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LawTalk Blog



Caveats and deceased estates

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For a relatively small fee, it is possible for anyone to lodge a caveat in the Probate Registry to stop a [Grant of Probate \(where there is a Will\) or Letters of Administration](#) (where there is no Will) being made in respect of a deceased estate. The main purpose of a caveat in these circumstances is to prevent a Grant of Probate or Letters of Administration because:

- it is alleged that the Will is invalid because the author of the Will lacked the capacity to make a Will;
- there is another Will of the deceased made later in time which revoked the earlier Will;
- in the case of no Will (an intestacy), someone disputes that the person(s) applying for Letters of Administration is entitled to do so.

A caveat should not however be used as a tool to simply frustrate a Grant being made because the person wishes to bring a claim against the estate under the *Inheritance (Family Provision) Act*; that is, claim for provision to be made to them from the estate.

Unless there is a particular defect or problem with the [Will](#), the proper avenue is to wait until the Grant is made and then pursue the claim in the Supreme Court if a settlement cannot be reached in the meantime.

There must be a legitimate reason for lodging a caveat. If the allegation is that the Will maker lacked testamentary capacity (that is, the capacity to make a Will) then usually medical and witness evidence will be required to prove that allegation.

It is not appropriate in my view to lodge a caveat based merely on a suspicion that the Will maker lacked capacity or a feeling that the Will maker was influenced in some way by family members for example. If there is preliminary evidence to support such suspicions and feelings then a caveat may be appropriate as a 'stop-gap' measure in order for further evidence to be gathered.

"In [certain] circumstances, in a short space of time, the \$33.70 you paid to lodge the caveat may turn into legal costs in the thousands of dollars."

What may flow from lodging a caveat is unintended court proceedings to remove the caveat. In such circumstances, in a short space of time, the \$33.70 you paid to lodge the caveat may turn into legal costs in the thousands of dollars. This is the case whether you are the party who lodged the caveat or the party trying to remove it.

The argument in Court will generally revolve around the grounds upon which the caveat was lodged in the first place. This will require the caveator (the person who lodged the caveat) to produce evidence as to why the caveat was lodged, including medical evidence and other witness evidence if available. Carefully drafted pleadings and/or affidavits will need to be prepared and possibly, oral evidence given in Court.

At the end of the process, if the Court finds there were no grounds or insufficient grounds for lodging the caveat, the lodging party is likely to face a costs order against them.

On the flip side, if the evidence is sufficient to support the caveat, then the Court may declare the Will to be invalid. This will then allow any earlier made Will to be submitted to probate instead. If there is no such previous Will, the estate will be left to be administered under the laws of intestacy.

Before lodging a caveat and departing with your \$33.70, speak to us at Andersons Solicitors to ensure you do not go down the wrong path and cost the estate or yourself a lot of money.

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.