

OHIO LAND TITLE ASSOCIATION

500 West Wilson Bridge Road
Worthington, OH 43085
www.OLTA.org

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Testimony in Support of House Bill 407

Chairman Butler, Ranking Member Boggs, Vice Chair Hughes, and Members of the House Civil Justice Committee. Thank you for the opportunity to present proponent testimony on House Bill 407.

My name is Kevin Eichner. I am Ohio State Counsel for a national title insurance company. I am a past president of the Ohio Land Title Association (i.e. OLTA) and I am testifying on behalf of OLTA in support of the passage of House Bill 407.

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 and insure title to real property.

Brief Background on the Origin of Dower

Dower 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 mediaeval Europe. In particular, dower developed in England at a time and in response to the fact that 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.

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 many years. Men and women, whether married or single, have the right to own property and to enter into and enforce contracts.

To the extent that a spouse needs property and support protection, Ohio probate statutes and domestic relations statutes provide it. 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 if there is no will, 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 of the 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 like those cited above, virtually every state in the United States has abolished dower. Currently, in addition to Ohio, dower remains in only two other states, Arkansas and Kentucky. Indeed, dower has even been abolished in England by the Administration of Estates Act of 1925.

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 cloud 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.

It is Time for Repeal of Dower in Ohio

It is important to note that H.B. 407 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.

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 provide the protections, and more, that dower might provide. It's continued existence increases costs to consumers and lenders in real estate transactions without any benefit.

We support the passage of H.B. 407 to repeal dower in Ohio.

Respectfully submitted,

Kevin F. Eichner, Esq.