

Lodging Caveats on Land in South Australia

What is a caveat?

A caveat acts as a legal “stop sign” on a property title. When lodged by someone with a legitimate claim, known as a *caveatable interest*, it prevents any further dealings with the property (such as a transfer or mortgage) unless the caveator’s interest is acknowledged or resolved.

Common caveatable interests include:

- protecting a purchaser’s interest under a contract before the settlement date;
- securing a lender’s interest where the owner of the property agreed that the property would be security for the loan (for example, an unregistered mortgage or a charge over the land);
- preserving an equitable interest in the land through financial or non-financial contributions toward its acquisition or improvement;
- safeguarding the rights of a beneficiary under a will or a trust.

Importantly, not every claim is caveatable. A general debt which is not secured by the property, for example, is not a caveatable interest. The fact that you are owed money, on its own, is not sufficient to justify a caveat unless the borrower specifically agreed to use the property as security for the debt.

Lodging a caveat

Caveats are often prepared and lodged by a conveyancer or a solicitor.

It is important to seek legal advice to ensure that you have a valid caveatable interest before lodging.

The process then involves the preparation of the caveat, and lodging the caveat for registration with Land Services SA either in person or online.

Once lodged, the caveat will be registered on the Certificate of Title, and a notice will be sent by Land Services SA to the owner of the land notifying them of the registration of the caveat.

After Lodgement

Once a caveat has been lodged, it remains effective until it is either withdrawn by the caveator, or removed from the title on application of the caveatee.

Warning a caveat (application for removal)

The owner of the property can challenge the caveat by lodging an application with Land Services SA for its removal.

If such an application is lodged, the caveator will be notified, and the caveat will then be removed from the Certificate of Title after the expiration of 21 days, unless the caveator makes an application to the Supreme or District Court for an extension of time for the removal of the caveat.

Extending the caveat

The Supreme or District Court can make an order extending the 21-day period for the removal of the caveat, allowing the caveat to remain in force while the underlying dispute is resolved either through negotiations or following legal proceedings.

Importantly, the application must be heard by the Court, and an order extending the caveat must be made and served on the Registrar-General of lands titles **within the 21 day warning period**.

If you receive a 21-day notice relating to the removal of a caveat, you should seek urgent legal advice. Any delay may mean that there is insufficient time to have your court application filed and heard by the Court before the 21 day warning period expires.

At this point, the caveator is generally expected to make their substantive claim against the owner of the land and to demonstrate that they have an interest in the land justifying the lodgement of the caveat.

The Court will also require the caveator to undertake to pay damages to the owner of the land if it is later found that the caveat was lodged without a proper legal basis.

Why it is essential to seek advice

Lodging and managing caveats can be legally complex and, once an application is made for the removal of a caveat, extremely time-sensitive. Mistakes in documentation, procedural missteps or inadequate evidence substantiating a caveatable interest can lead to serious financial consequences.

Engaging a lawyer to assist early on ensures that you receive proper advice, and that the relevant and appropriate documents are drafted carefully.

For more information please call 8238 6666 or email enquiry@andersons.com.au