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Update Summary

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**BAALMAN AND WELLS
LAND TITLES OFFICE PRACTICE**

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UPDATE COMMENTARY

Greg Stilianou has provided new and updated commentary to the following chapters:

- Ch 1A – Recent Developments
- Ch 3 - Caveats
- Ch 4 – Community Title Dealings

A summary of the updates in the attached files follows:

Ch 1A – Recent Development

The Recent Developments chapter is updated periodically as a ready reckoner for legal practitioners to quickly see what has changed in the law, and what content in the service has been updated. The new content relates to:

- The revisions made to the “Caveat” chapter as a result of various Court decisions affecting the interpretation and application of Part 7A of the *Real Property Act 1900*.
- New commentary about section 129A of the *Community Land Management Act 2021* about by-laws being used for the management of keeping of animals, and the commencement of new cl 26A of the *Community Land Regulation 2021* which specifies the circumstances in which the keeping of an animal unreasonably interferes with another occupant’s use and enjoyment of the occupant’s lot or association property.

Ch 3 – Caveats

Registration in the land Register confers a legal and indefeasible estate or interest in land. But the type of estates or interests that may be created in land are not limited to legal estates and are not confined to finite categories. Equitable interests and other unregistered interests in land may be created. Catering for these types of equitable and unregistered interests are problematic in the context of a land Register that relates only to the registration and recording of legal estates. A caveat offers the solution to this dilemma.

Caveats have always played an integral role in the Torrens title system. The existing Caveat chapter content has been kept up to date, but it predominantly relates to the mechanical processes surrounding the lodgment, withdrawal and lapsing of caveats with the land titles office. Caveats routinely come before the court for examination and so there is judicial authority available to supplement the existing content to assist subscribing legal practitioners improve the reliability of their caveats, and to assist us in the proper interpretation of the caveat machinery in Part 7A of the *Real Property Act 1900*. Of particular note is the recent judicial commentary about caveats that are

prepared in electronic form and the process for selecting the nature of the estate or interest that the caveator claims in the land.

In this update, the author has commenced the overhaul of the “Caveats” chapter so that it is revised in modern language and clearer expression, commentary is fleshed out to be more practically useful and current with the latest judicial commentary. The revised and new content to the chapter includes reference to the following Court decisions (listed from most recent to the earliest decision):

- *Geneville Constructions Pty Ltd v Odisho-Benjamin* [2024] NSWSC 290
- *Finlayson v Bagala* [2024] NSWSC 94
- *Orsini v Habambo* [2024] NSWSC 289
- *Property Investors Alliance P/L v C88 Project P/L* [2023] NSWCA 291
- *Starling v Miller* [2023] NSWSC 855
- *ATF Group Pty Ltd v Melek* [2023] NSWSC 333
- *IWC Industries Pty Ltd v Union Fidelity Capital Funding Pty Ltd* [2022] NSWSC 1476
- *Zhou v Li* [2021] NSWSC 527
- *Fang v Yang* [2021] NSWSC 890
- *Van der Merwe v Cantale* [2021] NSWSC 1203
- *Zelic v Barisic* [2018] NSWSC 1346
- *Hanson Construction Materials Pty Ltd v Roberts* [2016] NSWCA 240
- *Gilles v Penson* [2014] NSWSC 1585
- *Windlock Pty Ltd v Velibor Davidovic & Ors* [2014] NSWSC 269
- *Schiabaia v Elias* [2013] NSWSC 1485
- *Bidmonta Pty Ltd v D'Angolo* [2009] NSWSC 438
- *Bellissimo v JCL Investments Pty Ltd* [2009] NSWSC 1260
- *Tadrous v Tadrous* [2009] NSWSC 407
- *Sutherland v Vale* [2008] NSWSC 759
- *Wu v Dardaneliotou* [2008] NSWSC 1319
- *Andrews v Wilcox* [2008] NSWSC 280
- *Mellish v Fetoza Pty Ltd* [2007] NSWSC 790
- *Sarandal Pty Ltd v Nameplan Pty Ltd* [2007] VSC 568

- *Choy v Hoang* [2007] NSWSC 390
- *Buchanan v Crown & Gleeson Business Finance Pty Ltd* [2006] NSWSC 1465
- *Business Acquisitions Australia Pty Ltd v Renshall* (2006) 12 BPR 23,873
- *FTFS Holdings Pty Ltd v Business Acquisitions Australia Pty Ltd* [2006] NSWSC 846
- *Hanson Construction Materials Pty Ltd v Vimwise Civil Engineering Pty Ltd* [2005] NSWSC 880
- *Circuit Finance Pty Ltd v Crown & Gleeson Securities Pty Ltd* [2005] NSWSC 997
- *Malouf v O'Donohoe* [2001] NSWSC 335
- *Boyton v Clancy* (1998) 9 BPR 16,585
- *Gordon v Treadwell Stacey Smith* [1996] 3 NZLR 281
- *Queanbeyan Leagues Club v Poldune Pty Limited* (1996) 7 BPR 15,078
- *Verebes v Verebes* (1995) 7 BPR 14,408
- *Troncone v Aliperti* (1994) 6 BPR 13,291
- *Kingstone Constructions Pty Ltd v Crispel Pty Ltd* (1991) 5 BPR 11,987
- *Gibson v Coordinated Building Services Pty Ltd* (1989) NSW ConvR 55-481
- *Sinn v National Westminster Finance* [1985] VR 363

This update revises the first half of the "Caveat" chapter, which deals with the following subject matters:

- Caveats
 - Introduction to caveats
 - Classes of caveat
- Caveats Against Dealings
 - Why lodge a caveat?
 - Who may lodge a caveat?
 - Caveatable interests - an estate or interest in land
 - Caveatable interests and claim categories in the ELN
 - The approved form of caveat
 - Completion of the caveat form

- Name and address of the caveator
- Name and address of the registered proprietor
- The caveator's address for service of notices
- Describing the land affected by a caveat
- Describing the estate or interest in the land claimed by the caveator
- Execution and verification
- Nominating the action prohibited by the caveat.

The remainder of the chapter will be updated in a forthcoming update.

Ch 4 – Community Title Plans and Community Title Dealings

Updates have been made to the topics in this Chapter to account for various changes in the law that have arisen over the last 6 months (approx.). The updates to the chapters include:

- The address for service of notices on an association may now be an electronic address.
- An association can manage the keeping of animals via the by-laws of the scheme: *Community Land Management Act 2021*, s 129A.
- The circumstances in which the keeping of an animal unreasonably interferes with another person's use and enjoyment of their lot or the association property are now prescribed by cl 26A of the *Community Land Management Regulation 2021*.
- A by-law for an association must not prohibit or restrict the keeping on a lot of an "assistance animal" on a lot used by an owner or occupier of the lot: *Community Land Management Act 2021*, s 130A.

