# Planning Act (Ontario): Important Amendments made to Section 50

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The wait is over! On January 1, 2022, the amendments to the *Planning Act* set out in the below article came into force creating a simpler and more user friendly piece of legislation. For a summary of these amendments, please refer to our article below. BLG's Commercial Real Estate lawyers are available to discuss these amendments and the different impacts they could have on your business. Get in touch with any of our lawyers listed below.

Real estate lawyers, municipalities, and the general public should be happy to hear that Bill 276,[1] which included a set of long awaited amendments to the *Planning Act* (Ontario),[2] received Royal Assent on June 3, 2021.

For many years, Section 50 of the *Planning Act* (Ontario) created conveyancing and title complexities, leading to unintended consequences and cumbersome workarounds. Through clearer language, new provisions, and a streamlined administrative process, Bill 276 has removed a number of these issues.

## What is the *Planning Act* (Ontario)?

The *Planning Act* (Ontario) regulates and controls the division of land for orderly land development. The core operative provisions prohibit dealing with land unless the transaction falls within one of the acceptable conveyances. If not, the transaction creates no interest in the land, and any conveyance is void.

## What are the key amendments to the *Planning Act* (Ontario)?

The amendments to the *Planning Act* (Ontario) make Section 50 simpler and more user friendly.

Here is what you need to know:

- **The exceptions to the abutting land rules have been expanded**: Prior to the amendments, the *Planning Act* (Ontario) prohibited a party from dealing with a property where it also held title in abutting land in the same name unless:

    a. the property is a whole of a lot on a plan of subdivision;

    b. the property abuts a whole of a lot on a plan of subdivision; and

    c. the property was previously conveyed with consent.

Bill 276 expands the list of exceptions to include circumstances when:

    d. the property abuts a condominium. This amendment could facilitate financing of phased condominiums or condominiums that do not sell individual units;

    e. the property abuts a property previously owned by joint tenants, where the survivor obtained ownership of the abutting property after a joint tenant dies.[3] Prior to the amendments, the two properties would technically merge under the survivor's name, preventing the survivor from dealing with each property separately without obtaining consent. Now, no merger will occur if it results from a joint tenant's death, allowing the survivor to convey each property freely; and

    f. the property abuts a property that was previously conveyed with consent to divide the property. Prior to the amendments, a party could only convey the property that received consent. Further consent was required for the property that abutted the consented property. Now, property that abuts the consented property (which is now to be referred to as "retained land" in the *Planning Act* (Ontario)) can also be dealt with, without further consent being obtained. Relatedly, prior to the amendments, consenting authorities would generally only provide a property owner with a consent certificate for the severed land in a consent application, without also providing a consent certificate for the retained land. Now, property owners can obtain consent certificates for both parcels of land referred to in a consent application (*i.e.* both for the severed land and the retained land). As such, if a property owner now wants to deal with the retained land before the severed land, they will not be contravening the *Planning Act* (Ontario).[4]

- **Consent is not required for outdoor ancillary spaces.** Long-term lease agreements for part of a building or structure with terms of 21 years or more are permitted under the *Planning Act* (Ontario). Prior to the amendments, the *Planning Act* (Ontario) did not expressly allow for outdoor spaces (*e.g.*, exclusive parking areas or patios) ancillary to these long-term leases for part of a building or structure. This led many tenants and landlords to apply for consent for these outdoor spaces out of caution. The amendments make clear that consent is not required for outdoor spaces ancillary to these long-term leases, sparing future tenants and landlords the expense and time involved in obtaining consents for these purposes.
- **Amendments to consent applications can be made any time before a decision.** Prior to the amendments, consenting authorities across Ontario had

different requirements for amending consent applications. For example, some consenting authorities prohibited amendments to a submitted consent application and required applicants to submit a new consent application if they wanted to make any amendments to the application. Now, in an effort to make the consent process more user friendly, the *Planning Act* (Ontario) permits amendments to consent applications at any time before consenting authorities approve or refuse to give consent.

- **Purchasers can make consent applications**. Prior to the amendments, the *Planning Act* (Ontario) only permitted property owners and mortgagees to apply for consent. Now, a purchaser of a property can apply for consent in their own name if the agreement of purchase and sale gives such authority.
- **Property owners have two years to fulfill provisional consent conditions**. Under the *Planning Act* (Ontario), consenting authorities can impose conditions when granting provisional consent. Prior to the amendments, if the conditions were not met within one year of the decision, the provisional consent would lapse, with no option to extend. This timeline could be difficult to meet due to uncooperative parties or surveying delays. In recognition of these issues, the timeline has now been increased to two years to satisfy the provisional consent conditions.
- **The other amendments improve efficiency and ease the consent process.** Now, a property owner can apply to cancel a consent certificate previously obtained in order to apply for a lot addition. As well, validation of title applications to cure past contraventions of the *Planning Act* (Ontario) are now governed under consent application criteria, which considers, but does not mandate, compliance with municipal planning and zoning by-laws. Moreover, foreclosures and powers of sale will now have no effect in law unless: (i) all of the property that is subject to a mortgage or charge is included in the foreclosure or power or sale; or (ii) the property could otherwise be conveyed in compliance with the *Planning Act* (Ontario). Furthermore, Bill 276 enhances the requirements for public notice, information and public meetings when processing applications for plans of subdivision.

This article highlights key changes to the *Planning Act* (Ontario). For a complete list of the amendments to the *Planning Act* (Ontario), please see Bill 276.

# How will the amendments affect you?

While the *Planning Act* (Ontario) still contains a number of conveyancing and title issues, Bill 276's amendments are a positive step in the right direction as they add practical and logical updates to the *Planning Act* (Ontario). Overall, the amendments:

- add simplicity for real estate lawyers;
- lessen administrative and procedural issues for municipalities; and
- create a more user friendly consent process for the general public.[5]

[1] *Supporting Recovery and Competitiveness Act*, 1st Sess, 42nd Leg, Ontario, 2021 (assented to 3 June 2021). View Bill 276 online.

[2] *Planning Act*, RSO 1990, c P13. View the *Planning Act* (Ontario) online.

[3] Under the common law, a joint tenant's death automatically bestows upon the survivor the deceased's interest in the property through a right of survivorship.

[4] Please be advised that this list of exceptions is not exhaustive. For all exceptions to abutting lands, please see the *Planning Act* (Ontario).

[5] The Ministry of Municipal Affairs and Housing anticipates the amendments could potentially save the real estate industry $6,803,500 annually. Please be advised that this figure is an estimate referenced in the Ministry's proposal to amend regulations under the *Planning Act* (Ontario) based on Bill 276's amendments to the *Planning Act* (Ontario). View the proposed regulatory changes in the Ontario Regulatory Registry online.

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