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# **Current Trends in Real Property Law**

*8<sup>th</sup> Annual Law & Practice Update*

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## CURRENT TRENDS IN REAL PROPERTY LAW

Introduction .....	2
Joint Tenancy.....	2
<i>Pohl v Midtal</i> , 2017 ABQB 711.....	2
<i>Sirois v Andrews</i> , 2017 ABQB 263.....	4
Dower.....	6
<i>Estate of Johnson, Rick Allen (Re)</i> , 2017 ABQB 399.....	6
Adverse Possession .....	7
<i>Koziey Estate (Re)</i> , 2017 ABQB 597 .....	7
Construction of Agreements.....	9
<i>Lutheran Church Canada (Re)</i> , 2017 ABQB 307 .....	9
Lease.....	12
<i>Paskal Holdings Inc. v Loedeman</i> , 2017 ABCA 29.....	12
Title Insurance.....	15
Western Law Societies' Conveyance Protocol (Protocol) .....	17

## INTRODUCTION

This paper by no means attempts to canvas all relevant case law relating to real property in the Province of Alberta. Rather, the intent is to highlight some interesting recent cases, the issues and facts involved and how they may or may not apply to the daily practice of a lawyer who deals with conveyancing matters.

## JOINT TENANCY

### *Pohl v Midtal, 2017 ABQB 711*

#### **Issue:**

Where a child is added as a joint tenant to real property by a parent as a gift, can the gift include an irrevocable right of survivorship?

#### **Facts:**

James Gordon Midtal (“Gordon”) and Vivian L. Midtal (“Vivian”) were married in 1974. Vivian had five children by her first husband who predeceased her. Gordon owned 6 quarter sections of land at the time of marriage, and transferred all six into joint tenancy with Vivian at the time of marriage. Vivian had one child Melva who continued in the farming profession with her husband Dennis.

In June 2004, Gordon and Vivian added Melva as joint tenant to the title to the home quarter, and added Bryce (another child of Vivian) as joint tenant to the other remaining quarters owned by Gordon and Vivian. At the same time, Vivian made a will leaving her estate to Gordon, and if he predeceased her, the residue passed to her other three children, excluding Bryce and Melva.

Gordon became Vivian’s attorney in 2007, and transferred the quarter section held jointly between Gordon, Vivian and Bryce to Bryce solely in 2010. Gordon also made a will in 2010 in which he left his estate to Vivian’s three other children, noting that he had “provided for [Melva and Bryce] ... during my lifetime”<sup>1</sup>. Vivian was required to move to a long-term care facility and in 2012 the relationship between Gordon, Melva and Dennis deteriorated. In September 2012 Gordon commenced an action on his behalf, and as attorney for Vivian, claiming that a resulting trust arose from the transfer of the joint interest in the Home Quarter to Melva in June 2004. This action was

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<sup>1</sup> at Para 13.