

FARM BUSINESS FACT SHEET

PERSONAL PROPERTY SECURITY REGISTER



SOUTHERN

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PHOTO: ZORAN ZEREMSKI



Personal Property Security Register – assisting growers to manage credit risk

The Personal Property Security Register (PPSR) is an online public register where all security interests held over personal property are registered to maintain their priority over competing interests from third parties. This is an important tool for potential use by grain growers who are selling or buying grain, equipment and engaging in other farm business transactions.

Key points

- The *Personal Property Securities Act 2009* (PPSA) aims to regulate the registration and priority of security interests over personal property. The register enacted under the PPSA, the Personal Property Securities Register (Register), is a national online noticeboard of interests for almost anything other than land, buildings or fixtures
- Having a contract of sale or set terms is no longer enough to protect your interests in personal property

WHAT IS THE *PERSONAL PROPERTY SECURITIES ACT*?

In January 2012, the Commonwealth Government enacted the *Personal Property Securities Act 2009* (PPSA), a national records system that deals with the creation, priority and enforcement of security interests held over various forms of personal property.

The PPSA also created a single, online public register known as the Personal Property Securities Register (PPSR), where all security interests held over personal property are registered to maintain their priority over competing interests from third parties.

Failing to register, registering incorrectly or registering outside of the required time frame may result in a security interest to be lost or for priority to be deferred through a subsequent registration.

WHAT IS PERSONAL PROPERTY?

The PPSA defines personal property as property other than land, fixtures and certain rights and licences, such as water rights. All other property, such as crops, farm machinery and livestock, is considered personal property under the PPSA.

The PPSA has replaced previous state and territory statutes and has created a central body to manage the registration of security interests.

WHAT IS A PPSA SECURITY INTEREST?

The PPSA defines a security interest as a transaction that, in substance, secures payment or performance of an obligation with no regard being made to the form of the transaction or the identity of the person with title to the property. In summary, it is an interest in which the seller or lender of goods can maintain and protect their interest in the transaction to ensure that it receives security in return for the goods it has provided.

To signal its interest over personal property, a secured party must register a security interest on the PPSR. However, its priority over other creditors will depend on the interests that have already been registered over the goods.

A security interest under the PPSA can also be specified to include any proceeds received in relation to the goods. This means that if secured goods such as crops, machinery or livestock are sold without payment having first been made, the secured party may trace the identifiable proceeds, or the money or any other benefit received under the sale.

I AM BUYING GOODS: PPSR – WHAT IS IN IT FOR ME?

If you are buying goods such as grain, livestock or machinery from another person, searching the PPSR will let you know if the goods are being used by the seller as security for an outstanding debt or other obligation. Paying a seller does not automatically guarantee that they will continue to pay their debt or will continue to satisfy their obligations.

If the seller ceases making its repayments, there is a real chance that the creditor will recall the asset from you and will not compensate you for any loss. Failing to search the PPSR may therefore leave you significantly out of pocket.

I AM SELLING GOODS: PPSR – WHAT IS IN IT FOR ME?

If you sell goods to an entity or individual with retention of title terms, or have consigned your goods to another person to sell on your behalf, registering a security interest over these goods secures your interest in the goods should the buyer default, go bankrupt (for an individual) or enter insolvency (for a company). Effectively, your registration will secure your position as a secured creditor.

If you fail to register an interest and the buyer goes bankrupt or enters insolvency before they have paid you in full, your assets may be sold to satisfy the debts of secured creditors first. If you are not registered, you will be deemed an unsecured creditor and may ultimately recover little or nothing.

HOW DO YOU REGISTER A SECURITY INTEREST WITH PPSR?

Security interests are documented by way of a security agreement entered into between the parties to the transaction. These agreements will give rise to a registerable security interest.

Security interests can be registered for a term of seven years, twenty-five years or for a specified fixed period. The registration fees are inexpensive, with a seven-year registration, being the most common type, equating to \$6.80 (as at June 2017). You should register your interest when you are dealing with a new buyer or an existing customer on new terms – do not wait until after the transaction is completed.

However, a secured party will need an appropriately drafted security agreement to support and regulate the security registration. This should be drafted by a suitably qualified legal practitioner and will come at an additional cost.

FARMING CROPS AND THE REGISTER

A security interest will attach to crops while they are growing, provided that they meet the definition of crops as provided for in the PPSA.

The term 'crops' means crops (whether matured or not and whether naturally grown or planted) that have not been harvested, including:

- (a) the products of agriculture or aquaculture, if the products have not been harvested; and
- (b) trees (but only if they are personal property), if the trees have not been harvested.

While crops can be considered fixtures to land at times, the PPSA specifies that a properly maintained and registered security interest can exist over crops yet to be harvested, and such an interest will maintain priority over a mortgage registered over the land in which the crops are planted.

The registration of a security interest over agricultural crops is subject to the rules as set out in section 84 of the PPSA. It is vital that you seek qualified advice regarding such an interest to ensure that your security interest takes priority over a financier holding a mortgage over the land, which also includes obtaining the consent of any mortgagee.

How the PPSR works

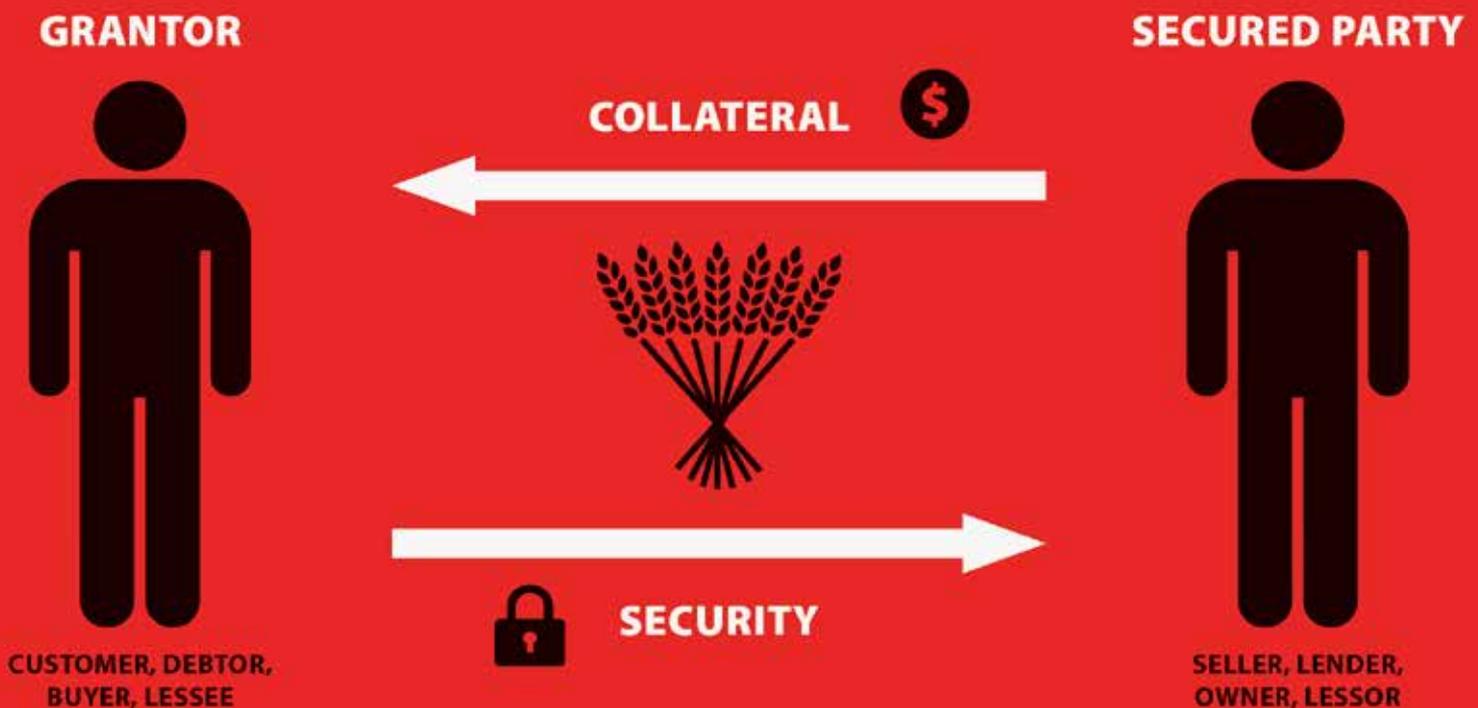


FIGURE 1: Key elements of a PPSR security agreement

Definitions

- Under the PPSA, a 'grantor' is the entity or individual who holds or has an interest in personal property over which a security interest is attached, such as a buyer, customer or lessee of goods.
- A 'secured party' is the entity or individual in whose favour a security interest is created, such as the seller, owner or lender of goods.
- The term 'collateral' refers to personal property to which a security interest is attached, such as crops, livestock or farm machinery.
- Security interests over crops and livestock are specifically called agricultural interests under the PPSA and are subject to strict criteria.

AN EXAMPLE:

Farming Co Pty Ltd is a commercial grower and supplier of grain. Grain Co Pty Ltd is a processor and buyer of grain. Farming Co contracts to sell a quantity of grain to Grain Co. Grain Co and Farming Co further agree that payment will be made after Grain Co takes possession. By delivering the grain to Grain Co prior to full payment being made, Farming Co is exposed to significant risk during this period, as it no longer has control over the goods it has sold and delivered to Grain Co. There is a risk that Grain Co may become insolvent prior to making full payment to Farming Co.

To minimise this risk and protect its interests, Farming Co registers a security interest over the value of the grain on the Personal Property Security Register (PPSR).

By registering this interest (i.e. Collateral), Farming Co becomes the 'Secured Party' and Grain Co, the 'Grantor', is bound to pay the value of the grain (Security).

If Grain Co becomes insolvent prior to full payment being made to Farming Co as the secured party, Farming Co becomes a secured creditor and will stand in line to receive payment by the liquidator ahead of any unsecured creditors on account of its interest in the grain.

The registration of a security interest protects the seller against the insolvency of the grantor and assists in preserving a priority position against other lenders and/or suppliers. Note: It is vital that you seek advice prior to entering into financial arrangements to protect your interests and ensure that registration is made within the requisite time period.

FAQs

Is registration with PPSR necessary?

While registering a security interest on the PPSR is optional, it is seen by many as an effective tool for minimising business risk and affording greater business protection. The Register has increased in popularity in recent times and is now used by many individuals and businesses.

What if I do not register a security interest with PPSR?

Failing to register a security interest on the PPSR may result in you becoming an unsecured creditor. This may force you to compete with other creditors and may result in you having limited or no recourse over the financed assets. Registration is vital to ensure that your financial interest is protected.

What happens if the interest is registered incorrectly?

Failing to register a security interest correctly can have disastrous consequences and the costs associated with such failure can be significant. It is always best to seek qualified legal advice to ensure that you have an appropriately prepared security agreement to rely upon and have effected a valid registration. Failure to register correctly may cause the security interest to become voidable against a third party.

Can I receive priority over other registered interests?

Sometimes a super priority can be granted to a secured party, with such an interlay known as a Purchase Money Security Interest. It is vital that you seek detailed advice regarding this interest as strict requirements must be met.

What if I sell multiple goods to the same buyer?

If you are selling the same goods to the same customer regularly and on the same terms, a single registration fee will usually have you covered. If the goods change or the terms change, further registrations must be made to ensure that your security interest is still protected.

Useful resources

PPSR Website –
<http://www.ppsr.gov.au>

PPSR Business Guide –
<https://www.ppsr.gov.au/ppsrbusiness-guide-0>

More information

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