

Caveats in family law

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Caveats can be a great tool to protect your interests before or while formalising a property settlement. This article explores how caveats work in Australia, and in Victoria in particular, and how they can be used in family law proceedings.

What is a caveat?

Beware! The Latin word ‘caveat’ translates literally to ‘beware’ – in Australian property law, a caveat is a notice placed on the title of real property (meaning property consisting of land or buildings, like your family home for example). A caveat cannot be placed on other kinds of property such as, say, a motor vehicle.

Who can lodge a caveat in Victoria?

Not just anyone can place a caveat on a property and the existence of a relationship or marriage does not automatically give a party a caveatable interest.

There are specific grounds of claim in relation to the property that must be met in order to lodge a caveat.

Grounds of claim – what is a caveatable interest?

There are many different grounds for lodging a caveat in Victoria. The one most commonly used in family law matters is an interest on the grounds of ‘an implied, resulting or constructive trust.’

Examples of a caveat being lodged for this reason may arise in the following circumstances (please note that this is not exhaustive):

Contributing to the purchase of the property

This could be where the Caveator contributed to the purchase price of the property directly, but the contribution is not accurately reflected on the title to the property.

For example, one party pays the deposit but the other party is listed as the sole registered owner on title.

Contributing to the conservation, maintenance or improvement of the property

This is where the Caveator has made contributions (both financial and non-financial) to the conservation, maintenance or improvement of the property.

This can include things like making mortgage repayments, completing DIY renovations and/or paying for improvements to the property.

Other contributions not made directly to the property

A Caveator may still have an interest in the property even where their contributions throughout the relationship were not made directly in relation to the property.

This includes where contributions have been made to the welfare of the family or to the benefit of the owner; for example, the Caveator was the primary caregiver of the children in the relationship, which allowed the owner of the property to work and earn an income with which to buy the property.

In order to fulfil this ground of claim, the contributions made by the Caveator must be of such significance that it would be unfair to deny the Caveator an interest in the property.

Making a promise or representation as to intention

This is where the registered owner of the property led the Caveator to believe that they would, at some point, have a legal interest in that property (meaning they would be on title), but that promise has not been fulfilled.

Transferring property for less than market value

Sometimes during a relationship, parties may transfer the legal title of a property to the other for nothing in return (or for an amount less than the actual market value of the property). This is usually done for tax purposes or securing loans.

In these circumstances, the previous registered owner of the property may have grounds to place a caveat on the property.

Risks of lodging a caveat in your family law matter

The circumstances where a caveat may be able to be lodged are varied and can be complex. It is best to discuss your specific situation with an experienced family lawyer so that they can properly advise you of whether you have a caveatable interest in a particular property and if a caveat is appropriate.

This is because there can be penalties associated with lodging a caveat when you do not have a caveatable interest and did not have an honest belief based on reasonable grounds that you had a caveatable interest.

If you proceed to lodge a caveat on a title without a legitimate caveatable interest and the owner of the property suffers a financial loss, you may be liable to pay compensation.

Why do I want to lodge a caveat in family law matters?

Ascertaining the asset pool for division after separation is the first step in formalising a property settlement in family law.

Lodging a caveat on a property ensures that the caveated property cannot be disposed of while you are in the process of negotiating a settlement and getting property valuations. Caveats can ensure that your interests are properly protected while going through the negotiation process or Court process with your ex-partner.

Importantly, however, a caveat cannot stop the registered owner from drawing down on an existing mortgage or loan that is secured against the property. This will be an issue for negotiation in the family law matter.

How a family lawyer can help

Given the risks associated with lodging a caveat without a reasonable basis, it always prudent to get legal advice first. We can provide you with advice as to the grounds for a caveat and lodge one on your behalf if necessary.

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