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# CAVEATS

A talk by

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# Purpose of a caveat

- A caveat prevents a grant being issued to anyone except the person who lodged the caveat without that person being notified and having the chance to object.



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# Why need a caveat

A person may have difficulty in establishing whether he has a claim to, or some interest in, the estate if he suspects:

- that a will may not be valid;
- that a will has been overlooked; or
- that matters are going awry in some way.

NB Should not be used if you think you have a claim under the 1975 Act – should use standing search procedure to know when a grant is issued.



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# Who can enter a caveat?

- Anyone over 18 can enter a caveat.
- you must have an address in England or Wales, or
- be represented by a solicitor in England or Wales.
- You must be able to show that you have one of the following interests in the will:
  - an interest – in other words, you are entitled to share in the estate;
  - a contrary interest – in other words, you have a different interest from the applicant for a grant.
- You cannot enter a caveat jointly with anyone else – anyone who wants to enter a caveat must do so separately





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# Applying for a caveat

- Whether you visit or write to the Probate Service, you will need to complete form PA8A and pay the fee of £20.00.

This sets out:

- a formal written request for a caveat to be entered, signed by you or your solicitor;
- full details about the deceased person, as recorded in their death certificate; and
- the last permanent address of the deceased person.
- your name and address; and the name and address of any solicitors acting for you.



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# Duration of the Caveat

- A caveat can last up to six months from the date when it is entered. In the month before it is due to expire, you may apply to extend it for a further six months. There is a £20 fee for this.
- The application for an extension must be made to the registry in which the caveat was entered and must be in writing, but no special form is prescribed.



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# Warnings

- The warning is a notice issued out of the nominated registry (or, if there is no nominated registry, out of Leeds District Probate Registry) in the prescribed form. (PR31)
- This form sets out the interest of the person warning and states that the caveator has eight days (starting with the date of service of the warning) in which:
  - (i) to enter an appearance in person or by a solicitor at the appropriate registry and setting out what interest the caveator has in the estate contrary to the interest of the person issuing the warning; or
  - (ii) if the caveator has no contrary interest but wishes to show cause against the sealing of a grant, to issue and serve in the same period a summons returnable before a registrar.
- The form points out that if the caveator fails to do either of these things, the court may proceed to make a grant notwithstanding the caveat.
- The warning should provide an address within the jurisdiction for service of the person warning. The warning itself is served on the caveator in the manner prescribed by Ord.65 r.5 of the Rules of the Supreme Court 1965.

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# Warnings

- The Caveator has two courses of action open to him:
- Enter an appearance.
- Issue a summons for directions.



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# Entering and appearance

- If the caveator has a contrary interest and wishes to prevent the issue of the grant, he may within eight days (inclusive of the day of service of the warning) enter an appearance in Form 5 by lodging this at the Leeds District Probate Registry.
- The appearance must show that the caveator has a contrary interest to the person applying for the grant (otherwise the entry of appearance may be refused by the court)



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# Summons for Directions

- If the caveator has no contrary interest but still wishes to prevent the issue of the grant he may within eight days (including the day of service) issue and serve a summons for directions



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# Affidavit of service

- If no appearance to the warning has been entered and no summons for directions has been issued within the eight day period, the person who issued the warning may lodge an affidavit of service at the Leeds District Probate Registry and the caveat shall cease to be of effect.



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# Withdrawal

- A caveat can be withdrawn at any time after it is issued, as long as an appearance has not been entered.
- To withdraw the caveat, the caveator should write to the Probate Registry that issued the caveat requesting that the caveat be removed. The letter should enclose a copy of the receipt that the caveator was sent when the caveat was lodged.
- If the caveator has entered an appearance, the caveat can only be withdrawn by order of a district judge or probate registrar.



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# Citations

- A citation is a document issued by the principal registry or district probate registry on the application of a person interested in the estate calling upon the party cited to show cause why a particular step should not be taken. There are three kinds of citation:
  - (1) a citation to take probate,
  - (2) a citation to accept or refuse a grant, and
  - (3) a citation to propound a will.



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# Citation to take probate

- Where a person who has a prior right to a grant of probate or administration delays or declines to take it, but will not renounce his right, he may be cited by a person having an inferior right to accept or refuse a grant. If the citee does not then take a grant, the citor may take one. If an executor does not appear to the citation, his rights as executor wholly cease.

# Citation to accept or refuse a grant



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- This is the standard method for clearing off someone with a prior right to the grant who has not applied for it but has not renounced. It may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right to a grant e.g. a residuary beneficiary who would be entitled to a grant of letters of administration with the will annexed might issue such a citation against a sole executor;
- if the deceased died intestate leaving a spouse and issue entitled to his estate, the issue might cite the spouse to accept or refuse a grant of letters of administration.



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# Citation to propound a will

- This is a useful weapon for those who would be entitled under an earlier will or on the deceased's intestacy, but for the alleged existence of a later will which no one has yet attempted to prove.
- It must be directed to the executors named in the later will and to all persons beneficially interested under it and it may be issued only at the instance of a person having an interest contrary to theirs.



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# Procedure - Issue

- Before issuing a citation, the citor must:
- enter a caveat ; and
- ensure that every will referred to in the citation has been lodged at a Probate Registry.
- If any will is not in the citor's possession, he will need to satisfy the registrar that it is impractical to require it to be lodged.



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# Procedure

- The citor should then prepare a draft citation and an affidavit verifying every averment in the citation. He should not yet swear the affidavit, as it may need to be amended if the registrar requires amendments to the citation. The citation should set out:
  - the name and address for service of the citor;
  - the dates of all known wills and codicils, concisely and in chronological order;
  - the interest of the citor; and
  - all relevant facts.
- The citor should then lodge the draft citation and affidavit at the Probate Registry. The citation must be settled by a district judge or registrar before it is issued. A settlement fee of £12 is payable but there is no issue fee.



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# Service

- Once the citation is issued it must be served personally on the citee unless the district judge or registrar directs that another form of service (such as advertisement) should be used.
- If the citor believes that another form of service would be appropriate, this should be stated in his affidavit.



# Entry of an appearance

- The person cited has eight days from service in which to enter an appearance by filing Form 5 of the NCPR 1987 and serve a copy of it on the citor. If he fails to enter an appearance, the following consequences ensue:
- (a) If the citation was to take out a grant of probate, the citor may seek an order that the citee takes out the grant within a specified time, or that the grant should be made to himself or some other specified person
- (b) If the citation was to accept or refuse a grant, the citor may apply for an order for a grant to himself.
- (c) If the citation was to propound a will and the citee fails to do so, the citor may apply for an order for a grant in common form as if the will were invalid.