

# Protecting Lenders from Wisconsin's Marital Property Law

As set forth in Chapter 766 of the Wisconsin Statutes, Wisconsin's Marital Property Act can pose challenges for any lender making a loan to or receiving a guaranty from a married Wisconsin resident. However, a lender can overcome these challenges by taking some basic steps to protect its ability to enforce its rights in the event of a default by the borrower or guarantor. This article briefly describes Wisconsin's Marital Property Act and how lenders can minimize the risks associated with making a loan to or accepting a guaranty from a Wisconsin resident.

Pursuant to Section 766.55 of the Wisconsin Statutes, any obligations incurred by one spouse during marriage are generally presumed to have been made "in the interest of the marriage or the family" and may be satisfied from the marital property of a married couple. However, that general presumption may be rebutted by the non-obligor spouse if he or she can establish that the obligation was not made in the interest of the marriage or family. As a result, any lender seeking to make a loan to or accept a guaranty from a married Wisconsin resident should be concerned that its ability to exercise its rights and remedies could be impaired by the spouse that did not formally enter into the obligation. Note, this issue may arise regardless of the physical location of any related collateral and could affect loans and guaranties granted by Wisconsin residents even if those obligations are secured by real estate or other collateral that is physically situated outside of the State of Wisconsin.

Additionally, lenders accepting a guaranty from a married Wisconsin resident should also be concerned about the restrictions that Wisconsin's Marital Property Act places on one spouse's ability to give marital property to a third person. Section 766.53 of the Wisconsin Statutes limits the amount of marital property that may be unilaterally given by one spouse to a third party in any calendar year to \$1,000, or an unspecified larger amount if, when made, the gift is reasonable in amount considering the economic position of the spouses. As the granting of a guaranty could be viewed as a gift under Wisconsin law, a non-guarantor spouse seemingly could impede a lender's attempt to seek to recover its damages pursuant to a guaranty given by a married Wisconsin resident.

Fortunately, though, there are ready paths for lenders to follow to navigate their

## POSTED:

Jul 16, 2013

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way around these challenges. For example, Wisconsin's Marital Property Act itself provides lenders with a way to remove the uncertainty in establishing whether a particular debt or obligation was made in the interest of the obligor spouse's marriage or family. Section 766.55 states that an obligation will conclusively be deemed to be incurred in the interest of the marriage or the family if the spouse incurring that debt or obligation provides a separate, signed statement that explicitly states that the obligation is or will be incurred in the interest of the marriage or family. Therefore, lenders making a loan to a married Wisconsin resident should include a simple, separate "Marital Purpose Statement", which should be signed and delivered at or before closing by the spouse receiving the loan and undertaking the repayment obligation.

Although obtaining an executed Marital Purpose Statement from an obligor spouse can help to protect a lender from a possible claim that an obligation was not made in the interest of the marriage or family, lenders receiving a guaranty from a Wisconsin resident would need to take an additional step to address the gift restrictions imposed by Wisconsin's Marital Property Act. To do so, the lender should consider requiring the non-guarantor spouse either sign the guaranty or provide a form of written consent approving of the granting of the guaranty.

If you have any questions or concerns about the information that needs to be included in a Marital Purpose Statement or a spousal consent to a guaranty being provided by a Wisconsin resident, please do not hesitate to contact your Reinhart attorney or any member of our Real Estate Opinion team.

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