



# Can I lodge a caveat on the family home during family law proceedings?

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## What is a Caveat?

A caveat is a registered notice on a land title that will prevent the property from being sold or mortgaged until the caveat is withdrawn, lapsed or cancelled. In Queensland, caveats are lodged with the Titles Office and for family law purposes, are dealt with under the *Land Title Act* 1994 (Qld) rather than a specific section of the *Family Law Act* (1975).

## Who can lodge a caveat?

Section 121 of the *Land Title Act* (1994) deals with who can lodge a caveat. Just because you are married or in a de facto relationship with the registered owner, doesn't automatically give you a right to put a caveat on a property.

It must be proved that you have an '*equitable interest*' in the property if you wish to put a caveat on it. An equitable interest may be proved by your contributions to the property during the relationship.

## Using caveats to protect your interests in family law proceedings

### Where the property is owned in joint names

In most circumstances, a family home will be owned in joint names and therefore, lodging a caveat may just be an unnecessary expense since your former partner won't be able to sell or mortgage the family home without you signing the relevant transfer or mortgage documents unless they were to commit fraud.

## **Where the property is owned in one party's name only**

On the other hand, if your former partner has held the family home in their sole name or has other investment property in their sole name, depending on all the circumstances, it may be prudent to lodge a caveat over a property to protect your financial interests. This is because there is nothing to prevent your ex from selling what is probably one of the most valuable assets in the property pool.

If this were to occur and depending on when you became aware of it, your ex could potentially have spent the proceeds from the sale as and how they wished. However, if you found out prior to settlement, you could instruct your lawyer to make an urgent application to the court for the funds from the sale to be held in a solicitor's trust account.

## **Sale proceeds do not always form part of the property pool**

The sale proceeds may not necessarily form part of the property pool as recent case studies demonstrate that a court is less inclined to 'add back' money spent by one party especially if it is not unreasonably spent. Rather, it is more likely they will assess it as a negative contribution post-relationship.

Of course, if this scenario were to occur, it would be an issue that would have to be determined by the court at a final hearing. However, very few cases reach that stage and it will be an expensive process to get there.

It is for this reason, that most litigants would advise their clients to lodge a caveat over their former partner's property.

## **Get legal advice early if you think your ex is about to sell property**

If you are aware your former partner has intentions of selling a property which you have an equitable interest in but where you are not a registered owner, we strongly advise you to seek immediate legal advice that takes into account your unique circumstances.

However, lodging a caveat may not be the most appropriate course of action when considering your specific circumstances and there may be better solutions to protect your interests.

For example, if your former partner has an interested purchaser for their investment property and neither of you wish to retain that property, it may be wise for the parties to agree to sell the property and retain the proceeds of the sale in a trust account of the conveyancing solicitor until the family law property settlement is finalised.

Applying for an interim order preventing one party from dealing with a particular asset, of their own accord and without the input or consent of the other party may also be sought from the court.

The effect of such an order would allow a party to lodge a non-lapsing caveat over the real property (real estate). A non-lapsing caveat is a caveat which does not lapse and will remain on the title deed until it is withdrawn, cancelled or ordered by the court.

It is also possible to apply for interim orders for assets you wish to protect in your family law dispute which are not real property; for example, a term deposit, expensive artwork, vintage motor vehicles, shares etc.

## Lodging a caveat is one option but not necessarily the only option

Ultimately, lodging a caveat may or may not be the best course of action in family law proceedings. The best course of action is highly dependent on your personal circumstances and it is strongly advised that you seek legal advice as soon as you are aware that your former partner has an intention to dispose of any particularly valuable asset.

Finally, in order to correctly preserve your rights to a property through a caveat, it is best to have a qualified legal professional assist you with drafting and lodging the relevant documents to the Land Titles Registry.

## Hall Payne no longer provides services in family law

If you require assistance with your family law matter, we recommend you contact the relevant Law Society in your State or Territory for a referral:

- **Queensland:** [1300 367 757](tel:1300367757)
- **NSW:** [02 9926 0333](tel:0299260333)
- **Victoria:** [03 9607 9311](tel:0396079311)
- **Tasmania:** [03 6234 4133](tel:0362344133)
- **South Australia:** [08 8229 0200](tel:0882290200)
- **Western Australia:** [08 9324 8600](tel:0893248600)
- **Northern Territory:** [08 8981 5104](tel:0889815104)
- **ACT:** [02 6274 0300](tel:0262740300)

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