Testimony in Opposition to House Bill 209
(Abolish Estate by Dower)
Presented by Eric Johnson, Esq.

Before the Senate Judiciary Committee
December 9, 2020

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and Members of the Senate Judiciary Committee:

Thank you for again allowing me to present this testimony in opposition to House Bill 209. I am Eric W. Johnson, an OSBA Certified Specialist in Family Relations Law. I have been licensed to practice law in the State of Ohio since 1995 and have practiced almost exclusively in the field of family law since 2004. I submit this further testimony in opposition to H.B. 209 as an interested family law attorney in Columbus, Ohio.

History

The concept of dower as a method of protecting a non-titled spouse, by recognizing a right to a livelihood from the estate of that person's spouse, is as old as the common law. The State of Ohio provided statutorily for vested dower until changing it by Section 10502–1 of the Ohio General Code in 1932 in response to a movement to abolish it. Amending the law, the Ohio legislature preserved inchoate dower but abolished vested dower. The provisions of dower were later incorporated into Ohio's Revised Code in 1953.

In the case of *In re Castor*, 99 B.R. 807 (Bankr.S.D.Ohio 1989), the U.S. Bankruptcy Court summarized numerous Ohio decisions regarding dower, concluding, "The foregoing review of many significant cases dealing with dower demonstrates the protection the courts have afforded the spouse in Ohio by the dower right in statute and in common law."

Dower Has Been Crucial in Protecting Non-Titled Spouses

The benefits of dower to a non-owner spouse have changed over time. Originally a protection created for widows who survived their husbands, the dower right was intended to protect a spouse who did not hold title. Currently in Ohio, dower remains crucial by effectively assuring a non-titled spouse be involved the transfer or encumbrance of real estate in which he or she may hold a significant interest, whether it be financial or a matter of personal need. It remains critical that one of the chief current benefits of dower—namely, providing notice to a non-titled spouse—remains in place to protect that spouse's interest in the marital estate.

I urge this committee to review the testimony I previously submitted for its consideration for the hearing held February 12th of this year and in which I described the ongoing importance of providing notice to the non-titled spouse and detailed measures taken by other states to ensure the families in their states remain protected, even after the elimination of dower.

Dower Continues to Serve a Vital Function in Ohio

I have been privileged to work with various interested parties who recognize the important protections dower affords to Ohio families and who have opposed this bill in its current form. These groups included the Ohio Judicial Conference, Ohio Association of Domestic Relation Judges, Legal Aid Society of Cleveland, Ohio Domestic Violence Network, Ohio Poverty Law Center, and Southwest Ohio Legal Services, all of whom recognized the significant negative impact the outright elimination of dower would cause and encouraged that reasonable precautions be put in place to protect non-titled spouses and their children in this state. The focus has not been to merely retain dower for its own sake, but to instead guarantee the protection it provides remains uncompromised.

Through my involvement, I have become aware of a recent suggestion—perhaps to take the form of a proposed amendment—to retain dower in its current form but forgive a recorded real estate transfer or encumbrance lacking a spousal signature after a period of just four years, thus treating the alienation of that spouse's interest as no more than a minor title defect. This proposal would not only expose non-titled spouses to the machinations of a scheming titled owner intent on eliminating the spousal interest in the family's home, but could also impact the non-titled spouse when the owner's intentions were far less nefarious.

A four-year period is not substantial these days. Marital disharmony does not always arise overnight but, instead, often simmers for years while spouses ignore underlying unhappiness and "stay together for the kids." A transfer or encumbrance of the marital home does not need to be the result of sudden "divorce planning." It can be driven by no more than an abundance of caution exercised by the titled spouse, perhaps even shortly after the marriage itself. A decade or more could pass before the non-titled spouse (or that spouse's attorney) would have cause to consider looking at real property records.

This proposal would also seriously reduce the incentive to make sure the non-titled, and often economically-disadvantaged, spouse is made aware of a transaction involving the marital home. An owner spouse could transfer or encumber the property and then sit back and wait for the clock to tick away a mere four years. Title companies would become substantially less concerned if the absence of a spouse's signature could evaporate in the same amount of time equated with "minor title defects." And even the most reputable and conscientious title company cannot act as a gatekeeper against fraud when the titled spouse decides not to use any title company at all.

Lengthening the four-year period will not provide adequate relief either. It is more than possible a transaction affecting the family home, including the transfer of title to a close relative, would not be discovered until the death of the owner spouse many years after the transfer. If dower were to be eliminated after any prescribed number of years, the surviving spouse would have no recourse to assert any claim to his or her home after that time. This is the precise situation dower was historically designed to prevent in the first place!

Conclusion

To be clear, I represent only myself, as a certified specialist in family relations law, and the voices of many other experienced and concerned family law practitioners who recognize the protections currently provided by dower are vital to spouses who are often struggling as the financially-disadvantaged party in a marital relationship. I do not speak for the interests of the other tireless groups I have had the good fortune to work with. But if dower is to be eliminated in Ohio, or if significant changes are to be made to it, it must be done so in a fair and reasonable manner.

There are very good, practical, public policy reasons to maintain the protections dower currently provides to non-titled spouses and their children. Dower protects that non-titled spouse from having marital real estate sold unilaterally, from learning too late that his or her spouse has obtained a loan secured by a 2nd mortgage, or from discovering his or her spouse secretly transferred ownership of the parties' marital home to another person.

I implore this Committee to make sure these protections remain fully in place and to avoid the enticement of settling for anything less. A compromise can be reached to the satisfaction of all interested parties. Creating an absolute notice and signature requirement for a non-titled spouse in R.C. 5301.04—especially when a transaction affects a marital residence—should be part of that. But treating the absence of a non-titled spouse's signature on a transaction affecting marital property as nothing more than a minor defect after a period of years should not be considered sufficient to protect those spouses and the children who depend on them. I therefore respectfully request you oppose both H.B. 209 and any proposal that would eliminate a spouse's dower interest based on the passage of time alone.

I remain available to answer questions at any time should the Committee have any for me.

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