Subject: **REMOVAL OF CAVEATS**

BACKGROUND

The Land Titles Act provides that a caveat may be voluntarily withdrawn pursuant to section 137, lapsed pursuant to section 138 or discharged upon application pursuant to section 141. These procedures provide all parties concerned with a method to deal with the caveat in a quick and simple manner. "A summary caveat removal procedure increases facility of transfer for the benefit of both the owner of an interest subject to a caveat and a potential purchaser from him." (1)

If it is determined that a caveat (other than a Registrar's Caveat) was filed or continued without reasonable cause and its filing has caused damage to any person, the court may award compensation. (2)

REGISTRATION PROCEDURE

A. WITHDRAWAL (OR DISCHARGE) OF A CAVEAT (S. 137)

1. The withdrawal must contain the following to be registrable:

a) registration number of the caveat,

b) the current legal descriptions for the parcels affected by the withdrawal of the caveat, in the case of a partial withdrawal. If the caveat is being wholly withdrawn, no legal description is required.

c) except for a caveat referred to in item 2., the signature of
- the caveator or original agent, or
- the transferee or agent where the caveat has been transferred, or
- an attorney pursuant to a power of attorney, see procedure under POA-1 for the requirements with respect to use of a power of attorney. or
- a solicitor who has been appointed as the custodian of the law practice of the solicitor who originally acted as agent, and

d) if the withdrawal is executed by an individual, the signature of a witness and an affidavit of execution; if the caveat was signed by a corporation, the corporate seal or the signature of a witness together with an affidavit of execution and an affidavit verifying corporate signing authority.

e) two forms have been developed (FORM B & FORM C) for use when withdrawing a caveat.

2. Where the nature of the interest claimed in a caveat is an easement, a party wall agreement, an encroachment agreement or a restrictive covenant and the dominant tenement is identified in the caveat or an attachment to the caveat, the withdrawal must be signed by

a) the registered owner of the dominant tenement, or

b) if the registered owner of the dominant tenement is the caveator and the caveat was signed by an agent, by the registered owner or agent.
c) for Caveats re easement, encroachment or party wall agreements, if the dominant tenement is not ascertainable from the caveat we will accept a discharge executed by the caveator. (3)

Where a restrictive covenant caveat does not identify the dominant tenement, the caveat can only be discharged by an order of the court (see procedure under RES-1).(4)

Caveats in respect of restrictive covenants and encroachment agreements registered pursuant to sections 651.1(2) and 651.2(2) of the Municipal Government Act respectively, can only be discharged by the municipality, or by order of a court and cannot be lapsed.

A caveat re environmental reserve easement cannot be discharged (see procedure under ERE-1)

A caveat re undermining and related conditions cannot be discharged. (5)

3. Where there is more than one caveator, any of the caveators may submit a withdrawal as to all of his interest in the caveated claim.

4. When a withdrawal of caveat is registered without a withdrawal of a certificate of *lis pendens* ("C.L.P.") relating to the caveat, a note should be made on the Customer Registration Notice advising the registrant that the C.L.P. is still registered against the title.

5. Before an executor or administrator may withdraw a caveat filed by the deceased, the caveat must be transmitted into the name of the personal representative (see procedure under TRA-1). This procedure also applies where the caveators have claimed a life interest and joint tenancy has not been specified. The withdrawal must be accompanied by appropriate evidence under section 120 of the Land Titles Act, concerning minors interested in the estate. Caveats re: unpaid vendor's lien do not require compliance with section 120 of the Land Titles Act.

6. Where the caveators have claimed a life interest but joint tenancy has not been specified, then the discharge must be signed by the personal representative with the probate or letters of administration attached. Section 120 of the Land Titles Act concerning minors must be complied with.

7. A surviving joint tenant may withdraw the caveat where:
a) the caveators have claimed their interest as joint tenants on the caveat or an attached agreement, and
b) satisfactory proof of death is provided (see procedure under TEN-1).

A statutory declaration by the surviving joint tenant or some other person having knowledge of the facts may be accepted as evidence of the creation and continuation of the joint tenancy. Where an interest has been granted to the caveators as joint tenants under an agreement attached to the caveat, the attachment may also be accepted as evidence of the joint tenancy.

8. **Fees** - Tariff item 11(5) is charged.

B. LAPSE OF CAVEAT (S. 138)

1. Every caveat, other than those outlined in item B. 5 or B. 6, may be lapsed on application made after the expiration of 60 days after the caveator has been served with notice to take proceedings on the caveat in the prescribed form (FORM 29), unless proceedings have been taken and a C.L.P. in the prescribed form (FORM 30) has been filed with the Registrar.

The 60-day time period may be shortened by order of the court. (6) In calculating the expiry date the 60 day or other time period does not include the day on which the notice was served.

A judge at any time prior to the expiration of the time limit for proceeding on a caveat may extend the time for proceeding on it by a further period to be specified in the order. (7) The order may be registered at the Land Titles Offices and thereafter the caveat is not to be lapsed except in accordance with the provisions of the order.

2. A statutory declaration (FORM A) has been developed which outlines what is required before a caveat may be lapsed but any documentation which provides all the necessary information can be accepted. The essential criteria are:
a) proof of service of the notice and a true copy of the court order shortening time, if applicable, on the caveator by an acceptable method, (8)
b) proof that the person causing the notice to be served has an interest in the land, mortgage or encumbrance against which the caveat was filed, and
c) expiration of the 60-day time period or such other period prescribed by court order.

3. **Acceptable Methods of Service**

a) **Service on an individual caveator**
(i) Registered mail to the caveator at the address stated in the caveat or in the most recent registered Notice of Change of Address for Service. The time period commences the day after the notice was mailed. (9)
(ii) Personal service on the caveator. The time period commences the day after the date of service indicated in the affidavit of personal service.
(iii) Courier service on the caveator (this is considered personal service). The time period commences the day after the date of service indicated in the affidavit of personal service.
(iv) A notice sent via facsimile is not an acceptable method for service.

b) **Service on a corporate caveator**

(i) Registered mail to the caveator at the address stated in the caveat or in the most recent registered Notice of Change of Address for Service. The time period commences the day after the notice was mailed.

(ii) Courier service on the caveator (this is considered personal service). The time period commences the day after the date of service indicated in the affidavit of personal service.

(iii) If the corporation is governed by the Business Corporations Act, service by delivery to the registered office in which case the time period commences the day after the date of delivery; registered mail in which case the time period commences the day after the date it would be received in the ordinary course of mail as indicated in the affidavit of service or statutory declaration. (Definition of, "ordinary course of mail" is 7 days in Alberta and 14 days outside Alberta.) (10) If the material submitted indicates that the notice was returned, service has not been effected and the caveat cannot be lapsed. The affidavit of service or statutory declaration must confirm that the corporation is governed by the Business Corporations Act and that the address served is the registered office or the post office box designated as its address for service by mail. (11)

(iv) If the corporation is incorporated under an Act which does not have any specific provisions relating to service, personal service on someone who works for the corporation in one of the following capacities: president, chairman or other head officer by whatever title he is known, manager, office manager or the agent designated in the caveat. Service may be effected on the mayor or reeve of a municipal corporation. (12) The affidavit of service must indicate the name and office of the person served and must confirm that service was effected pursuant to Rule 15 of the Rules of Court as the manner of service on the corporation is not provided by statute. The time period commences the day after the date of personal service.

(v) If the manner of service is governed by some other specific statutory provision, service in accordance with the provision. The statute must be checked to verify that service has been effected properly.

(vi) A notice sent via facsimile is not an acceptable method for service.

Where service is effected by registered mail, the dated post office receipt or a photocopy of the receipt must be submitted and examined to verify the date of service. An address in the receipt is not essential if it is declared in the statutory declaration that the address in the notice was served. Either the postal receipt or a statement in the statutory declaration should indicate that the notice was sent to each caveator, or if caveators have the same address it can be served as one notice. It is not acceptable to send the notice to the agent of the caveator.

Notices sent to the caveator by registered mail are accepted for lapsing even if it appears that the notice was returned. Once a person has sent the notice to the appropriate address, it is not necessary to ensure that the caveator in fact received the notice. (13) There is provision in the Land Titles Act for the caveator to file a Notice of Change of Address for Service (14) and it is the caveator's responsibility to ensure that the title is updated accordingly (see CAV-1, item 7).

4. **Calculating Expiry Date** - As indicated in the methods of service above, the 60-day or other time period does not include the day on which the notice was served. (15) Although the declarant of the statutory declaration (FORM A) is to state in the declaration that the time period has expired, the declarant's calculation of time must be checked to ensure that it is correct and that the time period expired before the application to lapse was submitted to the Land Titles Office. If the time period does not expire before the documents are received, the application to lapse must be rejected.

5. The following caveats cannot be lapsed pursuant to the above proceedings:
a) a Registrar's caveat (see procedure under CAV-3), (16)
b) a caveat registered to protect a restrictive covenant running with or capable of being annexed to land, (17)
c) a caveat filed pursuant to the Maintenance Enforcement Act, (18)
d) a caveat filed pursuant to the Public Health Act (19)
e) a caveat filed pursuant to the Income Support Recovery Act (20)
f) a caveat re order under the Environmental Protection and Enhancement Act (21)
g) a caveat re an environmental reserve easement (22) and
h) a caveat re undermining and related conditions (23)
i) a caveat re a restrictive covenant under the Municipal Government Act (24)
j) a caveat re an encroachment agreement under the Municipal Government Act (25)
k) a caveat filed pursuant to the Safer Communities and Neighbourhoods Act (26)
l) a caveat filed pursuant to the Unclaimed Personal Property and Vested Property Act, (27)
m) a caveat pursuant to the Seniors' Home Adaptation and Repair Act

6. If a caveat has been registered to protect an easement, a party wall agreement or an encroachment agreement and the dominant tenement is identified in the caveat or an attachment to the caveat, the notice to take proceedings on the caveat must be served on the registered owner of the dominant tenement. If dominant tenement not identified follow procedure under item B. LAPSE OF CAVEAT.

For acceptable methods of service, see item 3 above and substitute:
a) "caveator" with "registered owner of the dominant tenement", and
b) "address stated in the caveat" with "address stated on the certificate of title for the dominant tenement".(28)

7. **Fees** - Tariff item 5(2) is charged.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Lapse

The code used for registration at Land Titles is: LAPC

C. COURT ORDER DISCHARGING A CAVEAT

For all caveats except a Registrar's caveat, an application may be made to the court to have the caveator show cause why his caveat should not be discharged (see procedure

under CAV-3).(29) A certified copy of the court order discharging the caveat is registrable.

The requirements of section 191 of the Land Titles Act must be complied with.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge by Order

The code used for registration at Land Titles is: DISO

D. REMOVAL OF A CAVEAT BASED ON AN UNREGISTERED MORTGAGE OR ENCUMBRANCE

The caveat is removed in the same manner as a mortgage when the following is registered:

a) a certificate signed by a judge certifying that

(i) the judge is satisfied of the payment of all money secured by the mortgage or encumbrance, and

(ii) the mortgagee or encumbrancee is living, or if dead, that no succession duty or other tax is payable to the Crown in right of Alberta with respect to the mortgage or encumbrance, or

b) a certificate signed by a judge certifying that all obligations, the performance of which has been secured by the mortgage or encumbrance, have been performed and have come to an end. (30)

The requirements of section 191 of the Land Titles Act must be complied with.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge by Order

The code used for registration at Land Titles is: DISO

STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. Thomas Mapp, *Torrens' Elusive Title*, Alberta Law Review Supplement, vol. 1, p. 157
2. s. 144
3. s. 137
4. s. 139
5. s. 694(5.4), Municipal Government Act, R.S.A. 2000, c. M-26
6. s. 138(2)
7. s. 140
8. s. 138(2)
9. when notice is given pursuant to s. 138(1)(b), the 60-day time period runs from when the notice was sent and not from when it was served. Therefore, the

deemed service provisions of s. 23 of the Interpretation Act, R.S.A. 2000, c. I-8 do not apply.

10. s. 23(1)(a) and (b), Interpretation Act
11. s. 256, Business Corporations Act, R.S.A. 2000, c. B-9
12. Rule 15(2)(b)
13. *Ex Parte Little*, [1958] S.R. (N.S.W.) 173
14. s. 132; Form 28
15. s. 23(6), Interpretation Act
16. s. 138(1)
17. s. 139(1)(a)
18. s. 23, Maintenance Enforcement Act, R.S.A. 2000, c. M-1
19. s. 64(2), Public Health Act, R.S.A. 2000, c. P-37
20. s. 29(4), Income Support Recovery Act, R.S.A. 2000, c. I-1
21. s. 224(4), Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12
22. s. 664, Municipal Government Act
23. s. 694(5.4), Municipal Government Act
24. s. 651.1(3)(d), Municipal Government Act
25. s. 651.2(3)(d), Municipal Government Act
26. s. 22(5) and 47(5) Safer Communities and Neighbourhoods Act, R.S.A. 2008, c.S-0.5
27. s. 26(2), Unclaimed Personal Property and Vested Property Act, R.S.A. 2007
28. s. 138(3)
29. s. 141(1)
30. s. 141(2)