct impacts property or finances, court can consider it part of contribution to marital estate.

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### Court Will Look at Marital Property Agreement for Fairness at Divorce

A Marital Property Agreement (MPA) is enforceable at the time of divorce IF:

- The MPA states it applies at the time of divorce.
- It contains no provisions which are "inequitable" to either party.
- The court looks at whether MPA fair when signed.
- Court also examines whether circumstances have significantly changed since MPA was signed.

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### III. Creditor and Debtor Issues

- General concepts about debt at divorce:
- IF spouse is responsible for debt before divorce, should remain his or her responsibility at divorce.
- However, creditor can continue to seek payment from the ex-spouse for the other spouse's debt. Creditors' rights are unaffected by divorce law.
- IF creditor pursues person for his or her ex-spouse's debt, the party (ies) may need to take out personal loan to pay off marital debt to avoid poor credit.

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### Bankruptcy and Divorce

Bankruptcy is an action that impacts only the person filing the action and his or her creditors.

Obligations to support one's family are not affected by bankruptcy. Thus, if John and Mary divorce and John files bankruptcy, the creditor can still pursue Mary IF the credit card was marital debt (ie, it was in both of their names). If Mary does NOT pay, she risks poor credit. IF she does pay, John owes her that money. Issue = she may not be able to collect the money from John.

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### Timing of Action in Bankruptcy

- The court cannot divide property at divorce until the bankruptcy is final or unless it receives permission from the Bankruptcy Court.
- The court can continue to make and enforce decisions regarding child or spousal support.
- The divorce cannot be finalized until the court can divide the property.

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### Remedies - Mismanagement of Property

At Divorce:

- Void or cancel transfer of property to 3<sup>rd</sup> party
- Change property division. Although WI divorce law starts with 50/50 division, court can consider total contribution of each party to marital estate and then deviate from 50/50.
- IF one party has unjustifiably depleted marital assets, court must consider that debt as part of contribution.

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### Remedies – Marital Property Act

- MPA requires married couples to act in good faith regarding property that is marital or belongs to other spouse individually.
- Actions for mismanagement to be made within six years. IF divorce started, remedies not available.
- Spouse must have mismanaged property due to gross negligence or intentional acts – not just in manner to diminish value or fail to produce income.
- Consult an attorney for best remedy for situation.

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### Classification of Property–Pg 10

Types of Property and whether Marital Property or Subject to Division. Examples:

- Income from either spouse is both
- Gift/Inheritance is individual and not subject to division
- Debts: Depends on when incurred and by whom

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## Property Which Satisfies a MPA

Under MPA – look at Page 11. IF debt incurred by one spouse prior to marriage, individual property available to creditors.

- IF by one spouse during marriage for benefit of marriage or family, both parties' property
- IF both spouses during marriage, all marital property AND all individual property of spouses

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## Special Types of Debts....

- Tax Debt: Always debt of incurring spouse AND may involve all or half of marital property
- Student loans: Always debt of incurring spouse AND may involve all or half of marital property

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## Take Aways for Clients:

Abusive spouse can or may use financial exploitation to continue to abuse (ex) spouse

- During marriage: Take on loans and not pay, ruining credit rating. Not pay the tax debt so other spouse may be liable
- Divorce: Unpaid loans are given to abusive spouse but he or she does not pay them and creditors come after ex-spouse or ruin credit

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### Protect Self - Financial Exploitation

- MPA which states it applies at time of divorce
- Even if court assigns responsibility of debt to one party, creditors can pursue other spouse in court (particularly if no one is paying)
- Ask court at time of divorce to have the party who owes debt take out personal loan as part of divorce settlement so creditors do not seek payment from ex-spouse

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### Protect Self: Check Credit Cards

- Track credit lines of you and your spouse:
    - Pull credit report regularly
    - Check on all reasons for bad credit
    - Clean up bad credit as quickly as possible
    - See handouts in LM, Chapter 10 about credit
- Remember, even debt in a single party's name is likely considered marital debt and will allow creditors to pursue both parties

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### Thanks for all you do...

- Thank you for attending this general overview of property issues.
- End Abuse WI wishes to thank you for your advocacy on behalf of victims/survivors.
- You can reach us at 608-255-0539.
- Tess' extension = 311; Morgan = 331

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