



Caving in warning

Caveat

What is it?

It is a document that one lodges at the Land Title Office; claiming that you have an interest in that property.

What is the effect of the caveat once you lodge it?

In simple terms, it “freezes” the title. That means nothing can be added on to the title. It means you cannot sell or re-mortgage the property.

What reasons are some of the reasons do I have to have to lodge a caveat?

You must have a “caveatable interest”. That is you have an interest in the property. In short, it means the owner of the property owes you money and that the money relates to the said property.

You must have an interest in the property. That means you have contributed money directly or indirectly to the property.

To make it clear, people owe you money, to avoid any dispute; you should have a written agreement that says you are allowed to put a caveat on that title.

What is the purpose of the caveat?

All the caveat does, it sits there. Nothing will happen until the owner decides to sell the property then he or she cannot sell because no buyer will settle with a caveat on the title. Also, no banks will ever settle whilst a caveat is on.

What will happen will happen next?

This will force the vendor to negotiate with you, the person that lodges the caveat. Why does he or she want to negotiate with you now and not before?

Answer: He/she wants to settle the property and get the money. Of course, he or she must come to some agreement with you first before you will remove the caveat.

Common people who will put a caveat

- Spouse eg a wife is not on title and she has been contributing to the mortgage
- People you borrow money from and you used the money to repair and enhance the said property.
- People you have business dealing with eg you owe money to the hardware store, you use their chipboards but never paid for it

- A family member eg father lend money to his daughter to buy the house and he lodges a caveat

What if I do not have any interest, **can I frivolously lodge a caveat?**

The law says that you must have a probable interest (legal or equitable), if you don't and you lodge one, you will be in big trouble with the court.

Who cannot lodge a caveat even though they have an interest?

Answer: Real estate agents, conveyancers and solicitors (that is the law).

Who can remove the caveat?

Usually, when the vendor wants to sell, he or she will negotiate with the caveator and they then come to an agreement. The caveator then removes the caveat and the matter can continue to settlement. Remember, the caveator is the one that lodges the caveat in the first place.

Summary

1. A caveat act as an alert system to the caveator.
2. The caveator must have an interest (legal or equitable) in the land.
3. If the caveator has no legal or equitable interest in the land, he/she will be challenged and there can be hefty fine from the court.
4. If there is a caveat on title, no banks will settle the matter.
5. The good thing about a caveat is: if someone owes you money, you still have a chance to recover your money.
6. The weakness:
It just sits there on the title. Nothing will happen until the property owner tries to sell, transfer or refinance. It acts as an alarm. That is, the property owner via his or her legal representative will contact the caveator (the person who lodged it) when the time comes.

Smart Tips

- ✓ Do not owe people and no one will lodge a caveat on your property
- ✓ If you are going to lend money to people- you best is to have a written agreement. Make sure you state that you are allowed to lodge a caveat. This is to prevent any arguments or court challenge if you have an interest or not. Court costs are very expensive. Judges are not free
- ✓ If you have an interest whether it is legal or equitable but you are not 100% sure, it is best to lodge a caveat. At least this will alert you of an impending sale. It gives you a chance to negotiate. If you later feel that you have no interest, you can always remove it before he or she sues you. Prevention of loss or recovery of money is your aim.