

CAVEATS

PROPER CAVEATOR

The Real Property Act allows a person who is claiming an interest in land to register a caveat. For the purposes of *The Real Property Act*, person includes natural persons and corporations. Land Titles will not accept as caveator a trust, a family trust, a limited liability partnership, a partnership or a law firm. Where a client's lands have been pledged as security for the payment of legal fees and disbursements the caveator should be the specific lawyer and not the firm.

ADDRESS FOR SERVICE

Every Caveat filed at Land Titles must contain a complete address for service. These addresses must be within Canada. Caveats must set out the names of all of the Registered Owners, and must set out the correct and current affected title numbers.

INTEREST IN LAND REQUIRED

To be registerable at Land Titles a Caveat must claim a valid and acceptable interest in land. It is both our right and our responsibility to ensure that the interest claimed is a valid one. This said, once Land Titles has determined that the interest claimed is a valid interest in land, we do not investigate to determine if this interest is validly claimed. This interest must be specified in box 2 of the Caveat, or in an attached schedule, Land Titles will not read through attached agreements and then try to guess the interest claimed.

AFFECT OF REGISTRATION ON INTEREST CLAIMED

From time to time Land Titles accepts for registration Caveats where we are not entirely certain that the interest claimed is an interest in land. Where we have some doubt, but are not entirely certain such a caveat may be accepted. Be aware that the mere acceptance of caveat for registration by Land Titles does not mean that the interest claimed is in fact an interest in land. Further, the fact that a caveat has been accepted for registration does not convert an otherwise invalid interest into an interest in land.

Three recent Manitoba decisions have highlighted this principal quite clearly. See:

Kadyschuk v. Sawchuk 2006 CarswellMan 41 2006 MBCA 18 Manitoba Court of Appeal, February 10, 2006

Willman v. Ducks Unlimited (Canada), (2004) 187 Man. R. (2d) 263, 245 D.L.R. (4th) 319, 24 R.P.R. (4th) 150, [2005] 2 W.W.R. 1 (Man. C.A.)

Jacques v. Alexander (District), 33 M.P.L.R. (2d) 81, [1996] 7 W.W.R. 677, 109 Man. R. (2d) 223

CAVEATS (continued)

COPIES OF AGREEMENTS

For the benefit of future parties it is wise to attach copies of relevant agreements to Caveats. This is because Lawyers retire, die, close files, and change firms and the agreements which underlie caveated claims can become irretrievably lost. Where the Caveat is filed pursuant to section 111(1) of *The Real Property Act* (Rights analogous to easements) or is a development agreement filed by a municipal government (other than the City of Winnipeg) the agreement must be attached.

SMELL AND NOISE CAVEATS

Caveats which are registered for the purpose of giving notice of agreements prohibiting the owners of land from complaining about or taking action with regard the **smells and noise** associated with agricultural processes will not be accepted for registration at Land Titles. Land Titles position is based upon the fact that these agreements contain only the personal covenants of the land owners governing their own conduct, but do not form an interest in the underlying land or control the use of the land itself.

RIGHT OF FIRST REFUSAL CAVEATS

A caveat claiming a right of first refusal has in the past been accepted for registration at the Land Titles. The Manitoba Court of Appeal has now made it quite clear that not only is this not an interest in land, but it is not registerable as a caveat simply because it might at some future time become an interest in land. See: Kadyschuk v. Sawchuk 2006 CarswellMan 41 2006 MBCA 18 Manitoba Court of Appeal, February 10, 2006

EASEMENT CAVEATS

Where the interest claimed in a Caveat is based upon an **easement**, and the easement is not of the type specified in section 111(1) of *The Real Property Act* the Caveat must contain the legal description of both the dominant and servient lands (Section 111(1) Caveats are typically registered by the Crown, a municipality, Hydro, MTS, or a similar agency for the supply of some service – water, electricity, etc.).

Caveats giving notice of easements will not survive either a tax sale, a mortgage sale or a foreclosure under a mortgage which is registered in priority to the caveat. If this protection is important the easement should be registered pursuant to section 76 of *The Real Property Act*. See **EASEMENTS (INCLUDING PARTY-WALLS AND RIGHTS-OF-WAY)** for a complete discussion of the difference between these two methods of registration.

CAVEATS (continued)

RESTRICTIVE COVENANT CAVEATS

There are essentially two types of restrictive covenants (other than those registered by municipal authorities). The first kind is the traditional restrictive covenant imposed by a vendor on a purchaser whereby the vendor intends to control the use/development of a piece of land for the benefit of a piece of land retained by the vendor. These types of caveats are registered on the titles to both the dominant and the servient lands.

To be registerable at Land Titles a Caveat based upon a **traditional restrictive covenant** must specify both the beneficial (dominant) and the affected (servient) lands.

The second sort of restrictive covenant is one imposed by a developer. These are caveats registered by a party who has subdivided a large piece of land into numerous lots and is selling off the lots. These caveats are based upon separate agreements between the developer and the purchasers of each separate lots. Taken as a whole the numerous separate agreements together act to create and control development in an area. In these cases the restrictions in each separate agreement are intended to bind and benefit all of the lots in the subdivision and not any specific land retained by the developer. In the end, in this type of situation the developer ultimately would own no lands, having sold all of the lots. This is referred to as a building scheme.

To be registerable at Land Titles **building scheme caveats** must set forth all of the lands affected by the overall scheme of restrictions. Note that when referring to the lands it is sufficient to use some form of short hand, for example: All lots and blocks in Plan no. 45678 WLTO or Lots nos. 1-100 Plan 45678 WLTO. Typically these sorts of caveats will be registered subsequent in series to a transfer from the developer to the purchaser. Despite the fact that all the affected lands must be shown in these caveats, each separate caveats of this type is only registered on the title to the land that is actually being sold, and not on all of the lots in the subdivision.

MUNICIPAL RESTRICTIVE COVENANTS / DEVELOPMENT AGREEMENTS

Where they have the statutory authority to do so, the City of Winnipeg and rural municipalities can also register caveats giving notice of development agreements containing restrictive covenants. Specifically the City of Winnipeg can enter into these agreements and register these caveats giving notice thereof where an application is made for adoption of, or amendment to, a zoning by-law or where an application is made for subdivision approval.

Rural municipalities can also enter into these types of agreements and register caveats giving notice of them as a condition of amending a zoning by-law, making a variance order, approving a conditional use or approving a subdivision of land. Note that where a rural municipality presents such a caveat for registration at Land Titles the following rules must be followed:

1. The agreement must be attached;
2. The agreement must be with the party who was the registered owner of the lands at the time the agreement was signed; and
3. The agreement must specifically state that it runs with the land.

CAVEATS (continued)**CAVEATS BASED UPON AN ASSIGNMENTS OF RENTS**

While Land Titles will accept a caveat for an assignment of rents and leases, a caveat giving notice of a pure assignment of rents will not be accepted. These caveats do not contain an interest in land capable of supporting the registration of a caveat. This said, due to the provisions of *The Personal Property Security Act*, one can register a filing under that act, at the Land Titles Office, protecting those rights vis-à-vis other parties with an interest in the relevant lands. This registration is made using the Land Titles Request/Transmission form as modified for *Personal Property Security Act* registrations.

See **PERSONAL PROPERTY SECURITY NOTICES** for a more detailed discussion of registrations pursuant to *The Personal Property Security Act*. See **Schedule VI** for the front page of the modified Request/Transmission form. The entire form is available from Land Titles.