

Caveat form 08X: Instructions for Completion

WARNING: care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court; damages may be awarded for lodging a caveat without justification; and penalties could be imposed for a breach of *the Oaths Act 1900* and section 117 of the *Real Property Act 1900*. Furthermore failure to observe the requirements of section 117 of the *Real Property Act 1900* and regulations 7 and 8 of the *Real Property Act Regulation 2008* may make the caveat invalid.

1. Complete the form in dense black or dark blue ink. If handwriting, use block capitals only.
2. Do not use an eraser or correction fluid to make alterations: rule through rejected material and initial the left-hand margin.
3. If the space provided at any point is insufficient, insert “See Annexure” at that point and include the required material on sheets of white A4 paper at least 80gsm (ordinary copier paper satisfies these requirements) using one side only. Insert a heading beginning “Annexure to ...” and specifying the type of form, the date and the parties to the transaction. Identify the material included, where possible by referring to the relevant marginal heading on the form. In the case of signatures which could not be fitted in the space provided, reproduce the text and layout used on the form. Number all pages in sequence with the form using the format “Page ... of ...”; the number must be placed at the foot of each page and must be centred. The first and last pages must be signed by the parties and any witness. Securely attach the additional pages to the upper left-hand corner of the form: a Nalclip is preferred; stapling should be avoided.
4. Insert the total number of pages, including any additional pages (see above), in the space provided at the foot of the form.
5. Lodge the completed form by hand at the Department of Lands, Land and Property Information Division, Queens Square, 1 Prince Albert Road, Sydney (adjacent to Hyde Park Barracks). The certificate of title should not be lodged with the form. If the caveator claims an estate or interest pursuant to an unregistered mortgage, loan agreement or deed of charge, the form must first be submitted to the Office of State Revenue for assessment of stamp duty.
6. The following instructions relate to the marginal letters on the form.

(A) TORRENS TITLE

If the caveat affects land, insert the number of the relevant folio of the Register; otherwise leave this panel blank. If the claim relates to less than the whole of the land in the folio of the Register, describe the part or premises affected: the description must be consistent with the claim set out on page 2. In the case of premises, include the full postal address. Where the property affected is contained in a Lease Folio, enter the number of the Lease Folio only: for example, 'LF 1/2345'. It is not necessary to describe the property further.

(B) REGISTERED DEALING

If the caveat affects a registered lease, mortgage or charge, insert the registration number only of the lease, mortgage or charge and the relevant folio of the Register (where the interest affected is registered on a Lease Folio enter the number of the Lease Folio only: for example, 'LF 1/2345'; it is not necessary to describe the property further.); otherwise leave this panel blank. If the claim relates to premises in a lease, describe the premises: the description must be consistent with the claim set out on page 2; include the full postal address.

(C) LODGED BY

This section must be completed by the person or firm lodging the form at LPI (“the lodging party”). If the lodging party does not have a LPI document collection box, leave the relevant panel blank. If the lodging party has a Listed Lodging Party Number (“LLPN”) insert it as the first item of the first line in the relevant panel; use the following format: “LLPN: 123456. Provision of a reference is optional.

(D) REGISTERED PROPRIETOR

Insert the full name and postal address of the registered proprietor; if the claim relates to fewer than all the registered proprietors, insert only that of the registered proprietor(s) against whom the claim is made. The name must be identical to that shown on the certificate of title, apart from minor discrepancies, such as “Ann” for “Anne”. In the case of a corporation, the ACN or ARBN is not required.

(E) CAVEATOR

Insert the full name and postal address of the caveator. Ensure the postcode is included. In the case of a corporation, include the ACN or ARBN.

(F) NAME AND ADDRESS IN NEW SOUTH WALES FOR SERVICE OF NOTICES ON THE CAVEATOR

This is the name and address to which notices regarding the lapsing (i.e. removal) of the caveat will be sent, and to which Court documents may be sent. The address must be adequate for the purpose.

The address provided must be a street address in New South Wales (ensure the postcode is included). A post office box is not acceptable. If desired, a Document Exchange box in New South Wales may be included in addition to the street address.

(G) ACTION PROHIBITED

Insert the numbers only of those items in Schedule 2 on page 2 intended to be prohibited. Only those items which the nature of the claim entitles the caveator to prohibit may be included. As the prohibitions are for the most part mutually exclusive, reference to all items is not acceptable. Item 5 may be included only if the caveator is the registered proprietor of the estate or interest affected.

(H) FOLIO OF THE REGISTER / REGISTERED DEALING

Rule through “folio of the Register” or “registered dealing”, whichever does not apply.

(I) SCHEDULE 1 Estate or interest claimed

The estate or interest claimed by the caveator must be fully, clearly, accurately and unambiguously described (see Schedule 3 of the *Real Property Act* Regulation 2008). The caveator must have an estate or interest in the land or registered dealing specified in the caveat or some other interest recognised by the court as a caveatable interest. If the caveator does not have such an interest the caveat will be invalid. Note that a simple debt owed to a person by a registered proprietor of the land would not, of itself, entitle that person to lodge a caveat against the land.

(J) SCHEDULE 2 Action prohibited by this caveat

Unless suitably modified, these prohibitions will not prevent the registration of the dealings referred to in section 74H(5) of the *Real Property Act* 1900.

The prohibition clauses may be qualified, however the qualification must be clear, unambiguous and consistent with the claim. Items 1, 2 and 5 may be qualified to allow the registration of a specific dealing or plan.

If item 3 is selected, insert the number of the relevant plan.

If item 6 is selected, rule through the inappropriate words and insert the number of the relevant dealing or deposited plan.

If item 7 is selected, item 1 must also be selected.

It is not necessary to rule through the inapplicable items.

See also note (G) above.

(K) STATUTORY DECLARATION

Declarant may be the caveator, or where the caveator is a corporation an authorised officer of the corporation, or the caveator’s solicitor, attorney or licensed conveyancer. Insert the full name in the appropriate location.

If the declarant is not the caveator insert the declarant’s capacity in the appropriate location at the foot of the form.

If the declarant is the caveator’s attorney in addition to the above, the power of attorney must be registered at LPI and the registration number must be quoted.

If the declarant is the agent of the caveator’s solicitor or a nominated employee thereof insert the full address of the declarant after the name. When lodged, the caveat must be accompanied by a letter from the caveator or the caveator’s solicitor authorising the agent or nominated employee to make the declaration. Where the letter is from the caveator’s solicitor, the solicitor must state that he/she: is the caveator’s solicitor; is aware of the caveator’s claim; and has instructed the agent or nominated employee to make the declaration.

If clause 2 is ruled through the caveat must either be accompanied by an order of the Supreme Court authorising lodgment, or be consented to by the registered proprietor of the estate or interest affected or the possessory applicant as appropriate.

Witness must be a justice of the peace, practising solicitor, notary public, commissioner of the court for taking affidavits or a person otherwise authorised to administer an oath.

If signed outside New South Wales rule through “Oaths Act 1900” and substitute the local Act; the witness must be a person qualified by that Act to administer an Oath.

NOTE: As LPI may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed before the form is lodged at LPI.

(L) CONSENT OF THE REGISTERED PROPRIETOR OF THE ESTATE OR INTEREST AFFECTED

The consent of the registered proprietor of the estate or interest affected is not essential. If given, notice of the lodgment of the caveat will not be sent to the registered proprietor (see section 74F(6) of the *Real Property Act* 1900).

If you have any questions about this form or privacy matters, please call Department of Lands, Land and Property Information Division, Client Services on 02 9228 6713 or visit our website at www.lands.nsw.gov.au.