

CAVEATS (To Prevent Registration of Dealings)

Caveat is a Latin word meaning “*Let him beware.*” The Registration of Titles Act (RTA) contains provisions, Section 139, whereby any person claiming an interest or estate in land may lodge a caveat to protect his interest. The caveat is an injunction to the Registrar of Titles restraining the registration of any dealing affecting the ownership of the land without notifying the Caveator.

A Caveat must be in substantial compliance with the RTA in order to be valid and is received by the Registrar. It is not an instrument and is not registrable. A party dealing with a registered proprietor will know of the caveat only from a search of the Certificate of Title from the Registrar.

Caveator

The name, address and description of the person who is claiming an interest in the land is required.

Nature of the Estate or Interest Claimed

The nature of the interest claimed should be clearly and concisely expressed. An equitable interest or estate without more detail is insufficient. The estate or interest claimed must be stated in the Caveat Form (see Thirteenth Schedule). In the absence of fraud (actual not constructive) all estates and interests in land prior to first

registration are vitiated or extinguished with the exception of certain Crown rights and a tenant for a term not exceeding three years.

Only a person having or claiming to have some recognized legal or equitable estate interest in land or a beneficiary can be a Caveator. The estate or interest may be classifiable under one of these seven headings:

1. A right to the present or future possession of the land either as a owner of the fee simple or as a tenant for life or for years or for some shorter period.
2. A right to the proceeds of the sale of the land or to a share thereof or to payment of a sum of money secured by mortgage of the land.
3. A right to rent or annuity charged on the land.
4. A right to the rents and profits of the land or to a portion thereof.
5. A right to take some natural product from the land such as teak, stone or timber.
6. A right to take water out of a well situated on the land or from a stream or watercourse running through it.
7. A right to enter upon the land for the purpose of securing a benefit of a contract for the purchase of anything situate or growing on the land.

***THIS IS NOT EXHAUSTIVE OF THE CATEGORY OF ESTATES OR INTEREST
IN LAND WHICH WOULD SUPPORT A CAVEAT AGAINST DEALINGS***

Where the claim is being made under any document or writing, a copy of the paper writing must accompany the caveat. Where there is an outstanding mortgage or lease on the title it should be clear from the caveat whether the claim is against the registered owner of the land or of the mortgage or of the lease. The caveat should also state the quantum of the estate or interest being claimed.

Acceptable Interests for Caveats

The following list represents common types of acceptable interests:

- Equitable mortgagee or encumbrance pursuant to an unregistered mortgage.
- Charge for a real estate commission pursuant to an agreement which expressly charges the land
- Charge against the land pursuant to an agreement or a statutory provision (e.g., unpaid maintenance fees for a Strata Corporation).
- Charge by virtue of an unpaid vendor's lien
- Encumbrance pursuant to an annuity or rent charge.
- Purchaser or beneficial owner pursuant to an agreement for sale or assignment of an agreement for sale.
- Beneficial owner pursuant to a will, settlement or trust deed.
- Executor or administrator of a deceased person having an interest in the land.
- Trustee in Bankruptcy pursuant to an order of the court in Bankruptcy.
- Beneficial owner pursuant to a severance of joint tenancy.
- Beneficial owner by virtue of adverse possession.

- Right to purchase the property pursuant to an option to purchase or right of first refusal.
- Leasehold interest pursuant to a Lease or assignment of a Lease or transfer of a lease.
- Rights granted under an easement or restrictive covenant.
- Assignee of a registered interest.
- Priority of rights granted in another instrument or postponement agreement as against a registered mortgage.
- Profit a prendre (e.g. the right to take soil, gravel, timber etc. from the land)
- Public utility charge which expressly charges the land.
- Claims under the Married Woman's Property Act or other Acts dealing with matrimonial property.

There is nothing to prevent a registered proprietor from lodging a caveat against dealing with his own property. This usually happens in the case where the registered owner may have lost his certificate of title or other registrable instrument of title to the estate or interest they wish to protect.

The Registrar is empowered under Section 15 [c] to lodge a caveat when it appears necessary to him or upon the direction of a Referee for the protection of interest of persons under disability, on behalf of the crown, or to prohibit dealings with land in the case of any error in a certificate of title or instrument, or for the prevention of fraud or improper dealings. A Registrar's caveat will be withdrawn by the Registrar when the purpose for which it has been entered has been

satisfied, example, beneficiary under the disability of infancy having attained the age of majority or a trustee on behalf of the minor is appointed.

This is not an exhaustive list.

Unacceptable Interest for Caveats

Some interests not sustainable on a summons to remove caveat are listed below:

- Promissory Note (unless the land is specifically charged).
- Personal Loan (unless the land is specifically charged).
- Creditor pursuant to a writ of enforcement (unless the court attaches the debt to the land).
- Attorney's fees (unless related to a conveyance of land).

Identification of Land and Owner

The Land against which the caveat is to be lodged must be identified by Volume and Folio numbers (see form in the 13th Schedule of the Act) name of the registered owner may be stated in the caveat or supporting declaration if necessary and in that event the name should be consistent with that on the Certificate of Title. If the Caveator does not claim against all registered proprietors this must be explained by a Statutory Declaration.

Degree or Extent of Prohibition

Section 139 of the Registration of Titles Act enables a caveat to forbid the registration of any person as transferee or proprietor of, and of any instrument affecting such estate or interest either absolutely or until after notice of the intended registration or dealing be given to the Caveator or unless such instrument be expressed to be subject to the claim of the Caveator as is stated in the caveat instrument. The Caveator should select which operative clause is applicable to his claim.

Address for Service

The caveat must provide an address or place for service of notice within the city of Kingston **only**. A Caveator may however give an additional address outside of the city of Kingston, in which case a registered letter should also be sent through the post to such address at the same time that any notice is being sent to the address provided in Kingston. If the address for service has been changed the Caveator may service a notice of change of address and this should be reflected on the Caveat Card and in the Caveat.

Execution

A caveat instrument must be signed by the Caveator or a person who represents himself as an agent for the Caveator. An attorney signing the caveat on behalf of a

Caveator must sign as agent also; in such a case no proof of agency is required. A caveat is only a warning to the Registrar of a claim to an interest in land. The rules governing attestation requirements when instruments are presented for registration do not apply.

Memorandum

When a caveat is registered, a note evidencing the receipt is noted upon the certificate of title. The caveat number, date of lodgment, name of the Caveator and a summary of the interest is printed on the face of the title. The Caveat number is also stated on the first page at the top right hand corner of the Certificate of Title in red.

Notice to Registered Proprietor

Notice of the Caveat is given to the registered owner of the land, lease, mortgage or charge that it has been noted against the title by registered mail. A copy of the caveat must also be sent with the notification [Section 140 of the RTA].

Notice to Proprietor of Caveat No.

Against Dealings

Office of Titles

Kingston November 7, 2005

TAKE NOTICE — That a CAVEAT No. forbidding the registration of any change in the proprietorship of or of any dealing with the land comprised in the Certificate of Title as set forth in Volume Folio and as appears by the said Caveat, copy of which is hereunto annexed. This notice is given to you in accordance with the Registration of Titles Act that you may if you think proper take the necessary proceedings in the Supreme Court against the Caveator to show cause why such Caveat against your Title should not be removed.

To

Registrar of Titles

Effect of Lodging Caveat

A caveat has the effect of prohibiting the Registrar from entering in the Register any change of proprietorship or memorandum of transfer or any dealing presented for registration subsequent to the date on which the caveat was lodged unless the transfer or other instrument or dealing be expressly exempted from the operation of the Caveat or the Caveator consents thereto in writing.

Registration of Dealing by Consent of Caveator

The Caveator can permit registration of a dealing not prejudicial to his interest by giving consent in writing, without the caveat lapsing. The consent should expressly state whether or not the dealing is to be registered subject to the caveat or in priority to the caveat. The Consent document should:-

- State the full name of the Caveator,

- State the Caveat Number and the Volume and Folio number of the Title,
- State the type of dealing and the name of the person(s) to which the consent refers and
- Expressly state whether the instrument is to be registered subject to or in priority to the Caveat.
- Be signed by the Caveator or anyone authorised to sign on his or her behalf.

Withdrawal of Caveat

The Caveat can be withdrawn by the Caveator or his agent authorized on his behalf or by the personal representative of a deceased Caveator. The signature must be duly witnessed. The withdrawal of caveat should contain the name of the Caveator, the caveat number and the Volume and Folio number of the Title.

Lapsing of a Caveat

The Registration of Titles Act provides for lapsing of a caveat where it is not withdrawn by the Caveator or the Caveator will not consent to registration of a dealing. A registered proprietor on lodging a transfer or other dealing for registration will request that the Registrar of Titles send Notice of a impending dealing lodged for registration to the Caveator. Notice of the application for registration of such dealing shall be given to the Caveator at the address provided in the caveat. On the expiration of fourteen days after service of such notice on the Caveator the caveat

will lapse unless a restraining Order or injunction from a Judge is obtained and served on the Registrar of Titles before the expiration of the said fourteen days. A reasonable time for delivering through the registered post is calculated into the period.

Certain caveats are exempted from these provisions:

- Caveats lodged by or behalf of a person under disability claiming under any will or settlement.
- Caveats lodged by the Registrar.

A notice to Caveator cannot issue unless an instrument is submitted simultaneously therewith for registration. As soon as the caveat has lapsed it is the duty of the Registrar to register any instrument lodged for registration.

Notice to Caveator

IN THE MATTER of an
application for the
registration of an
instrument dealing with the
land comprised in
Certificate of Title
registered at Volume
Folio Of the Register
Book of Titles

AND
IN THE MATTER of
section 140 of the Register
Book of Titles Act.

WHEREAS **[name of registered owner]** are the registered proprietor of the abovementioned land part of **[name of place]** in the parish of **[parish]** being the Lots numbered on the plan of part of now called aforesaid deposited in the Office of Titles on the [day] day of [month] , [year] of the shape and dimensions

and butting as appears by the said plan and being the land comprised in Certificate of Title registered at Volume Folio, **has applied for the registration of Transfer/Mortgage No. [document number] to [name of transferee/mortgagee].**

I HEREBY GIVE YOU NOTICE that upon the expiration of fourteen days from the service of this Notice on you the **Caveat numbered [caveat number] lodged by you on the [day] day of [month] [year]** will be deemed to have lapsed and I shall proceed to Register the said Transfer/Mortgage in accordance with the provisions of the Registration of Titles Act **unless you sooner obtain and serve on me an Order from a Judge forbidding me so to do.**

Dated this [day] day of [month], [year].

REGISTRAR OF TITLES

To: Name of Caveator and address

CC: Name of Registered Owner and address

More than One Caveat Regarding the Same Matter

A caveat cannot be renewed by or on behalf of the same person in respect of the same estate or interest. Such caveat cannot affect registration of a dealing lodged prior to the date of lodgement of a dealing for registration. If the dealing is withdrawn before registration a caveat in respect of that dealing does not lapse.

Fees

Fee No. 8

General Notes

A Caveat cannot prevent registration of instruments lodged before the date the caveat is received by the Registrar. The reason is that registration of a dealing is actually perfected as at the date of lodgment so that when the necessary searches have been conducted and it appears that the register was clear at the time of lodgment of a dealing for registration, no caveat lodged subsequently can affect the registration.