

OHIO'S DOWER LAW: SHOULD IT STAY OR SHOULD IT GO?

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In June 2018, the Ohio House of Representatives passed [House Bill No. 407](#) to abolish statutory dower. This legislation is now pending before the Ohio Senate. If statutory dower is abolished in Ohio, it will streamline many residential property transactions, but it may leave certain spouses without protection.

WHAT IS DOWER?

Dower is the (contingent) right of a spouse to one-third of the marital real property until his or her death, divorce, or relinquishment. Dower under Ohio common law dates back to the agrarian days of the 1800s, when farms provided the primary (or only) source of income for most families. Under that patriarchal regime, it was presumed that the working (and property-owning) husband would die first, and dower vested rights for the wife in the farm for her life. Dower was an effective way to provide for the surviving spouse to benefit from the productivity of the land. The Ohio common law for dower was eventually enacted into law in 1953.

In layman's terms, dower is a statutory interest given to one spouse which prevents property owned by the other spouse from being transferred without both spouses agreeing to the transaction or otherwise waiving their rights. The effect of dower is that any time a spouse conveys or mortgages an interest in real property, he or she must also sign the conveyance or mortgage document to release dower rights; otherwise, the dower rights will cloud the title of the property and presumably prevent the conveyance.

Over the years, evolving societal norms and the changing legal landscape have resulted in the abolishment of dower in most states; however, statutory dower in Ohio remains in effect. The proposed repeal of dower is prospective only – it will not affect dower rights of a spouse that have already vested. Strong arguments are being presented both in favor of preserving dower and abolishing it.

ARGUMENT FOR PRESERVATION

Although dower's purpose has changed, it still serves as a valuable tool in spousal protection law. Dower prevents a spouse from transferring or encumbering (through mortgages and lines of credit) real property without the knowledge and consent of the other spouse. In most marriages, the marital home is the family's most valuable asset, both monetarily and emotionally. In a hotly contested divorce proceeding, separation, or troubled marriage, dower is a critical protection against one spouse's absconding with this prized asset or incurring crippling amounts of debt without the other spouse's consent.

ARGUMENT FOR ABOLISHMENT

Dower is a cloud over many titles to Ohio property. A spouse whose name does not appear in the chain of title must sign deeds, mortgages, and other documents to relinquish his or her dower interest. Often, a spouse's signature is missing, and tracking down an individual many years after an intended conveyance in order to execute new documents is impossible. That is why many deeds contain language describing the grantor in terms such as "John Doe, *an unmarried man*," to remove any suspicion of marriage.

- **Real Estate Transaction Headaches.** Dower creates a headache for title companies and real estate professionals dealing with chain of title issues. When a spouse wants to sell real estate that is titled solely in one spouse's name, the other spouse must sign the deed conveying title to the buyer to relinquish the dower rights in the property. Often an administrative hassle at the time of conveyance can turn into a larger issue 50 years later when a title commitment uncovers that the property was not properly conveyed with relinquishment of dower rights. In this scenario, a buyer has essentially three options: (1) track down the spouse that did not sign the deed and have him or her sign a relinquishment or confirm that the spouse is deceased, (2) take the property subject to a life estate in the spouse, or (3) walk away.

- ***Declining Benefit and Applicability of Dower.*** Today, certain trends in property-ownership and lending have caused dower to become less relevant, leading to a declining level of protection for spouses. For example, when a property-owning spouse wants to secure a mortgage or a home equity line of credit, the bank will often require that the other spouse sign the mortgage, providing the bank with an additional responsible party to be on the hook for the debt. In these situations dower never comes into play. This common lending practice has reduced the benefit that dower provides as it is less common for a spouse to encumber property with debt without the other spouse's knowledge.

Additionally, dower most often applies when property is owned by a spouse in individual ownership – in one spouse's name; however, it is now more common for spouses to jointly own the property in business entities such as limited liability companies or in trusts. These forms of ownership are generally preferred over individual ownership for reasons such as probate avoidance, tax planning, and/or creditor protection. Individual ownership of real property is becoming less common, thus making dower a less impactful form of spousal protection.

- ***Availability of Information.*** Dower also has become less relevant as access to information has increased over time. For example, many real property records are accessible over the internet as public records, making it more difficult for an individual to hide property from a spouse and convey property without a spouse's knowledge.

The debate in the Ohio Senate is sure to be a heated one, with strong lobbyist organizations on both sides.

ADDITIONAL INFORMATION

For additional information, please contact:

- **KEITH RAKER** | 216.696.2468 | keith.raker@tuckerellis.com
- **JOSEPH FERRARO** | 216.696.5842 | joseph.ferraro@tuckerellis.com
- **ASHLEY GAULT** | 216.696.5648 | ashley.gault@tuckerellis.com

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