

Application for preparation of a lapsing notice



Info Sheet

www.nswlrs.com.au

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This document provides information on how to prepare and lodge an Application for preparation of lapsing notice (form 08LX) for registration by NSW Land Registry Services (NSW LRS), under sections 74I or 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 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.

Instructions for completing an Application for preparation of lapsing notice (form 08LX) are available from Registrar General's Directions website <http://rg-guidelines.nswlrs.com.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, NSW LRS will prepare a notice to the caveator 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 NSW LRS in the form of a statutory declaration.

Once the caveator has been served, they have 21 days from the date of service of notice, 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 annexed to a request form and lodged at NSW LRS 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 NSW LRS has received your satisfactory statutory declaration stating the date and method of service of notice, NSW LRS 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 by NSW LRS 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 with NSW LRS.

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 visiting <http://rg-guidelines.nswlrs.com.au> and searching for "withdrawal of caveat" or "08WX".

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 with NSW LRS, 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 search for "mortgagee sale of land affected by caveat" on our website at www.nswlrs.com.au.

How do I lodge the application at NSW LRS?

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

NSW Land Registry Services

1 Prince Albert Road, Queens Square

Sydney NSW 2000

Lodgment must be made in person.

Postal lodgment of an application form 08LX cannot be accepted.

Office hours are 8:30am to 4:30pm Monday to Friday except 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.nswlrs.com.au.

On recording of the application for preparation of lapsing notice, NSW LRS 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.nswlrs.com.au and search for "Fees".

How can I serve the lapsing notice on the caveator?

In the original notice prepared and sent to you, NSW LRS will include details of how you can serve notice on the caveator (section 74N).

This includes serving the notice on the caveator by:

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

Note: Service of notices sent by normal or express post is not acceptable.

Where do I lodge my statutory declaration?

Your statutory declaration must be lodged by hand at NSW Land Registry Services:

1 Prince Albert Road, Queens Square
Sydney NSW

or by post:

GPO Box 15
Sydney, NSW 2001

When NSW LRS sends you the original notice to caveator it will also advise you in writing of the requirements for lodging a statutory declaration in NSW LRS 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 NSW LRS within four weeks of the date of the notices originally sent to you by NSW LRS.

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?

It is a written statement which you sign and declare to be true before an authorised witness. For a sample statutory declaration visit our website at www.nswlrs.com.au and search for “statutory declaration”.

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 + seven 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 NSW LRS 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 NSW LRS 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 NSW LRS preventing the lapsing of the caveat.

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

Further information

Further information can be obtained by visiting and searching our website: www.nswlrs.com.au .

Or contact the NSW LRS Customer Service Centre on **T: 1300 052 637** or email GeneralEnquiry@nswlrs.com.au .

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