

**Proposed Changes to the D.C. Code 15-502
to Correct Error that Purports to Invalidate Deeds of Trust and Mortgages Not
Joined by a Non-Titled Spouse or Domestic Partner Even after Law was Passed to
Abolish Dower Rights.**

Track changes and highlighting indicate changes to the original. The Title, Chapter, and
Section Headings are listed for reference. Prepared by Roy L. Kaufmann

**Exemptions from Enforcement and Decrees
Emergency Act of 2006**

Would Amend as follows:

Judicial Foreclosure of Certain Mortgages or Deeds of Trust

TITLE 15. JUDGMENTS AND EXECUTIONS; FEES AND COSTS.

CHAPTER 5. EXEMPTIONS AND TRIAL OF RIGHT TO SEIZED
PROPERTY.

SUBCHAPTER I. EXEMPTIONS.

§ 15-502. Mortgage or other instrument affecting exempt property

A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the spouse or domestic partners of a debtor who is living with his or her spouse or domestic partners. For the purposes of this section the Term “Domestic Partner” shall have the same meaning as provided in §32-701(3). This subsection shall not apply to deeds of trust with power of sale, to mortgages given voluntarily by borrowers to secure loans on real property, or to such obligations reflected by financing statements recorded among the land records of the District of Columbia.

Author’s Comments

This statute currently exempts from execution of judgments and decrees deeds of trust and mortgages unless the document was signed by the spouse of a debtor (including

domestic partner) even though the spouse or domestic partner is not a titled owner of the property. The existence of this statute came as a surprise to the bar and to the title industry and was only brought to light with the passage of Act 16-265 (“Domestic Partner Equality Amendment Act of 2006”) ¹ which became effective on April 4, 2006.

Years ago, the District became one of the last jurisdictions in the United States (if not the last jurisdiction) to abolish “dower” rights. The repeal of dower was part of the Omnibus Trusts and Estates Amendment Act of 2000 (D.C. Law 13-292 which became effective on April 27, 2001² as Act 13-599). Pertinent parts of the legislative history of D.C. Law 13-292 are appended hereto, but the salient provision reads:

“Although [the right of dower] may have previously served a useful purpose in preventing disinheritance, it has no utility today. Instead, it clouds titles to property and increases the expense of transfer. Virtually all states have abolished this right.”

Prior to the passage of 13-292, title companies and attorneys required the co-signature of any spouses on deeds and deeds of trust, even if only one spouse was the owner of record. The purpose of this requirement was to have the non-titled party convey to the grantee-purchaser (or grantee-Trustee in the event of a Deed of Trust) any inchoate interest that the non-titled spouse might have.

Since the abolishment of dower, this burden has been lifted, or, so the industry and bar believed was the case.

With the passage of the A16-265, the real estate bar and title industry finds themselves in the same situation as before the elimination of dower. All spouses are once again being required to co-sign deeds and deeds of trust with the predictable complications and costs that the Council thought it had eliminated with it abolished dower.

The plain reading of § 15-502 states that deeds of trust and mortgages are not binding or valid without the co-signature. The statute does not limit itself to the issue of execution upon judgment and could just as easily be interpreted that deeds that do not have the co-signature are void *ab initio*, and invalid for all purposes.

Further, the statute may be construed to impute some interest in the property to the nontitled spouse/domestic partner which would affect bankruptcy proceedings (i.e. whether a bankruptcy filing by the nontitled spouse/domestic partner triggers an automatic stay).

¹ Act 16-265 added the words “domestic partner” to the dower provisions.

² D.C. Law 13-292 amended 19 D.C. Code 102 by abolishing the old law which established that a widow/widower of a deceased man was entitled to a life-estate of one-third of the real estate of the decedent, which created an inchoate right to a share in intestacy, a right dating back to the year 1225, as part of the Charter of Henry III.

The proposed amendment's reference to financing statements would handle loans secured by co-operative housing which are generally perfected by the filing of a financing statement in the land records of the Recorder of Deeds pursuant to Article 9 of the Uniform Commercial Code. This would eliminate a gaping difference between the current Article 9 under D.C. Law versus the uniform provisions enacted throughout the country.

The author suggests the amendment of § 15-502, retroactive to April 27, 2001 (the effective date of D.C. Law 13-292). Retroactivity becomes important so that any imputed rights (including the *de facto* dower effect of § 15-502) are eliminated *nunc pro tunc* to the date that the Council abolished dower.

Emergency legislation is suggested to implement this change, because many real estate settlements are currently affected by a statute that all relevant parties thought had been repealed years ago and to ensure that instruments not signed by both spouses or partners retain the effect of law.

**Excerpt from Report of the Committee on the Judiciary
in connection with the Omnibus Trusts and Estates Amendment Act of 2000
(Act 13-599)**

Title 7. Abolishment of Estate of Dower ...

Section 701. This section is the abolishment of estate of dower. Specifically, it abolishes the common-law concepts of dower, which created an inchoate right to a share in intestacy. The right, codified in former D.C. Code Section 19-201, dates back to 1225, as part of the Charter of Henry III. Although it may have previously served a useful purpose in preventing disinheritance, it has no utility today. Instead, it clouds title to property and increases the expense of transfer.

Section 702. This section is a conforming amendment to the 1901 Code concerning dower. This section deletes references to dower in D.C. Code Section 30-201.

Section 703. This section contains conforming amendments to Title 16 of the District of Columbia Code concerning dower. This section deletes references to dower in D.C. Code Section 16-912 and repeals D.C. Code Sections 16-2921 to 16-2925, which require the existence of an estate of dower.

Section 704. This section is a conforming amendment to Compiled Statutes of the District of Columbia concerning dower. This section deletes references to dower in D.C. Code Section 45-1201.