

Guidance Notes – Caveat of a Sublease or Underlease

These guidance notes are of a general nature and are not intended to, and cannot, replace the advice of a Legal Practitioner.

The purpose of this application is to enter a private caveat on a sublease or underlease, when a caveator believes that they have an interest in the land that has been subleased. Its entry does not give any person a registered interest in another's land. It merely claims an interest and operates as a bar on registration of Registry Instruments. The registration of the caveat gives the caveator the opportunity to seek to prevent the registration of the Registry Instrument by obtaining an order of the Supreme Court.

A private caveat may be entered by -

- a person/corporation claiming an interest in the land (or Legal Practitioner for).

The form of caveat is, in itself, a statutory declaration. By that declaration, the caveator declares that the interest claimed is, to the best of their knowledge, a valid interest in the land.

NB: A business name cannot enter a caveat onto a title. Land Titles staff will reject an application if the applicant is not a person or a corporation (if a corporation, please provide the appropriate ACN).

Section 104A(2) of the *Land Titles Act 1925* provides that the Registrar-General is not required to determine the validity of the caveator's claim.

Whilst there is no comprehensive definition of what is a caveatable interest, it must always amount to **an interest in the land that is subleased**. The role of the Registrar-General in the entry and removal of caveats has been described as "ministerial" only and is not concerned as to the validity of the claim on which the caveat is based.

WARNING - A person who secures the entry of a caveat without reasonable cause is liable to compensate anyone who suffers loss or damage as a result (Section 108 *Land Titles Act 1925*).

For more information regarding lodging a caveat against land in the ACT. Refer to the *Land Titles Act 1925* and the ACT Land Titles Practice Manual.

This guidance note is to be read in conjunction with the Verification of Authority Guidelines and Verification of Identity Rules on the [Access Canberra website](#).

All panels must be completed in full. If an annexure is required, use form ANN-Annexure. If more than one page is required in the annexure these pages shall be numbered consecutively and bound to this document by staples along the left margin.

All handwriting must be clear, legible and in black ink.

Any alteration to information provided on this form must be struck through with a black pen. Substitute information must be clear, and all parties must sign in the margin. Do not use correction fluid or tape.

The Registrar-General may refuse to accept any instrument that does not comply with the *Land Titles Act 1925* or these notes.

PRIVACY NOTICE

The collection of personal information in this form is required by law under the *Land Titles Act 1925*, to ensure accurate and legal transfer of title or registration of other interests relating to land and for maintaining publicly searchable registers and indexes. Personal information collected on this form will be handled in accordance with the Territory Privacy Principles in Schedule 1 of the *Information Privacy Act 2014*. More detailed information about how Access Canberra handles this personal information is available at: <https://www.act.gov.au/acprivacy>

LODGMET INFORMATION

Access Canberra - Dickson Service Centre, 480 Northbourne Avenue Dickson ACT
Opening hours – Monday to Friday 9:00am to 5:00pm
(excluding public holidays)

Lodgment fees apply.

CONVEYANCE DUTY

Please contact the [ACT Revenue Office](#) for the requirements of Conveyance Duty (commonly known as Stamp Duty)

A Buyer Verification Declaration or Seller Verification Declaration is not required for this form.

COMPLETION OF FORM

LODGING PARTY DETAILS

The lodging party needs to complete all fields. The Customer Reference Number is only required for approved subscribers who have a lodgment account to the ACT Land Information System. If the lodging party does not have a lodgment account, this field can be left blank. The lodging party will receive a Registration Confirmation Statement by email upon registration of the document to the provided email address.

LAND DESCRIPTION

Legal identifier of the land is to be supplied. To assist with suburb, section, and block, visit actmapi.act.gov.au. The registered instrument number will also be noted here.

FULL NAME AND ADDRESS OF LESSEE/S

Complete full name as registered on title and full postal address. Note: this name should match the Land Titles Register.

FULL NAME AND ADDRESS OF CAVEATOR/S

Full legal name and address of Caveator to be listed in these fields.

FORM OF TENANCY

This panel is used to determine the tenancy if there is more than one Caveator.

ADDRESS AND EMAIL ADDRESS FOR SERVICE OF NOTICES FOR THE CAVEATOR

Caveator must provide an Australian Capital Territory postal address and can also provide an email address for service of notices. All correspondence from ACT Land Titles will be sent via these means. It is up to the Caveator to keep this information up to date. Note: if an email address is used, it becomes a part of the register and cannot be removed.

NATURE OF THE ESTATE OR INTEREST IN THE LAND

The Caveator must state their interest in the land in this field. The Registrar-General requires a caveator to provide details of the interest claimed in order to substantiate that the interest runs with the land.

REPRESENTED SOLICITOR DETAILS FOR CAVEATOR

Solicitors full name, email address and firm must be completed in full. If solicitor is not acting for the registered proprietor then complete with N/A.

ACTION REQUIRED BY THIS CAVEAT

One box is required to be ticked.

- Item (a) of Action required by this Caveat - A caveat cannot prohibit the registration of a lapsing, withdrawal, cancellation or removal of a writ; the entry of, lapsing, withdrawal or removal of a caveat); dealing by a prior mortgagee; or a correction by the Registrar-General.
- If you tick item (b) the following dealings will be permitted: Notice of death, vesting, resumption or withdrawal of land; discharge of mortgage; registration, extinguishment or variation of an easement; transmission application; registration of new or additional trustees; registration of a declaration by an executor.
- Item (c) of Action required by this Caveat - Care should be taken not to forbid registration of any instrument for which the Caveator has no right to forbid.

CERTIFICATION

Certifications are statements made by a Certifier that they have undertaken a specific action prior to lodging the Registry Instrument to the Land Titles Office. A Certifier must provide the required Certifications when signing Registry Instruments or other Documents and provide the Certifications required for the role they are undertaking.

All parties must execute the document under certification.

Certification statements (dot points) must be made by the certifier, being one of the following:

- a. **A legal practitioner**
- b. **If the applicant is not represented by a legal practitioner – the applicant (i.e. self-represented party)**
- c. **If a party to an instrument is not represented by a legal practitioner – that party (i.e. self-represented party)**

Any inapplicable certification statement(s) must be deleted.

All certification statements apply where the certifier is a legal practitioner.

By certifying this form, the legal practitioner acknowledges they have taken reasonable steps to verify that their client or his, her or its administrator or attorney is a legal person and has the right to enter the conveyancing transaction.

The first listed certification statements do not apply where the Certifier is a self-represented party. Self-represented parties are only required to make certifications relating to retaining evidence to support the registry

instrument or document and ensuring the registry instrument or document is correct and compliant with relevant legislation and any prescribed requirement.

A self-represented party must have their identity verified and certified by an Identity Agent, Justice of the Peace, Legal Practitioner, or Notary Public and provide evidence to be able to transact on the land as outlined in the self-represented party pack found [here](#). Self-represented parties must sign in the certification panel and have that signature witnessed by the authorised person completing the verification of or by an adult over the age of 18 who is not a party to this document. A completed self-represented party pack is to accompany the application at time of lodgment.

Note: - An attorney, body corporate or a corporation cannot make certification statements. They are required to complete the form as a self-represented party.

EVIDENCE TO BE LODGED FOR SELF-REPRESENTED

If you are a self-represented party, satisfactory evidence is to accompany this application. Evidence may include but not limited to:

- A completed Self-represented party pack including identity certification, documents used to verify identity, and documents linking the applicant to be able to deal on the property; and
- Annexures or attachments supporting the lodgment.

EVIDENCE TO BE RETAINED BY LEGAL PRACTITIONERS AND MORTGAGEE CORPORATIONS

Any evidence to support verification of identity carried out by a legal practitioner or mortgagee corporations, must be retained:

- (a) by the Legal Practitioner for at least 7 years from the date of lodgment of the Registry Instrument in the Land Titles Office;
- (b) by the mortgagee until they cease to be mortgagee in respect of the mortgage.

Evidence is required to be retained in order to demonstrate that the transaction was completed in accordance with legislative and other requirements and the certifications required were accurately made. Evidence may be required to be provided to the Registrar-General for the purpose of monitoring compliance with legislative and other requirements. The evidence must be legible, stored safely and securely, and accessible and may include:

- Client Authorisation
- Verification of identity
- Right to deal
- Other Prescribed Requirements; and
- Any evidence required by the Duty Authority.

Have a question or need assistance? Click the Contact us form button at the end of the [ACTLIS](#) home page or you can call this office on (02) 6207 0491