

FACT SHEET - CAVEATS

What is a caveat?

A caveat is a legal document that prevents any dealings with land (for example prevents the land from being sold or mortgaged). It is a very serious step to take.

You should only lodge a caveat if you have received legal advice to do so. If you have no legal right to lodge a caveat, you may be held responsible for payment of costs to another person if the caveat is lodged.

How do I get a caveat?

You need to complete a Form 11 from the Department of Natural Resources and Mines These forms are available online at www.dnrm.qld.gov.au.

Follow the directions included in the form.

Note:

If you do not have 'Land Title details" you will need to complete a title search at the Department of Natural Resources and Mines to complete the caveat application form.

At section 3, under the heading "Interest Being Claimed" insert the words:

"An equitable interest in Fee Simple"

At section 4, under the heading "Grounds of Claim" insert the following words:-

(If married)

"The Caveator has an equitable interest pursuant to a constructive trust in the property referred to in Item 2 by reason of the Caveator being in a married relationship with the registered owner and by reason of having contributed both financially in the form of having made mortgage repayments and non financially in the form of making improvements to the property during the course of the marriage"

(If de facto)

"The Caveator has an equitable interest pursuant to a constructive and/or resulting trust in the property referred to in Item 2 by reason of the Caveator being in a de facto relationship with the registered owner and by reason of having contributed both directly and indirectly to the property"

If another reason forms the basis of claim, you will require further legal advice before completing this section.



At section 7, you have an option of limiting the time that the caveat applies.

What do I do now?

You will need to lodge the caveat with the Department of Natural Resources and Mines so that it is recorded against the title of the property.

At the time of lodgment, you will be required to pay a lodgment fee. If you have to conduct a title search you will also be required to pay a Title Search fee. For details of current lodgment fees please contact 131304 or check the website address above.

Where is the Department of Natural Resources and Mines

The Department's address is:

The Government Building
Level 3
187-209 Stanley Street
TOWNSVILLE QLD 4810

William McCormack Place
3rd Floor
5B Sheridan Street
CAIRNS QLD 4870

There are service centres in many regional centres in North Queensland. To find out if there is one nearer to you, contact 131304 or check the website.

Posting your caveat application

You can post forms but there is a substantial additional cost involved. The postal address is:

Land Information and Titles
Department of Natural Resources and Mines
PO Box 5318
TOWNSVILLE Qld 4810

NB: Forms must not be folded, you will require an A4 envelope for postal lodging

Can the caveat lapse?

There are a number of different time limits in which a caveat can be in place:

- The Caveatee (the owner of the property over which the caveat is lodged) may send you a notice requiring you to start proceedings in a Court in order to establish the interest you have claimed under the caveat. The Caveatee must notify the Registrar within 14 days of service of this notice upon you.
- If, after receiving this notice, you do not commence proceedings in a Court within 14 days, and if you do not notify the Registrar within that 14 day period that the proceedings have been instituted, the caveat will lapse at the expiry of the 14 days. This means that even if you commence proceedings and you fail to inform the Registrar, the caveat will lapse 14 days after the Caveatee's notice was served.

- If proceedings are commenced and the Registrar is notified within the required period, the caveat will remain in force until the proceedings are determined by the Court or the caveat is withdrawn.
- If the caveatee does not act and you do not receive a notice, you may start proceedings in a Court to establish the interest claimed within three months of lodgement of the caveat. You must notify the Registrar within that period that the proceedings have been initiated. The caveat will remain in force until the proceedings are determined by the Court or the caveat is withdrawn. If you do not file proceedings within three months, then the caveat will lapse.

How do I withdraw a caveat?

You should obtain legal advice before withdrawing a caveat. The form you require for a withdrawal of caveat is a Form 14 General Request. This form may be downloaded from the following web site: www.dnrm.qld.gov.au

For details of current fees please contact 131304 or check the website address above.

If the caveat is over three months old it may be capable of lapsing (which is no cost).

Disclaimer

This publication is intended to give general information about the subject of law that it deals with. While every effort has been made to ensure accuracy, the law is complex and constantly changing. You should contact a qualified solicitor for detailed specific information on any of the information in this publication. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting, refraining from action or relying on information contained or omitted from this publication.