

Guide to Securing Money Lent Over Personal Property

Govett Quilliam
THE LAWYERS

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INTRODUCTION

Our legal system protects the lenders of money on the security of land and buildings (real property) differently from those lenders who take security over moveable property comprising goods and chattels (personal property).

The Personal Property Securities Act 1999 (PPSA) has changed the way people who lend money to persons using personal property as security, have to notify their interest and record their security. If they do this correctly they can usually enforce their rights against the person in possession of the personal property even if that person was not the borrower. Whether you are involved in buying or selling goods or lending money you will need to be aware of the ramifications of this relatively new law.

The Personal Property Security Register became operational on 1 May 2002. The secured parties now register their security interests by registering a Financing Statement, which requires the setting up of a user account at the Register's website. By application through www.ppsr.govt.nz it is possible to obtain a user ID and password, and to register a secured party group.

HOW DOES THE REGISTER WORK?

The Register provides for Financing Statements which are created by entering in finance details on the Financing Statement, the name of the debtor, and completing the collateral (an "American" term for security) and secured party group details. A partially completed Financing Statement can be saved as "pending" before being registered. It is possible to retrieve any Financing Statement up to 60 days from the original date of data entry. There is no legal status available to a Financing Statement that is still pending. The charge for registering the Financing Statement is \$3.00.

HOW LONG WILL A FINANCING STATEMENT LAST?

A Financing Statement is valid for a maximum period of five years from the date of registration. Users can enter in an expiry date for a shorter term if that is the intent. If no expiry date is entered the expiry date will be five years from registration. The charge for renewing a Financing Statement is \$3.00. Failure to renew the Financing Statement will result in the unenforceability of your security interest against other security holders. A subsequent registration may result in you losing your priority over other security holders.

Debtor details includes the identification of separate debtors. When the debtor is an individual, the debtors full name, date of birth and contact address must be entered correctly. Where the debtor is an organisation, correct details including registered numbers, contact addresses and full names of the party acting on behalf of the organisation must be completed. An optional mailing address and other points of contact can also be entered.

WHAT CAN BE SECURED?

The most common types of personal property secured for loans include vehicles, livestock, business stock and plant and machinery. However there is a wide range of property that can be secured under the Act, including shares, accounts receivable, accounts received, boats, aircraft, money, chattel paper and raw materials. A lender can take security over all the debtors personal property held now and in the future. This is common in cases of general business loans from Banks and other lenders.

It is important to note that the meaning of a “security interest” under the Act includes leases and bailment for a term of more than one year. In such cases the Lessor of goods must register their interest (as owner, effectively) on the Registrar to ensure their interest is not subordinated to other creditors. Case law shows that a failure to register an interest as owner under a lease

agreement (in one example, for a horse used in the bloodstock trade) could result in the collateral being surrendered to other creditors in payment of their debt.

It is important to note that one of the primary concepts of the Act is that "title" in goods over which money is lent and security given is only retained in so far as it is protected by registration of a Financing Statement on the Register.

WHAT IS DIFFERENT NOW?

Prior to the PPSA people used chattels securities, bailments, and hire purchase agreements to secure personal property loans. The secured party must now enter details of the collateral to which the security interest relates. There are thirteen collateral types i.e. such as goods, motor vehicle, goods/aircraft or goods/other and the popular choice of Banks "all present and after acquired property". The secured party must add individual records of each collateral item under the collateral type and further specific details for vehicles, boats, aircraft and livestock.

Consumer goods comprising motor vehicles must contain the description including the year of manufacture, the manufacturers name, make and model.

REGISTRATION OF THE FINANCING STATEMENT

When all the data is entered the Financing Statement can be registered and the secured party is able to view the financing statement before registration to check details are correct. If the details are incorrect it could affect the validity of the Financing Statement.

The practical application of the payment of the registration fee is effected by card or charge account. Credit card details are not obtained.

It is interesting to note that a Financing Statement can and should be registered before the debtor obtains rights in the collateral.

HOW DO I KNOW THE DETAILS ARE CORRECT?

Once registration of the Financing Statement is completed, the registering party can choose to view a Verification Statement either on screen or by having it sent to them by email. The Statement contains the Debtor Pin and the registration number of the Financing Statement. These are details needed by the debtor to register a Change Demand.

WHO ELSE SHOULD RECEIVE THE VERIFICATION STATEMENT?

A copy of the Verification Statement must also be given to the debtor by the secured party within 15 working days of registration in terms of the Act. However this is not necessary if the debtor has waived in writing their right to receive it. In addition, a Financing Statement Pin will be emailed to all members of the secured party group to enable any members of the group to maintain the Financing Statement.

HOW DO WE MAINTAIN THE RECORDS?

A secured party must ensure the data contained in the Financing Statement is kept up to date. If the secured party becomes aware of any changes to the information held by them they are obliged to update the Register. There is no additional cost to maintain the Register and all information can be amended except for the date and time of registration and the Financing Statement registration number.

WHY THE CHANGE AND HAS IT WORKED?

Computerisation has become an integral part of our personal and business lives. The New Zealand Government has determined New Zealand should be e-commerce literate. This Act follows the trends in recent legislation to make public record available on-line. The land transfer system, company records and personal property borrowing records have followed the trend.

The lawyers at Govett Quilliam are well trained and understand these changes. They have the computer skills necessary to keep track of all the changes. We hope the politicians themselves keep up and allow New Zealand to benefit from the rapid changes occasioned by ICT advances. The slow passing of the Electronic Transactions Act is an example of the need for more attention to the opportunities created by e-commerce.

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