

Circular



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Caveat Changes

On 29 November 2002 the Statute Law (Miscellaneous Provisions) Act (No.2) 2002 made a number of changes to the caveat provisions of the Real Property Act 1900.

Caveator's Address in a Caveat

Section 74F(5)(b)(viii) was amended to require that where a DX number is given as the address for service of a lapsing notice on a caveator, an alternative non-DX address must also be stated.

The purpose of this amendment is to facilitate the service of lapsing notices by persons who are not members of a document exchange.

Lapsing of Caveats

The decision in *St Abanoub Properties Pty Ltd v Registrar-General* (NSW Sup Ct, Barrett J, 12 July 2002) has highlighted the need to spell out the procedures for lapsing caveats in the Real Property Act.

The main aspects of the enacted scheme are as follows:

1. Sections 74I, 74J and 74JA of the Real Property Act require a person seeking the lapsing of a caveat to lodge with the Registrar General evidence of service of the lapsing notice on the caveator within 4 weeks after the issue of the notice.
2. The evidence of service must be in the form of a statutory declaration or such other form as is acceptable to the Registrar General.
3. Where the evidence is furnished within the required time and no court order is obtained and lodged, the caveat (totally or partially) **lapses when the Registrar General makes an appropriate recording in the Register.**
4. If the applicant does not produce the evidence, the Registrar General:
 - may refuse to take any further action in connection with the notice; or
 - may serve on the applicant a notice allowing a further 4 weeks from the date of service of that notice for lodgment of the evidence and, if the evidence is not lodged within the further period, may refuse to take any further action in connection with the notice.

Applications under sections 74I, 74J and 74JA lodged before the amendment commenced will be processed in accordance with the law as it existed prior to the changes.

Des Mooney
General Manager

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