



Caveatable Interest and Priority Notices

WHAT IS A CAVEAT?

Caveats serve as a very powerful and useful tool to use as a means of protecting a person or entity's interest in land. However they must be used correctly and only when a Caveatable Interest exists. It acts as a formal and written warning that there is an existing interest in the property. They appear on the online search of a Certificate of Title of a property and prevent the owner of the property from dealing with the property for example by way of sale or mortgage, without consent or until the matter of the Caveat is resolved or removed.

WHAT IS A CAVEATABLE INTEREST?

The statutory provisions that define a Caveatable Interest do not offer specific and precise principles for differentiating between all circumstances that might create interests in land to support a Caveat. What is certain is that the interest that exists at the time of lodging the Caveat must be a legal or equitable interest in the subject land. Caveatable Interests can be wide and varying but have been determined to include a binding agreement for the purchase of property between a purchaser and a vendor, the interest of an option to purchase land or the interest of an equitable mortgagee. By contrast these have been determined not to be a Caveatable Interest: an agreement to share profits on the sale of property or a licence in relation to land.

If you register a Caveat without a Caveatable Interest, you might become liable to pay the costs of the parties seeking its removal or in more austere cases the owner of the land may bring a claim against you for any loss suffered as a result of the Caveat. It is also important to be aware that if circumstances change during the life of the Caveat, the interest in the land is no longer able to

be supported by the Caveat then reasonable steps must be taken to have it removed.

The benefit of seeking the advice from an experienced Property Lawyer for someone wishing to lodge a Caveat cannot be understated.

PRIORITY NOTICES

With the new NSW Government's initiatives phasing out paper Certificates of Title and with the rise of Electronic Conveyancing across the nation, the NSW government has introduced amendments to the Real Property Act 1900, which have now allows for and govern Priority Notices.

A Priority Notice is an alternative to a Caveat and resembles a Caveat in many ways by providing notification of any intended registration of a dealing with land. A Priority Notice can only be lodged electronically and when lodged will give notice of the purchaser's interest to prevent the registration of a subsequent dealing or plan and will give priority for the instrument to be lodged.

It is generally understood that to lodge a Priority Notice requires the same conditions of a Caveatable Interest be met, that there is a legal or equitable interest in the subject land.

CAVEAT OR PRIORITY NOTICE?

There are similarities in their effect as they are both designed to remove the risk of fraudulent and unauthorised dealings taking place between exchange, settlement and registration. Their differences can be most easily discerned from the specific situations that require

them. A Priority Notice is generally not suitable for long settlement periods or off the plan transactions as the notice will only have effect for a period of sixty (60) days with an allowed extension period of thirty (30) days, so at best only gives short term protection. In these situations lodging a Caveat would be the best option as they remain for an indefinite period of time until they are withdrawn or lapsed by the owner. With the rise of Electronic Conveyancing and the uncertainty of future risks new procedures bring, it is becoming more common that incoming mortgagees are requesting that they be named on Priority Notices that include the Transfer and it is likely that in future it will become one of their requirements.

It is advised that you seek the professional advice of a experienced Property Lawyer as to the benefits each option can provide so that your interests are best protected for your specific situation.

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