



To Caveat or Not to Caveat?

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When a relationship breaks down the parties often lose trust and faith in each other. If the property the parties lived in is owned in one of the parties names solely (Party A), the other party (Party B) needs to be aware that Party A may try and do something with the property, such as to sell it or refinance it without the other party's consent. In this situation Party B should consider whether to lodge a caveat over Party A's property.

A caveat is a way that an interested party can record their interest in a property on the certificate of title. The certificate of title is the document that records important information about the property such as ownership and any mortgages etc.

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. This means that when they separate Party A can deal with the property in any way they like 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 Party A will get access to money from the property which they could then hide or spend.

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

When lending money, a lender will want to protect the loan to reduce the risk that they won't be paid back. This process is known as "security" and a mortgage over a property is the preferred form of security for lenders. If you want to borrow money against your property, the lender will check the certificate of title of the property when determining whether to lend money.

In this case, without a caveat, Party B would not be mentioned at all on the certificate of title for the property as it is registered solely in the name of Party A and the lender would have no idea that Party B has an interest in the property. If there is a caveat, the lender would be alerted to the interest of Party B straight away and would not be able to register their mortgage on the property. This preserves the equity in the property and means that the lender would be far less likely to lend the money to Party A.

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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