

# CAVEAT GUIDE

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This note provides an overview of the caveat process. It explains what a caveat is, when they should be used and the probate procedure that applies to them.

## GLOSSARY

Appearance	The formal document sent to the Probate Registry and the person that issued the Warning detailing why the Caveat has been entered;
Beneficiaries	The persons due an inheritance from a Deceased's Estate;
Caveat	A form sent to the Probate Registry by a person wishing to stop the Grant of Probate being issued to the Executor. The aim is to prevent the Estate being distributed;
Caveator	The person that has entered a Caveat;
Court Order	An order made by the court deciding the outcome of the claim;
Deceased	The person that has passed away;
Estate	The property, money and belongings that were owned by the Deceased immediately before their death;
Executors	The persons named in a Will that are responsible for administrating/distributing an Estate;
Grant of Probate	A legal document that confirms an Executor has the authority to sell and transfer the Deceased's Estate;
Permanent Caveat	A Caveat that can only be removed by the consent of the parties or by a Court Order;
Probate Registry	The government department that deals with issuing a Grant of Probate or a grant of letters of administration;
Undertaking	A promise made by a solicitor to do something. Breach of a solicitor's undertaking is a matter of professional misconduct.
Warning	A document issued by someone challenging a Caveat. The Warning demands that an Appearance is made within 14 days by the person that entered the Caveat. If no Appearance has been entered, then the Grant of Probate can then be issued;
Will	A legal document that decides what happens to property belonging to a Deceased upon their death.

## **WHAT ARE CAVEATS AND WHEN ARE THEY USED?**

A Caveat is a form sent to the Probate Registry which states that no Grant of Probate should be issued in respect of a Deceased's Estate. Once the Caveat has been entered, it will prevent the Grant of Probate being issued which generally stops an Executor from being able to control the Estate and sell and transfer assets.

If you are thinking of challenging a Will, then this is the first step that must be taken. This is because, without a Caveat, you are at risk of the Executor selling and transferring assets to the Beneficiaries named in a disputed Will. If assets are transferred, this could lead to assets being lost if the Beneficiaries have spent the inheritance and the assets cannot be located.

The benefit of the Caveat is that this risk, in most cases, can be overcome and it also gives "breathing space" to fully investigate the disputed Will and liaise with all relevant parties.

## **HOW DO YOU ENTER A CAVEAT?**

A Caveat is entered by:

1. Attending any of the Probate Registries personally and completing the Caveat form, known as Form 3; or
2. Posting the completed Form 3 to any of the Probate Registries.

You cannot enter a Caveat by phone, email or fax. The Caveat must also be in a single name and cannot be entered jointly (although there is nothing that prevents a Caveat being entered by different people on a single Estate).

In order to enter a valid Caveat, you must also satisfy the following criteria:

1. Be over the age of 18;
2. You must have an address in England or Wales or be represented by a solicitor in England or Wales;
3. You have a financial interest in the disputed Will or you have a contrary interest to the Executor;
4. You must pay the Caveat fee of £3.00;
5. In order to complete Form 3, you must also know:
  - a. The full name of the Deceased;
  - b. The Deceased's last address; and
  - c. The date of death.

It is very important that the information provided on Form 3 is accurate. If it is incorrect, the Grant of Probate may be issued as the Caveat system may not link the Caveat to the correct Estate.

Once the Caveat has been successfully entered, the Probate Registry will send you a confirmation letter confirming the Caveat number. Any application for a Grant of Probate will then be placed automatically on hold.

It is important to note that a Caveat is only valid for six months from the date it was entered. You can apply for it to be renewed the month before it is due to expire by asking the Probate Registry to extend the Caveat for a further six months. The Probate Registry will charge a renewal fee of £3.00. The Probate Registry will not send

you a reminder that the Caveat is due to expire. If you fail to renew the Caveat, the Grant of Probate can then be issued. If your Caveat has expired, but the Grant of Probate has still not been issued, then you can enter a fresh Caveat as detailed above.

## HOW DO YOU WITHDRAW A CAVEAT?

If no Warning or Appearance (explained below) have been entered and you no longer wish to keep your Caveat, then you can write to the Probate Registry and simply ask that they remove it.

If the Caveat was entered over six months ago and you have not renewed it or entered an Appearance, then the Caveat will have expired and no further steps need be taken.

## HOW DO YOU CHALLENGE A CAVEAT?

If you wish to have someone's Caveat removed, then the "**Warning**" and "**Appearance**" procedure needs to be followed. This works as follows:

1. The party challenging the Caveat issues a Warning. A Warning is a sealed notice (called Form 4) which is sent to the person that entered the Caveat giving that person 14 days to enter an Appearance at the Leeds District Probate Registry. An Appearance is simply a notice (called Form 5) giving the reasons why the Caveat was entered. The Appearance is not entered physically or in person.
2. If no Appearance is entered after the 14 day period, then the Grant of Probate can be issued, assuming the Executor has applied for the Grant. If no Grant has been applied for, the Appearance can still be successfully entered after the 14 day period. As such, if you are challenging the Caveat, you should be in a position to apply for the Grant immediately upon issuing the Appearance.
3. If a valid Appearance is entered, then the Caveat becomes a Permanent Caveat and cannot expire or be removed, unless:
  - a. The parties reach agreement as to the validity of the Will and consent to the Caveat being removed; or
  - b. A party issues court proceedings and obtains a Court Order which determines the validity of the Will. In the circumstance, the Court will direct the removal of the Caveat and the Estate administration can then be commenced.

## ALTERNATIVES TO CAVEATS

If the Grant of Probate has already been issued, then it is too late to issue a Caveat. To protect your position it is recommend that agreement is sought from the Executor that they will not distribute the Estate until the dispute has been resolved. If solicitors are instructed, then a formal "**Undertaking**" can be obtained. If the Executor will not agree, then the only alternative is to apply for an injunction so that the Estate will not be distributed until the dispute has been resolved.

It is important to note that an improper use of a Caveat can result in a costs order being made against you. As such, you should take advice before entering a Caveat.