

## **REVENUE RULING NO. SD 079**

### **STAMP DUTY ON CAVEATS**

#### **PREAMBLE**

The Stamp Duties Act 1920 was amended with effect from 1 January 1987 to include the following:-Section 84CA

(1) A caveat under the Real Property Act 1900 in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty:-

(a) if the mortgage is stamped with ad valorem duty or is not chargeable with duty - of \$10 or

(b) if the mortgage is chargeable, but not stamped, with ad valorem duty - of the same amount as is chargeable on the mortgage.

(2) The mortgagor is the person primarily liable for duty chargeable under this section.

(3) This section does not apply to a caveat lodged in respect of a mortgage being a loan security not chargeable with duty under section 84EB.\*

\* (i.e. a loan security securing payments under a "regulated contract"> as defined in the Credit Act, 1984.)

The effect of this amendment is to create a liability to stamp duty on caveats in a similar manner and at the same rates of stamp duty as apply to loan securities.

#### **RULING**

##### **The Principles Upon Which Duty Is Payable On Caveats**

(1) If they support unregistered mortgages upon which stamp duty has been or will be paid, duty of \$10 is attracted.

(2) If they support an unregistered mortgage upon which stamp duty has not and will not be paid (or if they replace the traditional form of mortgage) ad valorem duty will be payable as if the caveats were the "loan securities".

(3) If the caveats are liable as in (2) above and support an unregistered "all moneys" mortgage or are themselves drawn in "all moneys" terms, they will be liable to \$5, on the basis

that they are "unlimited" loan securities.

Subsequently, lodging parties will be required to supply information and/or additional duty in respect of later advances, even where the caveat itself is not "upstamped".

- (4) If the caveat supports a regulated contract in terms of Section 84EB of the Act, it will not be chargeable with duty.

The provisions are considered not to apply to caveats which protect interests in -

- \* contracts for sale;
- \* leases;
- \* family law matters;
- \* unwritten mortgages (deposit of title documents, verbal agreements, etc.)

#### **Administrative Arrangements For The Stamping Of Caveats**

- (a) If it is claimed that the mortgage has been stamped with ad valorem duty, the mortgage should be produced or, if this is not practicable, sufficient evidence should be provided to indicate that duty has been paid.
- (b) If it is claimed that ad valorem duty will be paid at a later date on the mortgage, the caveat will be stamped with duty of \$10.00 and the Department will take subsequent action to ensure that payment of ad valorem duty is made.
- (c) In the absence of proof that ad valorem duty on the mortgage has been paid or will be paid, ad valorem duty will attach to the caveat at the same rates as are applicable to loan securities.
- (d) In furnishing information in terms of (a) or (b) above, lodging parties will be required to provide a letter signed by a principal of the firm.
- (e) Caveats may be presented for stamping in the Urgent Sections of the Parramatta, City or Newcastle Offices of the Department.
- (f) Caveats may support equitable interests which are not evidenced in the form of a mortgage as defined in Section 83(1) of the Act.

Terms used in the caveat might describe the interest as "equitable", "charge", etc. and the existence or otherwise of documentation in respect of that interest may be unclear.

When caveats of this nature are lodged at one of the Department's Urgent Sections, the lodging party will be issued with an on-the-spot requisition asking whether any

documentation or written evidence exists in relation to the interest supported by the caveat. The requisition must be responded to in writing and the response will form part of the assessment file.

When the written response is lodged, an immediate assessment will be made by counter staff.

- (g) For the purposes of these administrative arrangements, a caveat will be stamped with \$10.00 if an unlimited mortgage has been or will be stamped with duty of not less than \$5.00, subject to upstamping as and when advances are made.
- (h) Caveats which protect interests in contracts for sale; leases; or family law matters do not require stamping. Under a standing arrangement with the Land Titles Office these caveats will be accepted for registration unstamped.
- (i) Where caveats are assessed as not chargeable (either because the caveat supports a regulated contract or there is no written mortgage or written evidence) they will be so stamped in order to facilitate lodgement at the Land Titles Office.

A. D. CLYNE,  
Chief Commissioner of Stamp Duties.  
23 December 1987

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