

[Empty box for Instrument No.]

**CAYMAN ISLANDS**

**The Registered Land Law (2018 Revision)  
The Registered Land Rules (2018 Revision)**

**THIRD SCHEDULE**

**CAUTION**

**Privacy Notice:** Section 4 of the Registered Land Law authorises the Registrar of Lands to collect the information required by this form for the establishment and maintenance of the Land Register. Section 35 requires that the Register is made available to any person for search and inspection upon payment of a fee. It may also be used for authorised purposes in accordance with legislation and policy requirements. For more information, please see the Department’s website.

REGISTRATION SECTION

BLOCK

PARCEL

.....

I/WE

of

claim an interest as

in the land comprised in the above-mentioned title and forbid the registration of dealings and the making of entries in the register relating thereto (altogether) or to the following extent

without my/our consent, until this caution has been withdrawn by me/us or removed by order of the court or of the Registrar.

Dated this

day of

20

Signed by the Applicant:- .....

in presence of :- .....

**CERTIFICATE OF IDENTIFICATION**

Name.....

I HEREBY CERTIFY that the above named .....appeared before me on the.....day of.....20.....and being identified by\* ..... (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

.....  
Signature and designation of the person certifying

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\*NOTE: Please ensure that the appropriate insertions and/or deletions are made so that the method of identification is clear.

**The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action. Lands Registry accepts no responsibility where parties print this guide and seek to rely on information that is out of date.**

## **BACKGROUND**

The word "caution" is not expressly defined in the RLA, but means generally "a caution or warning". The interest claimed may or may not be a valid interest in the land but if its validity is disputed and upheld by the courts, any person dealing with the land subsequent to the registration of the caution is subject to the interest claimed. Caution lodged under the RLA have a twofold effect until removed.

These are:

- a warning to a person searching the Register of an outstanding equity claimed by the individual or company lodging the caution against any land, lease, mortgage or charge; and
- a caution acts as a statutory injunction preventing the Registrar from registering any instrument either absolutely, or until after notice of the intended registration or dealing be given to the individual or company lodging the caution, or unless such instrument be expressed to be subject to the claim of the cautioner (the latter being commonly called a subject to claim caution).

## **PURPOSE**

A caution confers no proprietary interest itself. Its purpose and function is to preserve and protect the rights of the individual or company lodging the caution, "the cautioner". It prohibits the interest claimed from being defeated by the registration of a dealing without the cautioner having first had the opportunity to invoke the assistance of the Registrar by giving them opportunity to object to the entry or the Courts to give effect to the interest. The interest may arise through the application of legal rules and principles or it may arise because a specific equitable remedy exists to protect it.

Cautions offer an unstable form of protection because they are liable to be cancelled whenever a dealing by the proprietor or a registrable disposition is entered in the register. They are also vulnerable to the relevant proprietor applying to cancel the caution and requiring the cautioner to prove their claim.

## **INTEREST IN LAND CAPABLE OF SUPPORTING A CAUTION**

The grounds upon which a caution may be lodged are many and complex. The RLA section 127 (1) provides:

*Any person who -*

*(a) claims any unregistrable interest whatsoever in land, a lease or a charge;*

*(b) is entitled to a licence;*

*(c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge; or*  
*(d) being a bank, has advanced money on a current account to the proprietor of land, a lease or charge,*  
*may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.*

While subsections b, c & d are clear many cases have been argued before the Courts, and much of the law on cautions under section 1 (a) is based on decisions of the Court rather than laid out in a statute. In such circumstances the law is subject to change as new decisions extend, modify or further explain the grounds on which a caution may or may not be maintained on the register.

Despite the fact that the interest claimed may not yet be decided by the Courts, a caution that is procedurally correct and expressly sets out the nature of the estate or interest claimed may be accepted by the Registrar. However, the cautioner will be required to complete a statutory declaration that clearly and concisely states the estate or interest claimed and the facts on which that claim is based. It will then be for the Courts to determine whether or not the particular estate or interest is a cautionable interest in land.

The Registrar may reject a caution where the Registrar considers that the claimed estate or interest is not cautionable or is inadequately described – section 127 (4). If the Registrar accepts a caution that the courts hold to be not adequate, then the registered proprietor has a remedy under Section 131 of the RLA for damages or compensation from the cautioner.

As a general rule, a cautioner's claim should arise through some dealing with the registered proprietor. Where the cautioner is not dealing directly with the registered proprietor the caution must clearly recite the step by step events which tie the cautioner to the registered proprietor.

### **“TRADITIONAL” INTERESTS THAT SUPPORT A CAUTION**

To assist cautioners the following forms of interests have been accepted as cautionable interests and may be used as a guide:

- a purchaser under an agreement for the sale of land; In the case of a sub-sale, you must also lodge copies of both contracts and establish the link between the registered proprietor and the applicant.
- a person having an option to purchase the land; the applicant should set out the details of the agreement, including the date of the agreement and the parties.
- the grantee of an easement;
- a mortgagee;
- an equitable mortgagee;

- an interim or final charging order that charges the legal estate may be protected by the entry of a caution in the register;
- a lessee of a lease of land;
- the beneficiary of a trust, against land held by a trustee for the trust;
- the holder of an unregistered instrument;
- a person who is to receive portion of the proceeds of land upon a sale;
- the grantee of a right to take from the land some natural product of it, such as peat, stone, or timber, or to shoot game thereon, and to take it away for the grantee's own benefit;
- a person having the right to a restrictive covenant running with the land; and
- a claimant who bases his or her claim upon the doctrine of resulting trusts or proprietary estoppel. The facts claimed to have given rise to the proprietary estoppel, including the name of the proprietor of the registered estate against whom the equity is claimed to have arisen.
- **Vendor's Lien**- A vendor's lien is an interest arising when a binding contract for the sale of land is made. As the interest affects the estate before the transfer is made, it must be protected before the transfer is registered if the purchaser is not to take free. The applicant should set out the details of the contract, including the date of the contract and the parties and confirming that the vendor has the benefit of a lien arising from that contract.
- **Bankruptcy** - Where a petition in bankruptcy is filed in the court against a registered proprietor, a caution may be entered in the register. Once the bankruptcy order has been made against the registered proprietor, a bankruptcy restriction is entered in the register.

**THIS IS NOT EXHAUSTIVE CATEGORY OF ESTATES OR INTEREST IN LAND WHICH WOULD SUPPORT A CAUTION AGAINST DEALINGS.**

**Applications based on evidence rather than consent**

Where the application is not made by or with the consent of the relevant proprietor, or someone entitled to be registered as such, it must be accompanied by sufficient evidence to satisfy the registrar of the validity of the applicant's claim.

The evidence required to satisfy the Registrar of the validity of the claim will of course vary on a case-by-case basis. Examples illustrating the type of evidence that may satisfy the registrar of the validity of a claim include:

- a. copies of the original instrument, signed or executed by the relevant proprietor, where the interest is claimed to have been created by express grant from the proprietor;
- b. a sealed court order in proceedings to which the relevant proprietor is or has been a party, where the interest is claimed to have arisen from that order or where the order declares the validity of the interest;

- c. the sealed claim form or writ, where the interest to be protected is a pending land action.

### **NATURE OF THE CAUTIONER'S CLAIM**

A cautioner can restrict dealings by a registered proprietor with three types of claim. These are:

#### **1. Absolutely**

An absolute caution bars the registration of any instrument affecting the estate and interest. Parties to a transaction wishing to register an instrument must either negotiate its withdrawal or have it removed by initiating action by the Registrar under Sections 129 of the RLA, or action by the Courts.

#### **2. Until after notice of any intended registration or dealing to be given to the Cautioner**

Cautions in this form are useful for those cautioners whose claim will not be defeated by the registration of any change of interest in the land, and who merely wish to be informed of any change in interest occurring on the title. If the change in interest is detrimental to the cautioner, the cautioner may choose to negotiate with the parties or obtain an injunction to prevent the registration of the instrument.

#### **3. Unless such instrument be expressed to be subject to the cautioner's claim.**

Instruments showing the caution as an interest may be registered. If the parties to the transaction do not wish to register their instrument subject to the cautioner's claim they must either negotiate its withdrawal or have it removed by initiating action before the Registrar or action in the Courts.

**The cautioner should select which operative clause is applicable to his claim.**

In general terms a claim based on an interest in fee simple, such as a purchaser's caution, may be absolute, and cautions based on a lesser interest, such as an equitable mortgage, may be made "subject to claim".

### **UNACCEPTABLE INTEREST FOR A CAUTION**

Some unacceptable interests for cautions are listed below:

- Promissory Note (unless the land is specifically charged).
- Personal Loan (unless the land is specifically charged).
- Creditor pursuant to a writ of enforcement (unless the court attaches the debt to the land).
- Attorney's fees (unless the land is specifically charged).

### **ENTRY OF A CAUTION**

Provided a caution is in the prescribed form (RL23), sufficiently identifies the land sought to be affected and claims an estate or interest in land with reasonable clarity entry on the Register is usually approved. A caution is effective from the time of its lodgment.

Registration by way of a caution has the same effect as to priority as the registration of any instrument under the Registered Land Act.

The relevant proprietor is not notified of the application until after the entry has been made so they will not usually be able to object to the application. However, they will always be notified after the application has been completed. They can then apply at any time to cancel the caution, and by doing so require the person claiming the benefit of the protected interest to prove the validity of their claim.

### **IMPROPER ENTRY OF CAUTION**

Under Section 129 of the RLA the registered proprietor may summon the cautioner to appear before the Registrar or the Grand Court to show cause why the caution should not be withdrawn.

Section 131 of the RLA provides that a cautioner lodging or maintaining a caution without reasonable cause shall be liable to pay such compensation for damage caused as at the suit of any person who has sustained damages as a result of the caution.

### **REGISTERED PROPRIETOR'S CAUTION**

The registered proprietor of land may lodge a caution against land registered in his or her name in exceptional circumstances. Such cautions are usually lodged in the following circumstances:

- the registered proprietor has lost possession of a land certificate of title either by fraud, theft or misplacement; or
- the registered proprietor has revoked a power of attorney but has been unable to contact the attorney to give advice of the revocation; or
- the registered proprietor has lost possession of a signed instrument e.g. transfer of land, and has not been paid.

The evidence to support such a caution would be a statutory declaration by the landowner setting out the facts and repeating the claim.

### **SUPPORTING DOCUMENTARY EVIDENCE**

Where a claim is alleged to arise out of a document, that a copy of that document must be lodged with the caution. If a caution is lodged which requires the production of a stamped agreement, and the agreement is not lodged, a requisition will be issued for a copy of the document. Failure to comply with the requisition can lead to the rejection of the caution.

### **SUPPORTING STATUTORY DECLARATIONS**

Where the estate or interest has not been created by a document, a statutory declaration will be required setting out the nature of the claim and how it arose in a manner that will satisfy the Registrar that the applicant has a valid claim. If no such declaration is lodged

with the caution, a notice will be sent to the cautioner requiring production of the declaration. Failure to comply makes the caution null and void.

### **NOTICE SERVED ON THE CAUTIONER**

The Registrar will serve a notice on the cautioner, where the relevant proprietor (or someone who is entitled to be registered as such) applies for cancellation of the caution, before approving any application to make any entry in the register in respect of a dealing by the relevant proprietor which is not accompanied by the cautioner's consent. The notice shall be given to the cautioner at the address provided in the caution. The registered proprietor (or someone entitled to be registered as proprietor) may apply at any time for the caution to be removed without giving reasons for doing so. If the application is made by someone entitled to be registered as the relevant proprietor, the applicant must also provide evidence of their entitlement.

An application by the relevant proprietor to cancel the caution can be made in the form of a letter. No fee is payable.

The notification will give the cautioner a set period (initially 30 working days) within which to respond. If the beneficiary does not object to the application within that period, or any extension to it, the caution will then be removed unless the Registrar makes an order to the contrary. If the cautioner objects to the application then the Registrar will allow the parties to be heard before making a decision as to whether or not the caution remains.

### **OPTIONS OPEN TO THE CAUTIONER**

If the cautioner wishes the Registrar to make an order permitting the caution to remain in the register they may:

1. object to the application by lodging a statement showing a fairly arguable case for the Registrar not to give effect to the application that generated the notice. The grounds of their objection might be that the application is defective in some way or that, even though the application appears to be in order, it would have the effect of postponing the priority of their interest;
2. consent to the application proceeding but request that their caution be entitled to remain in the register. The second option would only be available if the effect of the application would not wholly defeat the cautioner's interest. Where, for example, the application is to register a transfer for value that would postpone the cautioner's priority, or is for cancellation of the caution itself, the caution will not be allowed to remain;



3. Commence proceedings in Court to substantiate his claim. Should the cautioner take action to protect his or her claim he or she must join as parties, and any other person affected by the caution. Once the cautioner has commenced proceedings to substantiate the claim the caution will remain on the register pending the resolution of the Court Action. If successful, the caution will remain on the register and the application will be treated as withdrawn.

A dispute about whether the application should proceed can be referred to the Registrar for a hearing if it could not be resolved by agreement. Under the RLA the Registrar of Lands is obliged to hold a hearing to determine the questions in dispute and issue a decision.

When the hearing has been concluded the Registrar will give written reasons for his decision. Persons not in agreement with the decision of the Registrar can appeal to that decision to the Grand Court. The appeal should be made within 30 days of the decision and notice given to the Registrar of their intention to appeal the matter.

**Please refer to Guide for Registrar's Hearing for further details.**

### **CONSENT OF CAUTIONER**

The cautioner can permit registration of a dealing not prejudicial to his interest by giving consent in writing, without the caution being removed or losing its priority. The consent should expressly state whether or not the dealing is to be registered subject to the caution or in priority to the caution. The consent document should:

- state the full name of the cautioner,
- state the caution number and the Block & Parcel number,
- state the type of dealing and the name of the person(s) to which the consent refers,
- expressly state whether the instrument is to be registered subject to or in priority to the caution, and
- be signed by the cautioner or anyone authorised to sign on his or her behalf.

### **MORE THAN ONE CAUTION ON THE SAME MATTER**

A caution is to be rejected if it is evident from the register that another caution was filed for the same matter unless the caution is accompanied by an attested copy of an order of the court.

### **GENERAL NOTES**

A caution cannot prevent registration of instruments previously lodged. The reason is that registration when actually performed is at the date of lodgment so that when the necessary searches have been conducted it appears that the register was clear at the time of lodgement, no document lodged subsequently can interfere with the registration. For example, it will not stop a mortgagee from exercising powers of sale if the mortgage

was registered before the caution. In these cases, the caution will be removed without reference or notification to the cautioner.