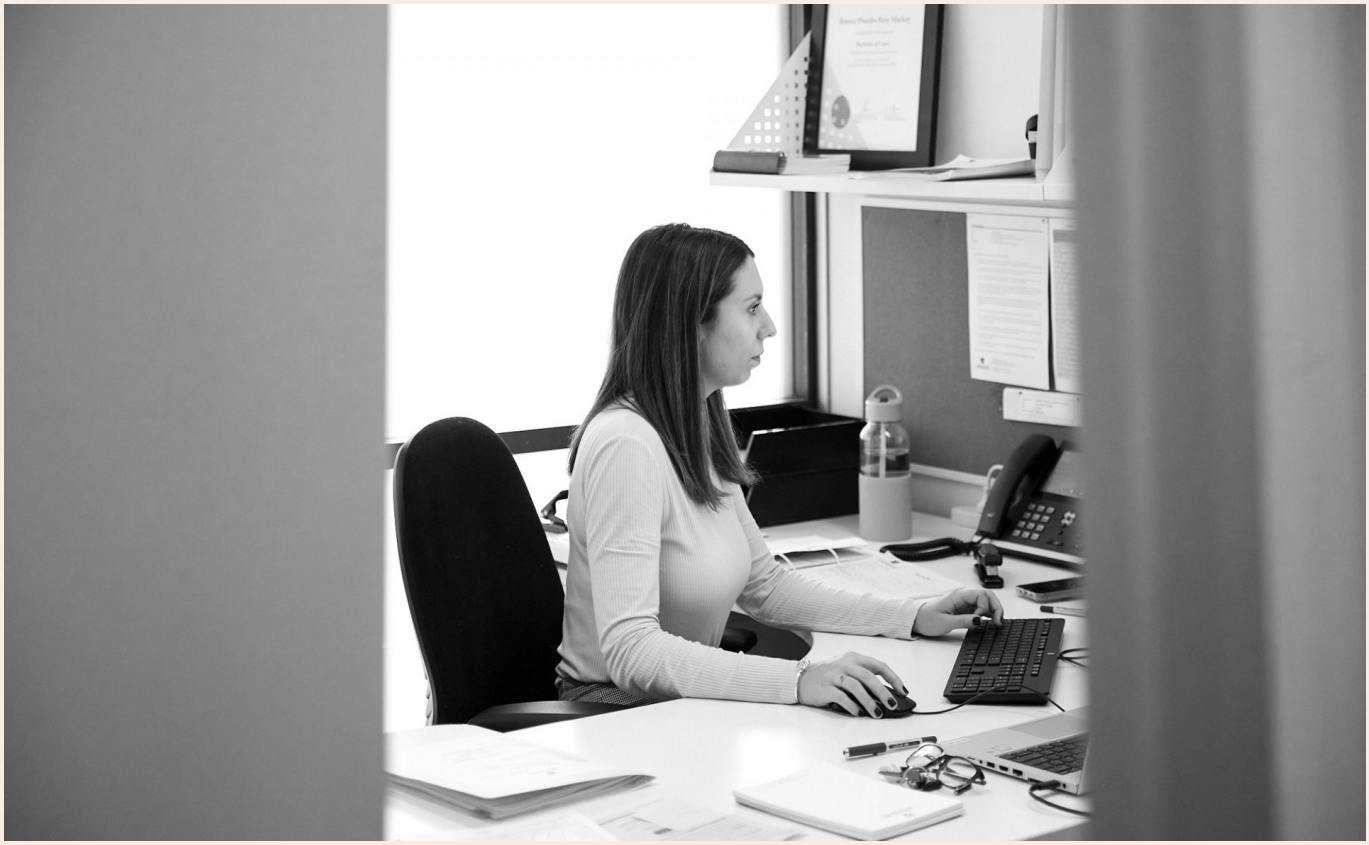


To caveat or not to caveat

What is a caveat?

A caveat is a way that a party can give notice of their interest in a property on the certificate of title.

In South Australia, there are two types of caveats:

- Property caveats (those relating to real estate); and
- Probate caveats (those relating to a deceased estate and the grant of *probate* or letters of administration).

This blog will discuss property caveats in South Australia.

What is the certificate of title?

The certificate of title is a document that records important information about the property such as ownership and any mortgages etc. Lodging a caveat can prevent any further dealings with a property until it is removed or withdrawn.

What are caveat interests?

When lodging a caveat, the interest claimed must attach to the land. Interests that are commonly the subject of a caveat are unregistered mortgages or leases or equitable interests in the property.

An example of an equitable interest is where a couple purchase a property together but the title is in the name of one spouse only.

In any dealings with land, registered interests are given priority over unregistered interests.

Examples of caveat interests:

- A right of an individual who has contributed to the “acquisition, maintenance and improvement” of the land;
- Unregistered mortgages and Loan Agreements;
- Unregistered leases;
- Caveats by authorities (such as for unpaid taxes or rates);
- Charges on the land for commercial ventures;
- A Purchasers interest in a contract to buy land;
- As a beneficiary to a Will;
- As beneficiary of a Trust.

How caveats apply in Family law:

When a relationship breaks down the parties often lose trust and faith in each other. The most common circumstance for lodging a caveat on a property is where the parties have been in a de facto relationship or married yet the property is owned in only one party’s name.

For example, if a property that a party (Tom) lived in is now owed by the other party’s name solely (Jane), Tom needs to be aware that Jane may try and do something with the property, such as to sell it or refinance it without the Tom’s consent.

This means that when they separate Jane can deal with the property in any way she likes such as:

- Selling the property (for example; to a friend or acquaintance at less than it is worth).
- Borrowing against the property, referred to as “encumbering” the property (such as borrowing money secured against the property and thereby reducing the equity in it).

In each of the above examples Jane will get access to money from the property which she could then hide or spend.

In this situation Tom should consider whether to lodge a caveat over Jane's property.

If a caveat is registered on the property, Jane will not be able to follow through with any sale as the transfer of the property cannot be processed while the caveat is on the title.

Once lodged, how long do caveats protect your interest?

In South Australia, caveats do not lapse. They protect the interest until they have been withdrawn, removed or have otherwise been extinguished. A caveat cannot be re-lodged without the leave of the Supreme Court.

When lodging Caveats, it is important to get professional advice from a legal practitioner to ensure that the document is properly completed and submitted. Additionally, if you think a property you have an interest in has a caveat, any warning to remove a caveat should be acted on immediately. If this warning lapses the opportunity may be lost to protect your interest in the property.

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 Andersons Solicitors.

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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.