



# GUIDE TO SECURING MONEY LENT OVER PERSONAL PROPERTY

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## INTRODUCTION

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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.

The Personal Property Security Register (PPSR) became operational on 1 May 2002. Secured Parties (ie, lenders or creditors) can now register their security interests by registering a Financing Statement through [www.ppsr.govt.nz](http://www.ppsr.govt.nz).

### Concept of priority

The PPSR works by prioritising creditors by time of registration. The first party to register a security over a debtors assets will generally take priority over those assets in relation to those creditors who register their interest at a later date.

The main exception to this is if a creditor registers a Purchase Money Security Interest (PMSI). This essentially means finance to purchase a specific asset, and the security will relate solely to that asset.

*Example:* On 24 June, a creditor might register a security over all the current and future personal property of a customer in relation to a trade account. That creditor will take priority over any other creditors who register their security subsequent to 24 June. However, the debtor may then get finance to purchase a car. The firm that loaned the debtor the money may register a PMSI over the car, which means if the debtor defaults, the firm gets first priority over the car, not the creditors who had registered general securities.

## HOW DOES THE REGISTER WORK?

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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 (the assets to be secured) and secured party group details. The charge for registering a Financing Statement is \$3.07.

## HOW LONG WILL A FINANCING STATEMENT LAST?

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A Financing Statement is valid for a period of five years from the date of registration, however, Secured Parties can enter in an expiry date for a shorter term if that is the intent. The charge for renewing a Financing Statement is \$3.07. 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.

## WHAT CAN BE SECURED?

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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.

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.

While contractual clauses that state that the supplier will retain title in the goods (known as ‘Romalpa’ clauses) can still have effect, they are essentially useless if another creditor has registered a security.

## WHAT IS DIFFERENT NOW?

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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

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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.

A Financing Statement can and should be registered before the debtor obtains rights in the collateral.

## HOW DO I KNOW THE DETAILS ARE CORRECT?

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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?

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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?

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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.

## HOW WE CAN HELP YOU

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Govett Quilliam is Taranaki's largest law firm. We have the people, the experience and the resources to assist you, whatever your case may be.

We have prepared this guide as a guideline to securing money lent over personal property. If you require further information, or have any questions about this guide please contact us.

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