

- Essentially a form of statutory injunction, providing time for judicial determination of the conflicting claims over land
- Once lodged, proprietor is notified of the caveat
- Caveat ensures all future dealings will be suspended for a specific time, pending proof of the validity of the caveatable interest
 - Usual suspension is 30 days (may be more depending on type)
 - If caveator fails to commence proceedings within the prescribed time, it will lapse insofar as it is inconsistent with the dealings lodged for registration

One: Dealing with an Unregistered Interest

- A person holding an unregistered interest should:
 - Register the interest if possible
 - Lodge a caveat to protect the unregistered interest against extinguishment by subsequent registration OR
 - Do nothing and rely on status of interest as exception to indefeasibility
- Note: if nothing is done and a subsequent inconsistent interest is registered, the subsequent registration may defeat the unregistered interest
- If no caveat is lodged, interest will be extinguished and cannot be asserted against any subsequent proprietor
- Courts have stressed importance of prompt lodgement of caveat to prevent registration so long as a caveat remains in force (*Black v Garnock*)

Two: is the interest a caveatable one?

In order to lodge a caveat, one must have a caveatable interest in land

- Generally, a proprietary right constitutes a caveatable interest
- Usually equitable in nature (although this is not a requirement)
- Under s 89 TLA an estate or interest in land under any unregistered instrument or dealing or devolution in law is required
 - Arguable, must be supported by registrable instruments
 - Mere or personal equities are not caveatable in Victoria as they do not constitute an estate/interest in land
 - Cannot exist for personal/contractual rights (e.g. a licence to occupy land) UNLESS contract expressly/impliedly grants a proprietary interest

Three: does the caveat relate to an existing interest?

Caveat must relate to an existing interest

- Caveat must direct itself to an existing identifiable interest in Torrens title land
- Not possible to lodge a caveat to protect the mere possibility of an interest, even if that possibility is great
- Caveatable interests must be clearly described
- Must be reasonable cause to lodge a caveat, otherwise caveator may be required to compensate any person sustaining damage as a result of wrongful lodgement (s 118 TLA)
 - Purpose is to prevent vexation, removing caveats involve costs and inconvenience to registered proprietors
 - Burden of proof: must establish caveator did not have honest belief on reasonable grounds they had caveatable interest