O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

TAX AND WEALTH ADVISOR ALERT: A BRIEF OVERVIEW OF WISCONSIN'S MARITAL PROPERTY SYSTEM

In general, states are considered either "common law property" or "community property" states. Wisconsin, along with a few other states, is a community property state (community property is referred to as "marital property" in Wisconsin). It is important to understand the difference between these two systems for purposes of wealth management planning, estate planning, and divorce.

Under the common law property system, assets and debts earned or acquired by one spouse during the marriage belong only to that spouse. With this type of system, only assets and debts that are titled under the name of both spouses are owned by both spouses. Under Wisconsin's marital property system, all assets and debts acquired or earned during a marriage belong to both spouses, regardless of whose name the assets and debts are titled under. It is important to emphasize that this general rule applies only to assets or debts acquired *during* the marriage—assets and debts acquired before the marriage remain the individual property of whichever spouse brought the assets or debts to the marriage. There are, however, some exceptions to this general rule, such as assets acquired as a gift or through inheritance. Also, non-marital property that is comingled with marital property may be unintentionally reclassified as marital property. Income and appreciation incurred on a non-marital asset may also be deemed marital property.

Spouses living in Wisconsin may wish to enter into a marital property agreement to define and clarify ownership of their assets and debts. Because classifying and defining assets and debts may be difficult, as the above-paragraph outlines, some spouses may wish to enter into a marital property agreement "opting into" Wisconsin's marital property system. By doing so, the spouses can be certain that their property will be classified as marital property, which may have certain tax and estate planning advantages. On the other hand, some spouses may want their property to be subject to a common law property system to protect assets for their children from a prior marriage or shield assets in a potential divorce. These spouses should consider entering into an agreement "opting out" of Wisconsin's marital property system.

Overall, understanding the distinction between common law property systems and community property systems is important for wealth management planning, estate planning,

and divorce. Whether it makes sense for spouses living in Wisconsin to opt out of or opt into Wisconsin's marital property system depends on a variety of factors that you should discuss with your estate planning attorney.

If you would like to learn more about Wisconsin's marital property laws and how they affect your estate plan, please contact attorney Kelly M. Spott.