

The ancient right of dower abolished in Michigan



Patrick A. Karbowski | Wednesday, January 11, 2017

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On December 28, 2016, Michigan Governor Rick Snyder signed into law Public Act 378 of 2016 (the “Act”), which abolishes all statutory or common law rights of dower in Michigan; that is, a wife’s interest in the real property of her deceased husband. Although the Michigan Compiled Laws version of the Act is not yet available, the Legislative Analysis of the Act indicates that the new law takes effect on April 6, 2017, and suggests that the Act completely eliminates the concept of dower from Michigan law, with an exception made for dower rights elected by a woman whose husband died before the law’s effective date.

The concept of a dower interest in real property dates back centuries and generally provided a surviving widow with an election to retain one-third of her husband’s real estate during her lifetime. Because a dower interest was “inchoate” in a married woman while her husband was alive; i.e., it was not vested in the wife until the husband died, it created a trap for the unwary when transferring an interest in real property owned by the husband, but not the wife. For example, if a married man conveyed an interest in his real property by a deed or mortgage which his wife did not also execute, the transfer likely remained subject to the wife’s inchoate dower interest, even though the wife did not jointly own the property with her husband.

One of the many consequences of the dower interest in Michigan has been the requirement that deeds of conveyance reflect a husband’s marital status. The existence of dower also made it prudent to have express language in the conveying instrument barring a wife’s dower interest in real property, to ensure that this inchoate or “springing” interest would not create a cloud upon the grantee’s title (although the wife’s signature on the instrument was typically sufficient). The Legislative Analysis did not speak to issues relating to marital status on deeds and recording requirements related to the dower interest, but presumably these matters, if not expressly resolved by the Act (and apparently they were not), will be resolved by subsequent legislation and/or practice.

Bills to abolish dower had been presented to the Michigan Legislature almost routinely for many years. Prior to the Act, Michigan was one of the few (and perhaps the last hold-out) states to continue to recognize dower. The concept of dower had been supported by the Michigan Supreme Court as recently as 2008 in the case *In re: In the Case of Miltenberger*. Some have suggested that the Supreme Court of the United States’ decision in *Obergefell v Hodges*, and the complications of applying the doctrine of dower in the context of same-sex marriage, was the impetus needed to eliminate this ancient doctrine from Michigan law. Regardless, this ancient doctrine has finally gone the way of the *Rule in Shelley’s Case*, and will soon be of interest only to legal historians and law school professors.



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