

Short Minutes Transcript: A Caveat About Caveats

In the Supreme Court case of *Guirgis v JEA Developments*, Justice Kunc provides a reminder as to the responsibility of solicitors and conveyancers when certifying and lodging caveats.

The parties were engaged in family law proceedings, and the husband's property was subject to a Contract of Sale and due to settle.

The wife instructed her conveyancer to lodge a caveat on behalf of her company, JEA Developments, on the basis that the company was owed money by the husband. Despite never having lodged a caveat before, the conveyancer agreed because the wife was an existing client and the matter was urgent.

The husband sought urgent removal of the caveat. At the hearing it was revealed that there was no written agreement between the company and the husband, and that there was no mortgage, charge or other caveatable interest in the property. The conveyancer had not sought any further information about the alleged loan agreement from the wife, nor provided any advice as to whether there was a caveatable interest. JEA Developments was ordered to remove the caveat and pay the husband's costs.

The conveyancer was also called before the court and criticised for failing to meet her obligations as a licenced conveyancer and falling below the standard of care owed by a reasonable person in her position. As the PEXA Subscriber and Certifier she had failed to meet her obligations under the Real Property Regulation and the Participation Rules to identify and keep evidence of the facts on which the claim to a caveatable interest was founded.

While the conveyancer did escape further disciplinary action, the message is clear - solicitors and conveyancers are on notice to take appropriate steps to satisfy themselves, through inquiry, of whether there is a proper basis for lodgement of a caveat.

The solicitor or conveyancer certifying the caveat must:

- Take reasonable steps to verify the identity of the caveator;
- Hold a properly completed client authorisation;
- Specify the particulars of the legal or equitable estate or interest, or the right arising out of a restrictive covenant, to which the caveator claims to be entitled; and
- Retain the evidence supporting the caveat.

I'm Jen McMillan

Links to the case can be found below:

- [Guirgis v JEA Developments Pty Limited \[2019\] NSWSC 164](#)
- [NSW Participation Rules for Electronic Conveyancing](#)