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A caveat can be removed once it is proven by the court that there is no valid ground for its lodgement

- A caveat will effectively prevent any subsequent dealings in a property
- Private caveats can be removed

How private caveats affect property deals



by Hazel Leong

One of the most common issues hopeful home owners face is whether caveats exist on a property or land. But, how does one go about dealing with caveats placed on a property? Moreover, what is a private caveat and why is it there in the first place?

And most importantly, is there any way in which the caveat can be removed? These are the common questions that emerge when contemplating the risk involved in any caveated dealings.

Why a private caveat?

A private caveat is basically a formal legal notice, informing the society that one has a legal interest in the property or land. Private caveats are the most common form of caveats used to protect interest in land. It is used as a temporary measure to preserve the status quo and protect the rights of the land for a period of time pending resolution of a dispute by the court. Hence the

caveat is not a remedy by itself. When a said property or land has a caveat on it, all process of registration will be suspended and halted until the dispute is settled and the caveat is lifted.

A caveat effectively prevents any subsequent dealings with the land and preserves the status quo pending resolution by a court of law. This however, does not prevent the transfer of the said land and property to the caveator himself.

It is important to note that a private caveat is valid for 6 years, unless it is withdrawn by the caveator, or removed via legal methods. Once the private caveat has lapsed, the caveator will not be able to lay claims on the property. The only way to revive the claim is to lodge a new caveat, but on different grounds.

One must also note that a private caveat does not have the effect of altering the ownership of the land or property. It merely functions as a notice of a claim and priority of a claim.

Who may enter a private caveat?

A private caveat can be entered by any person or body claiming title to, or any registrable interest in the title, and is entered by the Registrar of Title upon application by the said person. As outlined in the National Land Code, interests which are registrable include transfers, leases, charges and easements. Interests which are NOT registrable are liens and tenancies.

In order to know when a "caveat-able" interest exists, one needs to ask the question: What is your interest? Is it in the land or goods? If your interest is in the land, then there is a possible valid interest to place a caveat.

However, the land owner cannot enter a private caveat on his own land unless he can properly establish the circumstances which give rise to a distinct inter-

est in land other than as a registered proprietor. Thus, the land owner himself will still have to go back to the test and establish if he has any caveat-able interest.

It is important to understand that currently, one does not need to obtain consent from any person or body before lodging a private caveat.

Because of this, there is a good chance that certain parties may exploit this vulnerability and lodge private caveats without strong legitimate grounds. To address this issue, the law has provisions for compensation to be given to anyone who has suffered a loss or damages resulting from caveats lodged without basis.

This means that the person who entered the caveat wrongfully or without any legitimate grounds can be made liable to pay compensation to the land owner or any person or body who has suffered damages or losses.

How can a private caveat be removed?

Yes, a private caveat can indeed be removed, based on three grounds:

Firstly, the private caveat can be withdrawn at anytime by the caveator. Once the Registrar of Title receives the proper forms from the caveator with regards to the withdrawal of the caveat, the registrar will cancel the entry of the caveat and then issue a notice to the caveatee.

The second method is the direct removal of the caveat directly by the registrar. This can be done via application to the land office by the person or body with registered title or interest. The registrar will then issue a notice to the caveator with regards to the intended removal and the caveat will lapse after an expiry of two months as specified in the notice. The move by the registrar can be stopped if the caveator applies for a court extension which goes by a three-stage test, which includes:

Stage 1: To show that he has a caveatable interest in the land;
Stage 2: To support his claims by evidence, and show an arguable situation;
Stage 3: Whether on a balance of justice and convenience, would it be better to allow the caveat to remain in force until the trial.

Usually when the caveator has met the first requirement to show that he has caveat-able rights, and it does raise reasonable doubts in court in the absence of other circumstances, the wheels of justice usually tend to favour leaving the caveat in place until the trial concludes.

The third method of caveat removal is by the decision of a court of law. The affected person will need to apply to the High Court for an order that the caveat be removed.

The "any affected person or aggrieved person" classification is very wide as it includes the caveatee and any other person aggrieved by the existence of the caveat, such as purchasers, lease, successful bidders or any unregistered interest should be at least registrable or caveat-able.

The caveat can indeed be removed once it is proven by the courts that there is no valid ground for its lodgement or that the earlier valid grounds now no longer exist.

In order for the caveator to challenge the removal of the caveat, the caveator will need to establish that there still exists an arguable case and that a valid ground still exists for the caveat to be sustained.

Finally, use of caveats are pretty common in the industry and is a powerful tool to protect the rights of rightful claimants.

But there is no reason for alarm should you find a private caveat lodged against your land or on the property that is being transacted.

Rest assured that the law provides sufficient protection and measures that can be taken to respond to such situations.

Hazel Leong is an avid investor with 10 years of experience with a personal portfolio of over 30 properties in Klang Valley. FOCUS

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Private caveats are the most common form of caveats used to protect interest in land