



# Family Law Property Dispute? Who Can Lodge a Caveat?

Did you see my article "[Can I lodge a caveat on my ex-partner's property?](#)" which was the first in a series on caveats. To continue the theme, I thought I would next deal with who can lodge a caveat.

Not just anyone can lodge a caveat on the title of a property, they must have an interest in the property. Having been in a marriage or a de facto relationship alone does not give someone an interest in their partner's property. The question of whether someone has an interest in property is a complex legal one and one which legal advice should be sought on before lodging a caveat over property. The caveat should be prepared by a lawyer or conveyancer so that it is prepared properly and the interest in the property is described correctly.

When determining whether someone has an interest in property, we refer to previous cases that have set out the law regarding interests in property.

## **Baumgartner v Baumgartner (1987) 164 CLR 137**

The case of *Baumgartner v Baumgartner* (1987) 164 CLR 137, was about whether the de facto wife

had an interest in the de facto husband's property. The de facto husband had purchased property in his name, had paid the deposit and had borrowed the balance in his sole name. While living together the couple had pooled their financial resources to pay for their household expenses, including payment of mortgage instalments on the property in question.

In this case the Court found that the de facto wife had an interest in the de facto husband's property even though the property was owned solely in the de facto husband's name. The interest the de facto wife had is known as a constructive trust which is an equitable interest. This is often the basis for being able to lodge a caveat over the property in family law matters.

### **Parij v Parij (1998) 72 SASR 153**

A later case took this area of the law one step further and looked at non-financial contributions. In *Parij v Parij* (1998) 72 SASR 153, the Court had regard to both financial and non-financial contributions of the parties. In this case the de facto wife did not make significant financial contributions to the property however, the Court had substantial regard to the contribution of the de facto wife who was a homemaker and caregiver of the children. Accordingly, the domestic contributions of one partner can be regarded as contributing to the acquisition of property by the other partner, however, this will not always be the case.

Subsequently, in *Read v Nicholls* [2004] VSC 66, Nettle J expressly approved *Parij*.

The question is at what point do non-financial contributions in the absence of financial contributions give rise to a constructive trust, as that remains unclear.

### **How Can Andersons Help?**

It is important that you are well informed about the complexities of caveats and we recommend that you always seek advice from a lawyer experienced in this field. 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, please contact our Partner in Family Law, [Ryan Thomas](#).