

Notices of Claim & eDealing

Notices of claim do have the same effect as a caveat however the requirements under the legislation for what must be included in a notice of claim is quite different from a caveat. Unlike the requirements under s137(2)(c) Land Transfer Act 1952 for caveats, s 42 Property (Relationships) Act 1976 **does not** require the claimant to show how the person against whom the claim is being made to show how that person derives an interest in the land from the registered proprietor.

With caveats, for example, you may have a client who wishes to lodge a caveat based on an agreement for sale and purchase to buy a house and land package from a builder - however the builder may not yet been registered on the title - it may still be in the name of a developer. Section 137(2)(c) Land Transfer Act 1952 requires that the caveat must describe how the interest is derived from the registered proprietor. As a result you must show in the caveat that your client has an agreement for sale and purchase with the builder who in turn has an agreement for sale and purchase from the developer - the registered proprietor.

In contrast, s42 Property (Relationships) Act 1976 simply requires the claimant to complete the prescribed form as set out in the Property (Relationships) Forms Regulations 2001. That form requires either the first or second options to be shown - firstly, that the person against they are claiming is the registered proprietor or secondly, that the person against whom they are claiming is *'...entitled to, or beneficially interested [nature of estate or interest under Land Transfer Act 1952] in, the land described below, by virtue of an unregistered agreement or other instrument or transmission, or an express or implied trust, or by virtue of some other circumstances'*. This second option would be used if for example if the title was in the name of a company or trust and the person against whom you were claiming was a shareholder of the company or the beneficiary under the trust.

When preparing the E-dealing for a Notice of Claim in Landonline it appears that the template that has been created reflects the same template that has been created for Caveats and requires you to show how the interest is derived from the registered proprietor. As outlined above under the Property (Relationships) Act 1976 **there is no requirement to show the derivation from the registered proprietor**. If the person against whom your client is claiming is not shown as the registered proprietor it is sufficient to utilise the second option outlined above and **there is no duty** to show exactly how that person is entitled to or benefiting from the estate against which you are claiming.

Landonline appears in this, and other instances, to be attempting to be creating new law and the template in Landonline needs to be amended to more accurately reflect the prescribed form as set out in the Property (Relationships) Forms Regulations 2001. Any rejections that require you to show how that interest being claimed is derived from the registered proprietor should be appealed vigorously and I am afraid that there may be instances where a claimants entitlement may be defeated should the notice of claim be rejected by LINZ while allowing a subsequent transfer to be registered.



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