

## CAVEATS—CLAIMING AN INTEREST IN A PROPERTY



By Amy Haste  
[amy@collinsmay.co.nz](mailto:amy@collinsmay.co.nz)  
 DD: 576 1412

Lloyd Collins  
[lloyd@collinsmay.co.nz](mailto:lloyd@collinsmay.co.nz)  
 DD: 576 1403

Eugene Collins  
[eugene@collinsmay.co.nz](mailto:eugene@collinsmay.co.nz)  
 DD: 576 1407

Hannah Nimot  
[hannah@collinsmay.co.nz](mailto:hannah@collinsmay.co.nz)  
 DD: 576 1409

Simone Seddon  
[simone@collinsmay.co.nz](mailto:simone@collinsmay.co.nz)  
 DD: 576 1411

Lisa Grant  
[lisa@collinsmay.co.nz](mailto:lisa@collinsmay.co.nz)  
 DD: 576 1417

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### What is a Caveat?

A Caveat is an instrument which is registered over a title to a property, recording the Caveator's interest in the land. In order for a Caveat to be registered, the Caveator must have a 'caveatable interest' in the property.

### What is a Caveatable Interest?

A caveator (who is lodging the Caveat), must have an interest **in the land**. Some examples include:

1. A Settlor or Beneficiary of a Trust i.e. if the Settlor (who sets up the Trust) transfers land to a Trustee to hold on behalf of the Trust or if a Beneficiary has a beneficial interest in the land, the Settlor or Beneficiary may register a Caveat to note their interest in the property.
2. A Purchaser pursuant to an Agreement for Sale and Purchase i.e. if a Purchaser has a reason to suspect that the Vendor would not honour their obligations, they could register a Caveat to prevent the Vendor transferring the ownership of the property to someone else.
3. If there is an equitable mortgage (i.e. an Agreement to Mortgage).

### For Example

Sarah and Luke are buying their first home. To help them finance their purchase, Luke's parents agreed to lend them \$50,000.00 which is to be repaid upon the sale. All parties enter into an Agreement to Mortgage recording the loan advance. On settlement, Luke's parents register a

Caveat over the property (after registration of the Mortgage to the Bank). In future when it comes time for Luke and Sarah to sell, they will need to obtain Luke's parents consent to have the Caveat withdrawn at which point the loan will be repaid as per the Agreement.

Had Luke's parents not entered into the Agreement, they would only be an unsecured creditor with the advance being a personal debt between themselves and Luke and Sarah. They would be unable to register a Caveat notwithstanding the fact that the funds were advanced to Luke and Sarah to purchase the property.

### The effect of a Caveat

Section 137 of the Land Transfer Act 1952 provides that a Caveat against dealings prevents registration of any instrument, having the effect of charging or transferring, or otherwise affecting the interest protected with a Caveat. In other words, if a Caveat is registered on the Title, the ownership cannot be transferred until the Caveat is removed.

A Caveat is a way of protecting a Caveator's rights as it serves as notice to all of those who search the Title that the Caveator has an interest in the land.

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