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## LawTalk Blog



# Caveats and recognising a caveatable interest

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Quite often we are asked by a prospective client if we can lodge a caveat over another person's property. The reasons can be numerous, for example our client has lent money to that person. It is a misapprehension that it can be done for that reason.

## What is a Caveat?

If a person has an interest in real estate, which is not registered, then a caveat may be lodged. A caveat, which translates to "beware" from the Latin language, gives notice to the world at large that the person has an interest in that property.

There are two types of caveats, absolute and permissive. An absolute caveat prevents any further dealings with the property until the [caveat is removed](#). A permissive caveat may allow further dealings with the property with the permission of the person who lodged the caveat (the caveator).

## When can I lodge a caveat?

The caveator **must** have an actual interest in the property. This is the issue that some people fail to appreciate.

If you are seeking merely to obtain security or enforce an interest, which is not an actual interest in the property and attaches to the property, then a caveat is not the appropriate procedure and will ultimately fail.

For example, a loan to a person will not be an interest in property which will allow the lodging of a caveat to obtain security or enforce a remedy.

Examples of a caveatable interest are:

- an equitable lease;
- an equitable mortgage;
- an interest to purchase the property under a contract for sale;
- an option to purchase the property;
- a beneficial interest under a resulting trust;
- an easement or encumbrance.

If you have contributed to the purchase of the property or have improved the property somehow, you may have a caveatable interest in the land.

## An example of a caveatable interest on land

Matilda is in a relationship with George and the property is only registered in Matilda's name. However, over the last several years, George has contributed towards renovations to the property and maintenance costs. George therefore has a caveatable interest in the property.

Consequently George can lodge a caveat to protect his interest in the property on the basis of a resulting or constructive trust.

Quite often when a couple are going through a separation or divorce, their solicitor will often suggest that a caveat be lodged over the property pending final property settlement to ensure that the property is not sold prior to finalising everything.

## I've loaned someone money and they're not paying me back. Can I lodge a caveat?

If you've loaned money to another person then it may not be advisable to lodge a caveat unless that loan is directly for the purchase of the property and is documented in a loan agreement. Further, an agreement to share profits on the sale of the property or to recover a debt which is unrelated to the property will not be a caveatable interest.

Generally caveats protect an interest in property on the basis of equity and that interest remains over the property until such time as the caveat is withdrawn by the caveator or removed pursuant to a request by the Registrar General or by an order of the Supreme Court.

Once a caveat has been lodged over a property, the Registrar General will advise the registered owner of the property. If the registered owner of the property deems that the caveat is not legitimate they may make a request to the Registrar General that it be removed.

If the Registrar General agrees with the property owner's assertions that the caveat is not legitimate, they will then notify the person who has lodged the caveat and advise them that the caveat will be removed within 21 days unless the caveator obtains an order from the Supreme Court that it remain.

The caveator must then instigate proceedings in the Supreme Court that the time for the removal of the caveat be extended. If no such order is obtained within 21 days then the caveat will be removed by the Registrar General.

*\*An equitable lease or mortgage is an agreement for the grant of an interest in land with terms that correspond to a legal lease or legal mortgage but do not comply with the necessary formal requirements of a legal lease or legal mortgage. For example the lease or mortgage may not have been reduced to writing or may not have been signed.*

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