

MARITAL PURPOSE STATEMENTS FOR WISCONSIN RESIDENTS

Many lenders are aware that Wisconsin law requires them to obtain a marital purpose statement when making a loan to a Wisconsin resident. However, there is a significant amount of uncertainty in determining how the marital purpose statement should be worded, how it can be documented, who should sign the statement and when it must be obtained. This article will clarify those uncertainties.

Wisconsin Statutes Section 766.55, states that,

a statement separately signed by the obligated or incurring spouse at or before the time the obligation is incurred stating that the obligation is or will be incurred in the interest of the marriage or the family is conclusive evidence that the obligation to which the statement refers is an obligation in the interest of the marriage or family

This provision alone clarifies several requirements of the marital purpose statement.

First, with respect to how the marital purpose should be worded, it requires language that the obligation “is or will be incurred in the interest of the marriage or the family.” Although Wisconsin Statutes Section 766.55, does not specifically require any mandatory language, there would be little or no benefit in varying from the language used by the statute.

The second and third uncertainties revolve around how to document the marital purpose statement and who should sign it. These are perhaps the most common issues that arise with respect to marital purpose statements, in part, because the form documents used by many financial institutions deal with this issue incorrectly. Specifically, form documents typically attempt to address this issue by adding a marital purpose statement to the end of a document and having it signed by the non-obligated spouse. However, this is not consistent with Wisconsin Statutes Section 766.55, which requires that the statement is “separately signed” by the “obligated or incurring spouse.” It should be recognized that there are some cases in Wisconsin which suggest that the marital purpose statement can be included in the instrument evidencing the obligation. However, this is not the best practice given the wording of the statute. As a result, the best practice would be to have the marital purpose statement in an instrument from the obligation and be signed by the obligated party.

Fourth, there is uncertainty around when the marital purpose statement must be obtained. As you’ll note in reviewing the above excerpt from Wisconsin Statutes Section 766.55, it only references “obligations”. This would primarily include promissory notes and guaranties. It would also include combination documents, such as a universal note and security agreement. But, purely collateral documents, such as a security agreement or mortgage, do not require a marital purpose statement. However, you should be cautious. Although you may not need a marital purpose statement in conjunction with a collateral document, depending on the

underwriting requirements, you may need the both spouses to sign the collateral document in order to effectively pledge their collective interest in the collateral. It should be noted that the marital purpose statement requirement applies whenever the obligor, including a guarantor, is a Wisconsin resident. Thus, in the case of a loan to an entity secured by real estate located in Minnesota and guaranteed by the entities two owners, one of which is a Wisconsin resident, a marital purpose statement would be required for the one guarantor who is a Wisconsin resident. Additionally, with respect to when you do and do not need a marital purpose statement, the concepts of marriage and family do not apply to entities. Thus, even though you may have a Wisconsin resident signing a promissory note as an officer of a corporation or limited liability company, you would not need a marital purpose statement because the obligor is the entity, not the office signing for the entity.

Even without a proper marital purpose statement, obligations incurred during marriage by a Wisconsin resident are presumed to be made in the interest of that person's marriage and family. However, those obligations can be challenged as not being incurred in the interest of the marriage or family. If successful, those challenges would prevent a lender from enforcing its rights and remedies against marital property, which can be especially problematic since Wisconsin is a community property state. However, if properly obtained, a marital purpose statement creates "conclusive evidence that the obligation to which the statement refers is an obligation in the interest of the marriage or family" and effectively prohibits any challenges that the obligation was not incurred in the interest of the person's marriage or family.