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— RESIDENTIAL · GUIDE

# Transferring title when a joint owner dies

What a survivorship application is, why you usually do not need probate, and the one thing that has to be checked first.

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When someone who owns a home with another person dies, the survivor's first worry is often the house: what happens to it, and whether they are facing a long, expensive court process to sort out the title. In the most common situation, two people who owned as joint tenants, the answer is reassuring. The home generally passes to the survivor automatically, and clearing the deceased's name from title is usually a straightforward step that does not require probate. This guide explains how that works, and the one thing that has to be confirmed before you rely on it.

## Survivorship: why the home usually passes automatically

If two or more people own a property as joint tenants, their ownership carries a feature called the right of survivorship. When one of them dies, that person's interest does not pass through their will or their estate. It passes automatically to the surviving owner or owners. The survivor does not inherit the deceased's share so much as end up holding the whole property by operation of the ownership itself.

Because the interest passes automatically and outside the estate, you generally do not need probate, the court process of proving a will, to deal with it. The deceased's name is removed from title through a document called a survivorship application, supported by proof of the death. It is a registration step, not a court proceeding.

This is the single biggest practical difference between joint tenancy and the alternative. We explain the ownership distinction in our article on joint tenants versus tenants in common; this guide is about what actually happens on title when a joint owner dies.

## What a survivorship application involves

In broad terms, to remove a deceased joint owner from title, your lawyer prepares and registers a survivorship application supported by:

- Proof of death, typically a death certificate.
- Confirmation of identity, establishing that the person who died is the registered joint owner.
- Confirmation that the joint tenancy was still intact at the date of death (more on this below, because it is the key point).

Once registered, title reflects the surviving owner as the sole owner. There is no sale, no transfer for value, and in the ordinary case no land transfer tax, because nothing is being bought or sold; the survivor already owned the property jointly and simply continues as the sole owner.

## **The one thing that must be checked first: was the joint tenancy still intact?**

Here is the trap, and it is the reason this is a lawyer's job and not a form-filling exercise. Survivorship only works if the owners were still joint tenants at the moment of death. A joint tenancy can be severed, converted into a tenancy in common, during the owners' lifetimes, sometimes deliberately, sometimes through events the survivor is not aware of. If the joint tenancy was severed before the death, there is no right of survivorship, the deceased's share passes through their estate instead, and the straightforward survivorship route does not apply.

So before anyone assumes the house passes automatically, the title and the circumstances have to be checked to confirm the joint tenancy was genuinely still in place. This is not a formality. Getting it wrong means handling the title the wrong way entirely. And it is only in that situation, where survivorship does not apply because the owners were not joint tenants, or were separated and the joint tenancy had been severed, that a surviving spouse's family-law rights and choices come into play, because the home is then passing through the estate rather than automatically. Those cases are the subject of our companion article on transferring title through the estate, and they call for estate and family-law advice, not just the conveyancing step.

## **The mortgage does not disappear**

A common and painful misunderstanding: the mortgage does not die with the owner. If there is a mortgage on the property, it remains, and the surviving owner generally becomes responsible for it. The survivorship application clears the deceased's name from title, but it does not clear the debt. The lender has to be dealt with, and the survivor needs to understand what the ongoing mortgage obligation means for them. If the mortgage was tied to the deceased's income, this can be a real practical issue, and it should be addressed early, not discovered later. We say more about how a mortgage affects a title change, including on death, in our article on whether your mortgage lender needs to know about a title change.

## **What to do if a joint owner has died**

- Do not assume, and do not rush to sign anything. The home is not going anywhere, and nothing about the title needs to be done in a panic.
- Gather the death certificate and the property's details.
- Bring it to your lawyer, who will search title, confirm the joint tenancy was intact, and prepare the survivorship application.
- Raise the mortgage early, so you understand the ongoing obligation.

## Bottom line

When a joint tenant dies, the home usually passes to the surviving owner automatically, and the deceased's name is cleared from title through a survivorship application without the need for probate or land transfer tax in the ordinary case. The thing that has to be confirmed first is that the joint tenancy was genuinely still intact at death, because a severed joint tenancy changes everything, moving the home onto the estate route where family-law rights and choices can come into play. The mortgage survives and has to be dealt with. For married spouses who held as joint tenants and were not separated, this is usually a straightforward process, but it is one to do properly rather than assume. Talk to us and we will handle it.

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This is general information about clearing title after a joint owner's death in Ontario, not legal advice for your situation, and it is not estate or family-law advice. Whether survivorship applies depends on how title was held and whether the joint tenancy was intact. Talk to us, and where your family-law or estate position is in play, the appropriate advisor, before relying on any of this.

**Questions about your own situation?** Book a free consultation at [lucianolegal.com/contact.html](https://lucianolegal.com/contact.html), call 647-479-4585, or email [info@lucianolegal.com](mailto:info@lucianolegal.com).

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