

Short Minutes – Caveats and final searches

In the case of *Cui and Salas-Photiadis* a caveat was lodged on title between exchange and settlement, after a PEXA workspace was created. Although a title activity check would have revealed the caveat, neither the purchaser's solicitor nor the incoming mortgagee's solicitor noticed that the caveat had been lodged. If they did, they did not appreciate the significance of it. The parties proceeded to settlement. Shortly after settlement, the incoming mortgagee received a requisition from Land Registry Services informing them that the transfer and mortgage could not be registered because of the caveat.

In the days of paper settlements, it was common practice for the purchaser's solicitor to undertake a final search, checking for caveats or writs. If a caveat had been lodged, settlement would be called off until the vendor had arranged withdrawal of the caveat. In electronic settlements, while automated Title Activity Checks occur at various stages of the matter, a Title Activity Check only advises whether there has been any activity on the title since the last one was performed. Importantly it is still up to the purchaser's solicitor to check the state of the title and take steps to prevent settlement occurring if a caveat has been lodged.

It is important that solicitors do not become complacent and assume that the electronic conveyancing process will intervene if there is a problem. Financial settlement will be allowed to proceed even if there is a caveat. You still need to have procedures in place to minimise risk and prevent issues.

- If you are relying on Title Activity Checks, make sure you have a title search less than 60 days old when the title was added to the workspace and check each Title Activity Check up to settlement; and
 - Consider doing a final title search just prior to settlement.
- If any Title Activity Check or title search reveals a caveat, ensure the settlement process does not proceed until it has been dealt with.

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