



RESIDENTIAL · GUIDE

Transferring title when the home passes through the estate

When survivorship does not apply, probate usually does. How an estate trustee transfers the home, and why it takes longer.

Posted Aug 13, 2026 · Updated Oct 19, 2026

Not every home passes automatically when an owner dies. Where the person who died was the sole owner, or owned as a tenant in common rather than a joint tenant, there is no surviving owner waiting to take the property automatically. Instead the home forms part of the deceased's estate, and it moves through the estate to whoever is entitled to it. That is a different and more involved route than the survivorship application we describe in our companion article, and the main practical difference is probate. This guide explains how it works and why it takes longer.

Why this route is different

The survivorship route works precisely because a joint tenancy passes outside the estate, to a surviving owner, automatically. When there is no surviving joint owner, none of that applies. The home is an asset of the estate, and it can only be dealt with by the person who has legal authority to administer the estate, the estate trustee (still often called the executor). Before that person can transfer the home, they usually need the court to confirm their authority.

Probate, in plain terms

Probate is the court process that confirms the will is valid and formally appoints the estate trustee, through a document called a Certificate of Appointment of Estate Trustee. For real estate, this matters a great deal: to transfer a deceased sole owner's home, a buyer, and the land registration system, will almost always require proof that the person signing on behalf of the estate actually has authority to do so. That proof is the Certificate. So in most cases the estate has to obtain probate before the home can be transferred or sold.

This is the key reason this route takes longer than survivorship. Probate is an application to the court, it takes time, and there is a tax on the value of the estate payable in connection with it (estate administration tax). A survivorship application, by contrast, is a registration step with no court application. The difference in timeline can be significant, often months rather than weeks, and anyone dealing with an estate home should plan for it.

How the estate trustee transfers the home

Once the estate trustee's authority is confirmed, there are two common destinations for the property:

- Transfer to a beneficiary. The will leaves the home, or a share of it, to someone, and the estate trustee transfers title to that beneficiary. This is a transfer under the estate, not a sale, and in the ordinary case it is not treated as a purchase for land transfer tax.
- Sale to a third party. The estate trustee sells the home on the open market and distributes the proceeds according to the will. Here the estate is the seller, and the transaction looks much like an ordinary sale, except that it is the estate trustee who signs, backed by their Certificate of Appointment, and the buyer's lawyer will want to see that authority.

In both cases the mechanics of registering the transfer are the estate trustee's to carry out, with their lawyer, once the authority to act is in place.

The mortgage still has to be dealt with

As with survivorship, a mortgage on the home does not disappear when the owner dies. If the home is being transferred to a beneficiary, the mortgage and the lender's position have to be addressed, the beneficiary does not simply take the home free of the debt. If the home is being sold, the mortgage is paid out of the sale proceeds on closing in the ordinary way. Either way, the debt is part of the picture and cannot be ignored.

Where this stops being conveyancing and becomes estate law

This guide is about the mechanics of moving title once the estate trustee has authority. It is not about who inherits, whether the will is valid, how the estate is administered, or disputes among beneficiaries. Those are estate-law questions, and they are genuinely their own field. Several things commonly arise that sit outside the title step and need proper estate advice:

- Whether probate is in fact required in a particular case, which depends on the specific assets and circumstances.
- What happens when there is no will.
- Disagreements among beneficiaries, or a will that is being challenged.
- The estate's tax position, which is an accountant's and estates lawyer's area.

If any of those are in play, the title transfer is only one piece of a larger process, and it should not be treated as the whole of it.

What to do if you are dealing with an estate home

- Establish who has authority. The home cannot be transferred until the estate trustee's authority is confirmed, which usually means obtaining probate. Start that process early, because it drives the timeline.
- Expect it to take longer than a survivorship case. Plan around months, not weeks, particularly if the home is to be sold.

- Deal with the mortgage, whether the home is going to a beneficiary or being sold.
- Keep the estate-law questions with an estates lawyer, and the tax questions with an accountant. The conveyancing step is ours; the administration of the estate is theirs.
- Bring us in on the title transfer or the sale once authority is established, and we will handle the registration side.

Bottom line

When a home does not pass by survivorship, because the owner was the sole owner or a tenant in common, it moves through the estate, and that almost always requires probate before title can be transferred or the home sold. The estate trustee, once their authority is confirmed by a Certificate of Appointment, can transfer the home to a beneficiary or sell it to a buyer, and the mortgage has to be dealt with either way. This route takes longer than survivorship and overlaps with estate law, so the title work is best done alongside proper estate advice. Talk to us about the conveyancing side, and we will tell you where you need an estates lawyer as well.

This is general information about transferring an estate's real estate in Ontario, not legal advice for your situation, and it is not estate-administration or tax advice. Whether probate is required, and how an estate should be administered, depend on the specific facts and belong with an estates lawyer and an accountant. Talk to us about the title transfer or sale once authority to act is established.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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