

OHIO LAND TITLE ASSOCIATION

305 West Nationwide Blvd.
Columbus, OH 43215
www.OLTA.org

May 21, 2019

Testimony in Support of House Bill 209

Chairman Hambley, Ranking Member Brown, Vice Chair Patton, and Members of the House Civil Justice Committee. Thank you for the opportunity to present proponent testimony on House Bill 209.

My name is Kevin Eichner. I am Ohio State Counsel for a national title insurance company. I have been an attorney focusing in real property law for 30 years. I am a past president of the Ohio Land Title Association (“OLTA”) and I am testifying on behalf of OLTA in support of the passage of House Bill 209.

OLTA is a trade association representing licensed title insurance agents, underwriters, abstractors and real estate / title attorneys throughout Ohio. Our members examine public records affecting real property, perform real estate closings, and insure title to real property.

Brief Background on the Origin of Dower

Dower is a legal concept related to real property and is defined in Ohio Revised Code Section 2103.02 as “... an estate for life in one third of the real property of which the consort was seized as an estate of inheritance at any time during the marriage. ...”. This concept has its origins in medieval Europe. In particular, dower developed in England at a time when a wife could not own property or enter into contracts. It was intended to be a means of providing for her support after the death of her husband because she was unable to own real property.

Modern Practice

Many customs, attitudes, practices and laws have significantly changed since that time. Although dower in Ohio applies to men and women, the underlying reasons for it have not existed for decades. Men and women, whether married or single, currently have the right to own property and to enter into and enforce contracts.

To the extent that a spouse needs property and support protection, dower is not the method to accomplish this goal. There is no benefit of dower that is magical or secretive that is not provided by other established and accepted means in Ohio and other states.

Ohio probate statutes and domestic relations statutes do provide protections. For example, within Title 21 of the Ohio Revised Code, pertaining to Probate, O.R.C. §2106.01 gives a surviving spouse the power to elect to exercise his or her rights under Chapter 2106, or the right to take under the will, or under O.R.C. §2105.06 (Statute of Descent and Distribution).

Within Title 31, pertaining to Domestic Relations, O.R.C. §3105.171 provides that marital property includes all real and personal property owned by either or both spouses that was acquired by either or both during the marriage. O.R.C. §3103.07 provides that a “married person may take, hold, and dispose of property, real or personal, the same as if unmarried.”

Abolishment of Dower

As a result of changes in customs, attitudes, practices, and changes in laws such as those cited above, virtually every state in the United States has abolished dower. Currently, only Ohio, Arkansas and Kentucky continue to recognize dower. Indeed, dower has even been abolished in England by the Administration of Estates Act of 1925.

It is important to note that H.B. 209 abolishes dower on and after the effective date of the bill. Any dower interests that are vested prior to the effective date of the bill will continue to be valid and effective.

Increased Cost and Delay to Consumers

Dower is widely misunderstood, even by practitioners, and failure to properly reference or release it can result in a defect on title to real property. When such failures occur, homeowners, lenders and realtors are subjected to delay and expense as attorneys and title professionals undertake efforts to resolve the problem.

From a title insurance company perspective, the company has to retain counsel to file actions to resolve missing dower issues. In the meantime, customer transactions cannot proceed. At the least, there is a delay. We see people racing around Europe and Asia trying to obtain signatures from people thought unnecessary because they held no interest in the real property – just for a refinance of their home loan. Worse, the seller or buyer/borrower may lose the transaction because of the delay.

It is Time for Repeal of Dower in Ohio

As I have noted, dower is a vestige of a time whose customs, attitudes, practices and laws have not applied to our society for decades, and in some instances, centuries. Current Ohio probate and domestic relations statutes protect the interests of both spouses. Dower’s continued existence constitutes a hardship to consumers and lenders in real property transactions while failing to provide any benefit.

We support the passage of H.B. 209 to repeal dower in Ohio.

Respectfully submitted,

Kevin F. Eichner, Esq.