

Dower Interest in Ohio

(or, “explain to me again why my spouse has to sign”)

By Christopher C. Pfendler, Esq.

If you own real property in the State of Ohio and are married, you most probably have encountered the term dower when either purchasing, selling or refinancing that real property. “What is your marital status” will be one of the questions you are asked when listing a property for sale, having a deed prepared by an attorney, or borrowing money from a lender where you intend to secure your repayment by placing a mortgage on your home. Why should this matter?

The answer relates back to a time when real property defined who had the power both economically and politically. It was a time when land was the chief form of wealth and its acquisition and transfer was limited mostly to rich, powerful males. Because of this, the law developed ways to protect the widow upon the death of her husband. The wife by law had a “dower interest” in any real property that the husband brought to the marriage or acquired during the marriage. But this interest did not actually materialize until the death of the husband. It kept the wife from being left penniless and specifically provided that she have a one third interest for the rest of her natural life in any real estate owned by her husband during their marriage.

As time passed, many changes took place, including recognizing a woman’s right to own real property. The law also found different ways to provide for a surviving spouse such as the intestate succession laws that provided for widows and widowers even when their spouse had failed to make a will or other provisions during their lifetime. As a result of these changes, at least forty-six States have abolished dower. Of course, Ohio wasn’t one of these.

Ohio Revised Code Section 2103.02 still provides that either spouse is entitled to a one-third dower interest (life estate) in real property that was acquired by their deceased spouse during their marriage. At this point you may find this all very interesting but may also be asking yourself the question so what?

The simple answer is if one spouse holds title to any real property, the other spouse must sign away, or “release dower” any time any interest in that property is transferred or encumbered. Although the interest is not perfected until the title owning spouse dies, it is real and must be released. Ohio law provides that a final divorce decree terminates the dower interest as does a court ordered decree of separation or the death of the spouse who is not in title.

But, if the divorce or dissolution is still pending and a final decree has not been issued by the court, the spouse must release their dower interest on any document transferring any interest in real property owned by the other spouse. Likewise, if the parties “have been separated for years” but there has been no court ordered decree of separation, the spouse must release dower on any document transferring any interest in real property owned by the other spouse.

It makes no difference if the document conveying the interest is a “warranty deed” or a “quit claim deed”, the non-titled spouse must release dower. There is no blanket instrument that allows a spouse to sign away “all my dower interest”. The signature must be on the document transferring the real property. Upon examination, this makes sense since the amount of real estate owned by the other spouse can increase at any time.

Another confusing result of a spouse’s dower interest is the effect it has when a spouse places a mortgage on real estate that they already own or have just purchased. We need to remember the actual purpose of that mortgage document. The person who owns or is purchasing real property is borrowing money to supply some of the purchase price or in the case of a refinance, to spend on repairs or some other worthy project. The bank has them sign the note, which is the promise to pay the money back to the bank. The bank also wants some way of getting their money back if their customer either cannot or will not pay them back. The mortgage secures the person’s promise to pay the bank back, and if necessary, the bank will foreclose, take the house back and resell it to hopefully recover their loss. During that foreclosure process, the terms of the actual mortgage document act to, in effect, deed the property from the debtor back to the bank. If the debtor is married, the spouse must release dower on the mortgage because the mortgage document could be used in the future to transfer the real property back to the bank and therefore the non-titled spouse must sign off dower.

Many times a spouse is concerned that they are somehow being obligated to pay part or all of the money borrowed by signing the mortgage. Again, it is important to remember that the note is the promise to pay the lender back the money. The mortgage document only secures that promise by giving the lender the ability to “cut their losses” in the event their customer fails to make good on the promise. Releasing dower on the mortgage only allows the lender to proceed with a foreclosure free from any claim by the non-titled spouse due to their dower interest in the property.

Hopefully this sheds a little light on what is a very confusing topic to those both inside and outside of the real estate industry. Of course if you have a particular legal question or concern relating to dower interest, you should consult your attorney for proper legal advice.

Christopher Pfendler is the attorney who prepares deeds, affidavits and other legal documents for signature when closing with Beacon Title.