

Can I Lodge a Caveat on My Ex-partner's Property?

After a separation, you may need to take steps to protect your interest in your ex-partners property.

What is a caveat?

A caveat is a way that you can record your interest in a property on the certificate of title of that property. The certificate of title is the document that records important information about the property such as the legal ownership of the property and any encumbrances on the property (such as mortgages to the bank etc). A caveat is one option available to you if you are involved in a family law property dispute and do not have your name on your ex partner's property.

I commonly assist clients to lodge caveats when the parties have been in relationship, and they have an equitable interest in the property, yet the property is owned in the other party's name.

For example, take Bill and Sally. They have been in a de facto relationship for 8 years. They each owned a home at the commencement of the relationship. Eventually Sally moved into Bill's home and sold her own home. She used the money from the sale of her home to pay down Bills' home loan but Bill's home always stayed in his name only.

This means that when they separate Bill can deal with the property in his sole name in any way he likes, such as:

- Selling the property (for example to a friend for less than it is worth); or
- Borrowing against the property, referred to as "encumbering" the property (thereby reducing the equity in the property)

In each of the above examples Bill will get access to money from the property which he could then hide or spend. It allows him to prevent Sally from getting access to her fair entitlements to that property.

If a caveat is registered on the title of the property, the caveat will show to any prospective purchaser that looks at the title. Furthermore, Bill will not be able to settle on any sale of the property, as the transfer of the property cannot be processed while the caveat is on the title.

When lending money, a lender will want to protect the loan to reduce the risk that they won't be paid back. This process is known as "security" and a mortgage over a property is the preferred form of security for lenders.

If Bill wants to borrow money against his property, the lender will check the certificate of title of the property when determining whether to lend him the money. They won't be able to register a mortgage on the property if there is a caveat on the property.

In this case, without a caveat, Sally would not be noted at all on the certificate of title for the property as it is registered solely in the name of Bill and the lender would have no idea that Sally has an interest in the property. The lender would lend Bill the money and register a mortgage on the title of the property to protect their interests. They are therefore likely to be paid out in preference to Sally if the property was ever sold. This means Sally could be prevented from obtaining her entitlements to the property or any proceeds from the sale of the property. Lodging the caveat on the title will prevent that.

Need more information?

If you'd like more information on caveats or you wish to obtain advice on getting a caveat put on a property to protect your interests, you should contact our Partner in Family Law, Ryan Thomas.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.