



# **Cross-Border Community Property Issues: Been There, Bought That... Now Who Owns It?**

**Fox Valley Estate Planning Council**

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**Quarles**

# Presenters



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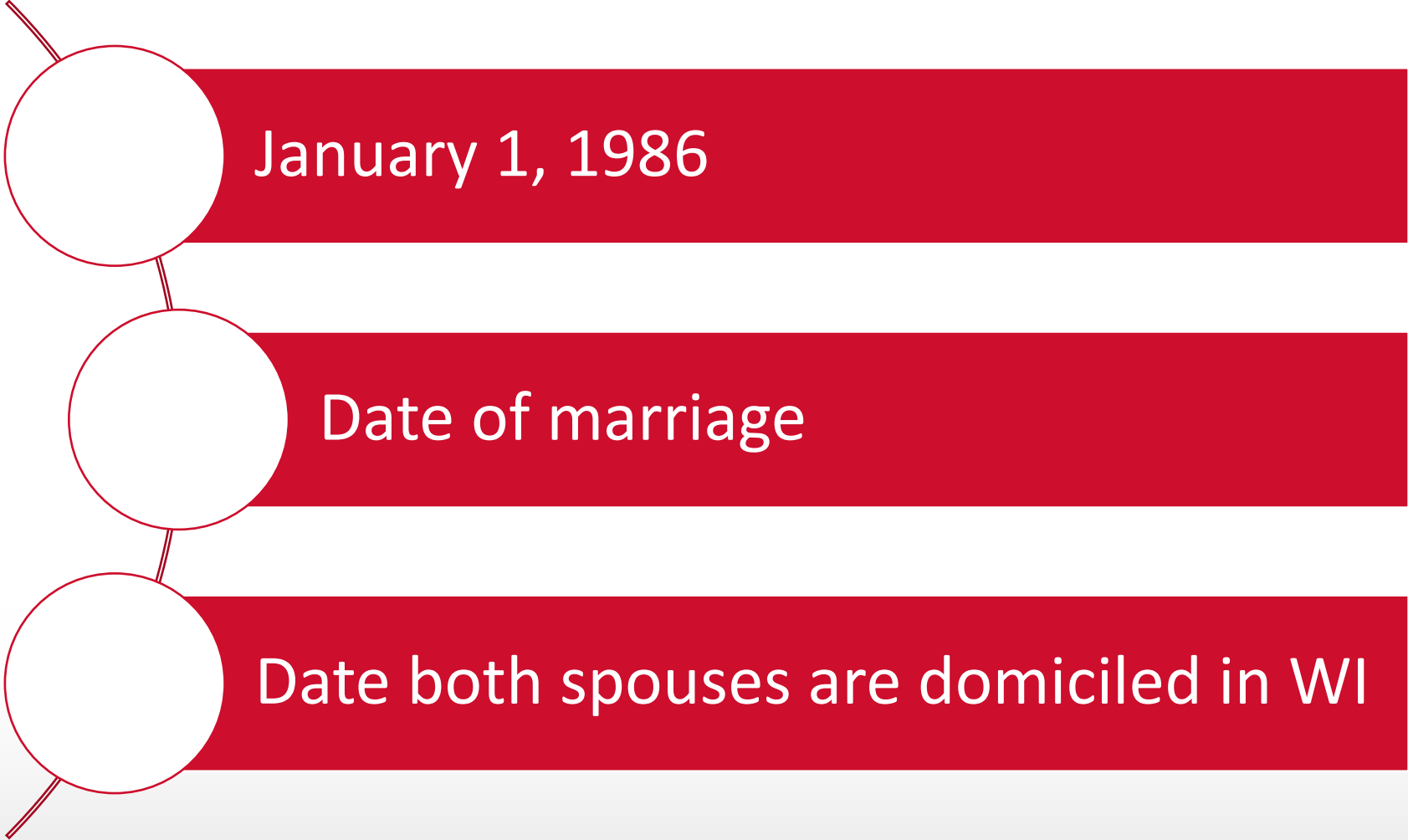
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# Basics of Wisconsin Marital Property Law

- Assets acquired by a married couple after the determination date are presumed to be marital property.

# Determination Date



## Determination Date (con't)

**Ex. 1:** Jack and Diane were married in 1976 and have always lived in WI.

**Ex. 2:** Jack grew up as a resident of New York, while Diane grew up as a resident of Wisconsin. They met in 2018 while they were students together at UW Madison. After college, they moved to Manhattan for work where they currently live. They were married in Madison in the Spring of 2022 and are planning to move back to Wisconsin next year to be closer to Diane's family.

**Ex. 3:** Jack and Diane were both previously married and divorced. Jack has always lived in Chicago while Diane currently lives in Milwaukee. They met at a Cubs game in 2020 and were married in 2021. Jack frequently stays with Diane at her home, but still maintains his condo in Chicago. He plans to sell his condo and move to Wisconsin after his youngest child graduates from high school next year.

# Individual Property

- a. Property acquired before the determination date.
- b. Property acquired by gift or inheritance.
- c. Principal appreciation on a spouse's individual property unless that appreciation is substantial and results from that spouse's undercompensated efforts. (Wis. Stat. §§766.31 & 766.63)



# #1 Example

- Example 1: Before getting married, Stedman purchases a run-down vacation property in Lake Geneva, Wisconsin. He and Oprah then get married and live together in Milwaukee, Wisconsin. After they are married, Stedman spends every weekend for the next year improving the property and later sells it for nearly double the purchase price. The vacation property is Stedman's individual property because he acquired it before the determination date; however, the appreciation on the property is marital property because it was substantial and resulted from Stedman's uncompensated efforts.
- Example 2: Oprah inherits a distressed business from her mother when her mother dies. Over the next five years, Oprah works 60-70 hrs/wk growing the business. She pays herself a reasonable salary. Oprah then sells the business for a 10x multiple. The business is Oprah's individual property because it was inherited property. The appreciation on the business is also Oprah's individual property because it resulted from her efforts, for which she was reasonably compensated. Note that Oprah's salary was marital property.

## Classification of Income



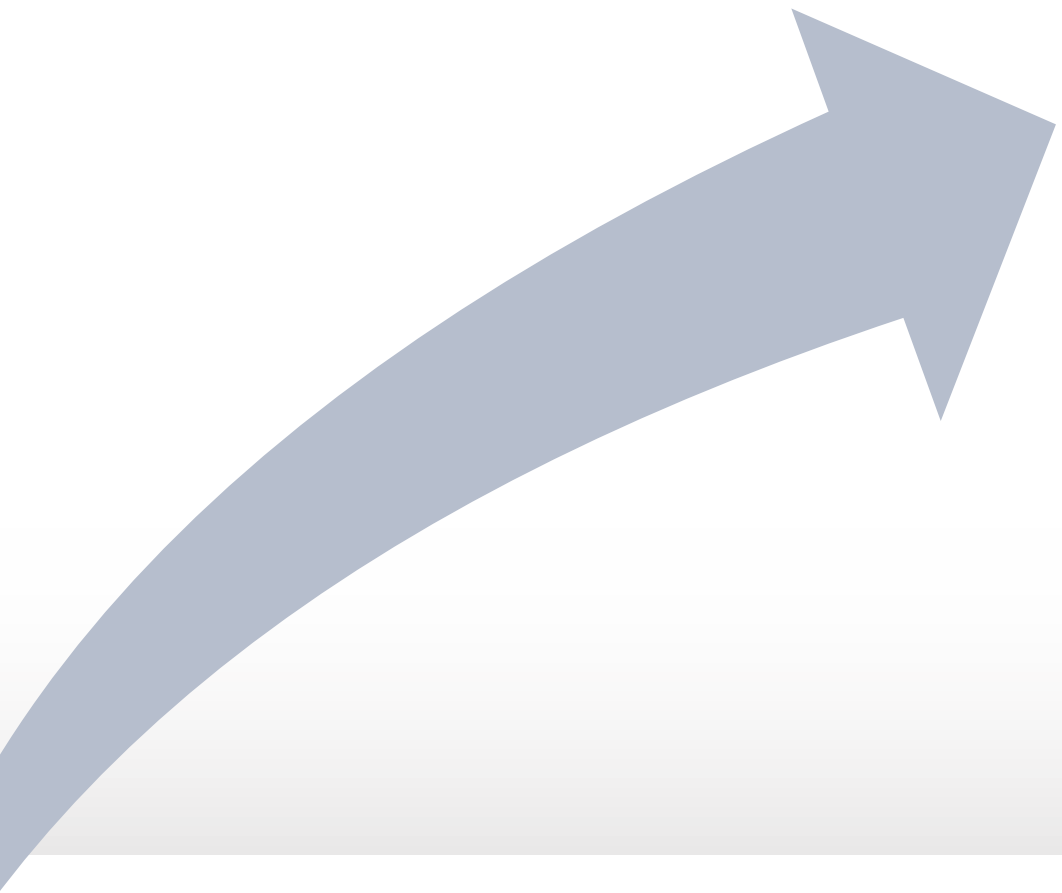
# Tax Issues



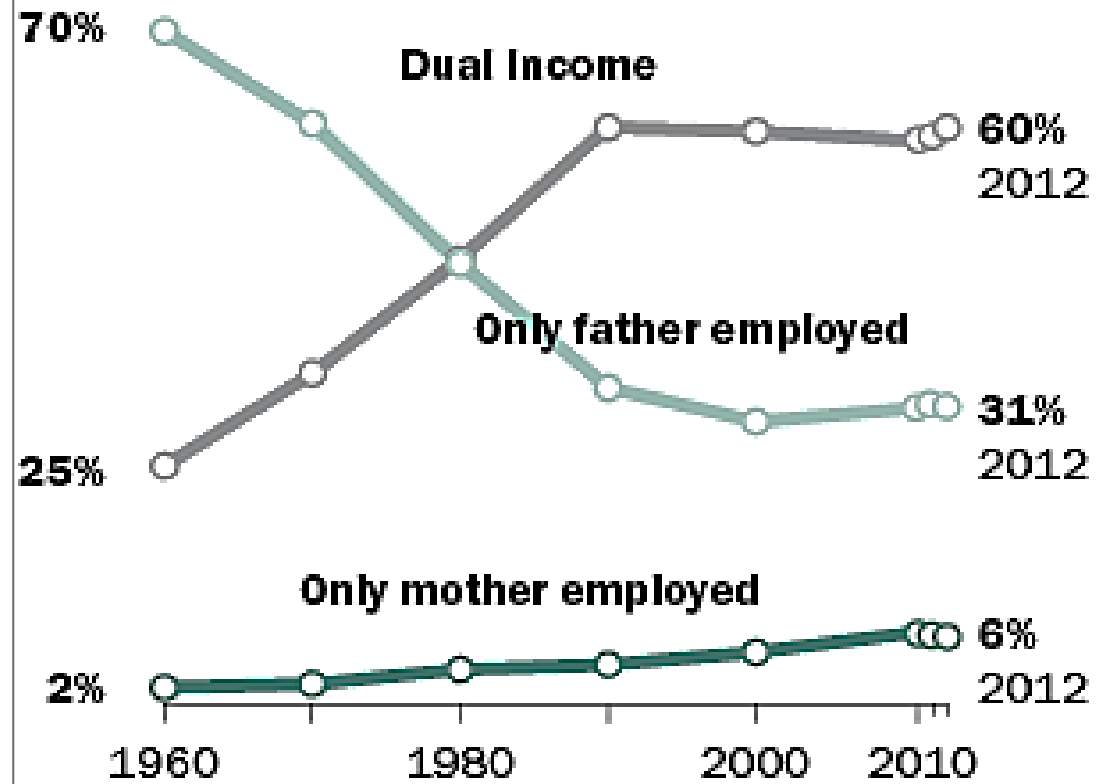
I.R.C. § 1014 -  
History



# The Rise in Dual Income Households



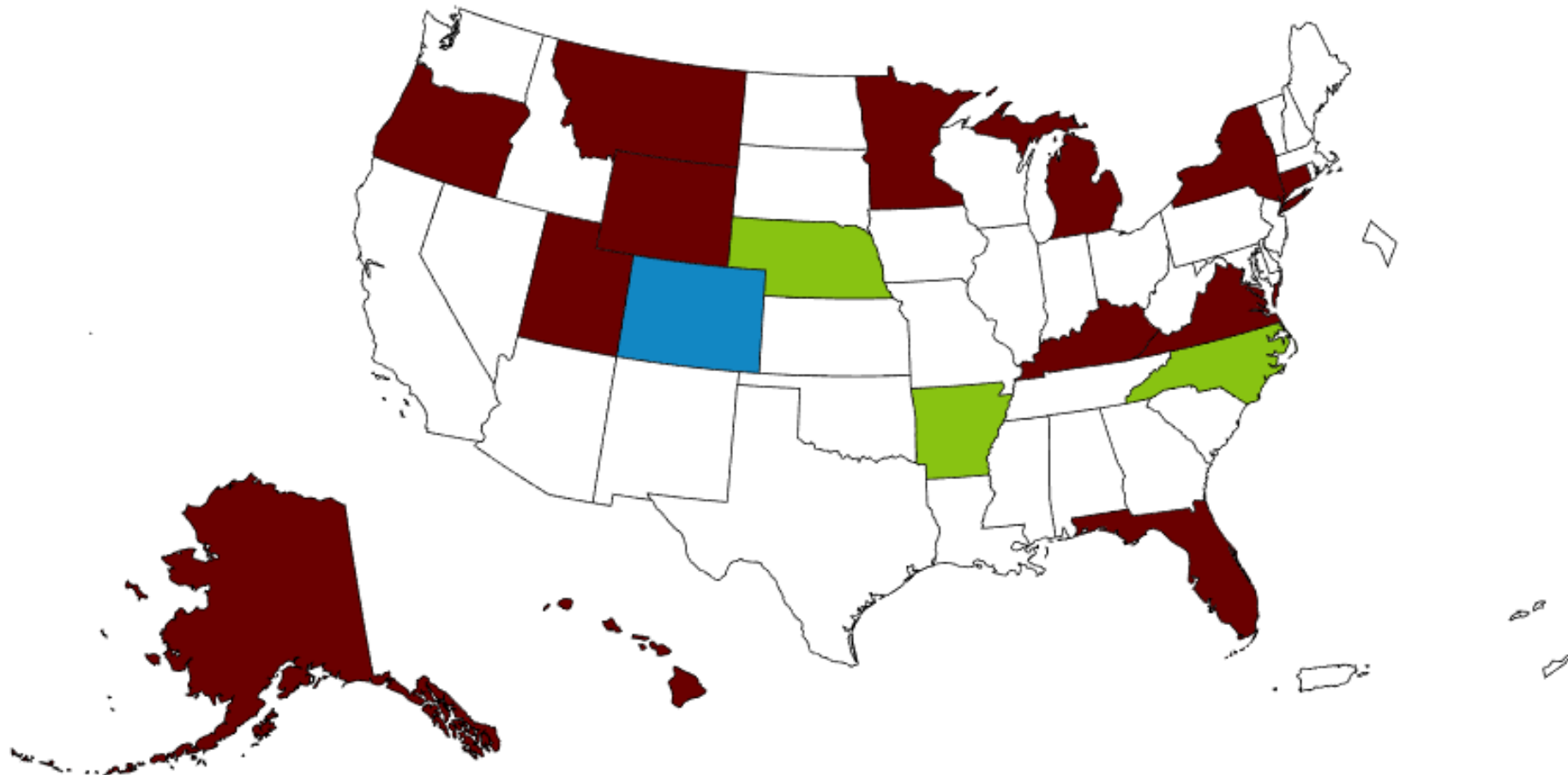
*% of married couples with children under 18*



Source: Pew Research Center analysis of the Decennial Census and American Community Surveys (ACS) Integrated Public Use Microdata Sample (IPUMS) files

PEW RESEARCH CENTER

# Uniform Disposition of Community Property Rights at Death Act (Uniform Act)



Enactment Map ● Introduced ● Enacted ● Prior Version Enacted

IRM § 25.18.1



One Year Waiting  
Rule – 1014(e)



**IRC Section 754  
Election and related  
issues**





## Altering the Impact of Wisconsin's Marital Property Law



# Marital Property Agreement

- Requirements for Validity
- Reasons to Create



## Altering the Impact of Wisconsin's Marital Property Law





# Creditor Rights Under Marital Property Law

# Creditor Rights Under Marital Property Law



During lifetime of both spouses

After death of one spouse

Effect of Marital Property Agreement and/or  
Unilateral Statement on Creditor Rights



## Cross-Border Issues

# #1 CASE STUDY

Spouse #1 and Spouse #2 were married at age 26 and lived in Wisconsin for the first 30 years of their marriage where they started and grew a successful business. They also had three children together. They have a Will and a Joint Revocable Trust, but no marital property agreement. They recently sold their business for \$50,000,000 and have moved to Florida. They scheduled a meeting with their Florida estate planner. What should their Florida estate planner consider?

## #2 CASE STUDY

Same facts as above, but Spouse #1 and Spouse #2 lived in Florida for the first 30 years of their marriage and have recently moved to Wisconsin. What should their Wisconsin estate planner consider?

Questions?  
Thank you



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