

073-481—December 21, 1973

DOWER

WAIVER OF DOWER BY ANTENUPTIAL AGREEMENT

*To: Elaine Gordon, Representative, 98th District, Miami**Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

May the dower right provided for by Ch. 73-107, Laws of Florida, be waived by an antenuptial agreement?

SUMMARY:

An antenuptial agreement settling the property rights of the spouses in their respective estates, or waiving dower rights, will be upheld by the courts, if entered into fairly after full disclosure or with full knowledge of the facts.

Chapter 73-107, *supra*, amended the statute, §731.34, F. S., relating to dower in real and personal property. The 1973 act repealed the former provision granting to a wife an inchoate right of dower in the realty acquired by her husband during their marriage in his name alone (thus necessitating her signature on his deed or mortgage conveying or obligating such real property in order to relinquish her inchoate right of dower), and it granted to the husband a reciprocal right in the property owned by the wife at her death equal to the dower right that has long been held by the wife in her husband's property—*i.e.*, one-third absolutely of all the real and personal property which the husband owned at his death. (The husband's reciprocal right was referred to in the title of the act as a right of "curtesy," which was the estate which a husband had in his deceased wife's property at common law, and which was, apparently, abolished by our early constitutional and statutory provisions respecting married women's property. However, the word "dower" is used in the body of the 1973 act to refer to the reciprocal and equal rights which each spouse has in the estate of the other at his or her death; and, for convenience, this opinion will do the same.)

As to the wife's dower right, it is settled in this state that a wife may, by agreement, contract away any right of dower which she may have in her husband's estate at his death. In *Weeks v. Weeks*, 197 So. 393 (Fla. 1940), the court affirmed the trial court's decree awarding separate maintenance and suit money to the plaintiff wife, which award was based in part upon the fact that the wife had, in an antenuptial agreement, waived all right to a dower interest in the husband's property at his death. The court quoted with approval *Murdock v. Murdock*, 76 N.E. 57, 59 (Ill. 1905), as follows:

"The rule in this state is well settled that a man and woman who contemplate marriage may by an antenuptial contract, if there is a full knowledge on the part of the intended wife of all that materially affects the agreement, settle their property rights in each other's estates."

While *Weeks v. Weeks*, *supra*, was concerned primarily with the validity of a separation agreement and only incidentally with the antenuptial agreement, the court in *Del Vecchio v. Del Vecchio*, 143 So.2d 17 (Fla. 1962), applied the rule of the *Weeks* and *Murdock* cases to an antenuptial agreement under which the wife relinquished her right of dower in the husband's estate. In affirming the validity of such an agreement in the proper circumstances, the court said:

A valid antenuptial agreement contemplates a fair and reasonable provision therein for the wife, or, absent such provision, a full and frank disclosure to the wife, before the signing of the agreement, of the

husband's worth, or, absent such disclosure, a general and approximate knowledge by her of the prospective husband's property. The term "approximate" is, for this purpose, held synonymous with "near", "close to" or "approaching".

In *Posner v. Posner*, 233 So.2d 381 (Fla. 1970), the court again affirmed the validity of antenuptial property settlement agreements as follows:

Antenuptial or so-called "marriage settlement" contracts by which the parties agree upon and fix the property rights which either spouse will have in the estate of the other upon his or her death have, however, long been recognized as being conducive to marital tranquility and thus in harmony with public policy. See *Del Vecchio v. Del Vecchio*, Fla. 1962, 143 So.2d 17, in which we prescribed the rules by which the validity of such antenuptial or postnuptial property settlement agreements should be tested.

Accord: *Benke v. Benke*, 254 So.2d 828 (3 D.C.A. Fla., 1971), holding that the antenuptial agreement there in question validly settled property rights in the event of the death of either spouse but was not intended to settle alimony rights in the event of a dissolution of the marriage. See also *Belcher v. Belcher*, 271 So.2d 7 (Fla. 1972), affirming *Del Vecchio* as to antenuptial contracts relinquishing dower but declining to enforce a provision of an antenuptial agreement under which the wife waived her right to support and maintenance during coverture. While these decisions were, of course, concerned with a wife's agreement relinquishing her right of dower, they would seem to be equally applicable to an agreement whereby a husband relinquishes his statutory right of dower in his wife's estate.

073-482—December 26, 1973

CIRCUIT COURTS

PURCHASE OF ARTICLES FOR COURT BY SHERIFF

To: *Dominick J. Salfi, Chief Judge, Eighteenth Judicial Circuit, Sanford*

Prepared by: *Sharyn Smith, Assistant Attorney General*

QUESTION:

What constitutes "articles for court" which sheriffs are authorized to purchase for court use pursuant to §26.50, F. S.?

SUMMARY:

Once a circuit judge determines an article to be a tangible object of value which is necessary for the use of the court and will be used exclusively while the court is in session, the sheriff, pursuant to §26.50, F. S., is authorized to purchase such article.

Section 26.50, F. S., provides, in pertinent part, that

The judge of the circuit court at each term thereof, shall make a written requisition upon the sheriff attending upon said court *for such stationery or other articles as he may deem necessary for the use of the court*, and the sheriff shall procure the same (Emphasis supplied.)

Section 34.171, F. S., which also relates to the payment of court expenses, provides that

Unless the state shall pay such expenses, the county shall pay all