Fact sheet: Personal property security act 1999

What is the PPSA?

The Personal Property Security Act 1999 (PPSA) covers security interests taken in personal property. More specifically, it provides rules relating to the creation, registration, determination of priority and enforceability of security interests taken in personal property. It also provides for the rights of innocent persons buying or leasing personal property.

This legislation affects a wide range of financial transactions, including lending and leasing as well as other types of credit providing activities. It also applies to suppliers of goods on credit, leases for terms of greater than one year and consignment of goods.

This legislation does not apply to just one type of client. It is not just about banks and financial institutions. The PPSA can affect anyone who buys, sells, owns, lends or leases. It also applies to suppliers of goods on credit and consignment of goods.

What 'Personal Property' means under the Act

The term 'personal property' has a wide definition under the legislation, but generally (with a few exceptions) it covers any property someone can own other than land. Personal property can include both business and domestic assets, shares, leases, debts, boats, cars, appliances, stock and equipment.

A 'Security Interest' under the Act

A security interest is an interest in personal property that secures the payment of money or the performance of an obligation. For example if you lend money to someone for a car and take an interest in the car as security for the loan, you have a security interest. Security interests can include:

- Hire purchase agreements
- Long-term leases
- Retention of title (Romalpa) clauses in a supply agreement
- Loans that have personal property as security (for example a car)

A security interest in personal property is created or provided for by a transaction in which one party (the 'debtor') gives to a second party (the 'secured party') an interest in the debtor's property to secure the repayment of a debt or the performance of an obligation owed to the secured party.

All security interests taken in personal property are subject to rules of the PPSA.

What is the PPSR

Generally under the Act, in order for the secured party to protect their security interest and ensure priority over any competing security interest in the same property, they must register the security interest on the Personal Property Securities Register (PPSR).

The Personal Property Securities Register (PPSR) is a national computerised register created under the PPSA. It is an internet-based electronic 'notice board' wherein details of all security interests held in respect of personal property are recorded.

This register can be searched online by anyone wanting to know if an individual or company has debts. It is, however, illegal to search this register without good reason. In order to use it you will need to obtain a User ID and Password.

The register is operated by the Ministry of Economics and is available to be accessed 24 hours a day, 7 days a week.

Registering Security Interests

To register a security interest on the PPSR the secured party needs to register a 'financing statement'. This is not an actual document but refers to the data required for entry on the register. This must be done online at the Personal Property Securities website: http://www.ppsr.govt.nz/cms

In general the financing statement must contain the following information:

- Debtor's name, address and date of birth (if an individual)
- Company name; the name or job title and address of the contact person; and the company number
- Secured party's name and address
- Description of the collateral

There is a small fee payable for registering a security interest.

Registering a financing statement on the PPSR enables a security interest to be 'perfected' which is critical to protecting the priority of security interests.

Further information on how to register a security interest and what is also required is available on the Personal Property Securities website above.

What is the importance of the PPSA for Creditors?

If you are a lender, lessor, seller or supplier, this legislation affects you and you need to be aware of the requirements and how these apply.

The PPSA and the PPSR provide you with a means of securing the debtor's obligation to pay.

If you do not attend to the requirements of the PPSA, this can cost you dearly in the event the debtor defaults or, more importantly, becomes insolvent.

To get the best security protection you must:

- Make sure that your terms of trade, conditions of sale or any other security agreements are documented correctly and give you a security interest in accordance with the requirements of the PPSA
- Ensure that your security interest is registered on the PPSR correctly by registering a financing statement

The general rule under the PPSA is that the first interest registered gets priority. However, there is an exception to this which applies in certain circumstances.

Failure to register a security interest on the PPSR can result in other creditors (who do have a registered security interest in that same property) obtaining priority and rights to the property ahead of you in the event the debtor experiences financial difficulty — irrespective of the fact that your unregistered interest may have been created first.

In simple terms you run the risk of losing all rights to that property and may then be the last in queue to be repaid any outstanding debt.

What's the exception?

The major exception to the general rule is for a 'Purchase Money Security Interest' (PMSI)

A PMSI is a security interest in goods which secures the purchaser's obligation to pay the purchase price for the goods (e.g. suppliers who supply goods on credit where the goods have been supplied but not yet paid for)

A PMSI (provided all procedural requirements of the Act have been complied with) will take priority over all other types of security interests, regardless of when those other interests were registered or possession was taken.

Do I have to renew my registration?

Registration of a security interest lasts for only five years. It is therefore important to ensure that when required the renewal of the registration is completed before the expiry date.

Once again failure to renew a registration will mean that you run the risk of losing priority and rights to that property.

How does registration on the PPSR affect a debtor?

As a debtor you have certain rights and obligations.

When entering into an agreement relating to personal property it is important that you as the debtor read and understand the terms and conditions and implications of any security agreement before signing it.

Once the security interest has been registered by the creditor on the PPSR you are entitled to receive from them a copy of the information that they have registered. This is called a verification statement. However they do not have to provide this to you if you have waived this right in writing.

If you discover that any of the security interest's details recorded on the PPSR are incorrect, you have the right to ask them to be corrected.

In certain circumstances you can take the step of lodging a change demand to formally request correction of the registered details.

If you owe money on personal property, you should not sell or dispose of the property without getting permission from the person or company you owe the money to. If the secured party has registered their security interest on the PPSR, they may repossess the property from the person to whom you have sold it. In this situation, that person is likely to seek repayment of the purchase price from you.

Once you have repaid your hire purchase or loan etc., the secured party must discharge the registered financing statement. This means that the financing statement will no longer appear on the live register or be available for general searching. In the case of consumer goods, this is within 15 working days.

Effect of the PPSA on Consumers

The PPSA provides some protection for consumers that buy personal property.

As a consumer you will assume full ownership of the goods despite any registered security interest when:

- Buying from dealers — as opposed to private sale
- Buying consumer goods for less than NZ$2,000 or
- Buying from registered car dealers

However, you will not be protected from a registered security interest when you buy:

- Personal property that could have been worth more than NZ$2,000 at some time, particularly second hand items
- A motor vehicle privately i.e., not from a registered Motor Vehicle Trader
- Chattels that may be included in a house sale (eg, dishwasher, air conditioner)

Therefore, as a consumer, it is most important that you search the PPSR for any security interest that may be held in that property before buying the item.

If you find that the seller does owe money on the item of property — don't buy it.

If you buy personal property that is subject to a security interest registered on the PPSR, it may be repossessed from you to pay off the debt. This debt may have been incurred by the previous owner but you may still lose the item if the previous owner has not repaid the debt in full.

Our Recommendation

We have given an overview of how the PPSA can affect not only creditors but everyday consumers. The legislation can be quite complex and it is important that you know and understand the implications.

If you are presently or in the future going to be involved in an agreement relating to personal property as the secured party with the secured interest we strongly suggest that you seek our advice or that of your solicitor to ensure that you protect your interest.

If you think the requirements of the PPSA or the PPSR affect you then we should meet together to discuss your individual situation to make sure that your rights and priority over the property are protected.

It is important to get the process right as it can be costly for you if you do not.

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