

Caveats explained

The word caveat is Latin and translates to “let him or her beware”. A caveat can be lodged against someone’s property title to protect the lodging party’s right or interest in the property and it prevents the registered owner of the property from selling, mortgaging, and dealing with the property until the caveat is removed from the title.

To lodge a caveat you must have a “caveatable interest”. Under section 138(1) of the Land Transfer Act 2017, to meet the threshold of a caveatable interest, the person:

- (a) claims an estate or interest in the land, whether capable of registration or not; or
- (b) has a beneficial estate or interest in the land under an express, implied, resulting, or constructive trust; or
- (c) is transferring the estate or interest in the land to another person to be held on trust; or
- (d) is the registered owner of the estate or interest in the land and—
 - (i) has an interest that is distinct from that of a registered owner; or
 - (ii) establishes to the satisfaction of the Registrar that at the time the caveat is lodged there is a risk that the estate or interest may be lost through fraud.

Common examples of when a caveat could be registered are:

- A party has purchased a property and there is a substantial amount of time between signing the contract and the settlement date.
- A purchaser of a property registering a caveat when the vendor is seeking to cancel the contract.
- A party is a beneficiary who has an interest in land under a trust or estate.
- A party has a lease over the land.

Please note that if a caveat is registered without reasonable cause, you could be liable to pay compensation to anyone who suffers a loss as a result of the caveat being registered.

There are three ways to remove a caveat from a title which are:

1. The person who lodged it (also known as a caveator), withdraws it.
2. When the caveat lapses. The registered proprietor applies to the Land Registrar for the caveat to lapse. The caveator will then receive a notice that an application has been made for the caveat to lapse and will have 14 days to notify the Land Registrar that an application has been made to the High Court to sustain the caveat.
3. Apply to the High Court to have it removed. The High Court is required to be satisfied that there is not a valid reason for the caveat to be registered. The onus is on the caveator to prove there is/are reasonable ground(s) for the caveat to be sustained.

In conclusion, whether you would like to protect an interest you have in land, or would like to apply for the removal of a caveat from your property, I advise you seek legal assistance to explore the best way to move forward to resolve your matter.