

CAVEATS IN QUEENSLAND – WHAT ARE THEY AND HOW DO THEY WORK?

When a relationship breaks down in Queensland (where it be matrimonial or defacto), it is often the case that a caveat needs to be registered against a property which forms part of the net asset pool available for division.

What is a Caveat?

A Caveat is a formal document known as a Form 11 which is able to be lodged against real estate. Caveats in Queensland are lodged at the Titles Office with the Department of Natural Resources and Mines.

In summary, it has the effect of stopping the legal owner (and any other person) from selling the property or further registering other instruments against it, such as a loan/mortgage. It also stops the legal owner from being able to transfer the property to another person.

Why Lodge a Caveat?

It is not uncommon for a property which forms part of the asset pool to be registered in one party's name alone (the "registered owner"). That property may have been brought into the relationship by one of the parties, or may have been registered that way for tax/commercial purposes. Whatever the reason, to protect the interests of the party who is not on the title (the "other party"), it is in some cases advisable for the other party to lodge a caveat against the property.

The caveat would be lodged in circumstances where the other party wishes to negotiate property settlement matters with the registered owner, and is worried that the registered owner may sell, transfer, or encumber the property so as to attempt defeat of the other party's property settlement claim. For example, despite the fact that the parties in question may have been married for twenty years, if the former matrimonial home is registered in one party's name, the registered owner is entitled to list the property for sale and proceed with a sale, even if the other party does not agree to that. The only way to stop that from happening is to lodge a caveat, or obtain a Court Order. Lodgement of a caveat is far less expensive (a few hundred dollars in registration fees) when compared to seeking a Court Order which can cost thousands of dollars.

What Happens after a Caveat is Lodged?

Once lodged, the registered owner will receive a letter from the Department of Natural and Mines advising that the caveat has been registered. The registered owner's consent is not required for the lodgement of a caveat.

Once a caveat has been registered, the registered owner is entitled to serve the other party with a Notice requiring the other party to commence Court proceedings to support the caveat. If served with such a notice, Court proceedings must be commenced within 14 days of being served with the Notice. If Court proceedings are not initiated, the caveat will be removed from the title of the property. A registered owner rarely serves such a Notice, as lodgements

of caveats are more often than not expected in relationship breakdowns where a property is not registered in both parties' names.

Once a caveat has been registered, and a Notice is not served by the registered owner as detailed above, then the caveat will remain in place, but only for three months. If property settlement matters are not resolved within that three month period, the only way to keep the caveat "alive" and registered against the property is to start Court proceedings for property settlement. Such proceedings must be commenced before the three months have lapsed, and must be served on the Department of Natural Resources and Mines. Once that has taken place, the caveat will remain registered against the property indefinitely, until either the parties reach agreement and the other party removes the caveat, or the Court Orders that the caveat be removed.

To be successful in having a caveat accepted for registration, it must be drafted correctly. Furthermore, the person lodging the caveat must have a caveatable interest to do so. Legal advice needs to be sought as to whether such an interest exists. Whether a caveatable interest exists depends on the individual facts of each case.