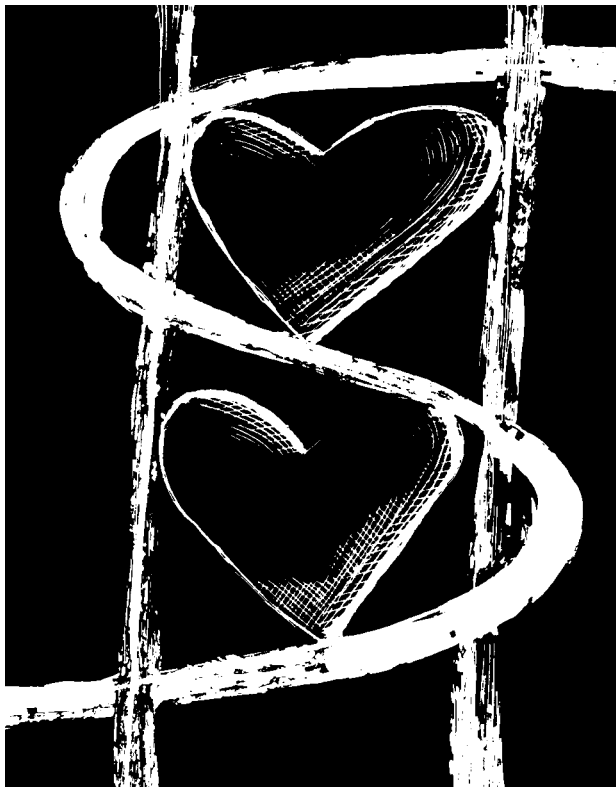




**University of Wisconsin-Extension Cooperative Extension**

# **Look before you leap**

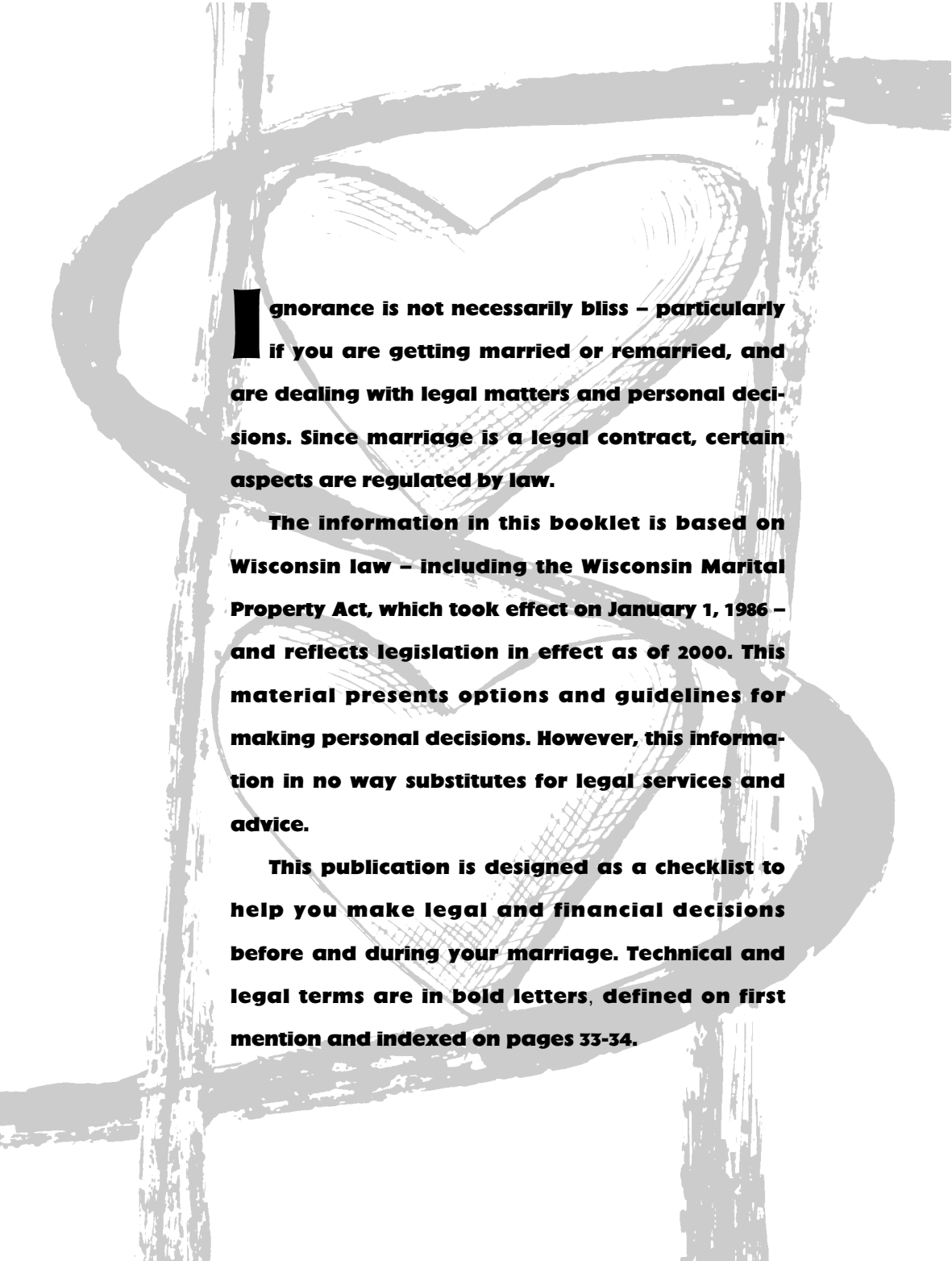
**A guide to the legal and financial implications  
of marriage . . . and remarriage in Wisconsin**



**Karen P. Goebel  
Linda Roberson  
Joan Kinney**

# Checklist ✓

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**I**gnorance is not necessarily bliss – particularly if you are getting married or remarried, and are dealing with legal matters and personal decisions. Since marriage is a legal contract, certain aspects are regulated by law.

The information in this booklet is based on Wisconsin law – including the Wisconsin Marital Property Act, which took effect on January 1, 1986 – and reflects legislation in effect as of 2000. This material presents options and guidelines for making personal decisions. However, this information in no way substitutes for legal services and advice.

This publication is designed as a checklist to help you make legal and financial decisions before and during your marriage. Technical and legal terms are in bold letters, defined on first mention and indexed on pages 33-34.

## Making sure you're eligible

First, you need to know that you are legally able to marry. To be certain, check these provisions based on the marriage chapter of the *Wisconsin Statutes*:

■ **Age** — If **competent** — mentally able and capable — anyone may marry at age 18 or over. For those 16 to 18, a license may be issued with the written, notarized **consent** of a parent, guardian or custodian. **Consent forms** are available in the county clerk's office. No one under 16 can marry under any circumstance.

■ **Relationship** — In general, persons closer in relationship than second cousins may not marry each other. However, marriage may be contracted between first cousins where, at the time of marriage license application:

- The female has attained the age of 55 years; or
- Either applicant submits an **affidavit** — a written, witnessed statement of facts — signed by a physician stating that person is permanently sterile.

■ **Divorced persons** — Whether divorced in Wisconsin or elsewhere, no one can marry again in Wisconsin until six months have elapsed since the date the divorce was granted. An earlier marriage is **invalid** — not legal.

■ **Out-of-state/non-resident** — If a Wisconsin resident who is prohibited from marrying in this state goes into another state or country and marries, and then returns to live in Wisconsin, the marriage is invalid for all purposes in Wisconsin.

**Note: Common-law marriage** — created by living together as husband and wife for a specified time period — is recognized as a valid marriage in Wisconsin only if you moved here from a state that recognizes this type of marriage as legal.

Wisconsin does require legally dissolving such a common-law marriage before you are eligible to remarry in Wisconsin.

## Setting the date Tax implications

Marriage changes your options for filing income tax forms. As a married person, you must either file a joint return with your spouse or file using the “married, filing separately” status. You can no longer file a single return (see also *IRS and Social Security*, page 8).

This is true for the entire calendar year in which you are married — even if you marry on the last day of the year.

Marriage can create either a tax benefit or a tax burden, depending on a couple's circumstances. **Income tax** is a **graduated** tax — the percent of tax owed increases as income increases. Different cutoffs apply to the various brackets, depending on filing status.

As of 2000, a single person owes taxes based on the lowest federal rate on the first \$26,250 of income earned. Couples filing jointly enjoy this lowest rate on the first \$43,850 of their combined incomes. Married persons filing separately have their taxes assessed at the lowest bracket on the first \$21,925 of their incomes — that is, half of the joint return cutoff. Thus, if one spouse earns \$43,850 per year and the other earns nothing, the couple will benefit by filing a joint return and marriage actually reduces the income tax they will owe.

But what if each spouse earns \$26,250 per year? Instead of paying all their tax at the lowest rate as they did before their marriage, \$8,650 of their income — \$26,250 + \$26,250 - \$43,850 — will be taxed at a higher rate than would have been the case if they had not married. Since few couples can afford to have one spouse at home and not working for pay, most newly married couples are burdened by this **marriage penalty**.\*

\* Bills to eliminate the marriage penalty are frequently introduced in Congress. Tax brackets are adjusted for inflation each year.

Another tax implication for older couples often goes unnoticed. The law provides for a **one-time exclusion** from **capital gains** tax on the first \$125,000 of gain on a principal residence sold by a person over age 55. If you are married, the exclusion can be used only once. A husband and wife cannot each claim this exclusion at separate times. If you marry someone over 55 who has already used the exclusion, you lose your right to take advantage of this tax break. Thus, older persons contemplating marriage may be well advised to sell their homes **before** the wedding date.

## Wedding insurance

Most services you'll engage such as hotels and caterers usually require non-refundable deposits. If your wedding may be cancelled or postponed — because, for example, a close family member becomes ill or you break a leg — you may be tempted to consider buying wedding insurance. Be aware that few companies offer this type of insurance. It is often limited to covering only non-refundable expenses due to unlikely misfortunes, and will not pay if the bride or groom fail to show up because of “cold feet.”

Read the fine print on all policies to be sure you're getting the coverage you expect. Check to see if you may already be insured by the wedding or reception site's **liability** policy — for possible loss — or a homeowner policy owned by whoever is paying the bills.

Think about other valuables you'll need to protect such as wedding rings. Contact your homeowner or renters' insurance company well in advance of your wedding date to ensure coverage. Some companies let you change your policy as early as 30 days before the wedding. Marital status may alter your car insurance premiums or make you eligible for health insurance maternity benefits (see *Insurance*, pages 27-29).

## Getting married Wedding budget

Today, more couples are older when they marry or remarry, and often pay for their own weddings. The cost of a formal wedding can escalate to tens of thousands of dollars. So it is critical for you to set up and follow a budget to prevent starting your marriage in debt, while still having the wedding you both desire.

## Preparation

Ask friends for recommendations. Shop around for value and services. Ask for policies, get references and compare prices. Look at portfolios, merchandise, brochures and atmosphere. Make no assumptions; ask questions. Check that items, services and accommodations are available for the dates, times and places you have planned.

Contracts protect both you and the service provider. Read them carefully, and include in writing any requests you have.

Verify:

- Dates and times
- Details about items, services and accommodations
- Delivery time schedule
- Name of person responsible
- Last date to make changes
- Cancellation policy
- Backup service
- Payment amounts
- Payment schedule

## Worksheet—Plan for the cost of . . . (Check box ✓)

To set up a budget, fill in the amounts you expect to spend on each item.

<b>Plan for:</b>	<b>\$ Estimated cost:</b>
<input type="checkbox"/> Announcements, including postage	_____
<input type="checkbox"/> Marriage license	_____
Ceremony fees:	
<input type="checkbox"/> Person officiating	_____
<input type="checkbox"/> Musician(s)	_____
<input type="checkbox"/> Marital property agreement	_____
<input type="checkbox"/> Insurance — Homeowner or renter	_____
Parties & reception food:	
<input type="checkbox"/> Rehearsal dinner	_____
<input type="checkbox"/> Groom's party	_____
<input type="checkbox"/> Reception	_____
<input type="checkbox"/> Reception music	_____
<input type="checkbox"/> Space rental	_____
<input type="checkbox"/> Equipment rental	_____
<input type="checkbox"/> Lodging	_____
<input type="checkbox"/> Travel	_____
<input type="checkbox"/> Local transportation	_____
<input type="checkbox"/> Gratuities	_____
Gifts:	
<input type="checkbox"/> Wedding party	_____
<input type="checkbox"/> Soloist/musician(s)	_____
Rings:	
<input type="checkbox"/> Groom	_____
<input type="checkbox"/> Bride	_____
Attire:	
<input type="checkbox"/> Groom	_____
<input type="checkbox"/> Bride	_____
<input type="checkbox"/> Wedding party, attendants	_____
<input type="checkbox"/> Flowers	_____
<input type="checkbox"/> Photography	_____
<input type="checkbox"/> Videography	_____
<input type="checkbox"/> Honeymoon	_____
<input type="checkbox"/> Thank yous, including postage	_____
<b>Total budget:</b>	_____

You may also want to make a list of after-wedding expenses, such as moving, changing apartments, leases and security deposits, or selling a house.

## Marriage license

Getting married requires a license. Here's what you need to do to get it:

- **Application** — Both applicants must apply in person for a marriage license at the county clerk's office (see **Residence**, below). The application includes the scheduled date of the marriage, name of each applicant, whether they are related, and each applicant's birth date and place, race, current residence and names of parents. Also, information will be required regarding the most recent marriage of each applicant, the place, date and how dissolved, and the name(s) of former spouse(s). The application may require more information as the Wisconsin Department of Health and Family Services directs.

**Note:** Although a blood test is not required, if you do not know your HIV status, consider anonymous or confidential testing (see *Resources*, page 31).
- **Identification** — Each person must present to the county clerk documented proof of identification and residence. Applicants under 30 must furnish a birth certificate. For those over 30, presenting your birth certificate will speed the process. For a fee, you can get a certified copy of your birth certificate from the register of deeds office in the county where you were born. Previously married applicants must present a copy of the most recent judgment of divorce, annulment or death certificate to document the termination of their most recent marriage.
- **Residence** — Wisconsin residents must apply in the county where one or both applicants have resided for at least the last 30 days — no matter where in Wisconsin the marriage takes place. Proof of residence such as a driver's license or Wisconsin identification card with a current address is required. If neither applicant has lived in

Wisconsin for 30 days, both must apply in the county where the ceremony will be performed, and must provide proof of out-of-state residence.

- **Out-of-state/non-resident** — If you are getting married in another state, apply in the county where the marriage will take place. Marriage of a Wisconsin resident in another state is null and void if such marriage would be prohibited in Wisconsin. Marriage in Wisconsin of non-residents who are prohibited from marrying in the state of their residence is also considered null and void in Wisconsin (see *Residence*, above, and *Out-of-state note*, page 1).
- **Oath** — The clerk who is to issue the marriage license will require the applicants to take an oath that the marriage will be lawful and the information given in the application is correct.
- **Objection** — A parent, grandparent, child, brother, sister or guardian of either applicant may object and prevent issuance of a license if the application contains willful misstatements, or either applicant is incompetent to marry. A district attorney or family court commissioner may also object and prevent issuance of a license.
- **Fee** — The fee for a marriage license varies by county. The minimum charge for a license is \$50. However, counties can charge any amount they wish. Most counties require payment in cash, and consider the fee non-refundable.
- **Waiting period** — In Wisconsin, you must apply for a marriage license at least five days before the license can be issued. Check with your county clerk's office. The five-day waiting period may be waived at the county clerk's discretion if the applicant pays an added fee of not more than \$10.

■ **Expiration** — A marriage license is valid for 30 days from the date issued. The marriage ceremony must be performed within 30 days, or the license expires.

**Note:** There may be more provisions, so call your county clerk to set up an appointment. Both applicants must apply together. Make sure the appointment date falls within the required period. Ask how much the fee is in your county, and what method of payment is accepted (most counties require cash). Take all the necessary documents.

Before you marry is also a good time to consult with your insurance agent and the employee benefits officer where you work (see *Insurance*, page 27, and *Employment benefits*, page 18).

## Marriage ceremony

You can be as creative as you want in personalizing your marriage ceremony. But here is what the law requires:

- **An official** — Judges of a court of record, court commissioners, ordained ministers, priests or rabbis may perform marriage ceremonies. Realize that your chosen official may have requirements for the marriage ceremony. You may perform your own ceremony if your spiritual tradition permits this. You can ask the county clerk for names of civil officials available to perform the marriage ceremony.
- **Two witnesses** — Two competent adult witnesses 18 years or older are required, neither being the person officiating. They do not have to be in the wedding party.
- **Deliver and file a marriage document** — The person officiating is responsible for filing the marriage document, legibly and completely filled out with non-fading black ink. In the case of a marriage ceremony performed without an officiating person, either spouse may return the marriage document to the register of deeds of the county in which the marriage was performed within three days after the date of marriage.

## Changing your name

### Deciding whether to change

Most women have assumed their husband's **surname** — family name — when they marry, though no law requires them to do so. Rather, in our culture, a strong tradition has developed in which the husband's surname becomes the surname for the wife and children.

From the mid-1800s through the early 1900s, a number of women followed the lead of suffragist Lucy Stone, who retained her birth name when she married Henry Blackwell. The “Lucy Stone League” encouraged women to choose their married surnames. But traditional ways had a strong hold, and for most of the past century it has been unusual for a woman to use a surname different from that of her current husband.

In the late 1960s and early 1970s — when feminist ideas again came to the forefront in our culture — a new generation of women began to assert their right to choose their own names. Today, couples have many options to contemplate, all acceptable under Wisconsin law. Couples may — and have — done all of the following:

- Wife takes husband's name
  - Husband takes wife's name
  - Wife hyphenates her name and her husband's name; husband does not change his name
  - Both spouses hyphenate their last names
  - Both spouses use a new name with special meaning for them, perhaps combining their two names
  - Wife uses her birth name as her middle name and takes husband's last name
  - Both spouses use the wife's birth name as middle name and husband's last name
- You may think of other choices as well.



Many factors may influence your decision about the name(s) you and your spouse will use. Considerations many people feel important include:

- The name by which you are known in the community and how important it is to you to maintain a consistent identity and reputation — the importance of name recognition to you
- Your profession and whether you would need to or want to change professional licenses, diplomas and other credentials to reflect a name change
- Your assessment of the amount of bureaucratic hassle you would endure in changing all of your identification and documents as opposed to explaining to people why your name is not what they think it is or should be
- The importance to you and your spouse of having all members of your new family known by the same name
- The importance to you and your spouse of maintaining and continuing your birth family's surname
- Aesthetic considerations, including the length and ethnicity of each of your surnames and how you feel about how they sound together
- Whether you and your spouse agree about your choices
- If you plan to have children, how will you name them:
  - A hyphenated name?
  - Dad's name?
  - Mom's name?
  - First child with one parent's name and second child with the other?
  - A different name completely?
 Parents can do — and have done — all of these.

You may change your name — or change it back — at any time. A legal name change procedure is not required, since common law permits any person over the age of 14 to change his or her name at will as long as the intent is not to defraud. In other words, notify all your creditors. You may be comfortable being known socially by one name — probably a spouse's name — but conducting business in another.

If you decide to change your name, change all of your identification and documents at the same time. Otherwise, you may find yourself showing identification to cash a check when the name on the check does not match the name on your driver's license or photo ID. Your checking account, payroll records, Social Security card, passport and driver's license or Wisconsin ID should all be consistent (see *Updating the records*, pages 7-9).

A woman who assumes her husband's surname is legally known by her first name and her husband's last name. Her legal signature is "Sue Jones," **not** "Mrs. John Jones." Traditionally, the woman's birth surname becomes her middle name. But many women retain their middle name and simply drop their birth surname. This is a matter of personal choice. Be consistent, always signing your name the same way.

For legal purposes, it really does not matter what name your magazine subscriptions come in, or whether your children's teachers call their mother "Mrs. Jones" or "Ms. Smith."

If you plan to change your name, it is easiest to do so when you marry. In this culture, simply showing your marriage license is generally all you need to do to change your identifying documents. If you are doing something very non-traditional or if your name change is not a result of marriage or divorce, you may have difficulty getting your new name on your documents without a formal name change procedure. A formal name change requires a hearing and publication of the change as a legal notice in the newspaper.

If you choose a non-traditional name option, be sure to review wills, deeds and other legal documents carefully. It usually makes sense to clarify the marital relationship in such documents. To avoid confusion, state that you are married and identify your spouse by name in your will. Also, be sure your income tax preparer, health and life insurance and other such service providers know your marital status.

You cannot change a child's name simply by changing the parent's name.

Children from a prior marriage will retain their birth names unless they go through a name change procedure. This generally requires both parents' consent.

## Updating the records

If you change your name, you will need to change some of your records, giving your married status, new name and new address. Be sure to change the following:

### Driver's license or photo ID

If either of you changes your name or address, notify the Wisconsin Department of Transportation within 10 days. As of January 1, 1991, everyone in Wisconsin who drives needs a photo driver's license. People who do not drive can obtain a Wisconsin identification card. To change your name, you must apply in person at a driver's license examining station for a duplicate license or Wisconsin ID. At the same time, you can complete a change of address form.

### Motor vehicle registration

The Wisconsin Department of Transportation (DOT) Division of Motor Vehicles requests that you notify it of any change of name and/or address. You must submit your car title to DOT as soon as possible if you are changing your name. Contact the DOT's Auto Registration Title and Renewal section, and ask for change of name form MV2014. After you sign a statement and send in the title and form, DOT will issue you a new title with your new name and address.

Or you can call to change just your address (see Transportation, Department of, under state government listings in your phone book).

If each spouse owns a vehicle, either one can register the car in one or both names — as long as its title is held the same way. Keep in mind that under Wisconsin marital property law, title does not determine who has ownership rights to the vehicle. Title determines property management and control rights. These rights become important if you want to sell or give away an asset such as a car (see *Management and control of rights*, page 13).

**Note: Changing title** to non-marital property may be construed as making a gift of that property (see *Gifts of marital property*, page 20).

### Passport and visa

If you wish to apply for a passport, you will need a certified copy of your birth certificate and two passport photos. If your married name differs from the name on your birth certificate, take your marriage license with you. For a fee, you can get a certified copy of your birth certificate from the register of deeds in the county where you were born.

Check your local government office for dates and times to apply. Ask about fees and method of payment. Allow six to eight weeks. For a visa, some countries require a divorce certificate if you have been married before. Take a notarized copy of your divorce judgment or certificate with you when you travel.

### Credit cards

If you own credit card accounts separately before marriage, you may wish to combine accounts after marriage. Credit card companies allow two people to share an account number with cards showing separate names. Credit cards are easier to identify if you hold them in each spouse's name — John Jones and Sue Jones (or Sue Smith if she kept her birth name) — **not** Mr. John Jones and Mrs. John Jones.

Regardless of how many cards you have or whose names appear on them, the records of a joint credit card account will appear on each of your credit reports at the credit bureau (see *Credit and debt*, page 16).

### Bank accounts and loans

Under the Equal Credit Opportunity Act, all new joint accounts and loans must be recorded in both spouses' names for credit purposes. This allows each spouse to establish a credit rating in his or her own name (see *Credit and debt*, page 16).

### Safe deposit box

Safe deposit boxes in financial institutions provide secure storage for valuables and important papers that would be hard to replace. You may lease a box in one person's name or in the names of two or more persons as **co-lessees**. In that case, either one has access to the box while both are living.

At the death of one lessee, a bank officer will sit down with the **personal representative** — executor who carries out the directions in the will — or surviving spouse to help inventory the box and to remove any original will or trust documents for filing with the court.

### Insurance

Notify your insurance companies well in advance of your marriage date. Some insurers allow you to change your policy as early as 30 days before the wedding. Getting married may reduce your car insurance premiums (see *Motor vehicle insurance*, page 29). You may be eligible for health insurance maternity benefits from your health insurance provider.

Make sure you give your new address, marital status and/or name to each of these insurers:

- Automobile or other vehicle
- Dental
- Disability or income continuation
- Health

- Homeowner or renters' and liability
- Life
- Property

**Note:** If you do not name your spouse as beneficiary on your life insurance, ask your spouse to sign a written **consent** to ensure that the insurance will go to the beneficiary you have named (see *Life insurance*, pages 19 and 28-29).

### Pension and retirement plans

Notify your employer's benefits office regarding changes in your dependents.

You may be required to obtain your spouse's **consent** if you elect pension benefit payment options that do not provide for payment to a surviving spouse after your death.

### IRS and Social Security

If you change your name, notify the Social Security Administration by filing a new SS-5 form. You can get a copy at your local Social Security office, or call: (800) 772-1213

You will need to present identification showing your old and new names — certified copies or original documents only. In about two weeks, you will receive a new Social Security card with your original number and new name.

Your tax refund could be delayed if you file your return with a name that does not match the one on your Social Security card. The Internal Revenue Service (IRS) freezes refunds on returns with names and Social Security numbers that do not match, and it may take three months or more to straighten things out.

You do not need to notify the IRS; they are cross-referenced with Social Security. But to find out whether a name change is holding up your refund, you can call the IRS:

#### IRS Hotline

(800) 829-1040

(800) 829-4059 (TTY)

Weekdays (also Spanish)

## Selective Service

Federal law requires men ages 18 to 35 to notify the Selective Service Board of any change of address and marital status. If you have prior service, you can update your records when you normally do so, usually once a year.

## Voter registration

To vote in the next election, remember to register under your new name — if you changed your name — and address. You may register to vote at the polls on election day by presenting proof of 10 days residence at your current address. For details on voter registration, call your city, town or village clerk.

# Clarifying property ownership

## Wisconsin Marital Property Act

Every couple needs to plan carefully for property ownership and transfer.

Since Wisconsin is a marital property state, you need to become familiar with ownership rights to property acquired before and during marriage. Generally, marital property law applies when both spouses reside in Wisconsin.

The **Wisconsin Marital Property Act** defines **marriage** as “a legal relationship between two equal persons, a husband and a wife, who owe to each other mutual responsibility and support.” Based on **community property** concepts, marital property law seeks to recognize marriage as a legal and economic partnership in which spouses share income and property acquired during marriage.

Under the law, which took effect January 1, 1986, how property is classified determines ownership rights. A couple’s **determination date** is the latest to occur of the effective date of the law, the date they both establish domicile in Wisconsin, or the date they marry.

### DETERMINATION DATE

The **determination date** is the date on which marital property law begins to apply to a married couple:

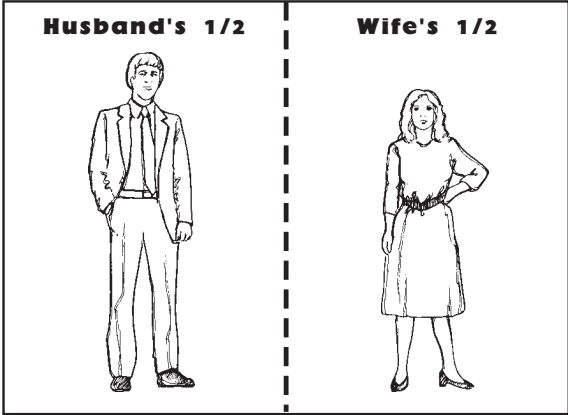
- For married Wisconsin residents, it is January 1, 1986 when the Marital Property Act took effect.
- For couples moving into Wisconsin after January 1, 1986, it is the date they both establish a domicile in the state.
- For Wisconsin residents who marry after January 1, 1986, it is the date of their marriage.

All property is presumed to be marital property, unless another classification can be proven. **Classification** is determined by when and with what funds you have acquired the property.

**Marital property**

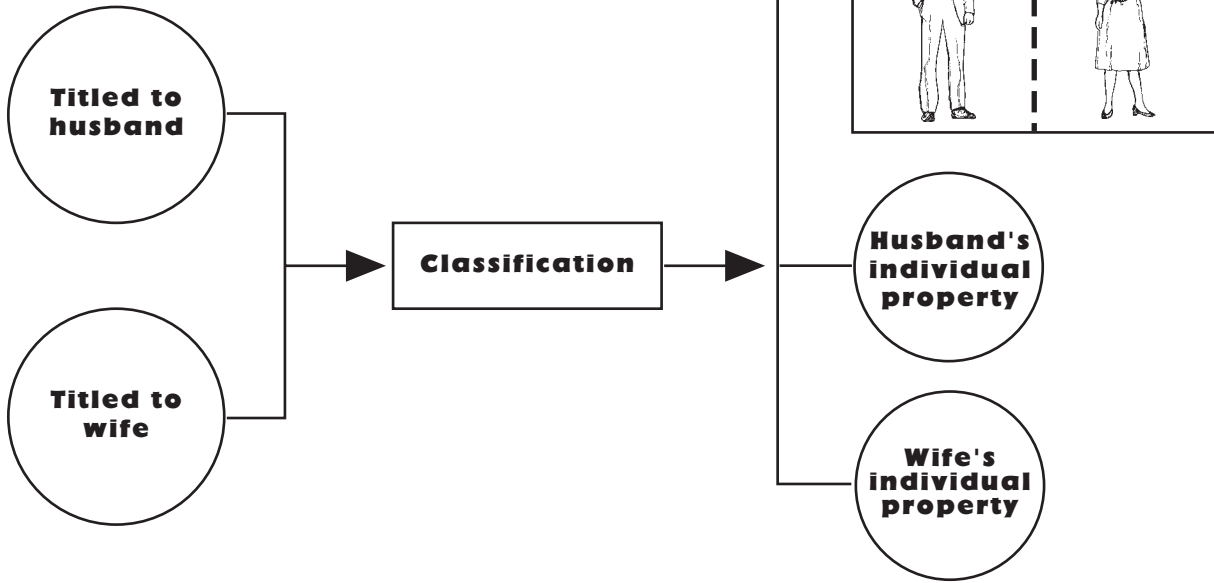
**Presumption:**

- All property is marital property.
- All marital property is automatically shared equally.



**Classification**

- Classification determines ownership.
- Title determines only management and control rights.



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**Marital property** is defined as all property acquired through either spouse's efforts or income during the current marriage. Generally, marital property consists of income and fringe benefits associated with either or both spouses' employment during their marriage, as well as income from investments owned by either or both of the spouses. During marriage, each spouse owns an undivided 50 percent interest in marital property — regardless of how it is titled (see *Management and control rights*, page 13).

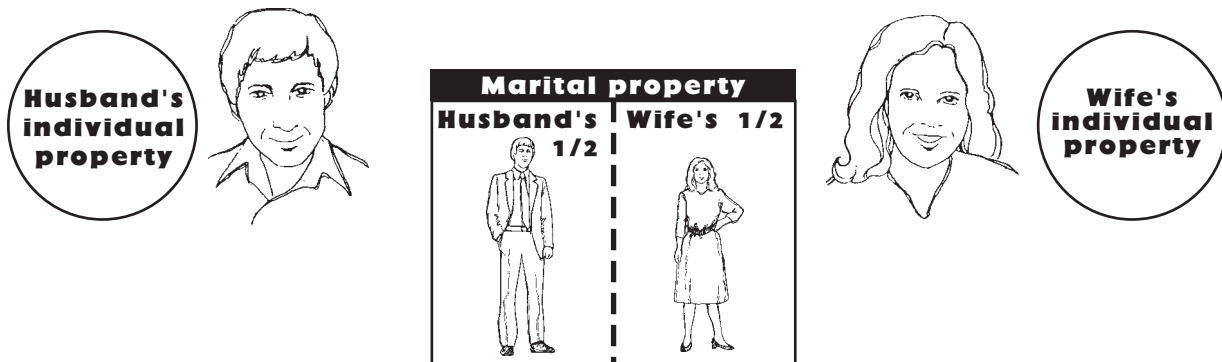
**Income** includes wages, interest, dividends, net rents and other earnings from marital and non-marital property. Property received by gift or inheritance is classified as individual property. Property brought to the marriage or made individual by a marital property agreement is also individual property (see *Marital property agreements*, page 13).

**Note:** Marital property classification rules are not the same as divorce property division rules. For example, under marital property law, property you bring to the marriage — such as savings from pre-marriage employment — is classified as individual property. But at divorce, property you bring into the marriage is subject to the **presumption of equal division**, even though it was not shared during the marriage — unless you have an enforceable marital property agreement that states otherwise. You need documentation to keep gifts and inheritances from being included among the divisible property.

**Individual property**

**Individual property includes:**

- Property received by gift or inheritance.
- Property brought into the marriage.
- Property designated as individual through a marital property agreement.



### Mixing marital and non-marital property

Keep careful records, or property that has both marital and non-marital parts may become classified as marital. **Non-marital property** includes:

- **individual property** — property brought to the marriage, gifts or inheritances you receive, or property made individual through a marital property agreement — and
- **unclassified property** — property owned before the couple's determination date.

The **mixing rule** is that if non-marital property is mixed with marital property — and the non-marital part cannot be segregated and traced back to its original source — then the entire asset is classified as marital property.

To **trace** property ownership, keep bank statements, canceled checks, title transfer documents and proofs of purchase. See *Mixing Rule* diagram, below.

During marriage, income from non-marital property — interest, dividends, net rents — is classified as marital property. This means that if you bring a sum of money into a marriage — even if you put that money into a bank account with just your name on the account — the interest earned on that bank account after your marriage is marital property.

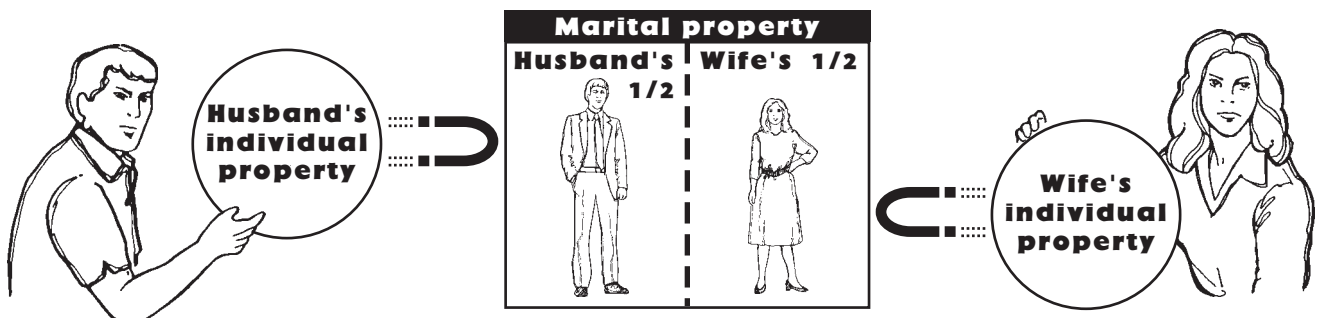
The account then contains marital property — **interest** — and non-marital property — **principal**. You may **unilaterally** — without your spouse's permission — **reclassify** the interest on your account as your own individual property. You do this by signing a written statement, having it notarized and giving a copy to your spouse within five days. Retain the original with a note indicating when and where you gave a copy to your spouse. This applies only to income earned from your individual property after you have delivered this statement — unless your marital property agreement had reclassified this income (see *Marital property agreements*, page 13).

**A unilateral statement could read:**

“All my income generated by \_\_\_\_\_ (name of asset), which is my individual or non-marital property because \_\_\_\_\_ (explanation: for example, it was a gift, inheritance or money brought into the marriage) on or after \_\_\_\_\_ (today's date) is classified as individual property.”

**Mixing Rule**

- You must act to keep property individually owned, or it will gravitate to marital property.
- Mixing marital and individual property produces marital property, unless the individual property can be traced.



This statement is best used for assets such as stocks and bank accounts brought into the marriage. A major drawback to using the unilateral statement is that it is effective during the marriage but not at divorce.

## Effects of title

### Management and control rights

Property may be titled in either one or both spouses' names. But **title** — legal paper such as a deed or mortgage that shows evidence of ownership — does not mean ownership. In most cases, title merely determines management and control rights (see *Management and control of marital property rights*, page 20).

### Survivorship marital property

If the property is owned as **survivorship marital property**, upon the death of one spouse the property automatically passes to the surviving spouse without **probate** — the legal procedure to settle an estate. The surviving spouse then owns the entire asset. Survivorship marital property cannot be controlled by a will, and is not subject to creditors' claims. As with other marital property, this classification receives a **full-basis adjustment** under the law — both halves are adjusted to current market value.

A homestead acquired after marriage is presumed to be survivorship marital property if:

- The deed or transfer document shows that the property is held by both spouses and by no one else; and
- The couple has not indicated on the deed or in a marital property agreement that they do not wish to hold the property with a right of survivorship.

*Wisconsin Statutes* define a **homestead** as the dwelling and land surrounding it —  $\frac{1}{4}$  to 40 acres — as is “reasonably necessary” for use of the dwelling as a home. Both spouses may jointly reclassify a homestead by gift, **conveyance** — title or deed transferring property, not will, lease or law — or marital property agreement. Neither spouse can sell it alone.

## Marital property agreements

Under Wisconsin law, spouses or people intending to marry may enter into agreements about how they will own, manage and dispose of property.

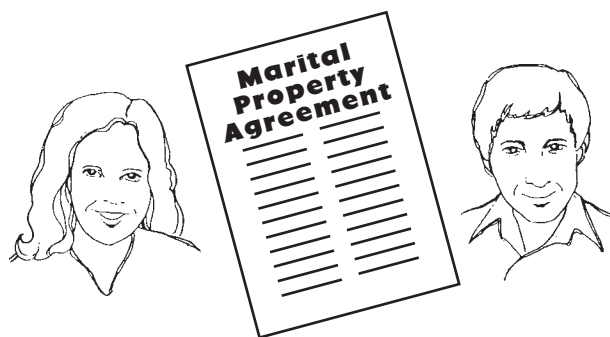
### The Wisconsin Marital Property Act:

- Encourages marital property agreements;
- Expands their scope; and
- Enhances their enforceability.

Since Wisconsin's marital property system may not suit all couples' needs, the law gives you the option to make a marital property agreement either before or during your marriage. The law permits couples wide latitude in structuring individual economic arrangements.

### Marital property agreements

Most effects of the marital property law may be varied by marital property agreement.





Marital property agreements offer couples the flexibility of individually tailoring a financial contract to meet specific needs. Marital property agreements are particularly suitable in these and other situations:

- The couple enters marriage with significantly differing wealth, debt or responsibilities.
- One spouse — or both — has been married before and wishes to enter into agreements to clarify obligations to children from prior marriages, responsibility for debt already acquired, or the right to continue to own previously acquired assets.
- One spouse — or both — owns a large asset portfolio acquired through gift, inheritance or personal savings, and wishes to protect these assets.
- One spouse is engaged in a speculative or risky business venture and wants to protect the other spouse from the ramifications of business failure.

A marital property agreement must meet certain legal requirements. To be **enforceable**, a marital property agreement must be:

- Entered into voluntarily by both spouses;
- Reduced to writing and signed by both spouses; and
- Preceded by full financial disclosure by both spouses of all of their incomes, assets, liabilities and other obligations.

Couples may not contract regarding certain prohibited matters the law considers contrary to public policy. You CANNOT:

- Adversely affect a minor child's right to support, or alter any court-imposed child support obligation without the court's approval.
- Enter into a contract that results in a spouse having less than "necessary and adequate" support.

- Eliminate spouses' obligation to act in good faith in managing and controlling marital property.
- Contract with your spouse to diminish the rights of creditors or **bona fide** — good faith — purchasers of marital property.

In negotiating a marital property agreement, couples consider issues such as the following:

- How do you give appropriate economic weight to the economic and non-economic contributions each spouse makes to the marriage and the family?
- How do you deal equitably with the financial needs or expectations of children from prior relationships as well as any children who may be born in the current marriage?
- How do you provide fairly for aged parents or other family members who may depend on one or both spouses for financial or personal assistance?
- How do you allot scarce resources to provide adequately for a surviving spouse as well as to leave an inheritance for children?
- How do you treat property — for example, a residence — owned by one spouse but used by the whole family?
- **Day-to-day:**
  - Who will have responsibility or authority for managing specific assets?
  - Who can incur debt?
  - What continuing information is each spouse entitled to know about the other's property?
  - What limits do you set on gifts a spouse may make unilaterally?
  - Who is responsible for paying ongoing expenses?
- Acknowledging that marriage duration is uncertain, the agreement needs to be fair to both spouses whether the marriage lasts for months or decades.

A marital property agreement alone will probably not resolve all of these issues. You may need a will, trust, powers of attorney and other legal documents to carry out your complete plan for dealing with these matters.

The marital property agreement is the linchpin of your estate plan, because it tells you what property you own and what you can and cannot do with it. You need to clarify property ownership before you can dispose of the property.

For couples who choose not to draft their own documents, *Wisconsin Statutes* contain two different marital property agreements that spouses can sign without modifying.

These **statutory marital property agreements** are:

- The statutory **Terminable Marital Property Agreement**, which permits spouses to classify all property as marital property; and
- The statutory **Terminable Individual Property Agreement**, which permits spouses to classify property as individual property.

Either of these agreements can be signed without **financial disclosure**. But in that event, the agreement automatically terminates in three years and cannot be renewed. Either spouse may **unilaterally terminate** either of the statutory agreements at any time. These agreements have no impact at divorce. Because they do not apply at divorce and can be terminated by one spouse acting alone, these agreements do not supply the certainty that most couples want when they enter into a marital property agreement. Therefore, couples rarely use them.

As detailed above, marital property agreements are **enforceable** during marriage if they are substantially fair and have been fairly procured. A marital property agreement is a contract. While the law does not require that you hire an attorney to help you negotiate and prepare an agreement, doing so maximizes your chances of crafting an enforceable agreement.

**Note:** Marital property agreements concerning property rights are **enforceable at divorce** if they are “equitable.” A divorce court will consider agreements about spousal support, but such agreements are not binding on the court.

A court determines whether an agreement is **equitable** by looking not only at its provisions, but also at the circumstances under which the agreement was signed. An agreement is more likely to be enforced if each spouse had full information about the other’s financial affairs and had a “meaningful choice” about whether or not to sign the agreement.

To determine whether each spouse had a **meaningful choice**, courts look at factors such as whether each person had counsel, how long each person had to review the agreement, and the terms of the agreement.

Circumstances could change greatly between the time the agreement is made and the time its enforcement is sought in divorce court. If the couple did not or could not reasonably contemplate those changes when they signed the agreement, the courts may find the agreement would be inequitable and may decline to enforce the agreement. To enhance the agreement’s enforceability, an attorney can help ensure that you consider all reasonably foreseeable possibilities.

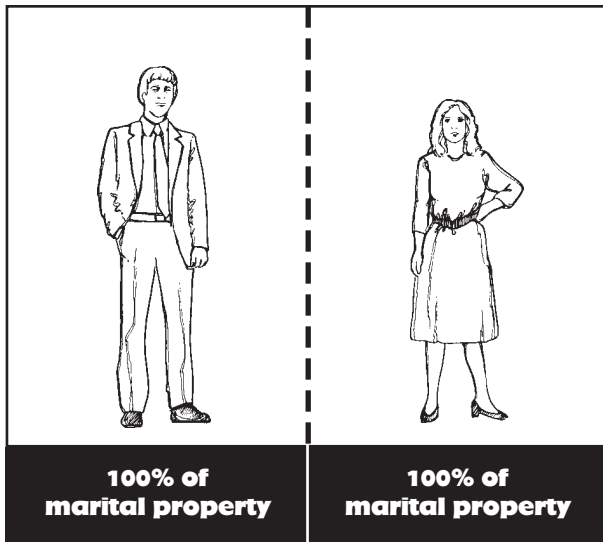
## Credit and debt

**Credit** depends solely on your financial abilities and payment record. These factors establish a credit history necessary to acquire credit. Establishing your own credit history may help you acquire credit following death of a spouse, separation or divorce.

Under the federal **Equal Credit Opportunity Act**, all new joint accounts and loans must be recorded in both spouses' names for credit purposes. Each of you can get credit in your name without the other's signature — if you are **credit worthy**. In fact, marital property law provides that a non-wage-earning spouse may obtain credit based on the other spouse's income and assets.

### 100 Percent Rule – Credit

Each spouse has access to 100 percent of the marital property other than business property for the purpose of obtaining unsecured credit.



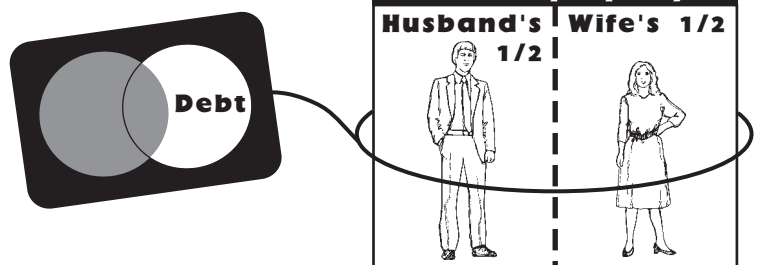
Under marital property law, one spouse may borrow money without the other participating in the credit transaction. But the creditor must notify the other spouse in writing — so the non-applicant spouse knows this is a marital property debt. If debts are incurred for a **family purpose** — in the interest of the marriage — all your marital property will be available for repayment even though both spouses did not sign for the loan.

Under marital property law, just as spouses share interests in the property they acquire together, they also have shared responsibility for many debts. Debts are not classified as “individual” or “marital,” however. Instead, they are assigned to one of five categories:

- Support obligations
- Family purpose obligations
- Pre-marriage or pre-Marital Property Act obligations
- Tort obligations
- Other obligations

### 100 Percent Rule – Debt

If a debt is incurred in the interest of the marriage, the creditor has access to 100 percent of the marital property for satisfying the debt. The creditor must notify the other spouse in writing — so the non-applicant spouse knows this is a marital property debt.



The category determines what property is available to creditors to satisfy the debt.

**Support obligations** to a spouse or a child of the marriage may be satisfied from:

- all non-marital property of the incurring spouse, and
- all marital property — even if held in the non-incurring spouse's name.

This same pool of property is available for satisfying all **family purpose obligations** — obligations either spouse incurs for the benefit of the marriage or the family. All debts spouses incur are presumed to be family purpose obligations.

**Pre-marriage or pre-Marital**

**Property Act obligations** — obligations either spouse incurred prior to their determination date — may be satisfied from:

- the incurring spouse's non-marital property, and
- all property that would have been the incurring spouse's property absent the marriage, enactment of the marital property law, or move to Wisconsin.

**Tort obligations** — liabilities arising as a result of a civil wrong a spouse committed, such as a judgment in favor of a person injured in a car accident a spouse caused — may be satisfied only from:

- the responsible spouse's non-marital property, and
- his or her half of the marital property.

Any **other obligations** may be satisfied only from:

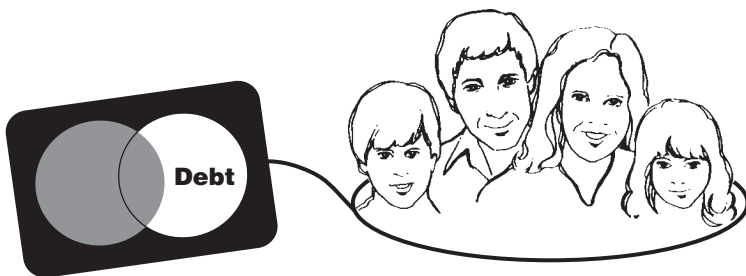
- the incurring spouse's non-marital property and, when that property is exhausted,
- that spouse's interest in marital property.

For example, John incurred debts and obligations before his marriage. Once he is married, creditors cannot pursue the income of the non-obligated spouse, Sue. Creditors may pursue John's income, without regard to Sue's marital property interest in this income.

If John borrowed money to buy a new car, this would be an example of a family purpose debt. The law presumes that this car will be used for the benefit of the family. Therefore, all marital property is available for **satisfaction** — the lender has the right to garnish Sue's wages to satisfy the debt. This is true even if Sue did not know about the loan, or if she disapproved of the loan and the purchase.

**Family purpose**

Any debt a spouse incurs is presumed to be in the interest of the marriage.



When evaluating each spouse's premarital debt, be sure to consider responsibility to pay child support.

If one spouse uses a credit card for business, keep that account in only the user's or business name for expense account and tax purposes. Use other credit card accounts for personal charges.

Because the law presumes spouses share liability for most debt, your credit rating is tied to that of your spouse much more closely than it would be in a separate property state. If you plan to marry someone with a poor credit rating, you can expect that your own credit rating will be negatively affected. This is something to talk about and plan for prior to marriage.

A marital property agreement may help you protect your credit rating (see *Management and control rights*, page 13). But your marital property agreement may limit creditors' rights **ONLY IF** creditors have **actual knowledge** of the agreement. Provide your creditors with a copy of your agreement if you expect the agreement to govern future debt transactions.

For information on how to gain access to your credit report, ask your county UW-Extension office for *Your Credit Report* NCR606-3, also available in English or Spanish from the address on the back of this booklet.

## Employment benefits

### Pension and retirement plans

Before marrying, check with the benefits officer where you work about your retirement program. Ask whether your new spouse will receive benefits at your death. If your marriage requires you to relocate and change places of employment, does your pension plan require you to work a certain length of time before you have the right to take your pension fund with you?

Be sure your employer knows whom you want as beneficiary of your pension or annuity plan. Wisconsin marital property law classifies retirement benefits earned during marriage as marital property. Also, federal law governing many private employers' pension plans — **ERISA, Employee Retirement Income Security Act** — restricts how an employee disposes of pension and death benefits. So the beneficiary named in the plan may not be able to collect all the proceeds. Check options carefully before changing any part of your retirement program. A previous marriage may affect benefits.

Federal law — ERISA or **REA, Retirement Equity Act** — provides rights that supersede state property law for deferred employment benefit plans covered by these laws. So language in a marital property agreement may not be sufficient to protect pension benefits, and other documentation may be necessary.

Special marital property classification rules apply to deferred employment benefit plans. A **pension plan** is entirely marital property if it begins as a result of employment on or after the latest of these dates:

- Marriage date
- Date the marital property law took effect (January 1986)
- Date the couple established Wisconsin residence

An employee pension plan that began before that determination date and continues after is prorated into a marital property part and a non-marital property part according to special classification rules.

For example, if Sue worked for 10 years before the marriage, married in 1987, worked 10 years after the marriage and then retired, one-half of her retirement plan would be individual and one-half would be marital. John would have a one-half interest in one-half of the plan — one-fourth of the benefits.

**Note:** Retirement benefits are subject to the **terminable interest rule** — a non-employee spouse’s marital property share of a deferred employment benefit terminates if she or he dies before the employed spouse. In the case above, this means that if John dies before Sue, he cannot will away the one-fourth marital property interest he would have had in Sue’s deferred employment benefit plans. This ensures that Sue receives income from those pensions or annuities when she retires.

**Life insurance**

Life insurance is important for young parents and second marriages. A life insurance policy that insures a married person and is issued after your determination date is classified as marital property.

It does not matter whether premiums are paid with marital or individual property.

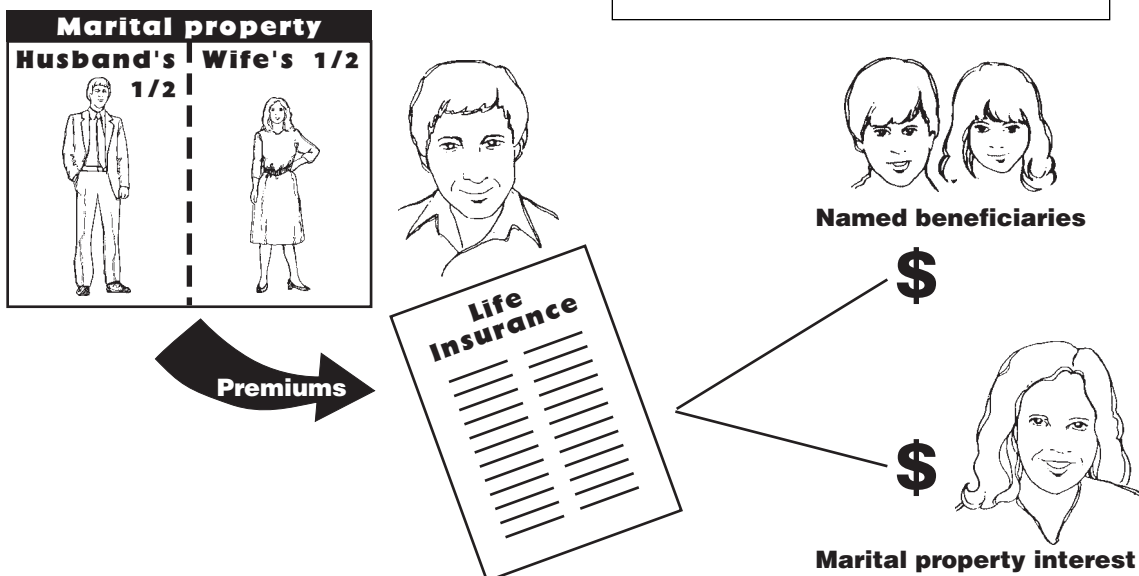
A policy issued before your determination date becomes a **mixed asset** if a spouse or a spouse’s employer pays even one premium afterward with marital property (see *Mixing marital and non-marital property*, page 12). When the insured spouse dies, proceeds from a mixed asset policy are prorated between the marital property part and other parts based on a statutory formula.

For example, if Sue took out a life insurance policy 10 years before moving to Wisconsin, paid annual premiums, then paid the first premium due after the move with marital property and died 10 years thereafter, one-half of the policy’s value would be marital property. If she died 20 years thereafter, two-thirds of the policy’s value would be marital property. In either case, John would have a right to one-half of the insurance proceeds’ marital property portion. And Sue could have designated a beneficiary only for her half of the marital property and for the non-marital property component.

Regardless of whom the insured spouse names as beneficiary, a surviving spouse has a right to one-half of any marital interest in a life insurance policy.

**Life insurance**

- Life insurance proceeds may be classified as marital property.
- If so, the beneficiary named in the insurance policy may not collect all of the proceeds.



For instance, if John names his child from a previous marriage as the beneficiary of a life insurance policy and then dies, and part or all of the policy is classified as marital property, Sue can bring a claim to recover her portion of the marital property proceeds. This rule applies **UNLESS** John is subject to a court order requiring him to name the child as beneficiary.

If spouses do not want this result, the non-insured spouse may give written **consent** for another person — such as a parent or child of either spouse — to be named as the **beneficiary** of the life insurance proceeds. Consent can be revoked **UNLESS** the original consent specifically says it cannot.

**Note:** Many different kinds of written consent forms are available, and signing a written consent has tax as well as property law consequences. So get expert advice **before** you sign a written beneficiary consent form.

If you have been divorced or have child support obligations from a prior relationship, check carefully to make sure you understand your legal responsibilities set forth in your court order. Be sure to discuss these obligations with your new spouse to avoid misunderstandings and complications later.

## Management and control of marital property

Title does not determine who has ownership rights to marital property. But a document of title does determine who manages and controls marital property.

For example, if property is titled to one spouse alone, that spouse solely manages the asset even though it is marital property. One important exception to this rule is that either spouse may manage all marital property — except certain business interests — to obtain unsecured credit or credit when the item purchased is the security for the loan.

If the document of title specifies ownership by the wife and husband joined by the word “**and**,” then both spouses manage the property and both signatures are required for property transactions.

If the document of title contains the names of wife and husband joined by “**or**,” then either spouse acting alone may manage the marital property. However, if a spouse has depleted a joint bank account, that spouse — or his or her half of the estate — may have to account for the missing funds at divorce or death.

**Note:** An exception applies to homestead property, which is presumed to be survivorship marital property unless the deed or a marital property agreement clearly indicate otherwise. Consent of both spouses is required to sell or encumber homestead property (see *Survivorship marital property*, page 13).

Contact your county or city records office to find out how to change name(s) on property you own.

If there is no document of title, either spouse may manage the property.

## Gifts of marital property

A spouse with management and control rights may make a **unilateral gift** or gifts from marital property to a third party of not more than \$1,000 per calendar year per recipient, without the consent of the other spouse. A gift can be a larger amount if it is reasonable considering the spouse’s economic position. This rule applies to gifts to all third parties, including children, either spouse’s parents, or charities.

For example, Sue makes a \$1,500 gift of marital property to her child by a previous marriage. If John did not **consent**, he may bring an action to recover the property — or to recover its value to the extent that it exceeds the permissible gift. He may bring the action against Sue, the gift’s receiver, or both. He must

take action within one year after the **date of discovery** — when he learns, or should with reasonable care and diligence — that she made the gift.

To avoid this result, the non-gifting spouse must agree to the gift, preferably in writing, either when the gift is given or later. On the other hand, a spouse can defeat a claim for recovery of a gift if she or he can show that it is **reasonable** in light of the spouse's economic position.

Spouses may give gifts of any size **to each other** without limit. Keep in mind that gifts during life or transfers at death between spouses are free from gift and estate taxes.

Why should each newlywed have a will? The most basic reason is that it lets each of you determine how your property will be distributed at your death.

Keep in mind that Wisconsin marital property law provides that one spouse is entitled to 50 percent of the marital property even if that spouse does not hold title to the property.

Young families can use a will to nominate a guardian for minor children and someone to manage the estate they leave those children. You can also establish a trust in your will for the benefit of children (see **testamentary trusts**, page 23).

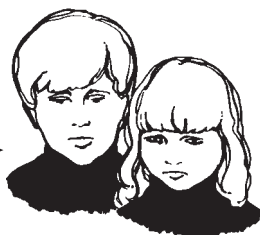
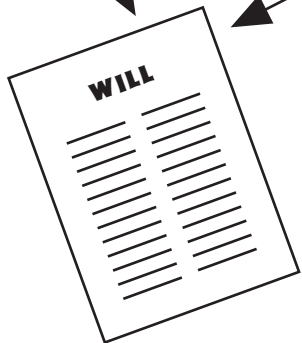
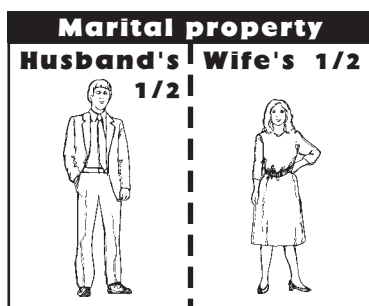
## Wills and trusts

Any person 18 years of age or older and mentally competent may make a will in Wisconsin. A **will** is a written document that specifies how you wish to have probate property distributed at your death, and designates someone to follow through on your wishes. A gift of property made in a will is called a **bequest**.

### Will

- By will, each spouse may dispose of one-half of the marital property, and all of his or her individual property.
- The surviving spouse has no claim on this property.

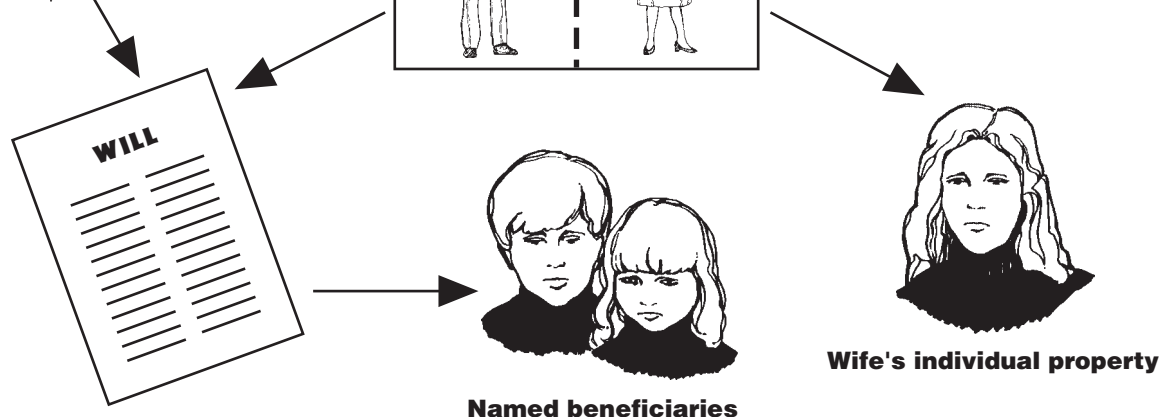
Husband's individual property



Named beneficiaries



Wife's individual property





If you have adult children from a prior relationship, you may find they regard your new spouse as a threat to their inheritance. Many couples faced with this situation choose to sign a marital property agreement that defines what the new spouse is entitled to, and what is being protected for the children.

This can help improve relations between stepchildren and stepparents.

If you have a marital property agreement, be sure that your will or trust is consistent with that agreement. If your marital property agreement and will or trust contradict each other, your beneficiaries may face years of court battles trying to determine your intent.

Keep in mind that your will covers only property subject to probate. Your **probate estate** is the real and personal property you own alone, as a tenant-in-common, or as marital property when you die. You may will to whomever you wish the following classes of property (**probate assets** only):

- One-half of each item of marital property, regardless of the name on the title
- Unclassified property
- All your individual property

If you and your spouse leave the bulk of your estates to each other, include a **death in common accident clause** in your wills. This indicates how property should be divided in case you both die at once or within a short time of each other.

When a married person dies **without a legally effective will**, under the Wisconsin laws of **intestate succession** all that person's **probate property** will pass to the surviving spouse — if there are no children, or only children or grandchildren of this marriage. If you leave behind minor children, a court will determine who will be the guardian of those children and administer the estate.

If the deceased spouse with no will is survived by children from a previous marriage, then the deceased person's marital property interest — 50 percent — and one-half of his or

her individual property will be divided equally among all the deceased person's children. The surviving spouse retains his or her half of the marital property, and receives half of the deceased spouse's individual property.

Without a will, the deceased spouse's **non-probate property** will be distributed under the laws governing **transfer on death** (TOD) or **pay on death** (POD) beneficiary designations, multiple party accounts, life insurance, and pension death benefit beneficiary designations, joint tenancy or survivorship marital property.

How do you make a will? Because a will is so important, it is wise to have a lawyer assist you. But in 1984, the Wisconsin Legislature created two **statutory will** forms:

#### ■ **Basic Will**

#### ■ **Basic Will with Trust**

These do-it-yourself wills provide a relatively simple, inexpensive means for individuals to dispose of some kinds of property. You can get these statutory forms at most stationery and office supply stores for about \$5. But they are not for everyone.

The statutory **Basic Will** form is designed for intact families with relatively simple estates. Because the language assumes the surviving spouse is also the parent of any surviving children, the form is not well-suited for those who have children from a prior relationship. Also, the Basic Will provides for naming one person as guardian of children and the children's estate. Basic Wills are not adequate for business owners or people with assets that approach the upper limits of federal estate tax exemptions.

For some people, **estate planning** is important because it can help reduce or even eliminate death taxes. For estates over \$675,000 in value, tax planning is especially important (as of 2000).\* The **taxable estate** includes all assets the deceased spouse owned, including life insurance, retirement, death benefits, interests in joint tenancy and marital property, and trust assets.

\*This amount is due to increase in stages to \$1 million by the year 2006.

People marrying for the second or subsequent time may have larger estates than young couples just starting out. They are also likely to have more competing obligations — children from prior relationships, elderly parents who need assistance, or business partners — that make their estate planning more complex. An attorney experienced in estate planning can offer a number of useful options to ensure that the special challenges for remarrying couples are met in a fair and practical way.

The laws governing wills vary by state. If you plan to move to another state, be sure you understand the interpretation of your will under the laws in that state.

A trust can serve the same purpose as a will. A **trust** is a form of ownership in which the property title is held by a **trustee** who has the duty to administer the trust for the benefit of the people named as beneficiaries of the trust. There are two basic kinds of trusts:

#### ■ **Living trusts**

#### ■ **Testamentary trusts**

A **living trust** is an arrangement to transfer property to a trustee to manage and distribute the income as you direct for your benefit or the benefit of your designated beneficiaries. This agreement protects assets for minors or inexperienced beneficiaries, provides flexibility and ensures privacy.

There are two kinds of living trusts:

■ **Irrevocable trusts** — which cannot be changed or terminated, though they can be worded to change the trustee — can save death and income taxes, protect assets for your heir(s), and possibly qualify you sooner for **Medical Assistance** — the Wisconsin form of **Medicaid**, for people of any age who cannot afford health care.

■ **Revocable trusts** — which can be modified or terminated at a later date — reserve the chance for you to change your mind or adapt to new developments as they occur. Revocable trusts may save probate costs — especially on real estate in other states — but they will not save taxes.

Co-trustees can manage co-owned property if they share the same goals.

When you create a living trust, define **incapacity** — when you want the trustee to take over. If you have a living trust, you still should have a will to ensure that any assets you failed to add to the trust are distributed according to your wishes. A trust only covers property titled into the trust. It is possible, but not practical, to place all your property in a trust. You can name the trust as the beneficiary of your will to avoid probate.

A **testamentary trust** is a trust you create in your will. It is court supervised and public record. Testamentary trusts preserve and manage assets for minors or others to whom you do not wish to make outright bequests of large sums of money. Generally, these trusts continue for a period of years and ultimately **terminate** with disposition of all remaining assets to the named beneficiary.

Sometimes testamentary trusts are used to give a life interest in certain property to a surviving spouse. At that spouse's death, the assets then go to designated beneficiaries.

Most consultants advise against using prepared forms for these complex documents. If you do use a prepared form for a will or trust, be sure it is for a marital (community) property state. Heavily promoted commercial trust “kits” are often not appropriate for Wisconsin, and may cost more than advertised.

Wills and trusts also require time and attention to detail, so it is a good idea to seek professional help to plan and set them up. Review and update your estate plan as your family and economic situations change.

For more information on wills and trusts, ask your county UW-Extension office for *Family Estate Planning in Wisconsin* B1442, also available from the address on the back of this booklet.

## Organizing your family records

Record-keeping is important for most families. Some records need to be retained only for a short time, while others should be kept indefinitely. Store your records in a safe, fireproof place such as a safe-deposit box or fireproof vault, and have a list readily available at home (see *Where to keep records and papers*, page 30).

### Household inventory

Keep a record of household furniture, furnishings and equipment, purchase date and cost, title and ownership. This serves as a basis for:

- Determining amount of insurance protection needed;
- Filing claims in case of loss by fire, theft or storm;
- Making replacement or purchase plans; and
- Tracing ownership classification — which indicates whether the property is individual, marital or mixed (see *Mixing marital and non-marital property*, page 12).

After making this list, keep it in a safe, fireproof place, and bring it up to date once or twice a year. Also consider taking photographs of items, or videotaping your home furnishings. Many video production companies offer this service, or camera or video shops may rent camcorders for your use. Update photo or video records frequently, and keep a copy in a safe deposit box.

If you want to classify your property as other than marital property, you need specific records. Begin keeping track to establish ownership as of the date of your marriage. Include:

- Date of acquisition
- Title
- Value
- Source of funds — individual or unclassified
- Documents that trace assets through sales and new purchases

The marital property law **tracing rule** helps classify ownership of property when it is mixed, exchanged or sold, and the proceeds are used to buy other property. Newly purchased property will keep the same classification as the original property — if it can be traced.

Marital property agreements can also be used to classify property ownership. They are often more convenient and certain than relying on tracing ownership through existing documents, and can reduce your need for record-keeping.

Ask your county UW-Extension office for *The Household Inventory* B2389, also available from the address on the back of this booklet.

### Advance directives

Spouses may wish to discuss whom each wants to make decisions if he or she becomes unable to do so. Wisconsin law has established the following ways you can do this with **advance directives** for health care, life and death, and financial decisions, each with statutory forms.

#### Power of Attorney for Health Care

#### Living Will (Declaration to Physicians)

Wisconsin has no next-of-kin law designating a family member to act in your behalf if you are incapacitated. A court-appointed guardian who makes health care decisions for you must act only in your “best interests” as defined by the court. That may not be what you would have wanted. Further, guardianship proceedings are time-consuming and expensive.

Under a 1990 Wisconsin law, you may designate someone to make health care decisions when you are unable to do so. You can give **power of attorney for health care** to another person, known legally as your **health care agent**. You can fill out these statutory forms without an attorney.

Discuss your wishes in detail with the person you choose. Appoint as your health care agent:

- Someone you trust, such as a friend or family member;
- An assertive, intelligent person who will carry out your wishes;
- Someone who lives in the same geographic area.

If you use the statutory Power of Attorney for Health Care form, you must make three decisions. Answer yes or no for these three checkoffs on the form:

- Right to withhold or withdraw feeding tubes
- Admission to nursing home or Community Based Residential Facility for other than recuperative or respite care
- Decision-making power during pregnancy

A “yes” check means that you wish your agent to have the power to make this type of decision for you. The health care agent can only act after two physicians, or a physician and a psychologist, rule you **incapacitated** — unable to receive and evaluate information effectively, or to communicate or manage health care decisions. You cannot be ruled incapacitated merely because you are old.

A living will is different from a power of attorney for health care. A **living will** — called “**Declaration to Physicians**” in Wisconsin — is a statement of your desires regarding the quality and extent of medical care you wish to receive if you are either terminally ill or in a persistent vegetative state.

You are **terminally ill** if your death is imminent and life-sustaining procedures would only postpone the moment of death. You are in a **persistent vegetative state** if there has been a permanent and irreversible cessation of all cognitive (thinking) brain function. Under either circumstance, you can request in advance that life-sustaining procedures and feeding tubes be discontinued.

The living will is different from a power of attorney for health care. The living will states your desires regarding the quality of medical care you wish to receive. The power of attorney for health care appoints another person to carry out these wishes if you are incapacitated. However, the power of attorney for health care is broader — it applies to more than just life and death decision-making.

The two statutory forms are connected by requiring your agent in the power of attorney for health care form to carry out your wishes expressed in the living will. To obtain both statutory forms — Power of Attorney for Health Care and Declaration to Physicians — send separate stamped, self-addressed, business-size envelopes (no. 10) requesting each to: Division of Health, DHFS  
P.O. Box 309, Madison, WI 53701-0309

For copies of both statutory forms and a decision guide, ask your county UW-Extension office for *Advance Directives for Health Care: Wisconsin Living Will and Power of Attorney for Health Care* B3604, also available from the address on the back of this booklet.

## Power of Attorney for Finances and Property

You also need another kind of power of attorney — a **power of attorney for finances**. If you become incapacitated and are unable to handle financial matters yourself, it is important to designate someone who can act on your behalf to pay bills, collect and manage your income, file tax returns and take care of your financial affairs generally.

There is a great deal of variety in the complexity and completeness of this kind of power of attorney. An incorrectly drafted power of attorney for finances may prevent your designated **agent** from carrying out certain actions on your behalf — or, conversely, may give your agent too much power. To protect your interests, consult an attorney who specializes in estate planning before signing a power of attorney for finances.

Give careful thought to choosing the person who will act on your behalf. Choose someone who is trustworthy and knowledgeable about financial affairs.

Most married people choose their spouse to act as their agent, but this is certainly not required. Also designate a successor, in case your first choice is not able to assist you when you need his or her services.

A statutory form is also available to designate power of attorney for finances. Send a stamped, self-addressed, business-size envelope to:

Power of Attorney for Finances and  
Property  
Division of Health, DHFS  
P.O. Box 309, Madison, WI 53701-0309  
<http://www.dhfs.state.wi.us/legalforms/pdffiles/powerofatty.pdf>

## Financial records

### Checking and savings accounts

Before passage of the Wisconsin Marital Property Act, some couples kept accounts in each spouse's name to make it easier to get credit in each person's name. Under marital property law, a married person's credit rating is based on marital property, plus that person's non-marital property. So it is no longer important for you to have your own account for credit rating purposes, though you still may wish to have separate accounts for management and control purposes (see *Credit and debt*, page 16).

If you wish to maintain your own account and have it classified as your individual property, be sure no marital property funds are deposited into that account. Each spouse's wages are family income and thus considered marital property even though only one of you earns them. If any marital funds are deposited into an individually owned account, mixing takes place (see *Mixing Rule*, page 12).

The entire account can be reclassified as marital property unless the individually owned

portion can be traced. Also, be careful not to accumulate interest in your account, since the interest will be marital property — unless upon marriage you execute a unilateral statement declaring the proceeds are your individual property.

A unilateral statement can be an informal letter. But the law does require that it be acknowledged by a notary and given to your spouse within five days (see sample **unilateral statement**, page 12.)

If you wish to open joint **checking and savings accounts**, be aware of other types of accounts. The way you sign the **signature card** at the financial institution determines whether you have a single or joint checking or savings account, or give someone the power of attorney to act on your behalf. Thus, the signature card determines who can manage and control the account. If the checking account card has the word "joint" on it, and John and Sue both sign the card, then either may write checks. There are two-party accounts for which both must sign checks, but this type of account is generally not used by husband and wife.

If you wish to have an **automatic right of survivorship** for your funds when the first spouse dies, use the joint bank account. Since 1982 when interspousal transfers became tax free, most institutions transfer the account to the surviving spouse and will allow spouses to withdraw all the funds from a joint account at the first spouse's death.

While both spouses are alive, joint and marital accounts are alike in that either spouse may withdraw funds, up to the entire amount on deposit. At death, however, the marital account will be distributed according to the will or laws of intestacy — unless you have designated a **pay on death (POD)** or **transfer on death (TOD) beneficiary**.

### Safe deposit box

Safe deposit boxes in financial institutions are for keeping important papers and other valuables. You may lease the boxes from a financial institution in one person's name, or in

the names of two or more persons as co-lessees — either one has access to the box while both are living.

The property in the safe deposit box is subject to Wisconsin marital property law, and thus may be classified as marital property. However, access to the safe deposit box is limited to the name or names on the safe deposit box lease. At death, the box may be sealed when the bank receives the death certificate of the deceased owner. Upon the request of interested parties, the bank may open the box for a will search and inventory. Check with the financial institution regarding their policies.

### **U.S. Savings Bonds and investments**

If you have been buying U.S. Savings Bonds, you may want to have these payable to your spouse. There are three forms of registration: in one name, in one name payable on death to one other designated individual, and in the names of two individuals as co-owners. If a savings bond is registered in one person's name and that person dies, it becomes a part of the estate.

Under marital property law, a spouse can claim marital property ownership interest in the bond if it can be shown that the spouse used marital income to purchase it. When a bond is registered as John's or Sue's, either may cash it. If John dies, Sue is the absolute owner and can receive the proceeds upon presenting the bond for payment.

### **Wills and trusts**

Keep signed original documents in a safe place, and let family members know where that is. People often choose a safe deposit box. As you revise or create new documents, dispose of the old versions to avoid confusion.

An attorney cannot keep a signed will without the client's direction.

## **Insurance**

The following information is not intended to promote buying insurance. This is a personal decision. This information is intended only to help you make such decisions. You may not be able to afford all the insurance you feel you need. So find out what insurance is available to you, and how much it costs.

Then, this overview may help you set your priorities.

### **Disability or income continuation insurance**

Statistically, it is more likely that you will be incapacitated for an extended period during your lifetime than that you will die suddenly. So it is important to plan ahead for the risk of disability, just as a good estate plan includes planning for unexpected death.

An important part of planning for disability involves providing for income continuation to support you and your dependents if you are unable to work for an extended period. Insurance designed to cover this need is called “**disability insurance**” or “**income continuation insurance**.”

It is also important to designate decision-makers to handle financial matters and health care planning for you if you are unable to make these decisions yourself. You can do so by completing advance directives forms (see *Power of Attorney for Health Care* and *Living Will (Declaration to Physicians)*, page 24; and *Power of Attorney for Finances and Property*, page 25).

### **Health insurance**

Before you marry, contact the person in charge of fringe benefits where you work (or worked, if retired) to arrange for health insurance for your spouse.

If each of you has health insurance, investigate the benefits of each to decide which policy to continue. Find out the deadlines for adding a family member to an already existing policy, and whether physicals are required. You may need to act promptly after your wedding. You will also want to clarify whether there is a

waiting period for receiving benefits. This can be especially important if you are pregnant or planning a pregnancy, or need treatment for a pre-existing condition.

If you are self-employed and not covered by a group health policy, look into non-group health insurance, or a group policy via an association.

Start a **medical history** for your new family. Include:

- **Allergies** or allergic reaction to any medication or food
- **Illnesses:**
  - Chronic and serious, past and present
  - Close family; for example, cancer, diabetes, heart disease, or hemophilia
- **Immunization** and inoculation records
- **Medications** you take regularly, including prescription, herbal and over-the-counter
- **Surgeries**, past; include dental
- **Physician's** and **dentist's** name and address, for each family member

### Homeowner or renters' and liability insurance

Many couples marry without household insurance. If they have been living at home, they have relied on parents for this coverage. Combining two people's possessions may result in more property being under one roof. You may want to add extra coverage for items not normally covered by household insurance — computers, jewelry or sterling silver, for example. In addition to insurance that covers your own losses, **liability insurance** covers your obligation to reimburse other people for losses they suffer, such as from a hazard or accident you may cause.

Marriage is the time to obtain a policy if you choose to protect yourself from loss in case of fire, wind and water damage, theft and liability. You can get a policy to cover wedding presents. But by obtaining a homeowner or renters' policy before your wedding date, you may have overall coverage.

In the beginning, your possessions may be low in value. But it is suggested that your initial policy be written for about \$50,000 of personal property coverage and personal liability coverage of \$100,000. Cost will depend on location, type of building, and value of furnishings you select. You can save money by having a policy with \$250 or more deductible.

If you are buying your own home, you may have a **homeowner** policy that includes your house, contents and liability. Consult an insurance agent, who will be happy to advise you.

If you are **renting**, the best all-around protection is a tenants' policy that takes care of your belongings and liability. Check to see that the policy includes fire, lightning, water damage, theft, liability coverage and additional living expenses — both at and away from home.

Be sure to know what your policy covers and what it does not cover. In particular, check to see whether the policy covers the current value of items lost, or their replacement costs. **Current value** covers what you paid for the item minus depreciation.

**Replacement costs** cover the cost to replace each item at today's price.

### Life insurance

Need for life insurance will vary as change comes with age and financial responsibilities such as employment, children and home ownership.

If you have life insurance policies, you may want to change the beneficiary and add contingent beneficiaries to reflect your new marital situation.

Marital property law has special rules to determine the ownership classification of **life insurance** policies. Some may be individually owned, some marital property and some **mixed** — part marital and non-marital — depending on when they were acquired (see page 19).

When policies have a marital property interest, the surviving spouse can claim a portion of the proceeds as marital property even if a third party has been designated as the beneficiary. Written **consent** may be used to change the classification of insurance proceeds. Discuss your immediate and future needs with your insurance agent.

Consider why you are buying life insurance. Does a parent, child or other family member depend on you for support? Will your spouse be self-supporting? Do you have any large, outstanding debts including mortgage? Will your spouse need your earnings to pay any debts, such as educational expenses?

Compare benefits provided under the **Wisconsin State Life Fund** with others you investigate. You can get insurance information from the state Office of the Commissioner of Insurance (see *Resources*, page 31).

### Motor vehicle insurance

If you owe money on your car, your creditor will probably require you to carry **collision** insurance. You will probably also need **liability** insurance.

The minimum limits for a policy written in Wisconsin after November 1, 1982, are \$25,000/\$50,000/\$25,000. This provides up to \$25,000 for bodily injury liability for each person in an accident, \$50,000 total coverage for each accident, and \$25,000 property damage liability.

You may wish to buy more coverage to compensate for higher financial losses in case of serious accident, injury or property damage. Based on recent legislation, higher limits are suggested. For example, **1997 Wisconsin Act 89** increased **wrongful death liability**

claims from \$150,000 to \$500,000 for minors and \$350,000 for adults.

Policies require that all drivers in the household be declared on a policy.

Be sure to change your declarations on your vehicle(s) as of your wedding date. Motor vehicle insurance may be held separately or jointly. Many companies offer auto insurance on a multi-car policy that covers all vehicles in a household whether owned and registered jointly or separately. See your insurance agent about making necessary changes, because there may be advantages to combining auto coverage into one policy. Multi-car insurance usually results in lower premiums.

These insurance premiums may decrease after you get married. Some companies will adjust the premium as of your wedding date, and the savings will be reflected on your next premium payment.

What information will you need to adjust the insurance policy?

- Your present policy or policy number
- Your name and driver's license number as they appear on your driver's license
- Social Security number
- Date of birth
- Occupation
- Use of vehicle and number of miles driven to work
- Percent of mileage you each drive each vehicle
- Age and type of vehicles: models, horsepower, serial numbers
- Driving history including any accidents or traffic violations for each person for the last three years
- Vehicle ownership — joint or individual



# Where to keep records and papers (Check box ✓)

Item	File at home		In your wallet
	Safe deposit box	Temporary file <sup>1</sup>	
<input type="checkbox"/> Account books		x	x
<input type="checkbox"/> Adoption papers	x		
Advance directives:			
<input type="checkbox"/> List of who has copies	x	x	
<input type="checkbox"/> Living will (Declaration to Physicians) <sup>3</sup>	x		
<input type="checkbox"/> Power of Attorney for Finances and Property	x		
<input type="checkbox"/> Power of Attorney for Health Care <sup>3, 7</sup>	x		
<input type="checkbox"/> Bank statements		x	
Cancelled checks:			
<input type="checkbox"/> For year		x	
<input type="checkbox"/> For paying taxes & important purposes			x
Certificates:			
<input type="checkbox"/> Birth, tribal enrollment	x		
<input type="checkbox"/> Death	x		
<input type="checkbox"/> Citizenship papers	x		
<input type="checkbox"/> Contracts — Installments <sup>4</sup>	x		
<input type="checkbox"/> Driver's license or Wisconsin ID			x
<input type="checkbox"/> Employment record			x
<input type="checkbox"/> Government savings bonds	x		
<input type="checkbox"/> Guarantees, warranties, instruction books		x	x
<input type="checkbox"/> Health records, medical history			x
Household inventory:			
<input type="checkbox"/> List	x		x
<input type="checkbox"/> Photos or video	x		x
<input type="checkbox"/> Identification <sup>5</sup>			x
Insurance:			
<input type="checkbox"/> Letter of government compensation for service-incurred disability	x		
<input type="checkbox"/> List of policies	x		
<input type="checkbox"/> Policies		x	
<input type="checkbox"/> Marital property agreement	x		
<input type="checkbox"/> Marriage & divorce records	x		
<input type="checkbox"/> Membership cards			x
<input type="checkbox"/> Military discharge papers	x		
<input type="checkbox"/> Mortgages	x		
<input type="checkbox"/> Notes — Mortgage, treasury, etc.	x		
<input type="checkbox"/> Passports	x		
<input type="checkbox"/> Real estate papers, abstracts, deed	x		
<input type="checkbox"/> Receipts and receipted bills <sup>4</sup>		x	x
<input type="checkbox"/> Receipts, periodic — Utilities, telephone		x	x
Social Security card:			
<input type="checkbox"/> Top portion			x
<input type="checkbox"/> Bottom portion	x		
<input type="checkbox"/> Stock certificates & investments	x		
<input type="checkbox"/> Tax returns — Income and property			x
<input type="checkbox"/> Vehicle registrations <sup>6</sup>			x
<input type="checkbox"/> Vehicle titles and bills of sale			x
Wills & trusts:			
<input type="checkbox"/> Signed originals	x		
<input type="checkbox"/> Unsigned copies <sup>7</sup>			x

See footnotes on following page.

## Resources

**Advance directives** — Statutory advance directives forms (see also UW-Extension county office listing, next page). For two copies each of the Declaration to Physicians (living will), Power of Attorney for Health Care or Power of Attorney for Finances and Property statutory forms, send a separate stamped, self-addressed business-size envelope (no. 10) for each one you request to:

Division of Health  
Wisconsin Department of Health and Family Services  
P.O. Box 309, Madison, WI 53701-0309

**Blood tests** — If you do not know your HIV status, you can get referrals for anonymous or confidential HIV testing from a public health nurse (see local government listings in your phone book); or call toll-free, statewide:

### Wisconsin AIDSline

(800) 334-2437 (800-334-AIDS)  
In Milwaukee: 273-2437 (273-AIDS)

<http://www.arcw.org> (English or Spanish)

**Credit and debt** — See UW-Extension county office and Web listings on the next page.

**Driver's license or Wisconsin identification card** (for people who do not drive): Wisconsin Department of Transportation, Division of Motor Vehicles (see "Transportation, Department of" under state government listings in your phone book).

**Insurance** — Information on benefits provided under the Wisconsin State Life Fund, for comparison:

Office of the Commissioner of Insurance  
P.O. Box 7873  
Madison, WI 53707-7873  
(800) 236-8517—7:45 a.m.– 4:30 p.m. M-F  
In Madison: 266-3585

<http://badger.state.wi.us/agencies/oci/slif.htm>

### Marital property agreements — *A Marital*

*Property Handbook: An Introduction to Wisconsin's Marital Property System* by June Miller Weisberger and Teresa Meuer, 2nd Edition (Madison, Wis.: Center for Public Representation), 1989.

This handbook includes the Wisconsin statutory Marital Property Classification and Individual Property Classification forms. (Check your local library.)

**Marriage license** — Information about securing a marriage license, eligibility requirements, fees and method of payment is available from your county clerk. (See local government listings in your phone book.)

**Property titles** — Information about how to change name(s) on titles of property you own is available from your county or city records office. (See local government listings in your phone book.)

←

- <sup>1</sup> Use for current transactions and records used in the course of a year, including bills and receipts.
- <sup>2</sup> Use for records seldom used but needed to establish insurance, ownership, estate settlement, financial and legal matters.
- <sup>3</sup> Keep copies with your health care provider and your health care agent.
- <sup>4</sup> Keep for six years after paid.
- <sup>5</sup> Carry your name, address, whom to notify, special health information, doctor and hospital, advance directives wallet card.
- <sup>6</sup> Keep motor vehicle registration in the vehicle.
- <sup>7</sup> Wills and powers of attorney documents may be held at the county register in probate office for a small fee.

**University of Wisconsin-Extension**

**county office** (listed under county government in your phone book):

Provides educational information and programs on managing you money, buying and maintaining a home, parenting, saving and investing, estate planning, and more. These and other publications are available from your county UW-Extension office or the address on the back cover:

- *Advance Directives for Health Care: Wisconsin Living Will and Power of Attorney for Health Care* B3604
- *Consumer Credit* (English or Spanish):  
*Shopping for Consumer Credit* NCR 606-1  
*When There's an Error on Your Credit Card Bill* NCR 606-2  
*Your Credit Report* NCR 606-3
- *Family Estate Planning in Wisconsin* B1442
- *Home Wise: Help for New Homeowners* B3618
- *Household Inventory* B2389
- *Money 2000 and Beyond:*  
*Organizing Your Financial Records* B3709-1  
*Taking Control of Your Spending* B3709-2  
*Tracking Your Spending* B3709-3  
*Using Power Payments to Pay off Debt* B3709-4  
*Using a Check Register to Track Your Expenses* B3709-6 Use with: *Check Register Tracking System* B3709-6
- *Our Family Account Book* B2372
- *Our Family Records* B2369
- *Parenting the First Year* NCR 321 (English or Spanish)  
*Parenting the Second and Third Years* NCR 578

**Vehicle** — Motor vehicle title changes and fees:

Wisconsin Department of Transportation, Division of Motor Vehicles (see “Transportation, Department of” under state government listings in your phone book).

**Voter registration** — You can register at the polls, or contact your city, town or village clerk (see local government listings in your phone book).

**Web sites** — If you do not have Internet access, try your local library. Many libraries have computers linked to the World Wide Web.

- About the House: Solutions for Home Care Problems, UW-Extension Cooperative Extension:  
<http://www.uwex.edu/house>
- Money 2000 & Beyond, UW-Extension Cooperative Extension:  
<http://www.uwex.edu/ces/money2000>
- Parenting, UW-Extension:  
<http://www.uwex.edu/ces/flp/parenting>
- Your Money Matters, Wisconsin Department of Financial Institutions Office of Financial Education:  
<http://www.wdfi.org>

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Information about legal and financial aspects of marriage is available from many sources, a few of which are listed in this guide. Information is provided as a convenience to readers. This is not an endorsement by University of Wisconsin-Extension, nor does it cover all issues. Prices and availability are subject to change.

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