

Caveats Come With a Warning, Too

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This week I return to the two-edged sword theme from my previous article.

Another classic example, this time from the world of property, is the caveat.

A caveat is a legal notice that can be registered over land to warn the world of someone's interest in that land.

Some people think that they can lodge a caveat over another person's property just because they are owed money by that person.

That is not the case.

The person may well owe them money, or the person may be in breach of some other obligation, for example under a contract, but there are other hurdles to jump.

To qualify to be able to register a caveat, a person must establish they actually have an interest in the land.

Determining whether someone has an interest in land can be straightforward, but in many cases it is not. There have been numerous court cases across all jurisdictions about whether or not someone has what is called a "caveatable interest".

Just like statutory demands, which we looked at in my previous column, caveats can be very powerful when used in the right circumstances. However, they need to be treated with respect and not lodged on a whim, without adequately considering both the grounds for lodgement and what you are trying to achieve by using it.

This is because if you lodge a caveat and the land owner applies to have the caveat removed and succeeds, the court will often order the person lodging the caveat to pay the land owner's costs. If it is found that the caveat has been wrongfully lodged, you can also be up for compensation for the land owner's losses.

A land owner can also pile pressure back on the lodger of the caveat by giving a notice to the lodger that requires legal proceedings to back up the caveat claims to be commenced within two weeks - rather than the usual three months. This forces the person lodging the caveat to put up or shut up quickly.

So when selecting the caveat from the legal armoury, be informed and prepared.

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Sean's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/> or you can find Sean's column "Mind Your Own Business" in APN newspapers each Wednesday.



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