



Family Law Property Dispute? How to remove a caveat

In previous articles, I looked at the effect of [**lodging a caveat over a property**](#) and in what circumstances [**a party to a marriage or de facto relationship can lodge a caveat on a property**](#). Now I look at how to get a caveat removed.

After a caveat is lodged on the title of a property, the owner of that property will be sent a notice from Land Services SA advising them of that fact. A search of the Certificate of Title will show that the caveat has been recorded on the title. It is important to note that you cannot lodge a caveat and not let your partner know about it because this notice is sent to them. This can cause issues if you have not yet separated but want to get that protection, so you need to bear this in mind and weigh up the risks in doing so.

The owner of the land will then be precluded from dealing with the property without the consent of the person that lodged the caveat (known as the caveatator). No transfers of the property can be registered, nor any mortgages registered over the property. This will prevent the owner from selling the property or borrowing money secured against the property.

The owner of the property can apply to the Registrar of the Land Titles Office to remove the caveat. The process for doing this is quite simple and involves completing a form and lodging it with Land Services SA.

Land Services SA then sends a notice to the caveat's address for service (as listed on the caveat) advising them that the owner has applied to remove the caveat. The caveat has 21 days from the date the notice was sent to apply to the District Court or the Supreme Court of South Australia to obtain an order to keep the caveat on the property.

At that point they have three options:

1. Do nothing and allow the Caveat to expire;
2. Apply to either the District Court or the Supreme Court of South Australia seeking an Order to maintain the Caveat; or
3. Commence proceedings in the Federal Circuit and Family Court (FCFCOA) for **property settlement**. As part of that application, seek an injunction against the other party, preventing any dealing with the land.

If the caveat does nothing within the 21 days then the caveat is withdrawn. Once it is withdrawn the caveat cannot lodge another caveat on that property again.

In practice in family law matters, parties usually bring an application in the FCFCOA for property settlement and an injunction restraining the other party for dealing with the property. This is because the filing fee is lower, it is likely to be easier to obtain the Order in the FCFCOA and that Court can then go on to decide the ultimate question of the division of assets.

How Can Andersons Help?

If you have had a caveat placed on your property or would like more information on placing a caveat on a property to protect your interests, get in touch directly with today's writer, [Ryan Thomas](#).