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House Bill 209
House Civil Justice Committee**

Testimony in Opposition to House Bill 209

Chair Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee,

My name is Graham Bowman. I am an attorney with the Ohio Poverty Law Center. Our mission is to reduce poverty and increase justice by protecting and expanding the legal rights of Ohioans living, working, and raising their families in poverty. Drawing on the day-to-day experiences of the legal aid attorneys who provide civil legal services to low-income Ohioans in every county, we oppose House Bill 209 as introduced.

Our primary concern with HB 209 is that it does not provide a mechanism for non-titled spouses to stop the sale or mortgage of the family home without their consent. Most states provide such a protection, though they do it through their “homestead exemption” laws and not through dower. Ohio should do the same.

Nearly every state, including Ohio, provides special legal protections for the marital home against creditors. The purpose of these “homestead exemptions” are to promote the virtues of home ownership and protect dependents. With these protections come some responsibilities.

Ohio law provides two such protections:

- 1. Protection against collection by creditors for real property being used as the residence. (ORC 2329.66)**
- 2. Property Tax reductions for the home of elderly or disabled individuals. (ORC 323.152)**

Most states with homestead protections also require a spouse who is not technically an owner of the marital home in which they are living to consent to the sale or mortgage of the property. The purpose of these consent requirements, and the homestead exemptions from which they stem, is ensure dependents, like non-working spouses and children, are not blindly cast into homelessness by unscrupulous spouses. The consent requirement is particularly fair given the fact that some portion of that property is protected from creditors.

How does dower relate to homestead exemptions?

“A dower interest is an interest in real estate that is intended to protect a non-title-holding spouse. It has been a bane to real estate professionals, lenders, and first-year law students for eons. It is a dour subject.” - Standard Federal Bank v. Staff, 168 Ohio App.3d 14 (2006)

Dower is a complicated law dating to the 1800s that gives a widow(er) a right to a 1/3 of the value of real estate that their deceased spouse sold without their knowledge. In practice, very few widow(ers) ever actually receive financial compensation by enforcing their dower rights.

However, despite dower's backward nature, in Ohio it informally serves the role of creating the spousal consent requirement that most other states have for sales and mortgages of the marital home. Ohio should not repeal dower without enacting a replacement consent requirement that applies to the marital home.

The spousal consent requirement is necessary to protect dependents.

New Jersey provides a clear road map for how to repeal the dower statute and replace it with a clearer spousal protection law. New Jersey repealed its dower statute in 1980 and replaced it with "N.J.S.A. 3B:28-2 - Right of joint possession of principal matrimonial residence where no dower or curtesy applies." The effect of the new law, according to an analysis by Stark & Stark Attorneys at Law, was that *"title to property acquired on or after May 28, 1980 and occupied by spouses as a principal marital residence cannot be transferred without the consent of both spouses."* For a longer discussion of New Jersey's replacement spousal protections, see the attached article published by Stark & Stark Attorneys at Law.¹

The Ohio Poverty Law Center agrees with the Ohio Judicial Conference and other interested parties who wish to see a compromise in which reasonable protections for non-property-owning spouses are maintained.

Ohio already has a statute that requires a spouse to sign any document affecting an interest—like dower—that they have in their spouse's real property (ORC 5301.04). A straightforward way to address both the needs of the real estate and domestic legal community would be to repeal dower but amend ORC 5301.04 in a way that brings Ohio law in line with New Jersey and the many other states that require spouses to consent when the home they live in is sold or mortgaged.

Thank you for the opportunity to testify and I am available to answer any questions members of the committee may have.

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¹ <https://www.njlawblog.com/2008/05/articles/real-estate/protecting-spousal-rights-in-real-estate/>