



DIVORCE LAW IN WISCONSIN: AN OVERVIEW

Information Memorandum 98-23

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INTRODUCTION

This Information Memorandum provides an overview of divorce law in Wisconsin. In general, the statutes relating to divorce are located in ch. 767, Stats. (statutory references in this Memorandum are to the 1995-96 Wisconsin Statutes, as modified by 1997 Wisconsin acts). In addition to the statutes, a substantial amount of case law relating to divorce has been established by the courts. Because this Information Memorandum only provides an overview of Wisconsin divorce law, many specific aspects of divorce law are not covered (in addition, possible tax consequences of divorce are not covered). The application of divorce law to specific circumstances can be complex and a Memorandum of this nature should not be relied upon to answer fact-specific questions. Therefore, if specific questions relating to divorce law arise, the applicable law itself should be consulted and, if the situation warrants, the advice of legal counsel should be sought.

During the 1977 and 1979 Legislative Sessions, Wisconsin substantially revised its divorce law [Ch. 105, Laws of 1977; Ch. 196, Laws of 1979]. The revisions included:

1. Establishing a single test as grounds for a divorce: whether the marriage is “irretrievably broken” (i.e., “no-fault divorce”); and
2. Providing for a modified equitable division of property upon divorce: divisible property is presumed to be divided equally between the parties and any departure from equal division may be made by a court without regard to marital misconduct after considering specified factors.

The 1977 and 1979 revisions continue to form the basis of current divorce law in Wisconsin. However, since those revisions, numerous statutory changes have been made to divorce law, particularly in the areas of child support and child custody.

While this Information Memorandum is directed to divorce law, two other related topics warrant a brief mention to contrast them with divorce law: (1) marital property law; and (2) annulment and legal separation.

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1. Relationship of Divorce Law to Marital Property Law

On January 1, 1986, Wisconsin's common law, or separate property, system defining the property rights of married persons was replaced by the marital property law [primarily set forth in ch. 766, Stats.]. The principal feature of the marital property system is that each spouse by law has an equal ownership interest in certain property; generally, property acquired by either or both spouses during marriage, including income, but not including property acquired individually by gift or inheritance. Under the previous common law system, property acquired during marriage generally belonged to the spouse who acquired the property.

Since the marital property law became effective, there has been confusion regarding the relationship of the marital property law to Wisconsin divorce law. The marital property law was not intended to directly affect divorce law. The basic features of current divorce law were already in place when the marital property law was enacted. The marital property law governs the property of spouses during the marriage and upon the death of a spouse. The divorce law governs what happens to spouses' property at divorce [see, generally, *Kuhlman v. Kuhlman*, 146 Wis. 2d 588, 432 N.W.2d 107 (Ct. App. 1988)]. The divorce law has its own distinct rules of property division and support obligations at divorce. Therefore, for example, the property classification rules under the marital property law do not control whether the property is divisible under the divorce law.

One source of the confusion regarding the relationship of marital property law and divorce law is the common practice of referring to property that is divisible between the parties at divorce as "marital property" or the "marital estate." The latter terminology is not used in this Memorandum; property divisible at divorce is referred to as "divisible property."

To say that marital property law and divorce law are generally distinct is not to say, however, that marital property law in no way affects the divorce process. For example, the marital property law continues to apply during the pendency of a divorce and may continue to affect the income tax liabilities of the parties during that period. [Note, however, that interspousal remedies otherwise available under the marital property law are not available after a divorce action has been commenced [s. 767.05 (7), Stats.].] Also, the debt satisfaction provisions of the marital property law may affect what property is available to a creditor to satisfy a debt, both during the pendency of and following a divorce.

For information on the marital property law, see Wisconsin Legislative Council Staff Information Memorandum 98-22, *Wisconsin's Marital Property Law: An Overview*, dated July 13, 1998.

2. Annulment and Legal Separation Distinguished

Annulment and legal separation, often referred to in the same context as divorce, differ from divorce. A divorce means the end of a marriage; six months after a divorce, a party to a divorce is free to marry again. An annulment, in contrast, renders a marriage void, because the marriage was never valid from the beginning. Grounds for an annulment of a marriage include,

but are not limited to: the legal inability of a party to consent to the marriage because of age or mental incapacity; inability to sexually consummate the marriage; and fraudulent inducement to marriage [s. 767.03, Stats.].

A legal separation includes the basic elements of a divorce judgment, but does not result in an absolute divorce; therefore, the parties to a legal separation are not eligible to remarry as they would be, in the case of a divorce, after six months. In a legal separation, although marital status is not absolutely severed, the court is required to make provisions for custody and physical placement of children, child support and division of property. In addition, the court may make provisions for maintenance payments for the support of a spouse. There are two grounds for a legal separation: the marriage is irretrievably broken; or the marital relationship is broken (the latter ground, in contrast to the first-listed ground, recognizes the possibility of reconciliation) [s. 767.07 (2), Stats.]. A decree of legal separation may be revoked by both parties at any time [s. 767.09 (1), Stats.]. One year or more after a judgment of legal separation, either or both parties may have the judgment converted to a divorce judgment [s. 767.09 (2), Stats.].

This Information Memorandum is divided into the following parts:

	<u>Page</u>
I. COMMENCING A DIVORCE; PENDENCY OF A DIVORCE ACTION	5
A. Residency Requirements; Initiation	5
B. Ground for Divorce	5
C. Waiting Period; Reconciliation	6
D. Information Supplied by Family Court Commissioner	6
E. Prohibited Acts During Pendency	6
F. Guardian ad Litem for Minor Children	7
G. Temporary Orders	7
H. Reconciliation	8
I. Financial Disclosure	9
J. Counseling and Program Attendance	9
II. ISSUES DETERMINED BY DIVORCE JUDGMENT	11
A. Property Division	11

	<u>Page</u>
B. Child Custody and Visitation	13
C. Support	16
1. Child Support	16
2. Maintenance	19
3. Family Support	20
D. Attorney and GAL Fees	20
E. Stipulations	20
F. Appeal; Relief from Judgment	21
 III. POST-DIVORCE	 22
A. Modification of Legal Custody and Physical Placement Orders	22
1. Contested Legal Custody Modifications	22
2. Contested Physical Placement Modifications	22
3. Stipulated Legal Custody and Physical Placement Modifications	23
B. Change of Residence of Legal Custodian and Child	23
C. Modification of Child Support Orders	24
D. Modification of Maintenance Orders	25
E. Enforcement of Judgments	25
F. Debts and Bankruptcy	26
G. Transfers of Property to Surviving Former Spouse by Instrument Executed by Decedent Former Spouse Prior to Divorce	27
H. Prohibition on Subsequent Marriage	27

I. COMMENCING A DIVORCE; PENDENCY OF A DIVORCE ACTION

This Part of the Information Memorandum describes: (a) the basic requirements relating to the commencement of a Wisconsin divorce; and (b) various aspects of divorce law that apply after a divorce petition has been filed and before a divorce judgment has been rendered (i.e., during the “pendency” of a divorce action).

A. RESIDENCY REQUIREMENTS; INITIATION

In order to initiate an action to obtain a divorce in Wisconsin, at least one of the spouses must have been a resident of Wisconsin for not less than six months before the action is commenced [s. 767.05 (1m), Stats.]. Further, at least one spouse must have been a resident of the county in which the action is brought for at least 30 days before commencement of the action [ss. 767.05 (3) and (4) and 767.085, Stats.]. Either or both spouses may, by petition, initiate a divorce action. If only one spouse initiates the action, the other spouse must be served with the divorce petition [s. 767.085 (2) to (3), Stats.].

When a party, property of a party, or a minor child of the parties resides or is located outside of Wisconsin, complex legal issues may arise regarding the authority of a Wisconsin court to rule on various aspects of a divorce. Competent legal advice should be sought in such situations.

B. GROUND FOR DIVORCE

The ground for a divorce, under Wisconsin law, is that the marriage is irretrievably broken [s. 762.07 (2) (a), Stats.]. A marriage is irretrievably broken, if:

1. Both parties have stated in their petition for divorce, or otherwise under oath, that the marriage is irretrievably broken;
2. The parties have voluntarily lived apart continuously for 12 months or more immediately before commencement of the divorce action and one spouse has so stated; or
3. If neither 1. nor 2. applies, the court determines that the marriage is irretrievably broken, as described below [s. 767.12 (2), Stats.].

If the spouses have not voluntarily lived apart for at least 12 months before commencement of the divorce action and if only one party has asserted that the marriage is irretrievably broken, the court, in determining whether the marriage is irretrievably broken, must consider all relevant factors, including the circumstances that gave rise to the filing of the divorce petition and the prospect of reconciliation [s. 767.12 (2) (b), Stats.]. If the court finds no reasonable prospect of reconciliation, the court must make a finding that the marriage is irretrievably broken. If the court finds a reasonable prospect of reconciliation, the court must delay the proceedings. The court may suggest or, at the request of either spouse or on its own motion,

may order counseling. At the resumption of the proceedings, if either spouse states that the marriage is irretrievably broken, the court must make a finding whether the marriage is irretrievably broken.

C. WAITING PERIOD; RECONCILIATION

A waiting, or “cooling off,” period is generally required for divorce actions [s. 767.083, Stats.]. If the spouses file a joint petition for divorce, 120 days must elapse after the petition is filed in order to bring the matter to trial. If only one party has petitioned for a divorce, the 120-day waiting period begins when the other party is served with the petition. The general waiting period notwithstanding, the court may hear a case for a divorce immediately if necessary to protect the health or safety of either spouse, the children of the marriage or for other emergency reasons.

D. INFORMATION SUPPLIED BY FAMILY COURT COMMISSIONER

Upon the filing of a divorce petition, the Family Court Commissioner (FCC) is required to inform the parties to the action of any services, including referral services, offered by the FCC and by the Director of Family Court Counseling [s. 767.081 (1), Stats.]. [The FCC is an officer of the court who, although not a judge, is authorized by statute to perform numerous functions that would otherwise be performed by a judge.]

At the request of a party to a divorce action, the FCC is required to provide written information on the following: (1) the procedure for obtaining a judgment or order in the action; (2) the major issues usually addressed in divorce actions; (3) community resources and family court counseling services available to assist the parties; (4) the procedure for setting, modifying and enforcing child support awards or modifying and enforcing legal custody or physical placement judgment or orders; and (5) a copy of the statutory provisions in ch. 767, Stats., pertinent to divorce actions [s. 767.081 (2), Stats.]. The FCC is authorized to charge a fee for the requested information.

E. PROHIBITED ACTS DURING PENDENCY

After a party files or is served with a divorce petition the party is prohibited from:

1. Harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.
2. Encumbering, concealing, damaging, destroying, transferring or otherwise disposing of property owned by either or both of the parties, without the consent of the other party or pursuant to an order of the court or the FCC, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the divorce action, including attorney fees.

3. Without the consent of the other party or without an order of the court or FCC, establishing a residence with a minor child of the parties outside the state or more than 150 miles from the residence of the other party within this state, removing a minor child of the parties from the state for more than 90 consecutive days or concealing a minor child of the parties from the other party [s. 767.087 (1), Stats.].

The above prohibitions apply until the divorce action is dismissed, until a final judgment in the divorce action is entered, or until the court or FCC orders otherwise. Generally, a party who violates the above prohibitions may be proceeded against for contempt of court. Note that the above prohibitions are set forth in the divorce petition.

F. GUARDIAN AD LITEM FOR MINOR CHILDREN

In a divorce action, a guardian ad litem (GAL) may be appointed for any minor children involved. A GAL is a lawyer appointed by the court to represent the best interests of the minor as to legal custody, physical placement and support [s. 767.045 (4), Stats.].

If the legal custody or physical placement of a child is contested, the court is required to appoint a GAL if, after any statutorily required mediation, the parties to the action do not reach agreement on legal custody or periods of physical placement [ss. 767.045 (2) and 767.11 (12) (b), Stats.]. On its own motion, the court may appoint a GAL at an earlier time where the legal custody or physical placement of a child is contested if the court determines that earlier appointment is necessary. In the following situations, the court appoints a GAL whenever the court deems it appropriate: (1) the court has reason for special concern as to the welfare of the child; (2) the child's legal custody or physical placement is stipulated to be with a person or agency other than the parent; or (3) at the time of the action, the child is in the legal custody of, or physically placed with, any person or agency other than the child's parent by prior order or by stipulation [s. 767.045 (2), Stats.].

G. TEMPORARY ORDERS

During the pendency of a divorce action, the court or FCC may make "just and reasonable" temporary orders concerning the following matters:

1. Upon request of a party to the divorce action, granting legal custody of minor children to the parties jointly, to one party solely or to a relative or child welfare agency. A temporary order for joint legal custody may not be made without the agreement of the other party and without the necessary statutory findings.

2. Granting periods of physical placement of a minor child to the parties.

3. Prohibiting the removal of minor children from the jurisdiction of the court. [This order would be made to expand or narrow the prohibitions on removing a minor child or establishing a residence with a minor child, described under Section E, above.]

4. Requiring either or both parties to make payments for the support of minor children.
5. Requiring either party to pay for the maintenance of the other party (the maintenance may include expenses and attorney fees incurred by the other party in bringing or responding to the action).
6. Requiring either party to execute an assignment of income.
7. Requiring either or both parties to pay debts or to perform other actions in relation to the persons or property of the parties.
8. Prohibiting either party from disposing of assets within the jurisdiction of the court. [This order would be made to expand or narrow the prohibition on disposing of property described under Section E, above.]
9. Requiring counseling of either or both parties.
10. Requiring either or both parties to maintain minor children as beneficiaries on a health insurance policy or plan.
11. Requiring either or both parties to execute an assignment of income for payment of health care expenses of minor children.
12. Allowing a party to move with or remove a child after a notice of objection has been filed [see Part III, B, below] [s. 767.23, Stats.].

In addition, if the FCC believes that a temporary restraining order or injunction in connection with domestic abuse is appropriate, the FCC is required to inform the parties of their right to seek the order or injunction and the procedure to follow [s. 767.23 (1m), Stats.].

In making temporary orders, the court or FCC is required to consider those factors which the court is required by statute to consider before entering a final judgment on the same subject matter [s. 767.23 (1n), Stats.]. These factors are described in Part II of this Information Memorandum.

H. RECONCILIATION

During the pendency of a divorce action, if both parties stipulate that they desire to attempt reconciliation, the court may enter an order suspending the divorce proceedings [s. 767.082, Stats.]. The suspension period is set by the court, not to exceed 90 days, to permit the parties to attempt a reconciliation without adversely affecting their rights in the divorce action. During the period of suspension the parties may resume living together. The parties' acts during the period of suspension do not constitute an admission that the marriage is not irretrievably broken or a waiver of the ground that the parties have voluntarily lived apart continuously for 12 months or more immediately before commencement of the action. The suspension of the

divorce proceedings may be revoked upon motion of either party. If the parties become reconciled, the court dismisses the divorce action. If the parties do not reconcile during the period of suspension, the action is then continued as though no reconciliation period was attempted.

I. FINANCIAL DISCLOSURE

During the pendency of a divorce action, the court requires each party to fully disclose all assets owned in full or in part by either party individually or by the parties jointly [s. 767.27 (1), Stats.]. Disclosure may be made by each party individually or by the parties jointly. The information is ordinarily updated one or more times during the course of the divorce proceeding.

Assets that parties must disclose include: real estate, savings accounts, stocks and bonds, mortgages and notes, life insurance, interest in a partnership or corporation, tangible personal property, income from employment, future interests, whether vested or nonvested, and any other financial interest or source. Further, the parties are required to provide information pertaining to all their debts and liabilities. The court may require the parties to furnish copies of all state and federal income tax returns filed by them for the past four years.

Note that any asset of either or both parties with a fair market value of \$500 or more which is transferred for inadequate consideration (generally, in this context, less than market value), wasted, given away or otherwise unaccounted for within one year before the filing of the divorce petition (or length of the marriage, if the marriage has been less than one year) is rebuttably presumed to be part of the estate subject to division and is subject to the disclosure requirement [s. 767.275, Stats.]. Additional remedies may be available to a party claiming that divisible property was fraudulently transferred during the marriage [*In re Marriage of Zabel*, 210 Wis. 2d 337, 565 N.W.2d 240 (Ct. App. 1997)].

The information required to be disclosed in divorce actions is generally confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of the divorce action or any related action [s. 767.27 (3) (a), Stats.].

Failure of a party to file a complete disclosure statement permits the court to accept the statement of the other party as accurate [s. 767.27 (4), Stats.]. Deliberate failure to provide a complete disclosure may constitute perjury [s. 767.27 (1), Stats.]. Further, if failure to disclose the required information results in omission of any asset with a fair market value of \$500 or more from the final distribution of property in a divorce judgment, the aggrieved party may at any time petition the court to declare the creation of a constructive trust as to all undisclosed assets for the benefit of the parties and their minor or dependent children [s. 767.27 (5), Stats.].

J. COUNSELING AND PROGRAM ATTENDANCE

As indicated above, the court or FCC may, as part of its temporary order authority, require counseling for either or both parties to a divorce action [s. 767.23 (1) (i), Stats.].

The court or FCC may also order the parties, when a minor child is involved in the divorce action and the court or FCC determines that it is appropriate and in the best interest of the child, to attend a program concerning the affects of divorce on children [s. 767.115, Stats.]. The program must be educational rather than therapeutic in nature and may not exceed a total of four hours in length. The court or FCC may condition the granting of the divorce on attending the program. In addition, a party who fails to attend is subject to contempt of court. The parties to the divorce action are responsible for the cost, if any, of attending the program and the court or FCC may specifically assign responsibility for payment of the cost. Failure to pay costs specifically assigned to a party may subject the party to contempt of court.

In addition to possible counselling and program attendance requirements, when legal custody and physical placement of a child is at issue in a divorce proceeding, various mediation provisions of the law may be triggered (see Part II, B, below).

II. ISSUES DETERMINED BY DIVORCE JUDGMENT

This Part of the Information Memorandum describes the primary issues decided by a judgment of divorce. With regard to property division, child support and maintenance, the Wisconsin Supreme Court has stated: “Although they are often analyzed separately, it is critical that property division and child support (and maintenance, if any) be considered together” [*Cook v. Cook*, 208 Wis. 2d 166 at 183, 560 N.W.2d 246 at 253 (1997)].

A. PROPERTY DIVISION

Upon a judgment of divorce, the court is required to divide that property of the parties which is subject to division [s. 767.255 (1), Stats.]. Generally, property acquired by either spouse before or during the marriage by any of the following means is *not* subject to division upon divorce:

1. Property acquired as a gift from a person other than the other party.
2. Property acquired by reason of the death of another, including, but not limited to, life insurance proceeds, payments from an employee benefit plan or individual retirement account and property acquired by right of survivorship (e.g., joint tenancy), by a trust distribution, by bequest or inheritance or from an account in a financial institution.
3. Property acquired with funds acquired in a manner described in items 1 or 2, above [s. 767.255 (2) (a), Stats.].

All other property (including assets such as pension plans) owned by either or both spouses is generally subject to division at divorce. Property is valued as of the date of divorce, unless special circumstances exist [*Sommerfield v. Sommerfield*, 154 Wis. 2d 840, 851, 454 N.W.2d 55, 60 (Ct. App. 1990)]. Property that is not otherwise subject to division may be divided by the court upon a finding that failure to divide the property would create a hardship on the other party or on the children of the marriage [s. 767.255 (2) (b), Stats.].

Property that is divisible at divorce also includes income generated by property owned by either or both spouses, whether or not the underlying property is divisible [*Arneson v. Arneson*, 120 Wis. 2d 236, 355 N.W.2d 16 (Ct. App. 1984); and *Wierman v. Wierman*, 130 Wis. 2d 425, 387 N.W.2d 744 (1986)]. In addition, substantial appreciation in the value of otherwise nondivisible property due to the active efforts of the spouses may result in the appreciation being considered part of the divisible property [*Haldeman v. Haldeman*, 145 Wis. 2d 296, 426 N.W.2d 107 (Ct. App. 1988); *Schoerer v. Schoerer*, 177 Wis. 2d 387, 501 N.W.2d 916 (Ct. App. 1993)].

It is also important to note that property which, when originally acquired, was not divisible at divorce may become divisible property during the course of a marriage. In very general terms, this may occur because:

1. The property has lost its “identity” (i.e., the property can no longer be identified as having been acquired by a party as a gift or as a result of the death of a third party); or

2. The “character” of the property has changed (i.e., the property can no longer be considered the sole property of the person who acquired it as a gift or as a result of the death of a third party because of the way the property has been used during the marriage) [see, for example, *Popp v. Popp*, 147 Wis. 2d 778 (Ct. App. 1988); *Brandt v. Brandt*, 145 Wis. 2d 394 (Ct. App. 1988); and *Trattles v. Trattles*, 126 Wis. 2d 219, 376 N.W.2d 379 (Ct. App. 1985)].

The court, in dividing property, must presume that the property is to be divided equally between the parties, but may alter its distribution of the property after considering the following factors set forth in s. 767.255 (3), Stats.:

767.255 (3) (a) The length of the marriage.

(b) The property brought to the marriage by each party.

(c) Whether one of the parties has substantial assets not subject to division by the court.

(d) The contribution of each party to the marriage, giving appropriate economic value to each party’s contribution in homemaking and child care services.

(e) The age and physical and emotional health of the parties.

(f) The contribution by one party to the education, training or increased earning power of the other.

(g) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

(h) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.

(i) The amount and duration of an order...granting maintenance payments to either party, any order for periodic family support payments...and whether the property division is in lieu of such payments.

- (j) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.
- (k) The tax consequences to each party.
- (l) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution...
- (m) Such other factors as the court may in each individual case determine to be relevant.

Any alteration by the court of the presumed equal division of property is to be made without regard to marital misconduct. However, that prohibition does not prohibit the court from considering a party's squandering of the parties' assets or intentional or neglectful destruction of the parties' property [*Anstutz v. Anstutz*, 112 Wis. 2d 10, 331 N.W.2d 844 (Ct. App. 1983)]. Consideration of a party's destruction or waste of assets is viewed by the courts as part of the consideration of the party's contribution to the marriage.

The above-listed factors for departing from an equal division of property require a court to enforce the terms of any written agreement between the parties made before or during the marriage concerning property distribution at divorce unless the term is "inequitable as to either party"; all agreements are presumed equitable [s. 766.255 (3) (L), Stats.]. The Wisconsin Supreme Court has adopted the following general test for determining whether a written agreement is equitable: "each spouse has made fair and reasonable disclosure to the other about his or her financial status; each spouse enters into the agreement voluntarily and freely; [and] the substantive terms of the agreement dividing the property upon divorce are fair to each spouse" [*Button v. Button*, 131 Wis. 2d 84, at 99, 388 N.W.2d 546, at 552 (1986)]. If an agreement fails to satisfy any one of the three requirements, it will be found inequitable.

As part of the property division, the court also divides the debts of the parties, factoring the debts into the general property division formula. Note that, even though a party is assigned a debt pursuant to a divorce, the other party may still be legally obligated on the debt to the creditor. [See Part III, F, below.] The court may divide property in kind or award the property to one party and award other property or cash to the other party.

The court may protect and promote the best interests of the minor children of the parties by setting aside a portion of the parties' property in a separate fund or trust for the children's support, maintenance, education and general welfare [s. 766.255 (1), Stats.].

B. CHILD CUSTODY AND VISITATION

An element of the divorce process includes the awarding of legal custody and physical placement of any minor children of the parties and, in some circumstances, visitation arrangements for nonparents. These aspects of a divorce judgment are summarized below. For more

specific treatment of custody, physical placement and visitation law, see Wisconsin Legislative Council Staff Information Memorandum 96-22, *Wisconsin Law Relating to Child Custody, Physical Placement and Visitation*, dated July 23, 1996.

A party who has **legal custody** over a child has the right and responsibility to make major decisions concerning the child, including such decisions as marriage, military service, consent to obtaining a driver's license, nonemergency health care authorization and choice of school and religion [s. 767.001 (2) (a) and (2m), Stats.]. A person may have either **joint** legal custody, in which more than one party shares legal custody of the child, or **sole** legal custody, in which a child's legal custody is granted to one party exclusively [s. 767.001 (1s) and (6), Stats.].

A party awarded **physical placement** of a child has the right to have the child physically placed with that party either full-time or part-time, depending on the terms of placement [s. 767.001 (5), Stats.]. The party with physical placement of the child has the right to make daily, routine decisions regarding the child's care, consistent with major decisions made by a person having legal custody.

The general standard for awarding joint legal custody or sole legal custody is the best interest of the child. In awarding custody, the court is required to consider the following factors set forth in s. 767.24 (5), Stats.:

- 767.24 (5) (a) The wishes of the child's parent or parents.
- (b) The wishes of the child....
- (c) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.
- (d) The child's adjustment to the home, school, religion and community.
- (e) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household.
- (f) The availability of public or private child care services.
- (g) Whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.
- (h) Whether there is evidence that a party engaged in abuse of the child....
- (i) Whether there is evidence of interspousal battery...or domestic abuse....

(j) Whether either party has or had a significant problem with alcohol or drug abuse.

(k) Such other factors as the court may in each individual case determine to be relevant.

The court may grant joint legal custody of a child to the parties only if the court finds that doing so is in the child's best interest and: (1) both parties agree to joint custody; or (2) one party requests joint custody and the court specifically finds that both parties are capable of fulfilling parental obligations and wish to take an active child-rearing role, both parties will be able to cooperate in future decision-making under joint custody and there are no existing conditions that would substantially interfere with joint custody [s. 767.24 (2) (b), Stats.].

Joint legal custody may be denied if there is evidence indicating that a party has abused his or her child or spouse [s. 767.24 (2) (b) 2. c., Stats.]. Such evidence creates a rebuttable presumption that the abusive party will be unable to participate and cooperate in the future decision-making necessary for a joint custody arrangement to succeed. A party who wishes joint custody of his or her child may rebut the presumption of abuse by providing clear and convincing evidence that the abuse will not hamper the party's ability to participate and cooperate in any future decision-making required under joint custody.

In joint legal custody situations, the court may specify one of the parties as the primary caretaker of the child and one home as the primary home [s. 767.24 (6) (c), Stats.]. The court may also grant to one party the right to make specified decisions for the child; other legal custody decisions concerning the child would be made by both parties [s. 767.24 (6) (b), Stats.].

In awarding sole or joint legal custody, the court is also required to allocate periods of physical placement of the child between the parties. In determining periods of physical placement, the court is required to consider the same factors, listed above, that are considered in determining legal custody [s. 767.24 (5) (intro.), Stats.]. A child is entitled to periods of physical placement with both parents unless the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health [s. 767.24 (4), Stats.]. Note that periods of physical placement may not be denied or granted for failing to meet or for meeting any financial obligation to the child or former spouse [s. 767.24 (4) (c), Stats.].

The court is required to order a parent not awarded legal custody to provide the court specified medical and medical history information, known to the parent, about the parent and the parent's family [s. 767.24 (7m), Stats.]. The court is required to send the information to the physician or other health care provider with primary responsibility for the treatment and care of the child, as designated by the parent (or other person) with legal custody of the child. Additional substantive and procedural provisions are intended to protect the confidentiality of the medical and medical history information and to ensure that the information "follows" the child's patient health care records.

For purposes of both legal custody and physical placement, the court may not prefer one party over the other on the basis of gender or race [s. 767.24 (5) (intro.), Stats.]. If legal custody

or physical placement is contested, the court is required to consider reports of appropriate professionals, such as social workers and court appointed guardians.

Before a divorce judgment may be obtained, the parties must attend an initial mediation session if legal custody or physical placement of their children is contested [s. 767.11 (8), Stats.]. If the mediator and the parties determine that mediation is appropriate to resolve the contested issues, further mediation sessions are held. The court or FCC also must refer to mediation those parties wanting joint legal custody of their children if a party asks for mediation to resolve any problems relating to the joint legal custody or physical placement arrangement.

Each county is required to provide child custody mediation services and to appoint a director of family court counseling services [see, generally, s. 767.11, Stats.]. The statutes set forth provisions relating to the qualifications of mediators, the powers and duties of mediators and the fees to be charged for mediation services.

A grandparent, great-grandparent, stepparent or person who has maintained a relationship with the child similar to that of a parent-child relationship may petition for visitation rights to the child [s. 767.245, Stats.]. The court may grant such rights only if it determines that visitation is in the best interest of the child. The court is required to consider the child's wishes, whenever possible, in making its determination. The parents of the child must have notice of any hearing on a petition for visitation rights of nonparents.

C. SUPPORT

1. Child Support

As part of a divorce judgment, the court is required to order either or both parents to pay child support for their minor children (or any child less than 19 years old who is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent) [s. 767.25 (1) (a) and (4), Stats.]. The court must determine the amount of child support to be paid using child support standards promulgated by the Department of Health and Social Services (DHSS)*, unless the court finds that to do so would be unfair to the child or any of the parties [s. 767.25 (1) (j), Stats.]. Chapter HSS 80**, Wis. Adm. Code, establishes the child support standards, expressed as percentages, that are to be applied to a person's income to determine the appropriate level of child support.

Chapter HSS 80, Wis. Adm. Code, provides that the child support percentage applied to a person's income increases as the number of children to be supported increases. The percentage

*Currently, the agency with responsibility for child support standards is the Department of Workforce Development [1997 Wisconsin Act 3].

**It is anticipated that ch. HSS 80 will be renumbered ch. DWD 40.

standards are as follows: (a) 17% for one child; (b) 25% for two children; (c) 29% for three children; (d) 31% for four children; and (e) 34% for five or more children.

A child support order may require the obligated parent (or payer) to pay a percentage of his or her income or pay a fixed amount of money equal to the appropriate percentage of the income of the obligated parent at the time the order is established. Some courts combine a percentage- expressed order with a fixed-sum order to ensure that a minimum amount of support will accrue if the obligated parent has no income or is working a seasonal, low-wage job, while at the same time ensuring the maximum amount of support paid by the obligated parent when his or her wages are higher.

Income upon which a child support order is to be established is called the “base.” The base consists of the payer’s monthly “gross income adjusted for child support” plus the payer’s monthly “imputed income adjusted for child support” [s. HSS 80.02 (3), Wis. Adm. Code]. These terms are defined in ch. HSS 80, Wis. Adm. Code. In very general terms, the income against which a child support order is made is the “gross income” of the obligated parent, as that term is commonly understood.

Under ch. HSS 80, Wis. Adm. Code, special rules govern the application of the percentage standards to the following different types of payers:

a. A serial family payer--a payer with an existing child support obligation who incurs an additional child support obligation in a subsequent family [s. HSS 80.02 (22), Wis. Adm. Code].

b. A shared-time payer--a payer who provides overnight child care beyond a specified threshold and assumes all variable child care costs in proportion to the number of days he or she cares for the child under the shared-time arrangement [s. HSS 80.02 (22), Wis. Adm. Code]. The threshold is 30% of a year or 109.5 out of every 365 days [s. HSS 80.02 (28), Wis. Adm. Code].

c. A split-custody payer--a payer who has more than one child and who has physical placement of at least one but not all the children [s. HSS 80.02 (26), Wis. Adm. Code].

A court may set child support without using the percentage standards only in limited circumstances [s. 767.25 (1m), Stats.]. Upon request of a party to the action, the court may set support without using the percentage standard if the court finds that the use of the percentage standard is unfair to the child or to any of the parties. Consideration of the issue of fairness with respect to the level of child support to be set must include consideration of the following factors, set forth in s. 767.25 (1m), Stats.:

767.25 (1m) (a) The financial resources of the child.

(b) The financial resources of both parents....

(bj) Maintenance received by either party.

- (bp) The needs of each party in order to support himself or herself at a level equal to or greater than...[the federal poverty level].
- (bz) The needs of any person, other than the child, whom either party is legally obligated to support.
- (c) The standard of living the child would have enjoyed had the marriage not ended in...divorce....
- (d) The desirability that the custodian remain in the home as a full-time parent.
- (e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.
- (ej) The award of substantial periods of physical placement to both parents.
- (em) Extraordinary travel expenses incurred in exercising the right to periods of physical placement....
- (f) The physical, mental and emotional health needs of the child, including any costs for health insurance...[ordered by the court].
- (g) The child's educational needs.
- (h) The tax consequences to each party.
- (hm) The best interests of the child.
- (hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.
- (i) Any other factors...the court...determines are relevant.

A court that issues a child support order must also assign responsibility for payment of the child's health care expenses [s. 767.25 (4m), Stats.]. In assigning responsibility, the court must consider specified factors including existing and available health insurance and the cost of health insurance coverage for the child. The court may also require a parent to initiate or to continue health care insurance coverage for a child.

When deemed expedient, the court may appoint a trustee to receive any child support payments ordered, to invest and pay over the income for the support and education of the child or to pay over the principal as the court directs [s. 767.31, Stats.].

In order to protect and promote the best interest of a child, the court may direct that a portion of the child's support which either party is ordered to pay be set aside in a separate fund or trust [s. 767.25 (2), Stats.]. Except in limited circumstances, the court may not impose a trust at the request of the obligated parent after child support has been established [*Cameron v. Cameron*, 209 Wis. 2d 88, 562 N.W.2d 126 (1997); *Resong v. Vier*, 157 Wis. 2d 382, 392, 459 N.W.2d 591, 595 (Ct. App. 1990); and *Hubert v. Hubert*, 159 Wis. 2d 803, 817, 465 N.W.2d 252, 257 (Ct. App. 1990)]. The fund or trust is to be used for the support, education and welfare of the child.

For more specific information on child support law, see Wisconsin Legislative Council Staff Information Memorandum 98-20, *Child Support Law in Wisconsin*, dated July 8, 1998.

2. Maintenance

As part of the divorce judgment, a court may order maintenance payments (formerly alimony) to either party for a limited or an indefinite period of time after considering the following factors in s. 767.26, Stats.:

- 767.26 (1) The length of the marriage.
- (2) The age and physical and emotional health of the parties.
- (3) The division of property made...[in connection with the divorce].
- (4) The educational level of each party at the time of marriage and at the time the [divorce] action is commenced.
- (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage....
- (7) The tax consequences to each party.
- (8) Any mutual agreement made by the parties before or during the marriage...[relevant to the issue of maintenance].
- (9) The contribution by one party to the education, training or increased earning power of the other.

(10) ...[Any other factors the court determines relevant].

The Wisconsin Supreme Court has stated that the above factors “reflect and are designed to further two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective)” [*In re Marriage of LaRocque*, 139 Wis. 2d 23, at 33, 406 N.W.2d 736, at 740 (1987)]. There is no statutory presumption of an equal division of earnings in awarding maintenance, but the starting point for a maintenance evaluation for a long-term marriage is that the dependent spouse may be entitled to 1/2 of the total combined earnings of both parties [*Bahr v. Bahr*, 107 Wis. 2d 72 at 85, 318 N.W.2d 391 at 398 (1982)]. Ordinarily, maintenance is awarded as a fixed sum but, in unusual circumstances, the court may set maintenance as a percentage of the payer’s income [*Hefty v. Hefty*, 172 Wis. 2d 124, 493 N.W.2d 33 (1992)].

3. Family Support

The court is authorized to make a financial order designated “family support” as a substitute for child support and maintenance [s. 767.261, Stats.]. Family support, when used, has traditionally been for the purpose of obtaining favorable tax treatment; however, legal counsel should be consulted to determine the tax consequences in individual cases.

D. ATTORNEY AND GAL FEES

After considering the financial resources of both parties, the court may order either party to pay a reasonable amount for costs incurred by the other party in connection with the divorce action, including attorney fees [s. 767.262 (1), Stats.]. The court may also consider the parties’ litigiousness in awarding attorney fees [*Nelsen v. Candee*, 205 Wis. 2d 632 at 646, 556 N.W.2d 784 at 789, 790 (Ct. App. 1996)]. The court is required to consider the reasonableness of the attorney fees claimed [*Corliss v. Corliss*, 107 Wis. 2d 338, 350-51, 320 N.W.2d 219, 224 (Ct. App. 1982)]. The amount ordered may include sums for legal services rendered and costs incurred before commencement of the divorce action and after entry of the divorce judgment.

If a GAL has been appointed for any minor children (see Part I, F, above), the court is required to order either or both parties to pay the compensation of the GAL [s. 767.045 (6), Stats.]. If both parties are indigent, the court may direct that the county pay the compensation.

E. STIPULATIONS

Subject to court approval and certain conditions, the parties in a divorce action may stipulate (i.e., agree between themselves) to: property division, support and legal custody and physical placement of minor children [s. 767.10 (1), Stats.]. An example of a condition on the use of stipulations is the prohibition on court approval of a stipulation for child support unless the support stipulated to is determined in a manner consistent with the statutory requirements for

determination of child support by a court, described in Section C, 1, above [s. 767.10 (2) (a), Stats.].

F. APPEAL; RELIEF FROM JUDGMENT

A party may appeal a divorce judgment, under the law generally governing appeals of civil actions [see, generally, ch. 808, Stats.]. Strict time limits apply to appeals; if an appeal is contemplated, a lawyer should be consulted immediately in order to ensure that an appeal can be timely made and to determine if grounds for appeal exist.

Under limited circumstances, a party may seek relief from a divorce judgment [ss. 806.07 and 767.37 (2), Stats.]. Again, it is suggested that legal counsel be consulted to determine if grounds exist to seek relief.

Specific provisions exist for modifying legal custody, physical placement, child support and maintenance orders after the divorce judgment. These provisions are described in Part III.

III. POST-DIVORCE

This Part of the Information Memorandum describes several provisions of law that are relevant after a judgment of divorce has been granted, including modification and enforcement of divorce judgments.

A. MODIFICATION OF LEGAL CUSTODY AND PHYSICAL PLACEMENT ORDERS

1. Contested Legal Custody Modifications

Within two years after the initial legal custody order, a court is not permitted to modify the order, when modification is objected to by the other party, unless the party seeking the modification shows by substantial evidence that modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child [s. 767.325 (1) (a), Stats.]. After the two-year period, a court may modify a legal custody order if: (a) modification is in the best interest of the child; and (b) a substantial change of circumstances has occurred [s. 767.325 (1) (b), Stats.]. There is a rebuttable presumption that continuing the current allocation of decision-making under a legal custody order is in the best interest of the child. The statutes expressly provide that a change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification of a legal custody order.

2. Contested Physical Placement Modifications

Within the two-year period following the initial order for physical placement of a minor child, a substantial modification of the order that is opposed by a party may not be made unless the standard, described above, for modifying a legal custody order within the initial two-year period is met [s. 767.325 (1), Stats.]. A substantial physical placement modification is a modification which would substantially alter the time a parent may spend with his or her child. However, if the parties have substantially equal periods of physical placement and circumstances make it impractical for the parties to continue that placement, a court may order a substantial physical placement modification within the initial two-year period if it is in the best interest of the child [s. 767.325 (2) (a), Stats.].

After the initial two-year period following a divorce judgment, a court may modify an order for physical placement, where the modification substantially alters the time a parent may spend with the child, if the court finds: (a) the modification is in the best interest of the child; and (b) there has been a substantial change of circumstances [s. 767.325 (1) (b), Stats.]. There is a rebuttable presumption that continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child. Again, a change in economic circumstances or marital status of either party is not sufficient to meet the standard for physical placement modification.

If the parties have substantially equal periods of physical placement and circumstances make it impractical for the parties to continue to have substantially equal physical placement, the court may order a substantial physical placement modification if it is in the best interest of the child [s. 767.325 (2) (a), Stats.]. If no such circumstances exist, the court may order a substantial change in circumstances only if the standard, described above, that applies for substantial modifications after the two-year period is met [s. 767.325 (2) (b), Stats.]. Note that the rebuttable presumption applicable in the latter case is that having substantially equal periods of physical placement is in the best interest of the child.

The court at any time may order a modification of physical placement that does not substantially alter the amount of time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child [s. 767.325 (3), Stats.].

A court may deny a parent's physical placement rights at any time if it finds that the physical placement rights would endanger the child's physical, mental or emotional health [s. 767.327 (4), Stats.].

3. Stipulated Legal Custody and Physical Placement Modifications

If after a divorce judgment the parties agree to a modification of an order of physical placement or legal custody and file a stipulation for modification with the court, the court is required to incorporate the terms of the stipulation into a revised order of physical custody or physical placement if the court determines it is in the best interest of the child [s. 767.329, Stats.; *In re Paternity of S.A.*, 165 Wis. 2d 530, 478 N.W.2d 21 (Ct. App. 1991)].

B. CHANGE OF RESIDENCE OF LEGAL CUSTODIAN AND CHILD

If a court grants periods of physical placement of a child to more than one parent the court must order a parent with legal custody of and physical placement rights to the child to provide not less than 60 days written notice to the other parent (with a copy to the court) of his or her intent to:

1. Establish his or her legal residence with the child at any location outside the State of Wisconsin;
2. Establish his or her legal residence with the child at any location within the State of Wisconsin that is a distance of 150 miles or more from the other parent; or
3. Remove the child from Wisconsin for more than 90 consecutive days [s. 767.327 (1), Stats.].

Within 15 days after receiving the notice, the other parent may send to the parent proposing the move or removal (with a copy to the court) a written notice of objection. If the parent who is proposing the move or removal receives a notice of objection within 20 days after sending the notice of intent to move or remove, the parent may not move with or remove the

child during the pendency of the dispute unless the parent obtains a temporary court order allowing him or her to do so [s. 767.327 (2) (b), Stats.].

Upon receipt of a notice of objection, the court or FCC is required to promptly refer the parents for mediation or other family court counseling services and may appoint a GAL for the child. If mediation or counseling services do not resolve the dispute within 30 days after referral, the matter proceeds as described below unless the parents agree to extend the 30-day period [s. 767.327 (2) (c), Stats.].

If the parent proposing the move has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time, the objecting parent may request a modification of the legal custody or physical placement order [s. 767.327 (3) (a), Stats.]. If the parents have joint legal custody and have substantially equal periods of physical placement, either parent may request a modification of the legal custody or physical placement order [s. 767.327 (3) (b), Stats.]. The standards for modifying a placement or custody order under these circumstances are set forth in the statutes, as well as specified court considerations, burdens of proof and presumptions.

As an alternative to requesting a modification of the legal custody or physical placement order, the parent objecting to the move or removal may request the court to prohibit the move or removal. The court may prohibit the move or removal if, after considering specified factors, the court finds the prohibition is in the best interest of the child [s. 767.327 (3) (c) 1., Stats.].

Unless the parents agree otherwise, a parent with legal custody and physical placement rights is required to notify the other parent before removing the child from his or her “primary residence” for a period of not less than 14 days [s. 767.327 (6), Stats.]. Note that this simple notice requirement does not suffice if the move otherwise falls within the requirements of the moves described above.

C. MODIFICATION OF CHILD SUPPORT ORDERS

A judgment for child support may be revised by a court upon a finding of a substantial change in circumstances [s. 767.32 (1) (a), Stats.]. The amount of any revised child support must be determined in accordance with the requirements that apply when an original order for child support is made part of the judgment of divorce [s. 767.32 (2) and (2m), Stats.; see Part II, C, 1, above]. Child support due or past due may not be modified except to correct previous errors in calculation [s. 767.32 (1m), Stats.].

The statutes provide that certain events constitute a rebuttable presumption of a substantial change in circumstances sufficient to justify a revision of a child support judgment [s. 767.32 (1) (b), Stats.]. In addition, the statutes list various events that “may constitute” a substantial change of circumstances sufficient to justify a revision of a child support judgment [s. 767.32 (1) (c), Stats.].

In revising child support, the obligated parent, if remarried, is treated as though he or she were single for purposes of applying the percentage standards to determine the amount of revised child support. In other words, the percentage standards may only be applied to the income of the obligated parent (with income determined as if the marital property law does not apply) and not the income of that parent's spouse [*In re Marriage of Abitz*, 155 Wis. 2d 161, 455 N.W.2d 609 (1990)]. Note, however, that the income of the obligated parent's spouse may be considered by a court in determining whether to revise a child support order.

A child support order that is not a percentage-expressed order may contain provisions to change the amount of support to be paid on an annual basis, based upon a change in the payer's earnings. The order may specify the date upon which the order is to change [s. 767.33 (1), Stats.]. Even if the child support order includes provisions for an annual adjustment, the person entitled to the payments must apply for the adjustment and a procedure is included in the statutes for objecting to the adjustment. A person is limited to one adjustment per year.

D. MODIFICATION OF MAINTENANCE ORDERS

Orders for maintenance may also be revised after a divorce judgment [s. 767.32 (1) (a), Stats.]. A substantial change in the cost of living by either party or as measured by the Federal Bureau of Labor Statistics may be sufficient to justify a revision of maintenance, except that a change in an obligated party's cost of living is not in itself sufficient if maintenance payments are expressed as a percentage of income.

Revision of a maintenance order is prohibited if the original divorce judgment waived maintenance. If a recipient of maintenance remarries, the payer of maintenance may apply to the court for an order terminating the maintenance payments. However, where a stipulation requires maintenance payments during a party's lifetime, the payer may not request termination of payments when the other party remarries [*Rintelman v. Rintelman*, 118 Wis. 2d 587, 348 N.W.2d 498 (1984)].

E. ENFORCEMENT OF JUDGMENTS

A variety of means exists under the law for the enforcement of divorce judgments, including assignments of income (income withholding) [s. 767.265 (1), Stats.]; contempt of court [s. 767.30 (3) (b), Stats.]; tax refund intercepts [s. 46.255, Stats.]; requirements to seek work [ss. 767.253, 767.254 and 767.295, Stats.]; liens on boats [s. 767.30 (3) (f), Stats.]; suspension of driver's license [s. 767.303, Stats.]; and various remedies available to creditors to recover debts (e.g., attachment and garnishment) [s. 767.30 (3), Stats.]. In addition, criminal penalties may apply for intentional failure to provide child support [s. 948.22, Stats.] and for interference with child custody and physical placement rights of a parent [s. 948.31, Stats.].

Recent legislation (1997 Wisconsin Act 191) expanded means of enforcing child support orders to include:

1. The Department of Workforce Development (DWD) and county child support agencies may suspend, limit, withhold or deny driver's, professional and recreational licenses of delinquent child support obligors.

2. DWD and county child support agencies may seize financial accounts and seize and sell real and personal property of delinquent child support obligors.

3. DWD and county child support agencies may check records of financial institutions to determine whether delinquent child support obligors maintain accounts at those institutions.

4. Liens are automatically placed on all personal and real property of a delinquent child support obligor if child support is past due by one month or more.

5. DWD may withhold delinquent child support from lump sum pension payments of delinquent child support obligors.

For additional information, see Wisconsin Legislative Council Staff Information Memorandum 98-3, *New Law Relating to Child Support Enforcement and Paternity Establishment (1997 Wisconsin Act 191)* (May 19, 1998).

F. DEBTS AND BANKRUPTCY

Parties to a divorce should be alert to the possibility that after a divorce a creditor may attempt to satisfy a debt incurred during the marriage from a party even though the divorce judgment assigns the debt to the other party. The divorce judgment assigning a debt is not generally binding on third-party creditors. Thus, for example, a creditor may attempt to satisfy a debt from a party not assigned a debt in a divorce judgment because:

1. The party is personally liable for the debt because the party signed or cosigned for the debt or the party is liable under the common law "Doctrine of Necessaries" (a doctrine under which a spouse can be liable, under certain circumstances, for a "necessary" item purchased by the other spouse).

2. Property of the party is liable for satisfaction of the debt under the marital property law. [Note that, under the marital property law, unless the divorce judgment provides otherwise, no income of a nonincurring spouse is available after the divorce judgment is rendered for satisfaction of a family obligation incurred during the marriage [s. 766.55 (2m), Stats.]. Further, marital property assigned to each spouse under a divorce judgment is available for satisfaction of such an obligation only to the extent of the value of the marital property on the date of the divorce judgment [s. 766.55 (2m), Stats.].]

It may be possible for the parties to avoid such potential problems in connection with debts after a divorce judgment by taking certain actions before the divorce judgment; for example, consolidating debts assigned to a spouse and having that spouse refinance those obligations in his or her name only.

Parties to a divorce should also be aware of the potential that a party after the divorce might file for bankruptcy, if eligible. Very generally, obligations pursuant to a property division may be discharged in a bankruptcy proceeding, but obligations of support, including maintenance, may not [11 U.S.C. s. 523 (a) (5)]. Again, if there is potential for a petition for bankruptcy by one of the parties following a divorce judgment, the parties might be able to adjust property division and support during the divorce proceedings to protect the other party.

G. TRANSFERS OF PROPERTY TO SURVIVING FORMER SPOUSE BY INSTRUMENT EXECUTED BY DECEDENT FORMER SPOUSE PRIOR TO DIVORCE

Statutory rules govern the transfer of property which a decedent has left to his or her former spouse when the governing instrument (e.g., will, insurance policy or pension plan) was executed prior to the divorce and not subsequently revised to eliminate the transfer to the former spouse [s. 854.15, Stats.***]. The rules revoke the transfer to the surviving former spouse (and relatives of the surviving spouse who are not also relatives of the decedent); property passes as though the surviving former spouse disclaimed the property. The transfer is revoked unless extrinsic evidence shows the decedent's contrary intent or unless express provision to the contrary exists.

H. PROHIBITION ON SUBSEQUENT MARRIAGE

Any person who has been a party to a divorce in this state, or elsewhere, is prohibited from marrying again until six months after the judgment of divorce is granted [s. 765.03 (2), Stats.]. Any marriage before the six-month period expires is void.

DD:lah:rv;jt;lah;ksm

***Section 854.15, Stats., generally first applies to deaths that occur on January 1, 1999 (1997 Wisconsin Act 188, SEC. 233). The pertinent law generally applicable before January 1, 1999 is s. 853.11 (3), 1995-96 Stats., which only applies to wills and only revokes provisions in favor of the surviving former spouse (not extending to that spouse's relatives).