



3 tips for lawyers acting in family property disputes

01 KEEP NOTES

Take detailed file notes of what you are told by your client.

Sometimes, it may be suitable to have the client execute a contemporaneous document to confirm what they are telling you.

This could be a statutory declaration, which are typically kept on file, but at least a document that is kept on electronic record.



BE SURE THERE IS A LEGITIMATE INTEREST 02

Practitioners must be satisfied that their client has a legitimate equitable interest that gives rise to a caveatable interest in the property. Otherwise, the Court could make a referral to the Legal Services Commissioner.

Chauntelle says that you should be so sure of the evidence before you that you should be able to go to the Supreme Court and convince them of an interest in the property that day.



03 CHOOSE THE RIGHT COURSE OF ACTION

A caveat is a statutory injunction that prevents the registration of dealings and plans on a title. It prohibits any transaction involving the asset. A caveat does not prohibit the bank from taking possession of a property, and in fact may encourage them to.

Injunctions can prohibit a party from doing something or, less commonly, order that they do something, such as sell a property. Where there is money left over from the sale of a property, an injunction can restrain dealings with that money, whereas a caveat cannot.

