

The Top 10 Changes to the PLANNING ACT

you need to know about and why

The anachronistic provisions of the Ontario *Planning Act* (the “Act”) and the red tape they created have frustrated lawyers and property owners for many years. The government has listened, and after consultations with many stakeholders over the last two years, long overdue changes are finally here.

We believe these changes will save the public time and money, and from LAWPRO’s point of view, they will reduce the pitfalls lawyers face in many real estate transactions.

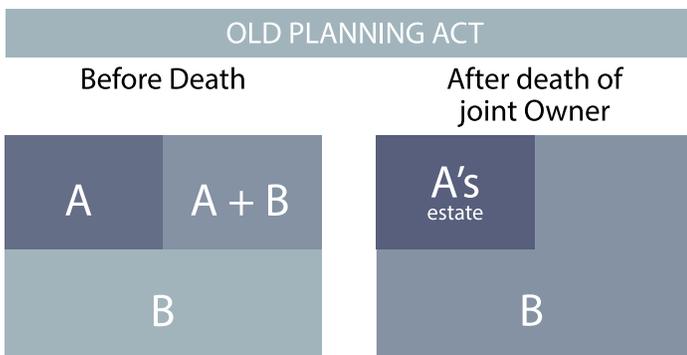
All the changes can be found in two pieces of legislation, Bill 213, *Better for People, Smarter for Business Act, 2020* – Schedule 20 and Bill 276, *Supporting Recovery and Competitiveness Act, 2021* – Schedule 24.

While there are too many changes to summarize in a single article, we’ve pulled out the key changes that lawyers will more commonly see in their real estate transactions.

1. Abutting properties no longer merge on death of a joint tenant

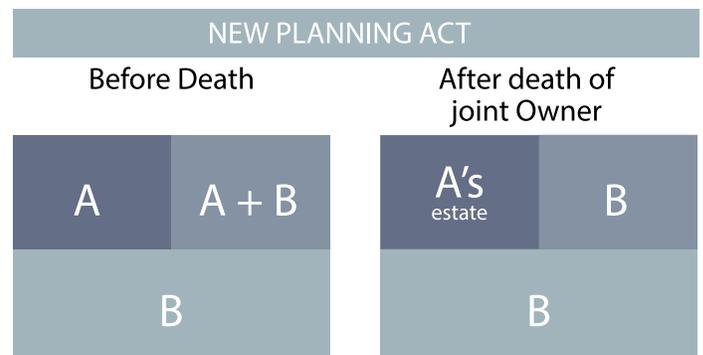
The separate status of a property remains the same whether abutting properties are owned jointly or not because the death of one party does not merge the properties (s.50 (3)(a.1) & s.50 (5)(a.2)).

Historically, related owners would hold abutting lands in different names or tenancies to keep parcels separate. This change eliminates the need for those tactics as spouses can now hold abutting properties as joint tenants without the risk of parcels merging on the death of one of them.



2. Chargees and purchasers may now apply for consent

This will help lenders enforce their security and improve transparency by avoiding the fiction of the owner applying for a consent on behalf of a purchaser or the purchaser acting as the owner’s agent. Until the recent changes, only an owner or their agent could apply (s.53 (1)).



3. In-progress consent applications can be amended

It is now possible to amend in-progress applications for consent (subject to terms) which will save time and money. Previously, some authorities required an applicant to restart the entire process if they discovered the need to amend their application after it was submitted (s.53 (4.2.1)).

4. Time to satisfy conditions extended to two years

The time to satisfy conditions before the consent expires has been extended to two years, reducing the need for duplicate applications for the same property. In addition, the time to satisfy conditions will be suspended during any appeal, and the two years run from the date of the order of the tribunal. (s.53 (41))

5. Cancel a consent certificate

An owner or owner's agent can now apply for a consent to be cancelled saving time and money. Previously, there existed no ability for applicants to cancel a consent other than changing the property description e.g., conveying a small portion of land (e.g., 1 foot) to create a new parcel, one that did not have the benefit of a consent (s.53 (45)).

6. Acchione case workaround no longer required for retained lands

Retained lands can now get their own consent on request (s.50 (3) (b)(iii) & s.50 (5)(a)(iii))

The practice established under the Acchione case is no longer required as a workaround. The applicant can request a consent certificate for the retained lands together with the certificate for the consented lands. (s.53 (4.2))

7. Codifying case law broadens "Part of building or structure" exemption

Part of a property that is not in the building can now be dealt with without contravening the Act. For example, a lease for a restaurant in part of the building can now also convey an exclusive use to allow the restaurant to set up an outdoor patio (s.50 (9)).

8. Return of expropriated energy line lands to abutting owners

When land is expropriated, it can now be reconveyed to the owner of the abutting lands when the expropriating authority no longer needs the property and wishes to return it (s.50 (3)(g)).

9. Obtaining validation certificate

The basis on which to determine if a validation certificate can be obtained has been clarified to be the same test as to obtain a consent (s.57 (6)).

10. Phased Condominiums simplified

Land within a Condominium Plan will now have an exception equivalent to a Registered Plan of Subdivision. This will greatly assist with phased condominiums and with the conveyance of easements and rights of ways or similar interest in abutting lands (s.50 (3)(b)(ii)).

There are many other changes of a more technical nature and we refer you to Bill 213, *Better for People, Smarter for Business Act, 2020* – Schedule 20 (proclaimed December 8, 2020) and Bill 276, *Supporting Recovery and Competitiveness Act, 2021* - Schedule 24 (to be proclaimed tentatively on January 1, 2022). Please take the time to review and understand all of the pending changes to the Planning Act.

These changes are going to be very helpful for members of the public and lawyers as they make real estate transactions simpler and less prone to problems and red tape. LAWPRO commends the government for listening to the recommendations that we and other stakeholders provided. ■

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Where to find the Planning Act changes mentioned in this article

1. No merger resulting from the death of a joint tenant – new exception (s.50 (3)(a.1) & 50 (5)(a.2))
2. Purchasers, or their appointed agents, will now be able to apply for a consent to sever land (s.53 (1))
3. Can now request an amendment to a consent application at any time before the consenting authority grants or denies the consent (s.53 (4.2.1))
4. Two years to meet conditions imposed when obtaining a consent to sever (s.53 (41))
5. Can now cancel a certificate of consent (s.53 (45))
6. Abutting lands created by a consent have their own exception now (Acchione scenario) (s.50 (3)(b)(iii) & 50 (5)(a)(iii)) and retained lands will now be eligible to have their own consent certificate (s.53 (4.2))
7. Part of a building or structure exemption equally applies to part of the property if use or right is ancillary to the use of or right in the part of the building or structure (s.50 (9))
8. Expropriated energy line can be reconveyed to the existing owner and not only the expropriated owner (s.50 (3)(g))
9. A validation certificate can be obtained under the same test as a consent (s.57 (6))
10. Land within a Condominium Plan is now exception equivalent to a Registered Plan of Subdivision (s.50 (3)(b)(ii))