

Subject: **CAVEATS**

## BACKGROUND

"Caveat" is a Latin word meaning "let him beware". The form used in the Torrens system is unknown at common law and "is a statutory notice of a claim of an interest in land that has been brought under the Land Titles Act". (1) It is a warning to anyone searching the certificate of title that the caveator is claiming an interest in that parcel of land. The interest claimed may or may not be a valid interest in the land but if its validity is disputed and upheld by the courts, any person dealing with the land subsequent to the registration of the caveat is subject to the interest claimed. The comments of Duff, J. in *Alexander v. McKillop & Benjafield* (2) illustrate the function of the caveat in a Land Titles system:

"The fundamental principle of the system of conveyancing established by this and like enactments is that title to land and interests in land is to depend upon registration by a public officer and not upon the effect of transactions *inter partes*. The act at the same time recognizes unregistered rights respecting land, confirms the jurisdiction of the courts in respect of such rights and furthermore makes provision - by the machinery of the caveat - for protecting such rights without resort to the courts. This machinery, however, was designed for the protection of rights and not for the creation of rights. A caveat prevents any disposition of his title by the registered proprietor in derogation of the caveator's claim until that claim has been satisfied or disposed of; but the caveator's claim must stand or fall on its own merits."

Registration by way of a caveat, whether by the Registrar or by any caveator, has the same effect as to priority as the registration of any instrument under the Land Titles Act. A caveator, or transferee of a caveat in whose name the caveat is registered, is included in the definition of "owner" in section 203(1)(b)(iii) of the Land Titles Act dealing with the protection of persons accepting transfer, etc. (3)

A caveat must be in substantial compliance with the requirements of the Land Titles Act to be valid. It should at least identify the land and state the claim with reasonable clarity. (4) The claim must be of an interest in land.

There is no statutory provision to amend a caveat.

## REGISTRATION PROCEDURE

1. A person claiming to be interested in land *for which a certificate of title has been issued* or in a mortgage or encumbrance relating to that land
  - a) pursuant to
    - (i) a will, settlement or trust deed,
    - (ii) an instrument of transfer or transmission,
    - (iii) an unregistered instrument
  - b) by virtue of the provisions of any Act of Alberta under which that person acquired any right with respect to that land, mortgage or encumbrance or
  - c) by virtue of
    - (i) having acquired through the owner or any prior owner, otherwise than under items a) or b), an interest in that land, mortgage or encumbrance after the first certificate of title was issued for that land,
    - (ii) being the owner or previous owner of an interest in that land otherwise than under items a) or b), when that interest arose after the first certificate of title was issued for that land, or
    - (iii) being the owner or a previous owner of the mortgage or encumbrance, otherwise than under items a) or b),may file a caveat in the prescribed form (5) (FORM 26) against the registration of any person as transferee or owner of, or any instrument affecting, the estate or interest, unless the certificate of title is expressed to be subject to the claim of the caveator.

### 2. Caveator

- a) The name of the person who is claiming an interest in the land is required. A "person" includes a corporation (6) but not a partnership or trade name as neither is a person at law as required by section 130. Corporate caveators must comply with section 27.
- b) Where a person is claiming an interest "as agent for" or "on behalf of" or "as receiver and manager of" a disclosed principal, the principal is the caveator. In the case of a receiver and manager this information should be entered in document particulars.
- c) Where a person is claiming an interest as "trustee in bankruptcy" of a disclosed principal and the bankruptcy endorsement is not registered on the title, then the principal is the caveator. The bankruptcy trustee must be entered in document particulars.
- d) A caveat cannot be filed on behalf of an undisclosed principal. (7) If it is not clear from the caveat who is claiming the interest, the caveat should be rejected for clarification.

3. **Nature of Interest Claimed** - Both the nature of the interest claimed **and** the grounds on which the claim is founded must be stated for a caveat to be registrable. (8) For example, a person who has entered into a binding contract to buy land would claim to have an interest as purchaser or beneficial owner (i.e., the nature of the interest) pursuant to an agreement for sale between the person and the registered owner (i.e., the grounds on which the claim is founded).

The document creating the interest claimed may be attached to the caveat but the nature of the interest must be ascertainable from the information in the caveat. If no interest in land is being claimed or if the interest cannot be determined sufficiently, the caveat should be rejected. **The responsibility to ensure that the nature of the interest being claimed is sufficiently stated in the caveat lies with the registrant.**

The reference to certain formations or zones on mineral caveats must be in the claim and not the legal description. If the formation or zone area is mentioned in the legal description, documents must be rejected. (Similarly there must be no reference to formations or zones in partial discharges or transfers of caveats).

#### **4. Acceptable Interests for Caveats**

The following list represents common types of acceptable interests:

Note: Items a) through f) must specify an amount (amounts and clarifications can be taken from attachment).

- a) equitable mortgagee or encumbrancee pursuant to an unregistered mortgage, debenture, encumbrance or floating charge (9)
- b) equitable mortgagee pursuant to a hypothecation agreement
- c) charge for real estate commission pursuant to a listing agreement which expressly charges the land (10)
- d) charge against the land pursuant to an agreement or statutory provision (e.g., unpaid condominium fees)
- e) equitable mortgagee pursuant to a mortgage of a mortgage
- f) security under the Bank Act
- g) charge by virtue of an unpaid vendor's lien or purchaser's lien (11)
- h) encumbrancee pursuant to an annuity or rent charge
- i) purchaser or beneficial owner pursuant to an agreement for sale or to an assignment of an agreement for sale
- j) beneficial owner pursuant to a will, settlement or trust deed (When pursuant to a will, the caveat claim must state that the testator is deceased)
- k) executor or administrator of a deceased person having an interest in the land
- l) trustee in bankruptcy pursuant to a bankruptcy receiving order or assignment in bankruptcy
- m) beneficial owner pursuant to a severance of a joint tenancy
- n) beneficial owner by virtue of adverse possession
- o) claim to beneficial ownership or a lien pursuant to section 69 of the Law of Property Act
- p) right to purchase the property pursuant to an option to purchase or a right of first refusal to acquire an interest in land (12)
- q) leasehold interest pursuant to a lease or to an assignment or transfer of lease
- r) dower interest in homestead property
- s) rights granted under an easement, utility right of way, party wall agreement, restrictive covenant or encroachment agreement
- t) assignee or transferee of a registered or unregistered interest
- u) rights granted under an amending agreement in respect of a registered or caveatable interest

- v) priority over rights granted in another instrument or caveat pursuant to a postponement agreement
- w) assignment of rents payable pursuant to a lease of land (13)
- x) profit à prendre (e.g., the right to take soil, gravel, timber, etc. from the land) (14)
- y) non-disturbance rights granted by a mortgagee to a lessee
- z) public utility charge which specifically charges the land (15)
- aa) an interest re: a notice of intention to sell pursuant to section 70 of the Civil Enforcement Act (Registration number of Writ of Enforcement should be shown in the claim) (16)
- ab) an agreement to execute documents that affect land (e.g. lease or mortgage)
- ac) a caveat filed by The Public Trustee for the Province of Alberta (use document type Caveat re Public Trustee (CAVP) for registration)
- ad) rights granted under a conservation easement
- ae) Surface Rights Board Order

See the procedure on Caveats Registered Pursuant to Statutes of Alberta other than the Land Titles Act (CAV-5) for additional caveatable interests.

## 5. Unacceptable Interests for Caveats

The following list represents some interests claimed which are not caveatable: (17)

- a) promissory note (unless land is specifically charged in the agreement)
- b) personal loan (unless land is specifically charged in the agreement)
- c) builders' lien (to be registered by way of builders' lien as there is no lien unless the requirements of the Builders' Lien Act are complied with)
- d) creditor pursuant to a writ of enforcement (18)
- e) any interest in untitled land (19)
- f) any interest in minerals registered in the name of the Crown in the right of Alberta (20)
- g) solicitor's lien (unless land is specifically charged by agreement)
- h) security interest in chattels (21)
- i) mortgage administration agreement
- j) brokerage or appraisal agreement (unless agreement specifically charges land)
- k) guarantee of mortgage (unless guarantor has paid the mortgage debt) (22)
- l) assignment of proceeds of future sale or proceeds of a mortgage (unless land is specifically charged by the agreement) (23)
- m) beneficial interest by virtue of being a limited partner (24)
- n) interest in part of a parcel (unless it has subdivision approval or is exempt from subdivision approval)
- o) participation agreement (unless an interest in land is granted under the agreement)
- p) claim under the Matrimonial Property Act (to be registered by way of certificate of *lis pendens*) (25)
- q) development agreement (unless pursuant to a specific section of Part 17 of the Municipal Government Act or it creates an interest in land such as a charge)
- r) joint venture agreement (unless an interest in the land is granted under the agreement)

- s) an agreement which provides for or permits registration of a caveat (unless an interest in land is granted under the agreement)
- t) undertaking not to encumber or dispose of land (26)

6. **Identification of Land and Owner** - A proper legal description must be given and the name(s) of the registered owner(s) in the caveat and in the certificate of title must be consistent. However the lack of the name of the registered owner is not a reason for rejection. If the interest is not being claimed against all of the owners, the caveat can be accepted even though all of the registered owners are not listed in the caveat, "see caveat for interest" should be shown in particulars.

7. **Address for Service** - The caveat must provide an address or place for service (27) which is to be included in the endorsement on the certificate of title. If there is more than one caveator, there may be an address for service for each caveator. If the address for service includes the name of a law firm and the name is lengthy, "ETC." should be used after endorsing some of the names so it is clear that the firm name has been abbreviated as the full name must be used for the lapsing of caveat procedure. The use of "AND CO." is not acceptable as an abbreviation unless it is shown this way in the caveat. The phrase "Barristers and Solicitors" does not need to be included in the endorsement.

The address for service in the caveat or in any previous notice of change of address for service may be changed by filing a notice of change of address for service in the prescribed form (FORM 28). The notice of change of address may be filed by the caveator, the original agent or the agent who signed the notice on a transfer of caveat (see procedure under ADD-1).

On receipt of a change of address for service, on a caveat re an easement, a restrictive covenant, an encroachment agreement or a party wall agreement, register the change of address as a CORI and enter @da in document particulars.

8. **Supporting Affidavit** - Every caveat, other than a Registrar's caveat, must be accompanied by an affidavit in support of caveat in the prescribed form (28) (FORM 27). The affidavit is to be completed by one of the caveators, an agent for the caveator or an officer or director of the caveator.

9. **Execution** - A caveat must be signed by the caveator or by a person who represents himself as agent for the caveator. Where there is more than one caveator but only one signs the caveat without representing that he is also acting as agent for the other(s), the caveat is to be rejected. As a caveat is only notice of a claim to an interest in land, the authentication requirements that are normally required when instruments are executed (i.e., witness and affidavit of attestation for individuals and corporate seals for corporations) are not required.

10. **Agents** - Where a caveat is executed by an agent, the agent's name should be included in the endorsement on the certificate of title. If it is not clear from the face of the caveat whether the signatory is signing as agent, the affidavit in support of the

caveat may be referred to to make that determination.

Where an individual signs on behalf of a corporation but there is no seal and the individual completes the affidavit in support as agent, the individual should be treated as the agent. However, if the individual completes the affidavit in support as an officer or director of the corporation or if a person other than the person that signed the face of the caveat completes the affidavit in support, the caveat should be dealt with as being executed by the corporation rather than by an agent. If the caveat is executed under seal, the person who completes the affidavit is not considered to be the agent of the caveator even if the affidavit is completed as agent.

When a caveator appoints a corporation as agent, the signature of the corporation's representative does not have to be under seal.

If the individual who completes the affidavit did not sign the face of the caveat, he is not considered to be the agent of the caveator even if the affidavit is completed as agent. While the affidavit may be used to clarify the identification or status of the individual who signs the caveat, it may not be used to establish the agency of someone who has not signed the caveat. If the caveator has not signed the caveat and the identity or agency status of the signatory cannot be established, the caveat is to be rejected.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Caveat

The code used for registration at Land Titles is: CAVE

11. **Change of Agents** - A caveator may submit a written request to change the agent authorized to deal with a caveat. The request must be signed by the caveator and satisfy normal attestation requirements.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Change of Name

The code used for registration at Land Titles is: CHAN

If an agent is to be removed:

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Change of Name

The code used for registration at Land Titles is: CORI (select "D" for delete)

12. **Subdivision Approval** - Any caveat claiming an interest in part of a parcel, whether the part is in the claim or body of the caveat, must have subdivision approval if it does not fall within the exemptions provided for in section 618 of the Municipal Government Act. (29) However caveats claiming an interest in part of a parcel pursuant to a lease will be acceptable without subdivision approval provided the lease is for part

of a shopping centre, office building or warehouse and in no way is intended for subdivision purposes. (The examiner must be able to determine that the lease is only for those purposes mentioned above or the caveat should be rejected for subdivision approval.) (30)

13. **Foreign Ownership** - Foreign Ownership requirements must be complied with (see procedure under [FOL-1](#)).

14. **More Than One Caveat re Same Matter** - A caveat is rejected if it is evident from the certificate of title that another caveat was filed for the same matter, unless the caveat is accompanied by a certified copy of a judge's order or fiat authorizing the new caveat to be filed. (31)

15. **Endorsement** - When a caveat is registered, an endorsement evidencing the registration must be endorsed against the certificate of title. (32) The interest claimed is summarized and included in the endorsement. If several interests are claimed, choose one and enter the applicable code with a plus (+) sign. The endorsement will display "etc." to the summary of the claim. If the interest is difficult to accurately summarize, nature of interest should state "see caveat".

When registering a caveat re an easement, an encroachment agreement, restrictive covenant or a party wall agreement the caveat will be endorsed against all legal descriptions listed on the face of the caveat (this can be either in the claim or in the lands portion of the caveat form-but not in the attached agreement). The caveator's name and address are not to be shown on title. Note see [CAV-2](#) for discharge procedures.

16. **Fees Where Claim is for Unregistered Mortgage or Encumbrance** - If an interest is claimed by virtue of an unregistered mortgage or encumbrance other than an encumbrance securing an annuity, rent charge, unpaid vendor's lien or purchaser's lien (i.e., the claims identified in items 4.(a) to (f) inclusive), the caveat or an attachment to the caveat must indicate

- a) the amount of the mortgage or encumbrance (33) (see procedure under [MOR-1](#)),
- b) the maximum amount of the encumbrance, or
- c) that the maximum amount for which the encumbrance was given is not known or ascertainable.

The fees payable for registration of these caveats are the same as if a mortgage or encumbrance for an equivalent amount was being registered (34) (see procedure under [MOR-1](#)). Where the maximum amount of an encumbrance is not known or ascertainable, the fee is based on

- (i) the value of the land or interest in land being encumbered, or
- (ii) an amount declared by the encumbrancee to be a maximum amount in respect of which security will be claimed. (35)

17. **Notice to Registered Owner(s)** - A notice of a registered caveat and of the interest claimed must be sent by mail to the person(s) against whose title the caveat is registered. (36) Only a photocopy of the front page of the caveat with the notice label

endorsed on it is provided, unless the legal description is contained in a schedule, in which case a photocopy of the applicable page of the schedule is also sent.

**18. Transfer of Caveat** - A caveator, or agent where the caveat is signed by an agent, may transfer a caveat by use of the prescribed form [\(37\) \(FORM 28A\)](#). A transfer of caveat as to some of the land against which the caveat is endorsed is also registrable. Current legal descriptions of the land affected by a transfer are required. Upon registration of a transfer of the caveat, the transferee has the same priority as if he was the original caveator. He is entitled to all rights of the caveator granted by the Land Titles Act and is subject to all the liabilities imposed by the Act on the caveator.

The transfer form provides a notice of change of address for service which must be completed by the transferee of the caveat or his agent. [\(38\)](#) If the notice of change of address is signed by an agent, the agent's name is endorsed on the title. If notice of change of address does not clearly show "as agent" and transferee is a corporation, signor should state they are an officer or director for the corporation, or it should be executed under seal, we will consider them as transferee and will not show them as agent.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Transfer of Instrument

The code used for registration at Land Titles is: TFIN

A transfer of a caveat held by the personal representative of the deceased must be accompanied by appropriate evidence under section 120 concerning minors interested in the estate (see procedure under [PER-1](#)).

A caveat re an easement, a restrictive covenant, an encroachment agreement or a party wall agreement may be transferred by the caveator, or agent where the caveat is signed by an agent, by the use of the prescribed form [\(37\) \(FORM 28A\)](#).

- a) enter the transferee's name and address for service, when registering TFIN,
- b) register a CORI to remove the name and address.

The historical record will then reflect the details but the title will not.

An affidavit of surviving joint tenant on a caveat is acceptable for registration when the caveators are described as joint tenants on the caveat or attached agreement. Transfer of caveat executed by the surviving joint tenant can be registered. (See procedure under [CAV-2](#) with respect to instructions on establishing whether caveators are joint tenants.)

Foreign ownership requirements must be met (see procedure under [FOL-1](#)).

**19. Transmission of a Caveat** - A caveat can be transmitted to the personal representative of the caveator in the same manner as other instruments are transmitted (see procedure under [TRA-1](#)).



The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Transmission of Instrument

The code used for registration at Land Titles is: TMIN

20. **Fees** - [Tariff item 5\(1\)](#) is charged for the registration of a caveat other than a caveat to which section 133 of the Land Titles Act applies (see item 16.).

### STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. *Re Paulette's Application to file a Caveat* [1976] 2 W.W.R. 193 (N.W.T.C.A.), pp. 224-5 per Clement J.A.
2. [1912] 1 W.W.R. 871 (S.C.C.) p. 886-7
3. *Durish v. White Resource Management Ltd.* [1995] 3 W.W.R. 609 (S.C.C.)
4. *Alexander v. McKillop & Benjafield* [1912] 1 W.W.R. 871 (S.C.C.)
5. s. 130
6. s. 28(1)(nn), Interpretation Act, R.S.A. 2000, c. I-8
7. *Holt Renfrew and Co. Ltd. v. Henry Singer et al.* (1982), 20 Alta. L.R. (2d) 97 (Alta. C.A.)
8. s. 131(1) See also *Rudtash and Lumsden v. Zawick* (1956) S.C.R. 347 but see *Calford Properties Limited v. Zeller's (Western) Limited* (1972) 5 W.W.R. 714 (Alta. C.A.)
9. *C.I.B.C. v. W.G. Fahlman Ent. Ltd.* (Receiver of) 1989, 66 Alta. L.R. (2d) 180 (Alta. C.A.)
10. *Osborne Bros Land & Property Ltd. v. Hamid et al.* (1982) 23 R.P.R. 149 (Alta. Q.B. Master's Chambers) (appeal to Alberta Court of Queen's Bench dismissed)
11. *Royal Trust Corporation of Canada v. Bengert Construction Ltd., Coyes and Coyes* (1987) 49 Alta. L.R. (2d) 79 (Alta. Q.B.)
12. s. 63, Law of Property Act, R.S.A. 2000, c. L-7
13. s. 63, Law of Property Act, R.S.A. 2000, c. L-7
14. *Siewert, Moench v. Seward* [1975] 3 W.W.R. 584 (Alta. C.A.)
15. *Canada Mortgage and Housing Corporation v. Calgary (City)* (1987), 52 Alta. L.R. (2d) 351 (Alta. C.A.): In this case, it was held that as public utility charges are not deemed to be unpaid taxes, they are not an implied exception under s. 65 of the Land Titles Act and therefore are not enforceable against a transferee if the charges are not registered. Leave to appeal to the Supreme Court of Canada was denied.
16. s. 46(2), Civil Enforcement Regulation
17. *Re The Land Titles Act; The Holland Canada Mortgage Company, Limited's Case* [1918] 3 W.W.R. 345 (Sask. M.T.): a Registrar is justified in refusing to file a caveat which on its face shows the caveator can have no interest in the lands.
18. s. 33(1)(b), Civil Enforcement Act, R.S.A. 2000, c. C-15
19. s. 134(2)
20. s. 202(a)

21. s. 105
22. *Badger v. Megson* (1981) 17. R.P.R. 206 (Alta. Q.B. Master's Chambers)
23. *Seel Mortgage Investment Corp. v. Tri-Dell James Construction Ltd. et al.* (1981), 19 R.P.R. 297 (Alta. Q.B. Master's Chambers); *Iverson Heating Ltd. v. The Canadian Imperial Bank of Commerce* (1983), 43 A.R. 143 (Q.B.)
24. s. 130; s. 28(1)(p), Interpretation Act; s. 55(2), Partnership Act, R.S.A. 2000, c. P-3
25. *Bielder v. Bielder et al.* [1983] 5 W.W.R. 129 (B.C.S.C.)
26. *Frado v. Bank of Montreal* (1985) 34 Alta. L.R. (2d) 293 (Alta. Q.B.)
27. s. 131(1)
28. s. 131(2)
29. s. 652(5), Municipal Government Act, R.S.A. 2000, c. M-26
30. *Knowlton et al. v. Registrar of Land Titles for North Alberta Land Registration District and City of Edmonton* (1982) 19 Alta. L.R. (2d) 31 (Alta. Q.B.); *Otan Developments Ltd. v. Kuropatwa* (1979) 7 Alta. L.R. (2d) 274 (Alta. C.A.); *Newsome and Newsome v. Sullivan* (1987) 52 Alta. L.R. (2d) 304 (Alta. C.A.)
31. s. 145
32. s. 134(1)
33. s. 133
34. s. 133
35. s. 4, Tariff of Fees, Alberta Regulation 120/2000
36. s. 134(1)(b)
37. s. 136, 203(1)(b)(iii) and *Durish v. White Resource Management Ltd.* [1995] 3 W.W.R. 609 (S.C.C.)
38. s. 135.1(3)