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House Bill 209**

**Senate Judiciary Committee  
12.9.2020**

**Testimony in Opposition to HB 209**

Chairman Eklund and members of the Senate Judiciary Committee,

The Ohio Poverty Law Center remains opposed to HB209 as it is currently drafted. Since the beginning of this process, the legal aid community has raised the importance of maintaining the practice in Ohio of requiring non-titled spouses to consent to the sale of marital property, particularly the family home. Bad acting spouses routinely hide or squander assets in anticipation of a divorce, particularly in cases involving domestic violence. In most cases, it is difficult, if not impossible, for those spouses to be made whole.

Most states require spouses to consent to the sale of marital real property. Ohio is unusual because it contains its spousal signature requirement in the dower statute, which the proponents of HB209 correctly describe as antiquated. States that repealed dower also adopted portions of the Uniform Probate Code that replace dower with alternative protections for spouses from disinheritance. Ohio does not have these protections and there is no such protection proposed as part of HB209. Furthermore, many states have a strict spousal signature requirement as part of their homestead tax exemption statute. Ohio does not have this requirement in its homestead exemption statute either.

I attached to my testimony a more detailed letter shared with the Committee in February that outlines the approaches other states have taken to the spousal signature requirement.

We are encouraged by recent conversations with the sponsors, Representatives Carruthers and Kick, and proponents of the bill regarding a compromise that would retain estate by dower and implement a cure date after which title defects would be resolved. However, it is imperative that the practice of requiring a non-titled spouse to consent to transactions involving marital property continues.

A strong and fair compromise would relieve the title companies of the burden of decades-long title searches while clearly stating in Ohio law that non-titled spouses must consent to transactions involving marital real property. ORC 5301.04 in the Conveyances; Encumbrances Chapter of the Real Property Section is the natural location for such a compromise.

Unless HB209 is amended to require a spouse's consent to the sale of marital property—the most important function that dower serves in Ohio law—HB209 should not be adopted.

Date: February 26, 2020  
To: Senate Judiciary Committee  
From: Graham Bowman, OPLC  
Re: HB 209: Abolish Dower

Chairman Eklund,

During the Senate Judiciary Committee's hearing on HB 209, I was asked to provide information we compiled on how other states continue to protect the property rights of non-titled spouses. This is an area of law where there is considerable variation from state to state. Nevertheless, it is possible to identify three broad approaches, with some states employing more than one.

Below is a non-exhaustive sample of how other state's approach the issue divided into three categories: (1) community property, (2) Uniform Probate Code, and (3) homestead exemptions.

It is important to note that these three areas of law frequently overlap, with protections for the marital home found in one area of law but protections for other real property found in another. I found this article by Holland & Hart LLP extremely helpful for understanding the way these areas of law interact from the title agency's perspective to create a generalized rule that a non-titled spouse must consent to the sale of real property, and particularly the marital home.<sup>1</sup>

### **1. Community Property States**

There are nine states that take a completely different approach to family law than the majority.<sup>2</sup> These states are mostly in the Southwest and their system is a legacy of Spanish rule. In community property states, most property is presumed to be jointly owned by both spouses regardless of whose name is on the title. For this reason, usually both spouses must sign documents affecting real property regardless of whose name is on the title. This system is simpler than the common law tradition of which Ohio is a part. However, becoming a community property state would represent a complete overhaul of our marriage laws and is not a realistic option for Ohio.

### **2. Uniform Probate Code States**

States that have adopted the Uniform Probate Code, or sections of it, provide protections for non-titled spouses to both the marital home and other real property the other spouse might own. The Uniform Probate Code (UPC) was first drafted by the National Conference of Commissioners on Uniform State Laws in 1969 and has gone through multiple revisions since. The UPC has been adopted entirely by 19 states<sup>2</sup> and partially in other states.

The UPC recommends repealing dower and replacing it with a concept called the "augmented estate." The augmented estate lets a court that is administering a will to allow the surviving spouse to collect proceeds from transactions that the deceased spouse made without their consent that were

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<sup>1</sup> <https://www.theoilandgasreport.com/2015/02/05/but-my-husband-or-wife-doesnt-need-to-sign-spousal-joinder-issues/>

<sup>2</sup> Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin

intended to hide assets. Some states that have adopted the augmented estate provisions of the UPC while not adopting the entire act. Like dower, the augmented estate system places a cloud of uncertainty over conveyances involving real property by a titled spouse without the consent of the non-titled spouse. It is perhaps for this reason that many of the states with augmented estate laws also simply require spousal signature for the sale of the marital home.

Adopted entirely: Idaho, Alaska, Colorado, Arizona, South Dakota, Nebraska, Montana, Minnesota, Utah, New Mexico, Michigan, Pennsylvania, Maine, Minnesota, South Carolina, Hawaii, North Dakota, New Jersey, Massachusetts.

Adopted augmented estate provisions (non-exhaustive): Virginia, Maryland, Oregon, West Virginia

### **3. Homestead Exemptions**

The most common place where protections for non-titled spouses against the sale of the marital home—as opposed to all real property—are found is in a state’s homestead exemption statute. Homestead exemptions protect a certain amount of the value of the marital home from creditors. This means that if a family goes bankrupt, their creditors cannot force them to sell their home. Ohio has a homestead exemption at ORC 2329.66. Some states require a family to formally declare a property as their homestead while others do not. Most of these states require a spouse to consent to transactions involving the marital home.

Attached to this letter is a compilation of other states’ statutes requiring such signatures. This research is not intended to be exhaustive, but rather illustrative.

I hope this information is useful to the committee as it decides how best to replace dower, if at all. From the perspective, at a bare minimum, any replacement ought to align with the state attached statutes that create a requirement that a non-titled spouse consent to conveyances of the marital home in order for that transaction to be valid.

Sincerely,

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## **Examples of spousal signature requirements in other states:**

### **Alaska**

AK Stat. § 34.15.010

**Spouse must sign:** (b) In a deed or conveyance of the family home or homestead by a married man or a married woman, the husband and wife shall join in the deed or conveyance.

(c) The requirement that a spouse of a married person join in a deed or conveyance of the family home or homestead does not create a proprietary right, title, or interest in the spouse not otherwise vested in the spouse.

(d) Failure of the spouse to join in the deed or conveyance does not affect the validity of the deed or conveyance, unless the spouse appears on the title. The deed or conveyance is sufficient in law to convey the legal title to the premises described in it from the grantor to the grantee when the deed or conveyance is otherwise sufficient, and

(1) no suit is filed in a court of record in the judicial district in which the land is located within one year from the date of recording of the deed or conveyance by the spouse who failed to join in the deed or conveyance to have the deed or conveyance set aside, altered, changed, or reformed; or

(2) the spouse whose interest in the property is affected does not record, within one year in the office of the recorder for the recording district where the property is situated, a notice of an interest in the property.

### **Illinois**

735 ILCS 5/12-901 – 904

**Spouse must sign:** “No release, waiver or conveyance of the estate so exempted shall be valid, unless the same is in writing, signed by the individual and his or her spouse...”

### **Iowa**

IA Code Sec. 561.13

**Spouse must sign:** “A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument”

### **Kentucky**

KRS 427.100

**Spouse must sign:** “No mortgage, release or waiver of an exemption granted by KRS 427.060 shall be valid unless it is in writing, subscribed by the defendant and his spouse, and acknowledged and recorded in the same manner as conveyances of real estate.”

### **Massachusetts**

MA Gen L ch 188 § 10

**Spouse must sign:** “(a) An estate of homestead created under section 3 or 4 may be terminated by any of the following methods: (1) a deed to a non-family member conveying the home, signed by the owner and a non-owner spouse or former spouse residing in the home as a principal residence as of the date of the deed; (2) a recorded release of the estate of homestead, duly signed and acknowledged by the owner and a non-owner spouse or former spouse residing in the home as a principal residence

as of the date of the release; (3) the abandonment of the home as the principal residence by the owner, the owner's spouse, former spouse or minor children, except that such abandonment shall terminate only the rights of the persons who have abandoned the home; provided, however, that no person in military service as defined in 50 U.S.C. appendix, section 511 shall be deemed to have abandoned the home due to such military service”

### **Michigan**

MI Comp L § 600.6023

**Spouse must sign:** “A mortgage is not valid for purposes of this subdivision without the signature of a married judgment debtor's spouse unless either of the following occurs:

- (i) The mortgage is given to secure the payment of the purchase money or a portion of the purchase money.
- (ii) The mortgage is recorded in the office of the register of deeds of the county in which the property is located, for a period of 25 years, and no notice of a claim of invalidity is filed in that office during the 25 years following the recording of the mortgage.”

### **Mississippi**

MS Code § 89-1-29

**Spouse must sign:** “A conveyance, mortgage, deed of trust or other incumbrance upon a homestead exempted from execution shall not be valid or binding unless signed by the spouse of the owner if the owner is married and living with the spouse or by an attorney in fact for the spouse.”

### **Missouri**

MO Rev Stat. § 513.475

**Spouse must sign:** “Either spouse separately shall be debarred from and incapable of selling, mortgaging or alienating the homestead in any manner whatever, and every such sale, mortgage or alienation is hereby declared null and void; provided, however, that nothing herein contained shall be so construed as to prevent the husband and wife from jointly conveying, mortgaging, alienating or in any other manner disposing of such homestead, or any part thereof.”

### **Nebraska**

Neb. Rev. Stat. § 40-104

**Spouse must sign:** “Except as otherwise provided in this section, the homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both spouses. The interest of either or both spouses may be conveyed or encumbered by a conservator acting in accordance with the provisions of the Nebraska Probate Code and may also be conveyed or encumbered by an attorney in fact appointed by and acting on behalf of either spouse under any power of attorney which grants the power to sell and convey real property. Any claim of invalidity of a deed of conveyance of homestead property because of failure to comply with the provisions of this section must be asserted within the time provided in sections 76-288 to 76-298.”

A purchase agreement or contract for sale of homestead property signed by both spouses does not require acknowledgment to be enforceable.

**New Hampshire**  
NH Rev Stat. § 480:5-a

**Spouse must sign:** “No deed shall convey or encumber the homestead right, except a mortgage made at the time of purchase to secure payment of the purchase money, unless it is executed by the owner and wife or husband, if any, with the formalities required for the conveyance of land.”

**New Jersey**  
NJ Rev Stat § 3B:28-1

**Spouse must sign:** 3B:28-3. Right of joint possession of principal matrimonial residence where no dower or curtesy applies; alienation.

- a) During life every married individual shall be entitled to joint possession with his spouse of any real property which they occupy jointly as their principal matrimonial residence and to which neither dower nor curtesy applies. One who acquires an estate or interest in real property from an individual whose spouse is entitled to joint possession thereof does so subject to such right of possession, unless such right of possession has been released, extinguished or subordinated by such spouse or has been terminated by order or judgment of a court of competent jurisdiction or otherwise.
- b) Nothing contained herein shall be construed to prevent the release, subordination or extinguishment of the right of joint possession by either spouse, by premarital agreement, separation agreement or other written instrument.
- c) The right of joint possession shall be extinguished by the consent of both parties, by the death of either spouse, by judgment of divorce, separation or annulment, by other order or judgment which extinguishes same, or by voluntary abandonment of the principal matrimonial residence.

**North Carolina**  
G.S 39-7

**Spouse must sign:** “In order to waive the elective life estate of either husband or wife as provided for in G.S. 29-30, every conveyance or other instrument affecting the estate, right or title of any married person in lands, tenements or hereditaments must be executed by such husband or wife, and due proof or acknowledgment thereof must be made and certified as provided by law.”

Does not apply to purchase-money mortgage (G.S 39-13)

**North Dakota**  
N.D. Cent. Code § 47-18-05

**Spouse must sign:** “The homestead of a married person, without regard to the value thereof, cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both the husband and wife.”

**Oklahoma**  
OK Const. Section XII – 2; 16 OK Stat § 16-4

**Constitution:** “The homestead of the family shall be, and is hereby protected from forced sale for the payment of debts, except for the purchase money therefor or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon; nor shall the owner, if married, sell the homestead without the consent of his or her spouse, given in such manner as may be prescribed by law; Provided, Nothing in this article shall prohibit any person from mortgaging his homestead, the spouse, if any, joining therein; nor prevent the sale thereof on foreclosure to satisfy any such mortgage.”

**Statute:** “No deed, mortgage, or conveyance of real estate or any interest in real estate, other than a lease for a period not to exceed one (1) year, shall be valid unless in writing and subscribed by the grantors. No deed, mortgage, or contract affecting the homestead exempt by law, except a lease for a period not exceeding one (1) year, shall be valid unless in writing and subscribed by both husband and wife, if both are living and not divorced, or legally separated, except as otherwise provided for by law.”

**South Dakota**  
SD § 43-31-17

**Spouse must sign:** “A conveyance or encumbrance of a homestead by its owner, if married and both husband and wife are residents of this state, is valid if both husband and wife concur in and sign or execute such conveyance or encumbrance either by joint instrument or by separate instruments.”

**Vermont**  
27 V.S.A. § 141

**Spouse must sign:** “A homestead or an interest therein shall not be conveyed by the owner thereof, if married, except by way of mortgage for the purchase money thereof given at the time of such purchase, unless the wife or husband joins in the execution and acknowledgment of such conveyance. A conveyance thereof, or of an interest therein, not so made and acknowledged, shall be inoperative so far only as relates to the homestead provided for in this chapter.”

**Wyoming**  
WY Stat § 34-2-121

**Spouse must sign:** “Every owner or occupant of a homestead as established herein may voluntarily sell, mortgage, or otherwise dispose of or encumber the same; provided the instrument of writing conveying, mortgaging, disposing of or encumbering such homestead shall contain in substance the following words: "Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state", and shall be freely and voluntarily signed and acknowledged by the owner and the spouse of the owner of said homestead.”