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LawTalk Blog



How do I keep a caveat on my ex partner's property?

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This blog explores keeping a caveat on a property when your ex partner is trying to have it removed. As I stated in my blog "[How can a caveat be removed?](#)", after an application to remove a caveat is filed at the Land Titles Office, a notice is sent to the person that lodged the caveat. They then have 21 days from the date that the notice was sent to apply to either the District Court or the Supreme Court of South Australia in order to maintain the caveat.

An application to the District Court or Supreme Court is very expensive, as the filing fee alone is \$1,192.00 in the District Court and \$2,379.00 in the Supreme Court (figures current as at July 2015). In addition, there are also the legal fees involved in your lawyer making the application to the Court. It is therefore very expensive to apply to have the caveat maintained. If the application is not successful then the party seeking to maintain the caveat will most likely have to pay some of the legal costs of the other party,

making it even more costly.

An alternative is to commence proceedings for either matrimonial or de facto (Family Law) [property settlement](#) in the Federal Circuit Court. The Federal Circuit Court has the power to grant an injunction restraining the owner of the land from selling or encumbering the property. This has a similar effect to a caveat and the injunction can also be lodged over the title of the property with the Land Titles Office. The caveat can then be removed from the title with no adverse affect.

It is also much harder for the owner of the property to remove an injunction as they will need to apply to the Court for the injunction to be lifted. There is no simple form to apply to have the injunction removed.

There are also legal costs involved in an application to the Federal Circuit Court but the filing fee for an application in the Federal Circuit Court is only \$430.00 (figure current as at July 2015). In practice you would apply for both final property settlement orders, which are the assets that you want to end up with, and seek interim orders including the injunction over the property.

Clients therefore often choose not to apply to the District Court or Supreme Court to maintain the caveat but simply to apply to the Federal Circuit Court for the property settlement and injunctions.

You may wish to read our other blogs on caveats:

• [Can I lodge a caveat o my ex partner's property?](#)

• [Who can lodge a caveat?](#)

• [How can I remove a caveat?](#)

So now you have choices to protect your interests in your Family Law property dispute. At Andersons, our Family Law team strongly recommend you seek experienced legal advice before finalising your [property settlement](#).

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