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LawTalk Blog



Caveats - a simple guide

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We have had a great number of responses to Ryan Thomas' series of posts called "To caveat or not to caveat?" So to give our readers a bit more information and to answer a few more recent queries we thought that we would provide another post about caveats in South Australia.

Can I put a caveat on for ...?

A caveat can be lodged for a variety of types of claims but in South Australia these are limited to claims that you have an interest in the land which is the subject of the caveat.

The most common types of caveats are for:

- Where a party to a relationship claims to have contributed to the land;
- Second (unregistered) mortgages;
- Unregistered leases;
- Caveats by authorities (such as for unpaid taxes or rates);
- By anticipated purchasers of the land;
- By a beneficiary to a Will; and,
- Where an agreement is alleged that a child would inherit the land in return for substantial ongoing assistance to their parent.

It is not enough in South Australia for one person to just owe another person money. There must be a real connection with the land.

Having said that, some connections with land can be difficult to spot. For example, abuses of Powers of Attorney, breaches of trust and partnership agreements and the like, can sometimes give rise to being able to lodge a caveat.

We are unable to give any specific answers through this blog post, but if you are interested in getting our advice as to whether you can lodge a caveat, please contact us and we can arrange an appointment to discuss your specific circumstances.

What if the item you wish to place a caveat on, is not land?

The type of caveat we are referring to above and in the original post "To caveat or not to caveat" only covers land. There is another type of caveat, being a caveat against a Grant of Probate or Letters of Administration, which is relevant where someone has died. If neither of the circumstances referred to above apply, and it is some other asset, then other legal processes must be used.

If there is a need to urgently protect some other property, such as a car, shares, bank funds or a business, then often it is possible to bring an application to a Court seeking the protection of the asset.

This is also true if the caveat is removed.

Can I still deal with the land if a caveat has been lodged?

Our answer to this is always "maybe".

It will not be possible to register any dealing with the land unless the caveat allows it (which most do) and the dealing is made subject to the claim in the caveat.

The parties to the dealing could end up with less than they bargain for and the dealing could be prevented entirely. In some circumstances, it may still be worth doing, but specific and specialised legal advice should definitely be sought.

The answer to this question may depend on whether or not the claim supporting the caveat is strong, because if the caveat is removed then any subsequently dealings can proceed.

How can I get a copy of the caveat?

Sometimes people will not receive a copy of a caveat that has been lodged, because they have changed address.

Copies of the caveat can be obtained from the Lands Titles Office, so long as you know the address of the property. A solicitor or conveyancer can also conduct a search to obtain a copy of the caveat. There are fees for doing this type of search.

What do I do now that I have put a caveat on the land?

The caveat itself does not provide any remedy to you and it is just a protection measure, but an important one.

You will need to bring a claim in either the District or Supreme Court in order to obtain the interest in the land which you have said you are entitled to in the caveat. If the claim arises out of a relationship breakdown, then it may be more effective to bring proceedings in the Family Court.

You should ordinarily seek legal advice before lodging or removing a caveat, in addition to advice on the next steps to take.

Should I apply to remove this caveat against my land?

This is another question where we can't give an answer until we know your particular circumstances.

It can often be very unwise to remove the caveat because of the process that it starts and the costs involved. It is important that you understand the risks and the advantages and disadvantages applying to have the caveat removed, or even lodging a caveat.

Do I have to disclose the caveat when selling the land?

In South Australia, the answer to this is yes. The caveat must be listed in the Form 1 Vendor's Statement, which is the disclosure document which must be provided upon any sale of land.

If the caveat is not disclosed in the correct manner, then the Purchaser may be entitled to void the contract.

I have paid money to help my friend buy a property. Can I put a caveat on the property?

Whether you can (or more correctly should) put a caveat on if you have provided monies for someone else's purchase of land, will depend upon the intention behind the payment towards the purchase.

If it was a gift, then the answer would be no. If it is a loan or a joint investment, then it may be possible to lodge a caveat.

If I remove the caveat, can I put it back on later?

Not without applying to a Court first. You can only put a caveat on once for the same subject matter.

Even if you do go to the effort of obtaining the Court's permission to lodge a further caveat, your claim in the caveat could lose out against third parties.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.