

**MICHIGAN LAND TITLE STANDARDS
SIXTH EDITION**

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CHAPTER IV

DOWER



STANDARD 4.1

ESTATE TO WHICH DOWER ATTACHES

STANDARD: DOWER ATTACHES ONLY TO REAL PROPERTY IN WHICH THE HUSBAND WAS SEIZED OF AN ESTATE OF INHERITANCE DURING THE MARRIAGE.

Problem A: John Doe, a married man, owned Blackacre subject to a life estate. Doe, as a married man, deeded Blackacre to Richard Roe. Doe's wife did not sign the deed. Is Roe's interest in Blackacre free of any dower of Doe's wife?

Answer: No.

Problem B: John Doe, a married man, was the lessee of Blackacre under a 99-year lease. During the term of the lease, Doe, as a married man, assigned his interest in Blackacre to Richard Roe. Doe's wife did not sign the lease. Is Roe's interest in Blackacre free of any dower of Doe's wife?

Answer: Yes. An estate of inheritance means a fee simple estate. An estate for a term for years is not an estate of inheritance.

Problem C: John Doe, a married man, was the lessee of Blackacre under a 99-year lease. During the term of the lease, Doe died testate. Doe's widow elected to take dower in his estate. The fiduciary of Doe's estate, acting under a testamentary power of sale, assigned Doe's interest to Richard Roe. Is Roe's interest in Blackacre free of the dower of Doe's widow?

Answer: Yes.

Problem D: John Doe, a married man, was the holder of a life estate in Blackacre. Doe, as a married man, conveyed his interest in Blackacre to Richard

Roe. Doe's wife did not join in the conveyance. Is Roe's interest in Blackacre free of any dower of Doe's wife?

Answer: Yes. Doe had no estate of inheritance to which dower could attach.

Authorities: Generally: MCL 554.2 and 558.1.

Problem B: *Redman v Shaw*, 300 Mich 314, 1 NW2d 555 (1942).

Problem D: *Case v Green*, 53 Mich 615, 19 NW 554 (1884); *Spears v James*, 319 Mich 341, 29 NW2d 829 (1947).

Comment A: See Standard 7.9 as to the effect of dower on probate sales.

Comment B: Other interests in real property to which dower will not attach, in addition to those set forth above, are tenancies by the entireties (*Agar v Streeter*, 183 Mich 600, 150 NW 160 (1914)); joint tenancies (see, Standard 4.4); estates in partnership (see, Standard 11.2); vendors' interests in land contracts (see, Standard 4.2); vendees' interests in land contracts (see, Standard 4.3); and oil and gas leasehold interests (*Redman v Shaw*, 300 Mich 314, 1 NW2d 555 (1942)). A wife is not entitled to dower in real property to which her husband held title in a fiduciary capacity (*Sagendorph v Lutz*, 286 Mich 103, 281 NW 653 (1938)).

Note: See Chapter V with regard to possible homestead rights.

STANDARD 4.2

DOWER – VENDOR’S INTEREST

STANDARD: A WIFE HAS NO DOWER IN REAL PROPERTY THAT HER HUSBAND OWNS IN FEE IF AT ALL TIMES DURING COVERTURE HIS INTEREST WAS SUBJECT TO AN EXECUTORY LAND CONTRACT.

Problem A: John Doe, a single man, owned Blackacre in fee. Doe sold Blackacre on land contract to Charles Palmer. Later, Doe married. Doe deeded Blackacre to Palmer pursuant to the land contract. Doe’s wife did not sign the deed. Did Palmer acquire title to Blackacre free of the dower of Doe’s wife?

Answer: Yes. Although Doe’s interest in Blackacre was a fee simple during coverture, the sale on land contract effected an equitable conversion of his interest to personalty, rendering the dower statute inapplicable. The same result would follow if Doe, instead of conveying to Palmer in fulfillment of the land contract, had conveyed to some other person subject to the land contract.

Problem B: John Doe, a single man, owned Blackacre. Doe sold Blackacre on land contract. Later, Doe married. The land contract was then terminated. Later, Doe deeded Blackacre to Simon Grant. Doe’s wife did not sign the deed. Did Grant acquire title to Blackacre free of the dower of Doe’s wife?

Answer: No. When the land contract was terminated, the equitable conversion ended and the dower of Doe’s wife attached to Blackacre.

Problem C: John Doe, a single man, owned Blackacre. Doe sold Blackacre on land contract to Charles Palmer. Later, Doe married. After Doe died, his widow elected to take dower in his estate. The personal representative of Doe’s estate, upon receiving the balance secured by the land contract, deeded Blackacre to Palmer. Doe’s widow did not sign the deed. Did Palmer acquire title to Blackacre free of the dower of Doe’s widow?

Answer: Yes. Because at all times during coverture Doe’s title was subject to a valid executory land contract, his interest is regarded as person-

alty, passes to his personal representative and does not descend to his heirs, and is not an interest in real property to which dower can attach.

Authorities: Problem A: *Detroit Trust Co v Baker*, 230 Mich 551, 203 NW 154 (1925), overruling *In re Estate of Pulling*, 97 Mich 375, 56 NW 765 (1893); *In re Estate of McBride*, 253 Mich 305, 235 NW 166 (1931); *Pungs v Hilgendorf*, 289 Mich 46, 286 NW 152 (1939).

Problem B: MCL 558.1.

Problem C: *Detroit Trust Co v Baker*, 230 Mich 551, 203 NW 154 (1925), overruling *In re Estate of Pulling*, 97 Mich 375, 56 NW 765 (1893); *In re Estate of McBride*, 253 Mich 305, 235 NW 166 (1931).

Comment: Although a wife has no dower in her husband's real property that has at all times during the marriage been subject to an executory land contract, an examiner should require some evidence of record of the land contract to establish of record that a conveyance by the husband alone, either in fulfillment of the land contract or subject to the land contract, is free of the wife's dower.

STANDARD 4.3

DOWER – VENDEE’S INTEREST

STANDARD: A WIFE HAS NO DOWER IN HER HUSBAND’S REAL PROPERTY IF AT ALL TIMES DURING COVERTURE HIS INTEREST WAS THAT OF A LAND CONTRACT VENDEE.

Problem A: Charles Palmer, a single man, purchased Blackacre on land contract. Later, Palmer married. Palmer then conveyed his vendee’s interest in Blackacre to Simon Grant. Palmer’s wife did not join in the conveyance. Was Grant’s interest in Blackacre free of any dower of Palmer’s wife?

Answer: Yes. A land contract vendee’s interest in real property is not an estate of inheritance to which dower can attach.

Problem B: Same facts as in Problem A, except that Palmer was married at the time he purchased Blackacre. Was Grant’s interest in Blackacre free of any dower of Palmer’s wife?

Answer: Yes.

Problem C: John Doe, a single man, purchased Blackacre on land contract. Doe assigned his interest in Blackacre to Charles Palmer, a married man. Palmer then assigned his vendee’s interest in Blackacre to Simon Grant. Palmer’s wife did not join in the assignment. Was Grant’s interest in Blackacre free of any dower of Palmer’s wife?

Answer: Yes

Authorities: MCL 558.1. *Stephens v Leonard*, 122 Mich 125, 80 NW 1002 (1899); *Dalton v Mertz*, 197 Mich 390, 163 NW 912 (1917).

Note: See Chapter V with regard to possible homestead rights.

STANDARD 4.4

DOWER – JOINT TENANCY

STANDARD: A WIFE HAS NO INCHOATE DOWER IN REAL PROPERTY THAT HER HUSBAND AND ONE OR MORE OTHER PERSONS OWN AS JOINT TENANTS.

Problem A: John Doe and Richard Roe owned Blackacre as joint tenants. Doe and Roe deeded Blackacre to Lawrence Smith, describing themselves as married men. Their wives did not sign the deed. Did Smith acquire title to Blackacre free of the dower of the wives of Doe and Roe?

Answer: Yes.

Problem B: John Doe and Richard Roe owned Blackacre as joint tenants. Doe died leaving a widow. Later, Roe deeded Blackacre to Sally Smith, describing himself as a married man. Roe's wife did not sign the deed. Did Smith acquire title to Blackacre free of the dower of the wives of Doe and Roe?

Answer: No. Smith's title is free of the consummate dower of Doe's wife, but is subject to the inchoate dower of Roe's wife.

Authorities: MCL 558.1. *Midgley v Walker*, 101 Mich 583, 60 NW 296 (1894); *Smith v Smith*, 290 Mich 143, 287 NW 411 (1939); *Schmidt v Jennings*, 359 Mich 376, 102 NW2d 589 (1960).

STANDARD 4.5

PRIORITY OF PURCHASE MONEY MORTGAGE OVER DOWER

STANDARD: THE LIEN OF A PURCHASE MONEY MORTGAGE EXECUTED BY A MARRIED MAN ALONE HAS PRIORITY OVER HIS WIFE'S DOWER IN THE MORTGAGED REAL PROPERTY.

Problem: In connection with his purchase of Blackacre, John Doe, a married man, gave a purchase money mortgage of Blackacre. Mary Doe, his wife, did not sign the mortgage. The mortgage was later foreclosed and the redemption period expired. Was Mary Doe's dower in Blackacre extinguished?

Answer: Yes.

Authorities: MCL 558.4. *Burrall v Bender*, 61 Mich 608, 28 NW 731 (1886).

Comment: A mortgage is a purchase money mortgage if the mortgage proceeds are applied on the purchase price. But see *Graves v American Acceptance Mortgage Corp.*, 469 Mich 608 (2004).

Note: See Standard 5.3 with regard to priority of purchase money mortgages over homestead rights.

STANDARD 4.6

DESIGNATION OF MARRIED MALE GRANTOR AS “UNMARRIED” OR “SINGLE”

STANDARD: NOTWITHSTANDING THE DESIGNATION IN A CONVEYANCE OF A MALE GRANTOR AS “A SINGLE MAN” OR “AN UNMARRIED MAN,” IF HE IS A MARRIED MAN THE DOWER OF HIS WIFE SURVIVES THE CONVEYANCE UNTIL BARRED BY DEATH, DIVORCE, LAPSE OF TIME OR OTHERWISE.

Problem: John Doe deeded Blackacre, designating himself as “a single man,” although at the time of the deed he was married to Mary Doe. Mary did not sign the deed. Does the grantee take title to Blackacre free of Mary’s dower?

Answer: No.

Authorities: MCL 558.1. *Greiner v Klein*, 28 Mich 12 (1873).

Comment A: In the absence of record notice to the contrary, title examiners generally accept a statement in a conveyance that a male grantor is “single” or “unmarried” as establishing a rebuttable presumption of his unmarried status. See MCL 565.221, which provides for the filing of an affidavit as to the marital status of a male grantor whose marital status was not disclosed on a conveyance that had been accepted for recording.

Comment B: Title examiners generally accept a designation of a male grantor as “a widower” as equivalent to a designation as “single” or “unmarried,” although in other contexts a man may still be a widower notwithstanding his remarriage. See, e.g., *In re Rhead’s Estate*, 288 Mich 220, 284 NW 706 (1939), involving the former Michigan inheritance tax statute. The Committee considers the designation of a male grantor as “a single man” or “an unmarried man” preferable to the use of the term “a widower.”

STANDARD 4.7

NON-RESIDENT WIFE HAS NO INCHOATE DOWER IN REAL PROPERTY OF HER HUSBAND

STANDARD: A WOMAN WHO IS A VOLUNTARY NON-RESIDENT OF MICHIGAN HAS NO INCHOATE DOWER IN THE REAL PROPERTY OF HER HUSBAND, WHETHER OR NOT HE IS A RESIDENT OF MICHIGAN.

Problem A: John Doe, the sole owner of Blackacre, deeded of Blackacre as “a married man”. Doe’s wife, Mary, did not sign the deed. Mary Doe was a voluntary resident of Indiana at the time of the conveyance. Did Mary Doe have inchoate dower in Blackacre at the time of the conveyance?

Answer: No.

Problem B: Same facts as in Problem A, except that John and Mary Doe were voluntary residents of Iowa at the time of the conveyance. Did Mary Doe have inchoate dower in Blackacre at the time of the conveyance?

Answer: No.

Problem C: John and Mary Doe were residents of Michigan. John Doe, the sole owner of Blackacre, deeded of Blackacre as “a married man”. Doe’s wife, Mary, did not sign the deed. Mary Doe had been involuntarily committed to a mental institution in Indiana where she remained at the time of, the conveyance. Did Mary Doe have inchoate dower in Blackacre at the time of the conveyance?

Answer: Yes.

Authorities: Generally: MCL 558.21. *Pratt v Tefft*, 14 Mich 191 (1866); *Putney v Vinton*, 145 Mich 219, 108 NW 655 (1906).

Problems A and B: MCL 565.453. *Ligare v Semple*, 32 Mich 438 (1875); *First National Bank of Buchanan v Twombly*, 265 Mich 555, 251 NW 777 (1933).

Problem C: MCL 565.453. *Gluc v Klein*, 226 Mich 175, 197 NW 691 (1924).

Comment A: The recording of an affidavit to establish recorded evidence of the residence of persons named in deeds, wills and mortgages is permitted. After July 14, 1965, the affidavit must either include a description of the real property or incorporate the description by reference to a recorded instrument containing the description. MCL 565.451a and 565.451c.

Comment B: See MCL 558.21 and 700.2202, regarding the right of a non-resident wife to elect dower in Michigan real property of which her husband died seized of an estate of inheritance.

STANDARD 4.8

BARRING DOWER BY CONVEYANCE TO HUSBAND'S SUCCESSOR IN INTEREST

STANDARD: A MARRIED WOMAN MAY BAR HER DOWER BY JOINING IN HER HUSBAND'S CONVEYANCE OF REAL PROPERTY OR BY A SUBSEQUENT CONVEYANCE TO THE THEN HOLDER OF THE INTEREST CONVEYED.

Problem A: John Doe, a married man, owned Blackacre. Doe deeded Blackacre to Richard Roe. Doe's wife, Mary, did not sign the deed. Later, Mary Doe deeded Blackacre to Roe, reciting in the deed her intention to bar her dower. Does Roe own Blackacre free of the dower of Mary Doe?

Answer: Yes.

Problem B: James Doe, a married man, owned Blackacre. Doe mortgaged Blackacre to Richard Roe, but Doe's wife, Mary, did not sign the mortgage. Later, Mary Doe executed a mortgage of Blackacre to Roe, reciting in the mortgage her intention to bar her dower. Does Roe have a mortgage on Blackacre free of the dower of Mary Doe?

Answer: Yes.

Authorities: Michigan Constitution 1963, Article X, Sec. 1. MCL 557.21 and 558.13.

Note: See Standard 4.9 with regard to the barring of dower by written contract, agreement or waiver.

STANDARD 4.9

BARRING DOWER BY WRITTEN CONTRACT, AGREEMENT OR WAIVER

STANDARD: A MARRIED WOMAN AFTER FAIR DISCLOSURE, AND IN THE ABSENCE OF FRAUD OR DURESS, MAY WAIVE HER DOWER IN WHOLE OR IN PART BY A WRITTEN CONTRACT, AGREEMENT OR WAIVER, WHICH MAY BE SIGNED BY HER EITHER BEFORE OR AFTER MARRIAGE.

Problem A: John Doe, a married man, and the sole owner of Blackacre, deeded Blackacre in 1993 to Richard Roe. Doe's wife, Mary, did not sign the deed. Later, Mary executed a written instrument waiving her dower in Blackacre. The instrument was recorded. Did Roe then hold Blackacre free of the dower of Mary Doe?

Answer: Yes. However, if Roe had knowledge that fair disclosure had not been made to Mary or that she was the victim of fraud or duress, Mary's dower would not be barred as to Roe, but would be barred as to a subsequent bona fide purchaser for value.

Problem B: John Doe, a married man and the sole owner of Blackacre, deeded Blackacre in 1995 to Richard Roe. Doe's wife, Mary, did not sign the deed. In 1997, Mary signed an agreement with her husband waiving her dower in all real property which John Doe owned, previously owned, and which he might subsequently acquire. Fair disclosure was made to Mary and neither fraud nor duress was practiced on her. Later, John Doe acquired title to Greenacre and deeded Greenacre as a married man. Mary did not sign the deed. Still later, John Doe acquired title to Whiteacre and owned it when he died in 2001. Is the dower of Mary in Blackacre, Greenacre and Whiteacre barred?

Answer: Yes.

Problem C: John Doe, a married man and the sole owner of Blackacre, deeded Blackacre in 1993 to Richard Roe. Doe's wife, Mary, did not sign the deed. In 1994, Doe acquired title to Greenacre and Whiteacre. In 1995, Mary Doe deeded Blackacre, Greenacre and Whiteacre to John Doe, reciting in the deed her intention to bar and waive her dower

in Blackacre, Greenacre and Whiteacre. The deed was recorded. In 1996, Doe, as a married man, deeded Greenacre to Richard Roe. Doe owned Whiteacre when he died in 2001. Is the dower of Mary in Blackacre, Greenacre and Whiteacre barred?

Answer: Yes. The waiver is valid, whether or not Doe then owned Blackacre, Greenacre, and Whiteacre and whether or not he later conveyed them without Mary signing the deeds.

Authorities: Michigan Constitution, Article X, Sec 1. MCL 702.74a (repealed by 1962 P.A. 83, being MCL 700.993, effective July 1, 1979); 700.291 (repealed by 1998 P.A. 336, § 8102); 700.2205, effective April 1, 2000.

Comment A: Before March 20, 1970, when MCL 702.74a took effect, a wife could bar dower by joining in her husband's conveyance or releasing it to his successor in interest. See, Standard 4.8. There was, however, no statutory provision expressly authorizing the release of dower, whether inchoate or consummate, to the husband after marriage. MCL 702.74a permitted a married woman to waive her dower by her written agreement or waiver delivered to her husband before or after marriage. The Revised Probate Code, effective July 1, 1979, repealed MCL 702.74a, by MCL 700.993, but enacted MCL 700.291, which contained a like provision. MCL 700.993 was in turn repealed by the Estates and Protected Individuals Code (EPIC) by MCL 700.8102. EPIC included a like provision at MCL 700.2205, effective April 1, 2000. None of the cited statutes contained a requirement that adequate consideration be given for a release of dower, as was the case in certain earlier decisions recognizing the right of the wife to release dower. *Rhoades v Davis*, 51 Mich 306, 16 NW 659 (1883); *Wright v Wright*, 79 Mich 527, 44 NW 944 (1890); *In re Estate of Pulling*, 93 Mich 274, 52 NW 1116 (1892); *Bechtel v Barton*, 147 Mich 318, 110 NW 935 (1907); *Rockwell v Estate of Leon Rockwell*, 24 Mich App 593, 180 NW 2d 498 (1970). But see *In re Greenfield*, 273 BR 128 (ED Mich 2002), in which the court held that the value of dower did not constitute reasonably equivalent value for fraudulent conveyance purposes in connection with the conveyance by one spouse to both spouses as tenants by the entireties.

Comment B: Dower may also be barred by a jointure settled on the wife before marriage. MCL 558.14.

STANDARD 4.10

BARRING DOWER BY EXERCISE OF POWER OF ATTORNEY

STANDARD: A POWER OF ATTORNEY GIVEN BY A MARRIED WOMAN TO HER HUSBAND OR TO SOME OTHER PERSON NEED NOT SPECIFICALLY MENTION DOWER TO AUTHORIZE THE ATTORNEY-IN-FACT TO RELEASE OR SUBORDINATE HER DOWER.

Problem A: John Doe, the owner of Blackacre, was the attorney-in-fact of Mary Doe, his wife, under a power of attorney authorizing him to execute and deliver on her behalf deeds and mortgages of any and all interests in real property she then owned or thereafter acquired. John and Mary Doe, by John Doe, as Mary Doe's attorney-in-fact, deeded Blackacre. Did the grantee acquire Blackacre free of Mary Doe's dower?

Answer: Yes.

Problem B: John Doe, the owner of Blackacre, was the attorney-in-fact of Mary Doe, his wife, under a power of attorney authorizing him to execute and deliver on her behalf deeds and mortgages of any and all interest in real property she then owned or thereafter acquired. John Doe, designating himself as a married man, deeded Blackacre to Richard Roe but did not execute the deed on behalf of Mary. Later, as attorney-in-fact for Mary, John Doe deeded Blackacre to Roe, who still owned Blackacre. The later deed recited that it was given to bar Mary's dower in Blackacre. Was Mary's dower in Blackacre barred?

Answer: Yes.

Authorities: MCL 558.13. *Continental National Bank v Gustin*, 297 Mich 134, 297 NW 214 (1941).

STANDARD 4.11

BARRING DOWER BY LAPSE OF TIME

STANDARD: TWENTY-FIVE YEARS AFTER REAL PROPERTY HAS BEEN CONVEYED BY A MARRIED MAN, HIS WIFE'S DOWER IS FOREVER BARRED UNLESS A CLAIM OF DOWER WHICH DESCRIBES THE REAL PROPERTY IN WHICH DOWER IS CLAIMED HAS BEEN RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.

Problem: More than 25 years ago John Doe, a married man and the sole owner of Blackacre, deeded Blackacre. His wife, Mary, did not sign the deed. No claim of dower has been recorded. Is the title to Blackacre free of Mary Doe's dower?

Answer: Yes.

Authorities: MCL 558.91 and 558.92, as to real property conveyed or otherwise disposed of on or after August 10, 1892. MCL 558.81 and 558.82, as to real property conveyed or otherwise disposed of before August 10, 1892.

Comment: The 25-year period runs from the effective date of the conveyance, not from the date of its recording.

