CAV-03 Caveats - types of

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Verification of Identity

The caveator in an application will be subject to the Verification of Identity process as of 5 June 2018. This process is completed by Australia Post for self-represented parties. Refer to the Australia Post website to complete your verification of identity. For information regarding the Verification of Identity Practice refer to Verification of Identity webpage on the Landgate website.¹

¹ [Guide updated to add new paragraph on 06/08/2018]

1 Registered Proprietor’s Caveat

The registered proprietor of land may lodge a caveat against land registered in his or her name. Such caveats are usually lodged in the following circumstances:

- the caveator/registered proprietor has lost possession of the duplicate certificate of title either by fraud, theft or misplacement

or

- the caveator/registered proprietor has revoked a power of attorney but has been unable to contact the attorney to give advice of the revocation

or

- the caveator has lost possession of a signed instrument e.g. transfer of land, and has not been paid.

The evidence to support such a caveat would be a statutory declaration by the caveator setting out the facts and repeating the claim of the caveator.

A caveat, correct as to form by a registered proprietor against his or her land would be accepted by the Registrar.
2 Caveat to Prevent Improper Dealings

In order to reduce the risk to WA Landowners from being the subject of improper dealings on their property a Caveat (Improper Dealings) can now be lodged with Landgate. The Caveat once lodged will stop the registration of any instruments or documents that would ordinarily need to be signed by the owner.

The Caveat (Improper Dealings) form must be made in the name of all registered proprietors. If one registered proprietor does not want to be part of the Caveat, then the document cannot be lodged. The Caveat can be signed and lodged with Landgate by the registered proprietors themselves or a Solicitor acting on their behalf of all the registered proprietors. A Licensed Settlement Agent does not currently have authority under the Settlements Agents Regulations 1982 to sign and lodge a Caveat to prevent improper dealings on behalf of land owners.

Please note that registered proprietors who have mortgaged properties should review their Mortgage terms and consult with their lending institution before lodging a Caveat (Improper Dealings) as the terms and conditions of the Mortgage may prevent the lodgement of any Caveat without the consent of the Mortgagee.

3 Types of Caveats under the TLA

Caveats may be lodged under the provisions of the following sections of the TLA:

- a caveat forbidding the bringing of land under the TLA
- a caveat against the granting of an application to rectify the boundaries or area of a certificate of title

and

- s.188(7) - a caveat lodged by the Registrar.

4 Caveats Lodged under Section 137 of the TLA and Section 20 of the LAA

4.1 Who May Lodge a Caveat Over Freehold Land

Any person or corporate body capable of taking a registered interest in land, a mortgage, a lease or a charge may lodge a caveat. Unincorporated bodies must caveat by their trustees personally and business associates or firms by all the individual members of the business or firm in their personal capacity.

Identification of the trustees as trustees of ... or members of a firm trading as ... is permitted. Certain persons with statutory authority may lodge caveats. Minors can lodge a caveat but a Court Order will be required if the caveat is to be withdrawn before the minor attains full age.

4.2 Who May Lodge a Caveat Over Crown Land
All persons, corporate bodies, trustees and minors in the same capacities as set out in s.137 of the TLA, may caveat as to an interest in Crown land (see Chapter 4.1 above).

A caveat over Crown land can only be lodged under s.20 of the LAA in respect to:

- A registered interest or an interest approved by the Minister for Lands under s.18 of the LAA but not registered.

or

- An unregistered interest created pursuant to a management order or vesting where the management order or vesting is created or vested for purposes of another Act.

The registered proprietor panel of the caveat form should show the party to whom the caveat is lodged against. State of Western Australia is shown where they are the only one shown on the Crown title or there is a management order or lease on the Crown title but the caveat evidence is based on an agreement (e.g. easement) between the State of Western Australia and the caveator.

The management body is shown in the registered proprietor panel for evidence (e.g. leases) based on a management order or vesting. The lessee is shown in the registered proprietor panel for evidence (e.g. mortgages) based on a lease.

4.3 How the Claim is Stated

The claim of the caveator must be set out clearly in the caveat.

It is very important that any options to renew the lease, or an option in the lease to purchase the fee simple be protected by including details of the options in the fifth and sixth panels of the caveat.

4.4 Where the caveator is claiming an estate in fee simple

Where the caveator is claiming an estate in fee simple he or she must also show how the claim arises. A simple example of a claim arising out of a contract of sale is:

"claims an equitable estate or interest as purchaser of the fee simple ...... by virtue of a contract of sale dated 5 January, 1994 made between the registered proprietor as vendor and the caveator as purchaser."

4.5 Where the caveator is claiming as equitable mortgagee

Where the caveator is claiming as equitable mortgagee an example of the claim would be:

"claims an interest as equitable mortgagee ...... by virtue of a mortgage dated 5th January, 1994 made between the registered proprietor as mortgagor and the caveator as mortgagee."

It should be noted that the words fee simple are omitted, as a mortgagee's claim is in equity and not the fee simple.

4.6 Where the caveator is claiming as lessee
Where the caveator is claiming as lessee an example of the claim would be:

"claims an estate or interest in leasehold as lessee ...... by virtue of a lease dated 5 January, 1994 made between the registered proprietor as lessor and the caveator as lessee."

5 Caveat against Applications to Bring Land under the Operation of the TLA (Section 30)

Following the advertisement of the intention of the Registrar to bring land under the operation of the TLA, any person claiming an estate or interest in the land may lodge a caveat forbidding the bringing of such land under the TLA.

Such caveat must be on a form approved by the Registrar. There is a printed form of Caveat, designated Caveat (under s.30 and 223A of the TLA) form, available for this purpose.

The estate or interest claimed must be particularised and, if required by the Registrar, must be supported by the statutory declaration of the caveator. This declaration must be supplied within seven days of the Registrar’s requisition, failing which the caveat will become null and void.

The Registrar may also require a perfect abstract of title setting out the estate or interest claimed. An address or fax number, within Australia, for service of notices to the caveator must be supplied.

The caveat has the effect of suspending action on the application until:

- the caveat is withdrawn
- the caveat has lapsed

or

- an order of the Court is obtained and served on the Registrar.

The caveat will lapse after thirty days from the date of lodgement if the caveator has not taken proceedings in Court to substantiate his or her claim and served on the Registrar an injunction of the Court restraining the Registrar from bringing the land under the TLA.

6 Caveat against an Application to Rectify the Boundaries or Area of the Relevant Graphic for a Title (Section 176 of the TLA)

The provisions of s.176 of the TLA, with the necessary changes in detail, are similar to those above.

7 Caveat against an Application by Possession of Land Already under The TLA (Section 223A)

The provisions of s.223A, with the necessary changes in detail, are similar to those above.

8 Registrar’s Caveats (NEW)
A Registrar's Caveat is may be lodged under the instructions from the Commissioner of Titles under section 188 of the Transfer of Land Act to prevent improper dealings or protect the interest of a person where the proprietor lacks legal capacity. Common situations that may occur are:

- Deposit of a Deed of Trust – see Deeds of Trusts

- Following an Application to Vest the land into a new Trustee – see Application s182 and s183.

- To protect a persons' right to reside on land contained in a Will

- To protect a minor/s interest disclosed in a Will

- To protect a Trust created in a Will

- To give notice of a "trust" incorrectly show in a Transferees Panel, Mortgagees Panel or Lessees Panel etc.

- To protect the interests of a represented person under a State Administrative Tribunal Order (SAT) or where a Donor of an Enduring Power of Attorney discloses that a purchaser, mortgagee, lessee etc. lacks legal capacity to manage their own affairs

- To give notice of any alleged fraud in the Register or to prevent such fraud

- To prevent improper dealings, where the State Administrative Tribunal formally advise the Registrar of Title that an Enduring Power of Attorney has been revoked by the Tribunal, or that the Tribunal has determined that a person is no longer able to manage their own affairs

- To prevent improper dealings, where the Registrar of Titles is formally notified by a Trustee of a Bankrupt estate that the Trustee has "Disclaimed" properties registered in the name of a person declared to be bankrupt.

9 Also see

- CAV-01 Caveats - overview

- CAV-02 Caveats - further reading

- CAV-04 Caveats - document preparation and lodgement

- CAV-05 Caveats - removal

- Guides for Lodging or Removing a Caveat