

Caveats and land

Where one has a "caveatable interest" in real property (i.e. land), that person can lodge a caveat over a property in order to stop the owner registered on the title of that property from "dealing" with that property, which, for most purposes, is usually the sale of that property.

What is a caveat

Whether one has a "caveatable interest" or not in a property will be fact specific. Therefore, specific legal advice should be sought in this regard before one decides to lodge a caveat over a property.

There are however certain transactions, such as where you have entered into a contract for purchase of property or where you have a mortgage over a property, for which the lodging of caveats is well recognised.

However, where someone owes you money, it will not give you an automatic right to lodge a caveat over the debtor's property unless you have a written agreement which permits you to do so.

Lodging a caveat

A caveat can be seen as serving two purposes:

- (i) It notifies everyone else that the caveator (i.e. the person who has lodged the caveat) has an "interest" in the property; and
- (ii) If you are the caveator, you will be notified of any proposed registration of any dealing in that property (e.g. its sale, proposed mortgage etc).

Practically, the cost of lodging a caveat is minimal. When one lodges a caveat over a property, the word "caveat" is actually recorded on the certificate of title of that property and the fact a caveat is registered over that property would therefore be known to all who search that title.

Where the situation in (ii) above occurs and the caveator receives a notification from the Land Titles Office, the caveator will have 30 days to commence legal proceedings to protect its interests. Where the caveator does not do so, the caveat expires and the dealing that is proposed can go ahead.

Protecting ones caveatable interest

If a caveator seeks to protect its caveatable interest and cannot reach an agreement with the other side in respect of its interest, the caveator will have to commence legal proceedings.

Although the registration of a caveat is an administrative process (i.e. applying in the appropriate form to the Land Titles Office), the courts see a caveat as

effectively being an administrative interlocutory injunction (i.e. a legal mechanism usually to maintain the status quo between the parties before a trial). Therefore, where there is an application in respect of a caveat, the onus is on the caveator to satisfy a two-stage test used by the courts when deciding whether or not to grant discretionary injunctive relief. First, the caveator will need to establish a '*prima facie*' case that it has the estate or interest claimed in the land which entitles it to the maintenance of the caveat. Where this is established, the court will then consider with whom the balance of convenience lies. A critical and perhaps decisive consideration in this respect is whether damages will provide an adequate remedy in the event the caveat is removed.

Improper lodging of caveat

As can be seen from the discussion above, a caveat may be administratively fairly easy to lodge. However, if you do not have proper basis for lodging a caveat and subsequently refuse to withdraw it, the registered property owner, where it suffers losses as a result of the caveat, may sue you for those losses.

To discuss the issues raised in this article or if you wish specialist legal advice, please feel free to telephone our office at (03) 8555 3895.

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