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ON-DEMAND



Recent changes to the Ontario Planning Act

Presented July 13, 2023, 10:00 AM (ET)

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Recent changes to the Ontario Planning Act Webinar

- Opening Remarks – Sharad Singh
- Planning Act: Update Refresher – Matthew Wilson
- Coverage for Planning Act Issues – John Tracy
- Live Q&A

Questions?

Please use the
interactive Zoom

Q&A

About Me

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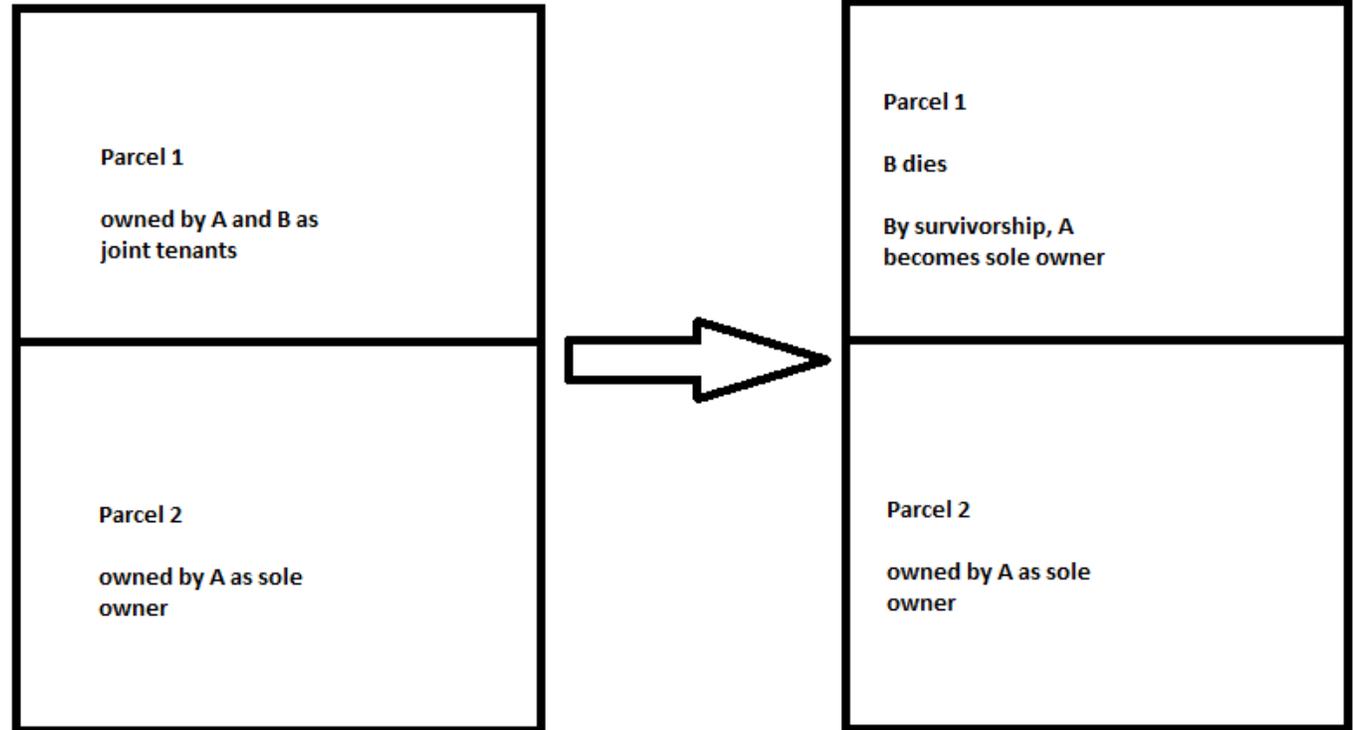
Overview

- Planning Act Exemption Changes
 - Death of a Joint Tenant
 - New Rules re Retained Lands
- Planning Act Process Changes
 - Certificates of Cancellation
 - Amending Consent Applications
 - Purchasers Applying for Consent
 - And the associated Risks
 - Two-Year Deadline
 - But not in all cases
- Things to Watch Out For (Try Not To Be Sued!)
 - Abutting Lands even if Full Lot
 - Is it a Plan of Subdivision?
 - Have you read the Part Lot Control Exemption By-Law?
 - Don't Miss Parking/Storage Units

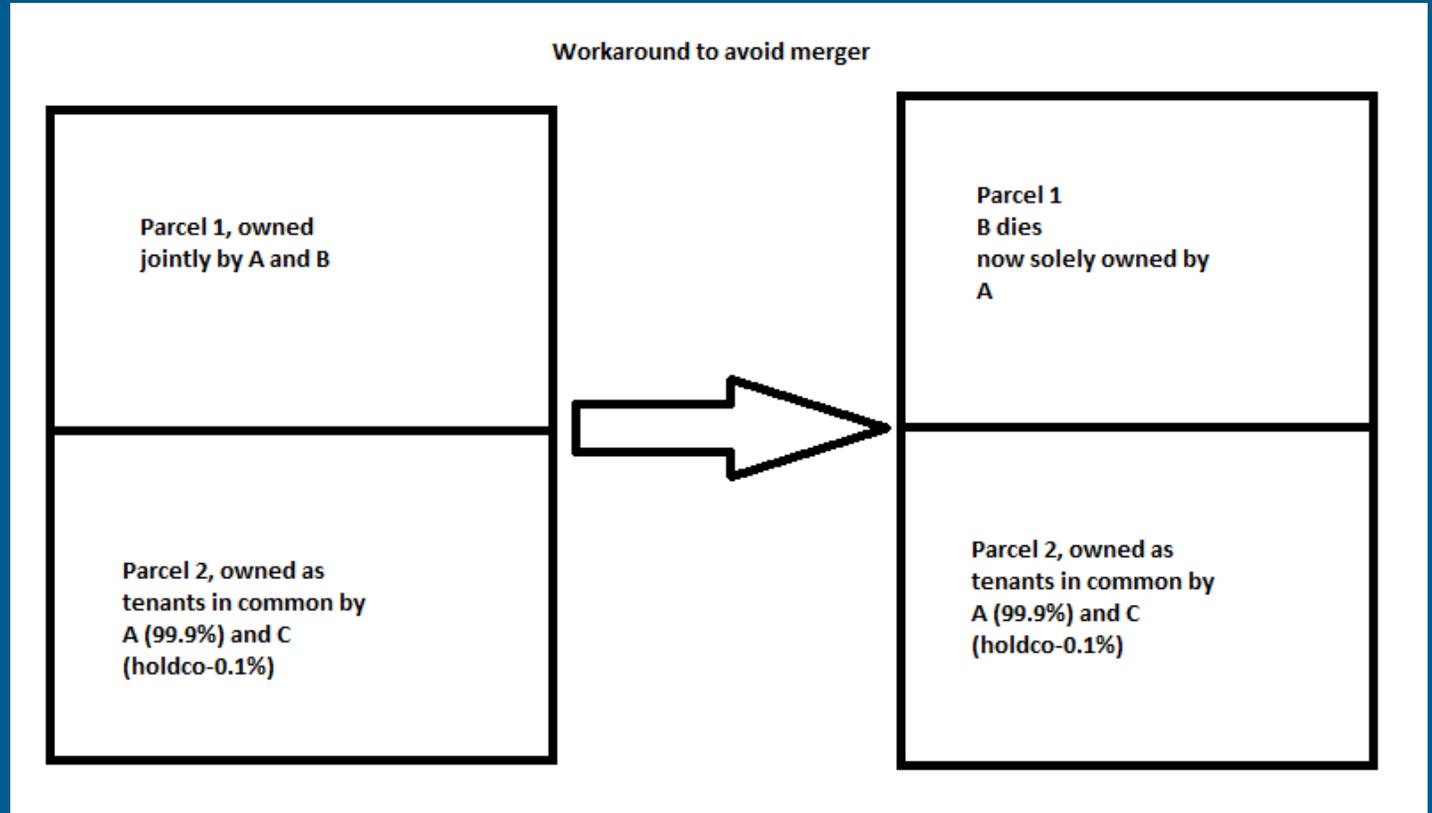
Planning Act Exemption Changes

Before the update: Death of a Joint Tenant

Inadvertent merger on death of joint tenant



Previous Workaround



After the Update: Death of a Joint Tenant

- (3) No person shall convey land by way of a deed or transfer, or grant, assign or exercise a power of appointment with respect to land, or mortgage or charge land, or enter into an agreement of sale and purchase of land or enter into any agreement that has the effect of granting the use of or right in land directly or by entitlement to renewal for a period of twenty-one years or more unless,

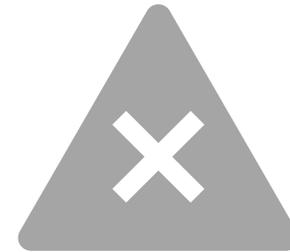
- (a.1) the land is the whole of a parcel of land that was previously owned by, or abutted land previously owned by, joint tenants and the ownership would have, but for this clause, merged in the person as a result of the death of one of the joint tenants;



Is the exception retroactive?



Courts still have not weighed in



BUT Consider:

It is a remedial provision

The intent of the amendment is to fix an identified problem with the Act re inadvertent merger

No reason this should not be retroactive in nature

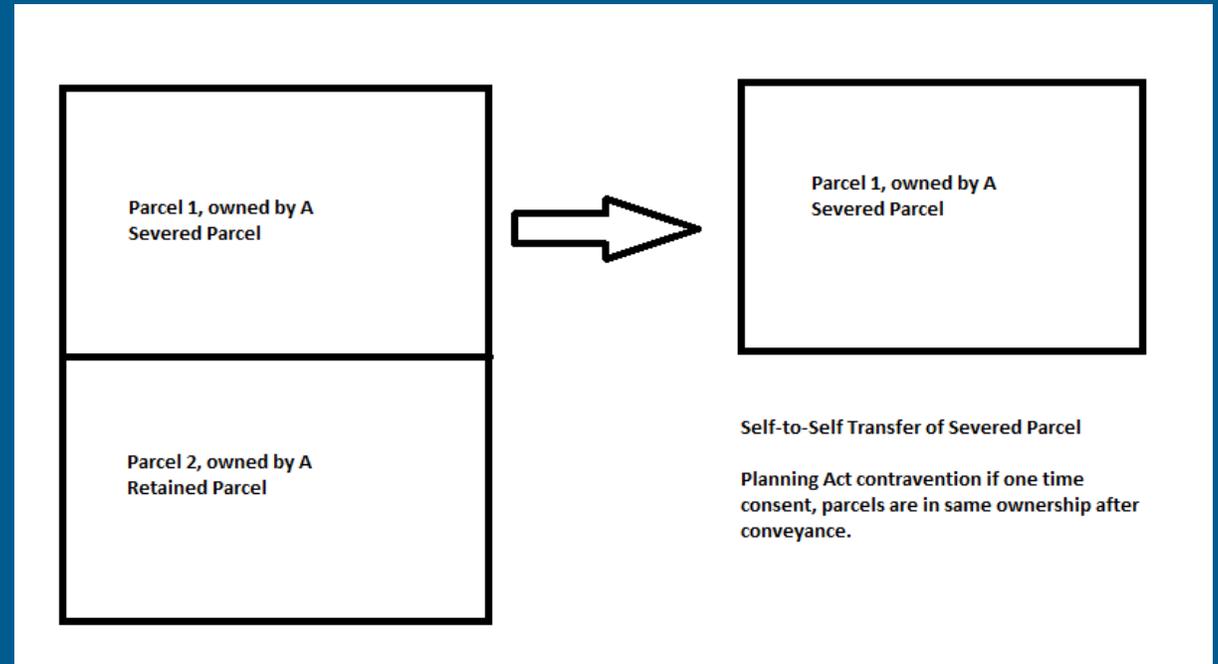
Retained Lands

50(1.0.0.1) For the purposes of this section and section 53, a reference to “retained land” refers to the whole of a parcel of land that abuts land that is the subject of a certificate given under subsection 53 (42) allowing the conveyance by way of a deed or transfer with a consent that was given on or after March 31, 1979 and that did not stipulate that subsection (3) or (5) applies to any subsequent conveyance or other transaction.



Before the Update: Retained Lands

- Retained Lands had to be conveyed after the severed parcel.
- Common misconception: self-transfer of retained lands (Acchione)
- Remedy: re-register ineffective conveyance after registering severed parcel
- Problem: Remedy not always available (consent lapse, required new application)

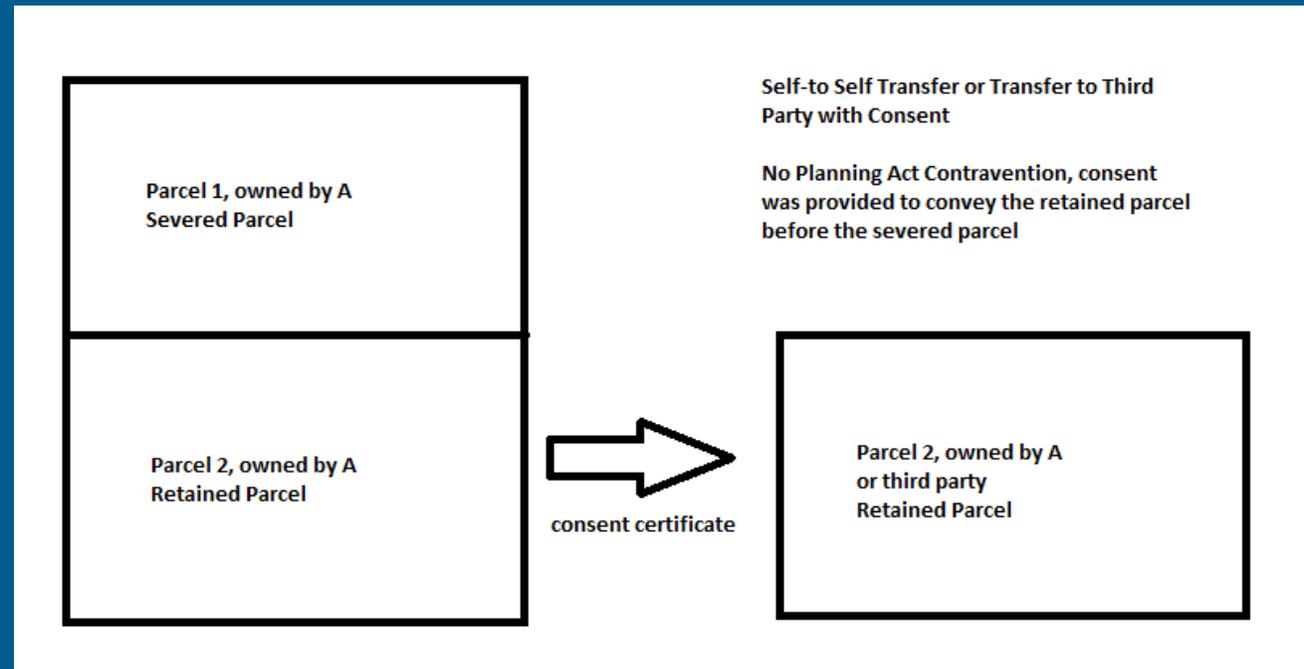


After the Update: Conveyance of Retained Lands

- 50(6) Despite subsections (3) and (5), retained land may be conveyed or otherwise dealt with before the land that is the subject of the consent is dealt with, provided the retained land is conveyed or otherwise dealt with before the consent lapses under subsection 53 (43)
- 50(42.1) If a consent has been given under this section to a conveyance of a part of a parcel of land and the consent did not stipulate that subsection 50 (3) or (5) applies to any subsequent conveyance or other transaction, the clerk of the municipality or the Minister, as the case may be, shall give the same form of certificate described in subsection (42) to the applicant for the retained land resulting from the consent, if the applicant, in making the application for consent,
 - (a) requests that the certificate be given; and
 - (b) provides a registrable legal description of the retained land.

Retained Lands: Practice Point

- Entitlement to second certificate
- Retained Parcel can now be treated in the same way as the Severed Parcel for transfers
- Caveat: Certificate must be requested for retained parcel, extra fee may apply (it should not require a separate application fee)
- Must provide a registrable description for both parcels
- Application will now ask: whether requesting certificate for retained land and for a **lawyer's statement that there is no land abutting the subject land (Parcel 2) that could result in a contravention.**



Planning Act Process Changes

Cancellation Certificate

53(45) An owner of land that was previously conveyed with a consent, or the owner's agent duly authorized in writing, may apply to the council or the Minister, whichever is authorized to give a consent in respect of the land at the time of the application, for the issuance of a certificate of cancellation of such consent. The certificate must provide that subsection 50 (12) does not apply in respect of the land that was the subject of the consent and that subsection 50 (3) or (5), as the case may be, applies to a subsequent conveyance or other transaction involving the land.

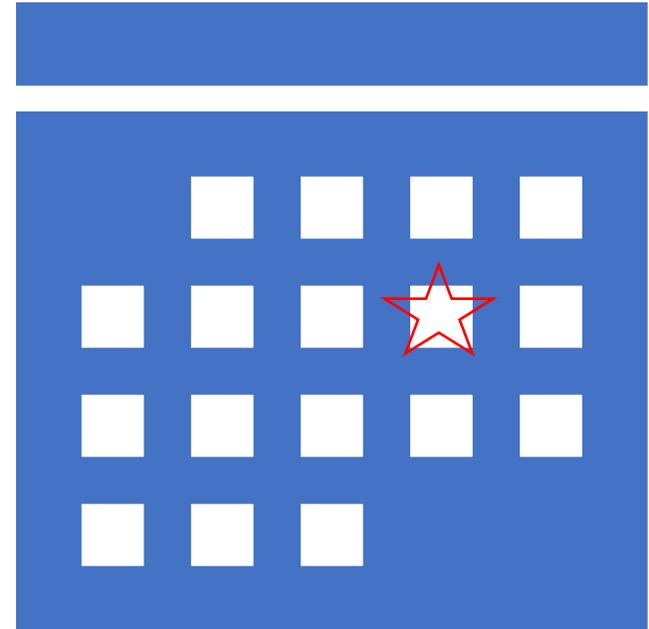
Before the Update: Re Furlong Work-around

In order to obviate consent, the applicant was required to convey a small portion of the severed parcel to the Municipality to change the nature of the parcel so it was no longer “identical” to the parcel that was previously the subject of the consent.



After the Update: Cancellation effective from fixed date

- No changing layout of severed property.
- Will be “forever and always” from chosen effective date.
- Will be considered to no longer have been conveyed with the unstipulated consent as of the effective date
- A Cancellation certificate is not retroactive, it only applies to subsequent conveyances
- Ambiguity: is there discretion in providing a cancellation certificate?



Why Cancel?



Add an abutting property,
merger is a condition of a
consent



Develop the property



Is a Cancellation Certificate Discretionary?

- (47) An application referred to in subsection (45) shall be accompanied by any prescribed information and material and such other information or material as the council or the Minister, as the case may be, requires.
 - No prescribed information required
- (48) If an application for a certificate of cancellation is made under subsection (45), the council or the Minister, as the case may be, **may** provide the certificate to the applicant.
- BUT:
 - Cancellation only causes merger, not creation or validation of a parcel of land
 - No planning input involved, benefit belongs to owner only (should be his or her right to give up this benefit)
 - No good reason why a municipality would want to avoid or prevent a merger
 - No planning policy issue, merger is the default

Practice Point: Procedure and Requirements for a Cancellation Certificate

- No mandated form or required components
- Likely, will require a letter with:
 - request
 - Information about title
 - Why cancellation certificate is being sought
 - Evidence of certificate to be cancelled that includes legal description
- Administrative fee likely
- No requirement for circulation, notices, or posting
- Authority granted to councils (and committees of adjustment and land division committees) to issue cancellation certificates

Form of Cancellation Certificate

- **CERTIFICATE OF CANCELLATION**
- **Section 53 (45) of the *Planning Act***
- Subsection 50(12) of the Planning Act does not apply in respect of the land described as follows: (insert legal description of the land that was the subject of the consent).
- Subsection 50(3) or (5) applies to a subsequent conveyance or other transaction involving the land.
- This Certificate of cancellation is issued in accordance with Section 53(45) of the Planning Act, R.S.O. 1990, c.P.13, as amended, and the decision of the Committee of Adjustments of the City of _____ dated _____, 20__.
- Dated the ___ day of 20__

Amending a Consent Application

(4.2.1) An application may be amended by the applicant at any time before the council or the Minister gives or refuses to give a consent.

Before the Update: No Amendments

- Some municipalities-consent application cannot be amended
- Simple mistakes-require no application
- Increased expense, delay and duplication of effort

After the Update: Amend application at any time

Amendment clarifies that application can be amended anytime up to final consent

Amendment: Requirements on a case-by-case basis

- (4.2.2) If an application is amended by the applicant, the council or the Minister may impose such terms as the council or Minister considers appropriate, including terms, (a) requiring the provision of additional information and material in relation to the amendment; and (b) specifying that the time period referred to in subsection (14) is deemed not to have begun until the later of, (i) the date the application was amended; and (ii) if additional information and material was required under clause (a), the date on which all the information and material was provided.
- There may be a fee imposed

Purchaser-Consent Applications

53(1) An owner, chargee or purchaser of land, or such owner's, chargee's or purchaser's agent duly authorized in writing, may apply for a consent as defined in subsection 50 (1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. (1.1) For the purposes of subsection (1), a purchaser of land is a person who has entered into an agreement of purchase and sale to acquire the land and who is authorized in the agreement of purchase and sale to make the application.

Before the Update: Drafting an APS

Only owner and mortgagee or their agent could apply for consent.

Purchaser had to act as owner's agent rather than bringing application as of right

Severance was condition that seller had to fulfill in APS

Obtaining severance was part of conveying good title

After the Update: Severance Application is Purchaser's Obligation

Purchaser can now apply for severance as of right



Helpful where purchaser is bearing expense of severance



Now can be a condition that the Purchaser must fulfill (shift of obligations)



Add provision allowing purchaser applicant to provide to authority copy of the portion of APS that authorizes making the application

Potential Risk

Purchaser may not take all steps, deal may fall through

Before the Update: Timeline for Conditions

- One year then deemed refused
- Tight timeline, often difficult to meet with more strenuous conditions
- No obligation on authority to provide extension
- Potential delays often included issues with surveying and cooperation with others on conditions

After the Update: Two Year Timeline

- (41) If conditions have been imposed and the applicant has not, within a period of two years after notice was given under subsection (17) or (24), whichever is later, fulfilled the conditions, the application for consent shall be deemed to be refused but, if there is an appeal under subsection (14), (19) or (27), the application for consent shall not be deemed to be refused for failure to fulfil the conditions until the expiry of two years from the date of the order of the Tribunal issued in respect of the appeal or from the date of a notice issued by the Tribunal under subsection (29) or (33)

Ambiguity Resolved: Retroactivity

Timeline is retroactive provided the application has not already been deemed refused

Application Timing	Applicable Timeline
Before December 31, 2019	One year
After Jan 1, 2020	Two years

Things to Watch Out for (Try Not to Be Sued!)

Abutting Lands on a Full Lot

Unconsolidated merged lots, without an abutting land search you run the risk of missing the transfer of a part of a lot that should have been included

If there is a part lot in addition to the full lot, then a planning act search is required

Is it a Plan of Subdivision?

Is there a deeming bylaw, deeming the lot NOT to be on a Plan of Subdivision?—Planning Act Search Required

Not on a registered plan? Look out for water supply and access road issues

Not to be confused with a “compiled plan” or “reference plan” which are used to describe the parcel

Have you read the Part Lot Control Exemption By-Law?

Remove part-lot control from all or any part of a full block or lot on a Plan of Subdivision

Creates the possibility of merger

Don't Miss Parking/Storage Units

Conduct a separate name search of seller

Pull last charge to confirm PINs

Thank you

Coverage for Planning Act Issues

John Tracy

Coverage for Planning Act Issues

FCT's Title Insurance Policies



Owner Coverage

Residential

Covered Risk 21 – *There is a violation of the provisions of a provincial or territorial act which restrict the subdivision of land.*

Commercial

Covered Risk 2(a)((vii) - *Any defect in or lien or encumbrance on the Title including but not limited to insurance against loss from: a violation of the provisions of a provincial or territorial law which restricts the subdivision of land.*

Coverage for Planning Act Issues

FCT's Title Insurance Policies



Lender Coverage

Residential

Covered Risk 5 - *The invalidity or unenforceability of the Insured Mortgage upon the title.*

Covered Risk 13 - *The failure of the Land to be a lawfully created parcel according to the subdivision and part lot control provisions of the Planning Act;*

Commercial

Covered Risk 2(a)(vii) - *Any defect in or lien or encumbrance on the Title including but not limited to insurance against loss from: a violation of the provisions of a provincial or territorial law which restricts the subdivision of land.*

Covered Risk 9(h) - *The invalidity or unenforceability of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following affecting the validity or enforceability of the Insured Mortgage upon the Title violation of the provisions of a provincial or territorial law which restricts the subdivision of land*

The tricky issue of
merger.



The first priority mortgage that maybe wasn't.



Time waits for nobody.



Oops! I missed that one.



Thank you
What questions do you have?