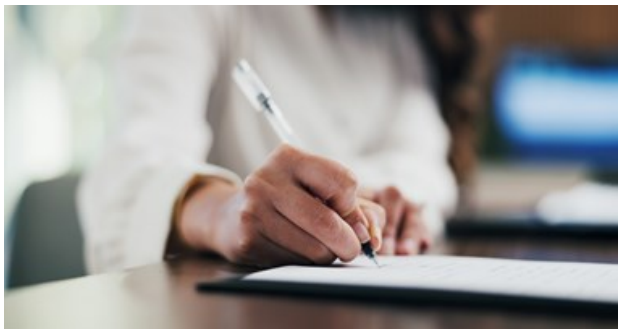


Caveats in family law property disputes: how they work and when to use one

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A caveat can help protect your interest in a property during separation, but only if you have a genuine legal interest. This article explains how caveats work, when they can be used and the risks of lodging one without proper grounds.

When a relationship ends, an important concern for separating couples is protecting property and assets until a property settlement can be reached. This issue can arise where the title to real property (a residential or commercial property) is held in one party's sole name. In Australia, a tool that can be used to protect an interest in real property is a caveat.

A caveat acts as a legal warning on the title of a property. This can provide an important safeguard where one party has a genuine interest in the property and there is a risk the other party may deal with it unfairly.

However, lodging a caveat is not always appropriate in a family law matter. It must be based on a recognisable legal interest, not simply a desire to prevent the other person from treating the relevant property in a particular way. It is important to understand when a caveat can be used and the potential risks if it is used incorrectly.

What is a caveat on a property in family law?

A caveat is a formal notice registered on the title of real property. Once lodged, it alerts anyone searching the title that another person claims a legal interest in the property.

It does not assign or determine ownership, but it can stop the property from being sold, transferred or further mortgaged without the caveator (the person lodging the caveat) being notified or resolving the caveat first.

In family law, caveats are sometimes used to protect a party's claimed interest in a property during separation. This can be especially important where one party solely holds the legal title but the other claims an equitable or beneficial interest.

When can a caveat be used in family law?

A caveat can only be lodged when the person lodging it has a legitimate legal interest in the property.

In a family law context, this may include situations where:

- the property was jointly acquired but only one name is on the title;
- a spouse made financial contributions to the purchase or improvement of the property;
- a spouse made non-financial contributions to the improvement of the property;

The above circumstances may give rise to a constructive trust or equitable interest claim, leading to a caveatable interest in the property.

The following stand-alone facts are not enough to justify lodging a caveat (but may be part of the total facts that support a caveatable interest):

- Simply being married or in a de facto relationship;
- The property being part of assets to be divided;
- There being real risk it may be sold or transferred without one party’s consent.

There must be a recognisable legal basis for the claim.

What are the alternatives to lodging a caveat?

The Family Law Act 1975 gives the Court power to make orders preventing the disposal of property. Sometimes a caveat is not the best approach, or grounds do not exist. Other options to protect property interests include:

- applying for injunctions to prevent the sale or transfer of property;
- negotiating undertakings from the other party not to dispose of assets;
- filing an urgent application in the Federal Circuit and Family Court of Australia;
- reaching agreement early and formalising any agreement reached by way of a Consent Order or Financial Agreement.

In situations involving family violence or financial control, urgent protective steps may be needed to safeguard assets and ensure safety. Legal support is crucial in these matters.

What are the risks of lodging a caveat without proper grounds?

Outside of Court orders, a caveat cannot be lodged purely because separation has occurred.

Lodging a caveat without proper grounds is risky and may result in:

- the caveat being removed;
- legal costs being awarded against the person who lodged it;
- delay in resolving the property settlement.

It is essential to obtain legal advice to confirm whether you have a caveatable interest before lodging one.

What a caveat does and does not do

A caveat can:

- prevent a property from being sold or transferred without notice;
- protect a party's equitable or beneficial interest pending settlement;
- help avoid dissipation of assets before Court or negotiation finalises.

A caveat does not:

- prove ownership or guarantee a settlement outcome;
- replace the need for property settlement orders or agreements;
- provide ongoing security once the caveat lapses or is removed.

It is a temporary protective tool, not a substitute for a proper property settlement.

Removing or challenging a caveat

If a caveat is lodged improperly or no longer justified, it may be withdrawn voluntarily or removed by Court order. A property owner can issue a lapsing notice requiring the caveator to start legal proceedings within a specified timeframe. If they don’t, their caveat will expire.

If there is a genuine dispute about property interests, the matter may be determined by the Court as part of the family law property settlement.

Practical tips for using caveats in family law

To use caveats effectively and legally:

- Seek legal advice before lodging a caveat;
- Ensure you have a legitimate legal interest in the property;
- Keep records of financial contributions and property dealings;
- Consider alternatives such as injunctions or undertakings;
- Act promptly to protect your interests, especially if there are signs the property may be dealt with unfairly.

The misuse of caveats can backfire. Proper legal guidance protects both parties and supports a fair settlement process.

Frequently asked questions

Does lodging a caveat give me ownership of the house?

No. It only alerts others that you claim an interest and prevents transactions without notice.

Can my former partner remove my caveat?

They may issue a lapsing notice. You may then need to start Court proceedings to preserve your interest.

Can I lodge a caveat just because we separated?

No. You must have a legal interest in the property, not just a relationship history.

Is a caveat permanent?

No. A caveat is temporary and may lapse, be withdrawn or be removed by Court order.

Need advice about a caveat? Speak with a family lawyer

Caveats can be an important tool for protecting property interests in family law matters, but they are not suitable for every situation. They should only be lodged when a genuine legal interest exists, and always with legal advice.

Understanding when a caveat may be used, how it works, and the risks involved ensures separating couples can protect their rights while working towards a fair property settlement under Australian law.

If you are worried about protecting a property during separation, contact Emera Family Law to discuss whether a caveat is right for your situation.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.