CAV-04 Caveats - document preparation and lodgement

Version 2 - 06/08/2018

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1 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 New paragraph added on 06/08/2018]

1 Improper Entry of Caveat

Under s.138 of the TLA the registered proprietor may summon the caveator to appear before the Supreme Court or a Judge in chambers to show cause why the caveat should not be withdrawn.

Section 140 of the TLA provides that a caveator lodging a caveat without reasonable cause shall be liable to pay such compensation for damage caused as a Judge on a summons in chambers may order.

2 What do I need for the Caveat?

- Title Search (recommended) – used to complete the caveat form

- Forms – caveat form Caveat/Caveat forbidding land to be brought under the Transfer of Land Act 1891 (section 30)/Caveat (improper Dealings)

- Copy of any evidence to support the claim as stated in the caveat (including original statutory declarations if required)

- Registration fees payable to Landgate
2.1 Title Search – a copy of the current Original Certificate of Title

A title search is optional as the search provides you with a complete up to date copy of the title at the date and time the title search is obtained.

2.2 Caveat forms C1/C3/C4

Caveat Caveat/Caveat forbidding land to be brought under the Transfer of Land Act 1891 (section 30)/Caveat (improper Dealings) forms are available from a Landgate office or online from the Landgate Website.

Caveat C1 can be lodged electronically.

3 Preparing the Caveat form

In addition to the below information, please refer to: DOC-01 Document Preparation.

3.1 Description of Land

Over Whole

As per standard document preparation guide (DOC-01 Document Preparation).

Over part

Where portion of the land in a title is involved that is not the whole or a lot or part lot in that title (multi lot title) then care is needed in its description. There is a need to ensure that no more land is caveated than necessary.

The land description must make reference to the portion and be supported by a sketch that identifies the land being caveat or in the form of a narrative. That sketch should be certified correct by the caveator and in the case of an absolute caveat, be referred to the Survey Advice Office in the Landgate building in Midland.

Caveators (and their conveyancers) need to be aware that certain problems can flow from poorly described ‘portion only’ caveat, which may result in a claim against them for compensation under s.140 of the TLA.

Having no way of determining what part of the land the caveat applies to, the Registrar has no alternative but to deal with it as if it binds the whole land. In a sub-division of land (which in this case does not include a strata/survey-strata scheme):

- the caveat will carry forward onto every part of the lot

- if part of the land in the lot is to vest in the Crown under s.152 of the Planning and Development Act 2005 (P&D Act) - formerly s.20A of the Town Planning Development Act 1928 (T P&D Act) or otherwise, then it will be necessary for the caveat to be withdrawn as to that portion

and
- if it is unclear which portion of land a caveat affects, it may create difficulties for or prevent the registered proprietor dealing with other parts of the land.

Where the portion is over portion of the land, the ‘Extent’ panel should state ‘Part’.

Reference to an annexed sketch

Where portion of the land in a certificate of title is caveated and the nature of the claim is absolute, such portion must be defined by a sketch bearing sufficient measurements to enable the land affected to be accurately plotted. The sketch should be drawn on or fixed to an additional sheet stapled to the caveat.

Where a subject to claim caveat is lodged against portion of the land in a certificate of title, it is not necessary for the sketch to be the same standard as above. It only needs to clearly establish its position of the lot/floor plan.

A simple example of a land description referencing a sketch is:

"as to portion of Lot ... on Plan....as described by the hatched area in the annexed sketch"

Note: The sketch should be provided on a separate page, numbered/labelled accordingly to form part of the legal document. Not just included as part of the evidence.

Reference by Narrative of Buildings

A lease of part of a building may have a land description defined by sketch, or by words referring to permanent walls. Care should be taken that in referring to parts of a building that any areas outside the building are also included in the lease (such as parking or storage areas) are not forgotten.

For example, a lease with a land description panel reading:

"The first floor of the CSA Centre, erected upon Lot 16 on Plan 13455"

Can be registered without requiring a sketch showing the measurements of the leased area, of the building in relation to the boundaries of the land parcel (Lot 16).

Over an Interest

The land being caveated must be accurately described on the caveat form. There the interest claimed is against a mortgage, lease or charge the appropriate words "as to ........." must precede the land description.

For example, in the case of a mortgage, the words "as to mortgage F123456" must precede the land description.

3.2 Volume/Folio

As per the standard document preparation guide (DOC-01 Document Preparation).

3.3 Caveator

The true name of the caveator must be stated.
The caveator is not required to include:

- Their address
- Their status, such as ‘As Trustee for.....’. However, they can include ‘trading as.....’ or ‘as the partners of.....’

3.4 Address for Service of Notice

Each caveator must state either an address or a fax number (one or the other, not both), within Australia, where notices relating to the caveat may be served.

3.5 Registered Proprietor

Plus any additional address for service of notice to the registered proprietor. (See also: DOC-01 Document Preparation.)

Note: This may differ from the property street address.

3.6 Estate or interest being claimed

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

It should be noted that the words fee simple is only used in reference to a purchaser, all other claims would not show these words.

3.6.1 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 option in the fifth and sixth panels of the caveat.

3.6.2 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"

3.6.3 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"

3.6.4 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"
3.7 The Caveator claims an estate of interest being specified by virtue of

In all caveats the estate or interest being claimed is required to be supported by documentary evidence of that claim. The panel title ‘The Caveator claims an estate or interest as specified herein of the estate or interest of the above-named registered proprietor in the land above described by virtue of (Note 6)’ should clearly reference the evidence supporting the claim by name and date.

For example, where the caveators claim arises from a contract of sale, insert into note 6 "...a contract of sale dated 30 August made between the registered proprietor as vendor and the caveator as purchaser".

3.8 And Forbids the Registration

In this panel, insert the wording of one of either:

- Absolutely
- Unless such instrument be expressed to be subject the caveator’s claim
- Until after notice of any intended registration or dealing to be given to the caveator

3.9 Who can sign the Caveat?

The Caveat may be signed by:

- The caveator(s) personally
- The caveator’s solicitor, signing as his or her solicitor and agent
- A principal of a settlement service, signing as agent for the caveator
- A responsible officer of a caveator company, i.e. director, secretary or manager
- The attorney for the caveator

4 Evidence required to support the claim of the Caveator

4.1 Document or Deed

An ‘Original Sighted’ copy must be presented.

4.2 Statutory Declaration

The original signed and witnessed statutory declaration must be provided. (See also: DOC-04 Statutory Declarations.)
5 Lodging the Caveat

- Complete the caveat form referring to the title search. Type or print legibly in dark ink (preferably black)

- Ensure the evidence is being provided (including originally signed statutory declarations if applicable)

- Lodge the originally signed forms with Landgate ensuring the registration fee payment is enclosed if lodging by post:

- In person at one of Landgate’s lodgement offices. NOTE: any person can lodge the application document with Landgate. The lodging party does not need to be one of the persons named in the application document

- By post to: Landgate Document Lodgement Section, PO Box 2222, MIDLAND WA 6936

6 Also see

- DOC-01 Document Preparation
- CAV-01 Caveats - overview
- CAV-02 Caveats - further reading
- CAV-03 Caveats - types of
- SIG-01 Signing of Documents
- Guides for Lodging or Removing a Caveat