

Lodgement of rates caveats through PEXA

By Adam Watts

A common tool used by local governments to secure outstanding rates debts is the lodgement of a rates caveat pursuant to section 6.64(3) of the Local Government Act 1995. Lodging such a caveat prevents any dealings (including refinancing, sale of land etc) on the land prior to the outstanding rates debt being paid. In our experience with this process, it is often an effective tool in securing payment of outstanding rates.

The process for the lodgement of caveats, including caveats for the non-payment of rates, has now changed with the introduction of the Property Exchange Australia (PEXA) network to facilitate e-conveyancing. The general changes introduced by PEXA were discussed in further detail in our September 2018 update, available [here](#).

This update addresses the changes that PEXA introduces for the lodgement of caveats, particularly caveats for the non-payment of rates.

Lodgement changes - PEXA

PEXA is a secure e-Conveyancing platform which enables lawyers, conveyancers and financial institutions to transact online. Landgate documents that are lodged electronically occur in real time. This means that a caveator's interest will be registered against the title immediately, rather than days or weeks after lodgement, as is currently the situation due to Landgate examination and processing.

The practice to date for a local government to withdraw or register a caveat, has been for the Landgate document to be signed by the relevant local government signatories, then lodged over the counter at Landgate in Midland or Perth. However, Landgate is now no longer accepting lodgement of caveat and withdrawal of caveat documents in paper form. It is now mandatory that these documents are lodged electronically via the e-conveyancing portal PEXA, which is used by solicitors, banks and settlement agents.

Caveat lodgement process

With the introduction of caveat lodgement via PEXA signing of paper withdrawal of caveat or caveat documents is no longer required. In fact these Landgate forms will no longer be used as in most circumstances all information must be submitted through PEXA making paper documents redundant.

As outlined above, the benefit of e-conveyancing via PEXA is that transactions, including caveat lodgement, are instant. For example, as soon as an email request from a local government to register a rates caveat is received we can submit it through PEXA immediately and the caveat will show as an encumbrance on the Certificate of Title within approximately 10-15 minutes. Once lodgement has occurred, we will provide the local government with confirmation details.

Authorisation to lodge caveats

McLeods is a PEXA member and is able to lodge caveats on its clients' behalf where authorised to do so. There are a number of options available to local government as to how authority to lodge caveats may be granted. We would be happy to provide further information on these options to interested local government clients, so as to ensure that the transition to e-conveyancing is seamless and in accordance with the local government's current practices and requirements.

Removal of rates caveat upon sale of land

When a local government receives a request to remove a caveat because the land is being sold, that request can be forwarded to our office and we will liaise with the settlement agent, bank or solicitor involved. During that process, we will also ensure that any remaining outstanding rates are paid and will make all necessary arrangements (following payment being received) for the caveat to be withdrawn, including any attendances at settlement or otherwise that may be required. This ensures that the local government is not required to deal with any of the parties, but instead can have McLeods liaise with the parties as necessary on the local government's behalf.

Costs of caveat withdrawal

Costs for rates caveat lodgement and withdrawal are generally recoverable when the caveat is withdrawn usually at settlement. The costs to withdraw the caveat will most often be paid by the landowner from settlement proceeds or through negotiations following receipt of a request to have the caveat withdrawn. Similarly, where a mortgagee has executed its power of sale. Any outstanding rates, including costs incurred by the local government, may be recovered from the mortgagee as a condition of the local government withdrawing its rates caveat to enable sale of the land.

Benefits of instructing McLeods

There are a number of benefits in instructing McLeods to lodge or withdraw rates caveats via PEXA. In summary:

- You simply send us the request to register a caveat with the land details and outstanding amount;
- Lodgement and registration of the caveat is immediate;
- An officer of the local government will no longer need to attend settlements for the collection of cheques or attend Landgate to lodge Caveat documents;
- You do not need to deal with any negotiations to secure payment; and
- We will take a robust approach in any negotiations to ensure full recovery of the amount payable including costs.

Personnel

The team at McLeods who will handle primary carriage of these matters are:

- Fiona Grgich, Partner, who is the head of the property practice team with extensive experience in property matters specifically related to local government;
- David Nicholson, Partner, who oversees rates recovery matters for local government clients;
- Adam Watts, Associate, who specializes in rate recovery and civil enforcement matters (particularly negotiations); and



- Naomi Edwards, paralegal, who is our resident PEXA expert with extensive experience with all aspects of settlements.

Further information

If you are interested in engaging McLeods to act on your local government's behalf in respect of the lodgement or withdrawal of rates caveats, we would appreciate the opportunity to speak with you via teleconference. Additionally, we would be happy to attend your office to deliver a brief seminar if that would assist.

Please contact Naomi Edwards on 9424 6231 or nedwards@mcleods.com.au or Adam Watts on 9424 6211 or awatts@mcleods.com.au should you wish to discuss instructing us to act on behalf of your local government in the lodgement or removal of rates caveats.