

Application for preparation of a lapsing notice

This fact sheet provides advice on preparing and lodging an *Application for preparation of lapsing notice* (form 08LX) for registration by Land and Property Information (LPI), under sections 74I, 74J and 74JA of the *Real Property Act 1900*.

You may like to consider using form 08LX when the following apply.

- You are the owner of land or have a registered interest in land (either as a private person or as a corporation), who has had a caveat placed over your land or registered interest.
- The caveator will not agree to the removal of the caveat.
- You would like to:
 - apply for the lapsing of the caveat
 - prepare and lodge the application yourself
 - use another private person to lodge it on your behalf
 - use a solicitor or licensed conveyancer to prepare and lodge it on your behalf.

You can make an application 08LX under:

- Section 74I: Where a dealing or plan adversely affected by the caveat has been lodged. The applicant must be the registered proprietor of the land or be entitled to an estate or interest affected by the dealing or plan, or the judgment creditor under any writ that cannot be recorded because of the caveat.
- Section 74J: the applicant must be the registered proprietor of an estate or interest affected by the caveat.
- Section 74JA: the applicant must be the same as the applicant for cancellation of a restrictive covenant, in cases where a caveat prohibiting the granting of the cancellation has been lodged.

Instructions for completing an *Application for preparation of lapsing notice* (form 08LX) are available from Registrar General's Directions website <http://rgdirections.lpi.nsw.gov.au>.

The following information is provided to help you decide where an application for preparation of lapsing notice is appropriate and to assist you in completing the form.

What is an application for preparation of lapsing notice?

Where the caveator (being the person or company who placed the caveat over your property) does not agree to removal of the caveat, you may like to consider preparing an application for preparation of lapsing notice.

Once an application has been lodged at LPI, LPI will prepare a notice to the caveator or his or her agent, of proposed lapsing of the caveat.

This notice is then sent directly to you in duplicate. You are then required to serve the original notice on the caveator, and provide evidence of this service back to LPI in the form of a statutory declaration.

Once the caveator has been served, they generally have 21 days from the date of service of notice, depending on the manner in which it was served, in which to apply to the Supreme Court of New South Wales (NSW) for a court order to extend the caveat.

Where a court order is obtained by the caveator, it will then need to be presented to LPI before the expiration of the 21 day period in order to stop the caveat from lapsing.

The notice that must be served on the caveator details the steps required to be taken to prevent a caveat from lapsing and the calculations used to determine the 21 days to expiry.

Once LPI has received your satisfactory statutory declaration stating the date and method of service of notice, LPI will wait until the expiration of 21 days from the date of service of notice.

Where 21 days has expired and no court order has been received, the caveat will lapse and be removed from your land title.

Where a court order is received in LPI within the 21 day period, the matter will then need to be settled between the registered proprietor and the caveator in the Supreme Court of NSW.

If you decide to proceed with preparing and lodging an *Application for preparation of lapsing notice* (form 08LX), you will need to lodge the completed and signed form at LPI.

The Certificate of Title for the land over which the caveat has been placed does not need to be lodged with the form 08LX.

Should an application for preparation of lapsing notice be used for all requests to remove a caveat?

No. It should only be used in the circumstances outlined above.

Where the caveator agrees to the removal of the caveat, you will need to obtain a signed and completed *Withdrawal of caveat* (form 08WX) from the caveator.

Further information on Withdrawal of caveat can be obtained by telephoning the LPI Customer Service Centre on T: 1300 052 637 or from our website at www.lpi.nsw.gov.au.

Under sections 74H(6) and (7) of the *Real Property Act 1900*, where it is clear the estate or interest claimed by the caveator vests in the caveator upon registration of a dealing, a caveat will automatically lapse on registration of that dealing without the need for an *Application for preparation of lapsing notice* (form 08LX) or *Withdrawal of caveat* (form 08WX). For example, where a caveat protects an estate pursuant to a contract for sale and the incoming transfer is lodged at LPI, the caveat will lapse on registration of the transfer.

I am lodging a transfer under power of sale affected by a caveat. What will happen to the caveat?

For information relating to a mortgagee sale of land affected by a caveat, please see the fact sheet *Mortgagee sale of land affected by caveat* on our website at www.lpi.nsw.gov.au.

How do I lodge the application at LPI?

To lodge an *Application for preparation of lapsing notice* (form 08LX), you will need to take your completed and signed application to:

Land and Property Information
1 Prince Albert Road
Queens Square
Sydney

Lodgment must be made in person. Postal lodgment of an application form 08LX cannot be accepted.

LPI is open to the public 8:30am to 4:30pm Monday to Friday except for public holidays.

You will need to take your application to the reception desk, Document Registration Services on the ground floor. A concierge will be available to assist you on your arrival.

An *Application for preparation of lapsing notice* (form 08LX) can be obtained from our website at www.lpi.nsw.gov.au or by calling our Customer Service Centre T: 1300 052 637.

On recording of the application for preparation of lapsing notice, LPI will send a notice of registration to the lodging party of the application.

How much does it cost to lodge an application for preparation of lapsing notice?

Lodgment fees for registration of an *Application for preparation of lapsing notice* (form 08LX) are available on our website www.lpi.nsw.gov.au or by contacting our Customer Service Centre T: 1300 052 637.

How can I serve the lapsing notice on the caveator?

In the original notice prepared and sent to you, LPI will include details of how you can serve notice on the caveator.

This includes serving the notice on the caveator by:

- registered post
- document exchange (DX)
- in person.

Where do I lodge my statutory declaration?

Your statutory declaration must be lodged at LPI:

Client Service Counter
Document Registration Services
Ground Floor, 1 Prince Albert Road
Queens Square, Sydney

or by post:
GPO Box 15
Sydney, NSW 2001

When LPI sends you the original notice to caveator it will also advise you in writing of the requirements for lodging a statutory declaration in LPI and the precise requirements to be covered in the statutory declaration including:

- the date and method of service of notice on the caveator
- reference to and the inclusion of the duplicate notice being attached to the statutory declaration.

Once you have served notice on the caveator, you will need to lodge evidence of service of notice at LPI within four weeks of the date of the notices originally sent to you by LPI.

Where evidence of service is not lodged within four weeks of the date of the notices sent, the caveat will not lapse and your application may be rejected and lodgment fee forfeited.

What is a statutory declaration?

A statutory declaration form is published on our website at www.lpi.nsw.gov.au.

For more information see the fact sheet entitled *What is a statutory declaration?* on our website www.lpi.nsw.gov.au.

Sample declarations for evidencing service of notice are provided at the end of this fact sheet.

How is the statutory period for the lapsing of a caveat calculated?

The statutory period for calculating the timeframe in which a caveat will lapse where satisfactory evidence of service of notice has been lodged is as follows:

- 21 calendar days if served in person
- 21 calendar days + two calendar days if served through the Document Exchange (DX)
- 21 calendar days + four days if served by registered post (excludes public holiday(s) and weekends where they fall at the commencement of the timeframe).

The statutory period commences on the day following the date of service of notice stated in a satisfactory statutory declaration.

Once LPI has received satisfactory evidence in the statutory declaration stating the date and method of service, we will wait until the expiration of 21 days from service of notice.

An Order of Court must be lodged before midnight on the 21st day, or where the 21st day falls on a weekend, public holiday or NSW bank holiday, the next working day.

Where 21 days has expired and a court order has not been received, the caveat will lapse and be removed from your land title.

How will I know if a court order has been lodged at LPI preventing lapsing of the caveat on my title?

A title search undertaken after service of notice is the best way to determine if a court order has been lodged in LPI preventing the lapsing of the caveat.

Where a court order preventing lapsing of the caveat has been received at LPI, it will be registered in the second schedule of your title under the caveat notification.

Title searches can be made through LPI's Online Shop <http://shop.lpi.nsw.gov.au>.

More information

For further information on performing a title search please contact the Customer Service Centre on T: 1300 052 637.

SAMPLE ONLY
(where personally served)

Statutory Declaration
New South Wales, *Oaths Act 1900*, Eight Schedule

I, _____,
solemnly and sincerely declare that:

At (show approximate time) on (the exact date of when the notice was personally handed over or delivered to the correct address) duly served (to whom and, if applicable where they are employed) the original notice to caveator, a true copy of which is annexed hereto and marked with the letter 'A'.

and I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths Act 1900*.

Declared at: on
[place] [date]

.....
[signature of declarant]

in the presence of an authorised witness, who states:

I, , a
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it:

[* please cross out any text that does not apply]

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was
[describe identification document relied on]

.....
[signature of authorised witness] [date]

SAMPLE ONLY
(where served by
Registered Post)

Statutory Declaration
New South Wales, *Oaths Act 1900*, Eight Schedule

I, _____,
solemnly and sincerely declare that:

On the (the exact date of when the notice was posted), I caused to be forwarded by registered post (registered post number), the original notice to caveator, a true copy of which is annexed hereto and marked with the letter 'A'.

This notice was forwarded to the caveator at:

and I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths Act 1900*.
Declared at: on
[place] [date]
.....
[signature of declarant]

in the presence of an authorised witness, who states:
I, , a
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it:
[* please cross out any text that does not apply]

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was
[describe identification document relied on]

.....
[signature of authorised witness] [date]

SAMPLE ONLY
(where served by
Document Exchange DX)

Statutory Declaration
New South Wales, *Oaths Act 1900*, Eight Schedule

I, _____,
solemnly and sincerely declare that:

On the (the exact date of when the notice was deposited), I caused to be forwarded by the Document Exchange (DX), the original notice
to caveator, a true copy of which is annexed hereto and marked with the letter 'A'.

This notice was forwarded to the caveator at:

and I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths Act 1900*.

Declared at: on
[place] [date]

.....
[signature of declarant]

in the presence of an authorised witness, who states:

I, , a
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it:

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2. *I have known the person for at least 12 months OR *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was
[describe identification document relied on]

.....
[signature of authorised witness] [date]

Disclaimer

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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