



A LOT FROM THE DOT: Timing and Sequence Matters: A Case Study

Jeffrey W. Lem
Director of Titles for the Province of Ontario

Timing and sequence matter when submitting documents for registration. Here is an example of why.

Ordinarily, when a joint tenant dies, and the survivor wants to sell the property, the 'correct' conveyancing sequence would be to register a Survivorship Application first (that would put the property solely in the survivor's name), then the survivor, as the sole owner of the whole of the property, can register a Transfer to a third-party buyer. What could be simpler?

When I was in private practice, I would make it a point to register the Survivorship Application well in advance of the proposed closing date. More and more, we are seeing applicants registering the Survivorship Application and the Transfer (typically followed by a Charge), all on the same day. There is nothing wrong with registering all of these documents on the same day, so long as applicants are careful about timing and sequence!

Occasionally, an applicant will register: the Transfer first; the Charge, if any, next; and the Survivorship Application last (i.e. with the Survivorship Application following the Transfer instead of preceding it). Like almost everything in life, timing matters, and registering out of sequence has consequences. In this case, the moment the Transfer was registered, it severed the joint tenancy and created a tenancy-in-common in its place, and the Transfer then acts as a conveyance of the Transferor's undivided share of that tenancy-in-common. The Transfer and the Charge get certified first and the 'trailing' Survivorship Application comes-up for certification review afterwards (sometimes days later). Obviously, the Survivorship Application will be withdrawn because it no longer makes any sense after the joint tenancy was severed by the Transfer. The purchaser thinks it has a Transfer of the whole of the property (and the mortgagee thinks it has a Charge over the whole of the Property), but instead they end-up on the PIN with an undivided share of the property, as tenants-in-common with the deceased!

What's a client to do? Well, the vendor would have to go back to the drawing board to somehow transfer the deceased's interest to the purchaser (which might not be too bad, especially if the property is a first dealings, but which may also require probate or some other court order).

Although, we have used a survivorship example which is (surprisingly) common, timing and sequence also matter in many other scenarios, including conveyances involving the *Planning Act*. Pay attention before you register!