

PROTECTING YOUR ASSETS IN DIVORCE

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Wisconsin law provides some financial protection for spouses who are in the process of divorcing. The law prohibits divorcing parties from doing the following:

Harassing, intimidating, physically abusing, or imposing any restraint on the personal liberty of the other party or any child of either party;

Encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either party without a court order or consent of the other party;

Removing a minor child of the parties from the state for more than 90 days, changing the residence of a minor child of the parties to another state or to a location more than 150 miles away from the other party, and concealing a minor child of the parties from the other party,.

The prohibitions apply to the petitioner (the person who files for divorce) as soon as the action is filed, and to the respondent as soon as he or she is served with the summons and petition. The petition must inform the respondent that the prohibitions are in effect.

The law creates some exceptions to the general prohibition against disposing of property. A spouse who operates a business may continue to make decisions to encumber or dispose of property "in the usual course of business." Any spouse may expend funds to "secure necessities" -- i.e., pay for living expenses -- and to pay attorney's fees. A spouse who disposes of funds during the pendency of a divorce action should be able to account for his or her use of the funds, to prove that they were expended for an approved purpose.

Karen Goebel, a University of Wisconsin-Extension family financial specialist, encourages divorcing parties to take the initiative to protect their assets during the pendency period, rather than relying on the statute. "Divorce proceedings often extend over a significant period of time," she points out. "If one spouse is irresponsible or vindictive, there may be a much smaller pool of assets for the court to divide at the end of the action than there was at the beginning."

The property subject to the presumption of an equal division at divorce includes a much larger pool of property than the property ("marital property") that is shared by the couple during marriage. While property acquired by a spouse prior to the marriage is classified as "individual property" and is not shared by the other spouse during the marriage, this property is divisible at divorce. Only gifted or inherited property, or property specifically awarded to a spouse pursuant to a valid marital property agreement, is exempt from the presumption of equal division at divorce.

Allocation of debt can create unforeseen pitfalls for divorcing couples. Because creditors are not parties to the divorce action, they are not bound by the couple's allocation of responsibility for debt or even by a court order dividing debts between the parties. If a debt was incurred by both spouses, the creditor can attach the property awarded to one spouse by the divorce court even though the judgment provides that the other spouse is responsible for the debt.

For all of these reasons, it is important for a divorcing spouse to know his or her legal rights and to consult early in the proceeding with an attorney who specializes in the area. An

early, properly drafted temporary order can preserve assets and eliminate the creation of new debt.

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