



ANDERSONS
S O L I C I T O R S

LawTalk Blog



I'm owed money. Can I lodge a Caveat?

Author: [Felix Hoelscher](#)

Email: enquiry@andersons.com.au

Phone: 08 8238 6631

Date: Tuesday January 12, 2016

There is a relatively common assumption that it is possible to lodge a caveat over land owned by someone who owes you money.

That is normally incorrect.

As discussed in our earlier blogs on [caveats](#), the right to lodge a caveat exists only if you can demonstrate that you have a direct interest in the land, by way of having contributed to its purchase, maintenance, upkeep or on account of having some other entitlement to the land by way of an agreement or a promise on which you have relied and acted upon.

There are, however, ways that you can secure your money claim against a debtor's land. The first and best method (if the debtor agrees) is by mortgage. Ideally, before lending money, you will have a formal written loan agreement in place and it will be a term of that loan agreement that you have the entitlement to register a mortgage on the borrower's Certificate of Title to the land. Of course, a mortgage is only as good as the available equity in the land and you should always ensure that a borrower has sufficient assets to secure the debt before you lend money.

You are able to lodge a caveat over land in respect to the loan agreement because the loan agreement gives you a right and interest in the land, namely the ability to register the mortgage if you choose to do so.

If you don't have a loan agreement with the person who you lent money to, you may nevertheless be able to register an interest in their land. That interest is not a caveat as such, but rather a charging order as made by the Court. If you are owed money and seek to recover it in Court and a judgment is made in your favour, you can ask the Court to make a further order which records that outcome on the debtor's Certificate of Title.

Whilst that may not get you paid immediately, having a charging order in place does mean that the debtor must pay you from any available equity in the land prior to dealing with it further, either by way of sale or refinance.

A charging order is, in many respects, stronger than a caveat as it can only be removed with your agreement or by further order from the Court. A charging order (or indeed a caveat) does not take priority over prior registered entitlements such as earlier mortgages or charging orders. For that reason, it is very important to establish whether there is actually any benefit in registering a charging order, mortgage or caveat. If the debtor has no assets, it will merely be an additional cost with little benefit to you.

In such cases, you should consider other methods of debt recovery, such as [bankruptcy](#) proceedings or a warrant of sale over non-land assets held by the debtor.

Other blogs related to caveats:

- [How do I enforce a judgement against a debtor?](#)
- [Who can lodge a caveat?](#)
- [How can I remove a caveat?](#)
- [Can I lodge a caveat on my ex partner's property?](#)
- [How do I keep a caveat on my ex partner's property?](#)
- [Is it worth lodging a caveat in a property settlement matter?](#)

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.