

PRINT CLOSE

What is a Caveat?

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A caveat is a form of statutory injunction provided for under the Real Property Act 1900. When a Caveat (form 08X) is lodged at Lands, it effectively prevents the registration of any dealing (except for some statutory exceptions and any specifically permitted dealings) until the:

- Caveat is formally withdrawn. The caveator or their solicitor must sign a Withdrawal of Caveat (form 08WX) which must be lodged by hand at Lands' Sydney office, together with the prescribed lodgment fee or
- Caveat lapses because the interest claimed under the Caveat is satisfied by the registration of another dealing; or
- Caveat lapses after action taken following the lodgment at Lands of an Application for Preparation of Lapsing Notice (form 08LX). The Application is lodged by or on behalf of the registered proprietor of the land or a registered interest, together with the prescribed lodgment fee or
- the Caveat is removed by an order of court, annexed to a Request (form 11R), which must be lodged, by hand, at Lands together with the prescribed lodgment fee or
- Caveator consents, in writing, to the registration of the other dealing. In this case, the Caveat remains on title, a notification that the caveator consented to registration is entered and the other dealing is registered.

You should consider lodging a Caveat if you have an estate or interest in land that you cannot protect by registration of some other dealing, for example, a transfer or mortgage.

If you lodge a Caveat without reasonable cause, you are liable to pay compensation to any person who suffers a pecuniary loss as a result. Therefore if you are unsure, you should seek legal advice. Lands cannot give advice on this aspect of lodging a Caveat.

Can Lands reject a Caveat?

Yes, Lands can refuse to accept a Caveat for lodgment and not record it for the following reasons:

- Reference to title is not supplied or is incorrect; or
- Name(s) and address(es) of the registered proprietor(s) has been omitted from the Caveat or if the name(s) do not agree with the name(s) recorded on the folio of the Register or
- Address for service of notices is not stated in the Caveat, is not within the State of New South Wales or is shown only as a postal delivery box or
- Caveat does not state a claim or interest in the land or
- Estate or interest shown is based on a writ of execution or
- Statutory declaration has not been signed by the caveator (or an authorised agent of the caveator) or is not made before a prescribed functionary of the State in which it was made or
- Caveat which is dated on or after 1 January 1987, has not been marked prior to lodgment in Lands, by the Office of State Revenue where the estate or interest claimed is related to an unregistered mortgage, loan agreement or deed of charge or
- Action prohibited by the Caveat has not been stated i.e. an item number has not been stated at marginal note (G) on the form.

The registered proprietor has the option of applying to the Supreme Court for an order for removal of Caveat that was placed without reasonable cause. The Court may also order the payment of compensation by the caveator to a person who suffers a pecuniary loss because of a Caveat.

What does it mean when a Caveat is recorded on a folio of the Register?

This means that another person is claiming an estate or interest in the land.

The Caveat must be removed, or the caveator's written consent to registration of your dealing(s) obtained, before your dealing(s) can be registered.

It may be prudent for you to seek legal advice from your solicitor or other legal adviser. Lands cannot give you legal advice.

What does it mean if I receive a notice from the Registrar General that a Caveat has been recorded on the folio

of the Register for my land?

The Registrar General is required to send a notice to the registered proprietor when a Caveat is recorded against the relevant folio of the Register. This makes the registered proprietor aware of the caveat, provides the opportunity to take any necessary steps to have the Caveat removed and, if necessary, seek legal advice.

The Registrar General does not have the legal authority to ensure that the caveator is entitled to the particular estate or interest claimed and Section 74Q of the Real Property Act 1900 does not require the Registrar-General to do so. Any objection to a Caveat is a matter for resolution between the parties or through the Supreme Court.

The registered proprietor has the option of applying to the Supreme Court for an order for withdrawal of a Caveat that was lodged without reasonable cause. The Court may also order the payment of compensation by the caveator to a person who suffers a pecuniary loss because of a Caveat.

How can I have a Caveat removed from my title?

A Caveat can be removed from a folio of the Register by one of the following means:

- Withdrawal of Caveat (form 08WX) that must be signed by the caveator or their solicitor. The completed Withdrawal of Caveat form must be lodged at Lands, together with the prescribed lodgment fee or
- Lapsing because the interest claimed under the Caveat is satisfied by the registration of another dealing or
- Lapsing action taken following the lodgment at Lands of an Application for Preparation of Lapsing Notice (form 08LX), by or on behalf of the registered proprietor of the land or a registered interest, together with the prescribed lodgment fee or
- Order of Court which must be lodged (by hand) annexed to a Request (form 11R) at Lands together with the prescribed lodgment fee.

What does lapsing a Caveat mean?

While there are a number of exceptions, generally a Caveat is said to lapse in the following circumstances, where:

- the estate or interest claimed by the caveator is satisfied by the lodgment (by hand) at Lands and registration of a dealing or
- the registered proprietor of the land or a registered interest lodges an Application for Preparation of Lapsing Notice (form 08LX), together with the prescribed lodgment fee, to have the Caveat lapsed, under section 74J of the Real Property Act 1900 and the lapsing procedure is completed or
- a party lodges a dealing (prevented by the Caveat) and also lodges an Application for Preparation of Lapsing Notice (form 08LX), together with the prescribed lodgment fee, to lapse or partially lapse the Caveat, under section 74I/74JA of the Real Property Act 1900 and the lapsing procedure is completed.

In the case of an Application for Preparation of Lapsing Notice, the Caveat will lapse or partially lapse 21 days after the date on which notice was served on the caveator. The lapsing notice prepared by Lands must be served by the applicant on the caveator in a manner set out in the *Real Property Act 1900*. The caveator can prevent the lapsing by lodging an Order of the Supreme Court with Lands, to extend the Caveat.

What does a Caveator's consent mean?

It is possible that a caveator (the person on whose behalf a Caveat was placed on a folio of the Register) may not want their Caveat removed but may not object to the lodgment of a particular dealing. For example, a Caveator claiming as an unregistered mortgagee may not object to a lease being granted over the property. In these cases the caveator can give a written consent to allow registration of the particular dealing(s).

When the caveator consents to the registration of any dealing they also consent to the exercise of any powers that the owner of that interest may gain by registration. For example, where a caveator has consented to the registration of a mortgage, the Caveat will not prevent the mortgagee from exercising the power of sale under the mortgage.

When a Caveator consents to the registration of a dealing that is prevented by the Caveat the consent must:

- be in writing on or attached to the dealing and
- state the full name of the caveator and
- state the registered number of the Caveat and
- state the type of dealing and the name of the party/parties to which the consent refers and
- be absolute; any qualification or contingency to the consent is unacceptable and
- be signed by the caveator or any person authorised to sign a Withdrawal of Caveat and
- have the signature of the caveator witnessed if signed by a private party or the consent does not appear on a letterhead.

What must I do if I want to have a Caveat lapsed?

If there is a Caveat recorded on the folio of the Register for your land and you want to have it removed by lapsing, an Application for Preparation of Lapsing Notice (form 08LX) must be completed and lodged, by hand, at Lands' Sydney office, together with the prescribed lodgment fee.

If a caveat lapses without reasonable cause, you are liable to pay compensation to any person who suffers a pecuniary loss as a result. Therefore if you are unsure as to whether you have a reasonable cause to apply for the lapsing of a caveat you should seek legal advice. Lands will not give advice on this aspect of lapsing a caveat.

Lands will prepare a Notice to Caveator of Proposed Lapsing of Caveat, in duplicate. The original Notice must be served on the caveator in a manner authorised by section 74N of the *Real Property Act 1900*. The duplicate of the Notice should be made an annexure to a statutory declaration setting out the exact date and manner of service of the original. The statutory declaration should then be lodged at the Client Services Counter at Lands' Sydney office.

The caveat will lapse 21 days after service of the Notice unless, before the end of that period the caveator obtains and lodges with Lands an order of the Supreme Court of New South Wales extending the operation of the Caveat.

If the caveator seeks an order of the Court to extend the caveat you will be made a party in the legal proceedings and summoned to appear before the Court. You may incur costs in the court proceedings.

Although Lands can give advice on the steps to be followed in lodging an Application for Preparation of Lapsing Notice (form 08LX) it cannot give advice as to your legal position or assist you in serving the Notice.

If I have lodged a Caveat what must I do if I am served with Notice of Proposed Lapsing of a Caveat?

In order to prevent the removal of your Caveat, you must obtain, and lodge with Lands, an order of the Supreme Court of New South Wales extending the operation of the Caveat. This must be done before the end of the lapsing period - being 21 days after the date of service of the Notice of Proposed Lapsing of Caveat. Lands cannot give assistance in this process.