

Personal Property Security Act and Regulations as they apply to Mobile Homes: Some Basic Principles

The purchase and financing of the purchase of a mobile home is complicated and fraught with peril.

This material is intended as a resource rather than as a definitive work.

Mobile Home Defined

Section 2(1)(k) of the Personal Property Security Act (PPSA) Regulations provides that:

“mobile home” means a structure, whether ordinarily equipped with wheels or not, that is not self-propelled and is designed

- (i) *to be moved from one place to another by being towed or carried, and*
- (ii) *to be used as a dwelling house or premises, a business office or premises, or accommodation for any other purpose;*

Fixtures

Pursuant to Section 37(2) of the PPSA, a personal property security interest in goods that attaches before or when the goods become fixtures has priority with respect to the goods over a claim to the goods by a person who has an interest in the lands. Therefore, for example, a party who has a security interest in a mobile home that attached before it became a fixture has priority of claim over the claims of the owner or a mortgagee of the land. The person who has the security interest does not have to perfect the interest by registration.

In order for the person to maintain priority against subsequent purchasers and mortgagees (including a mortgagee of the land at the time the mobile home became a fixture, with respect to subsequent advances on the mortgage), the secured party must record the security interest in applicable Land Registration Office. See PPSA Form 1, Notice of Security Interest.”

The Act does not define fixtures, except to the extent that Section 2(s) provides that fixtures do not include building materials. Thus, once materials are incorporated into a building they lose their character as goods and any security interest in them will disappear.

Pursuant to Personal Property Security Act Section 2(1)(i) “consumer goods” are “*goods that are used or acquired for use primarily for personal, family or household purposes*”. Registration of a charge purporting to affect consumer goods is deemed not to be registered or perfected unless a financing statement relating to the security interest includes a description of the goods by serial number.

Searches

- Pursuant to Section 49(2) of the Personal Property Security Act, a search may be conducted:
 - (a) in the name of the debtor;
 - (b) by serial number, if the asset is of a type that is prescribed as serial numbered goods, or
 - (c) by PPSA registration number.
- Searches in the name of the debtor and by serial number should be conducted.
- A search only in the name of the debtor will not identify security interests that might have been registered before the asset was owned by the debtor. A search by serial number will reveal encumbrances properly registered by previous owners.
- Be aware of the naming standards protocol set out in PPSA Regulations 20 and 21. Be aware of variations such as nicknames and name changes. If a debtor has married, searches ought to be conducted in the maiden surname and the married surname.
- Judgments may be registered in the Personal Property Registry. Searching the debtor by name should reveal the existence of any such judgment but it is equally important to conduct a search in the name of the Buyer so as to avoid any priorities issues. Similarly, a search of the Judgment Roll at the Land Registration Office should be conducted in cases where the chattel has or will become a fixture.
- If the mobile home has been used/held by the Seller as a business asset, you should consider doing Bank Act (Section 427), Workers' Compensation Board of Nova Scotia, Labour Standards Code/Occupational Health and Safety, and Bankruptcy and Insolvency searches.

Serial Numbers

Given the possibility that incorrectly setting out the serial number may defeat the claim of the creditor, the importance of verifying the serial number should not be underestimated. If it is available, the Manufacturer's General Conveyance (otherwise known as a "Bill of Sale") should be checked. In other cases, a subsequent General Conveyance/Bill of Sale may be available. In any case, the client (and/or Realtor) should be instructed to search for a serial number placed on the mobile home. The following locations can be checked:

- the cupboard above the refrigerator;
- one of the exterior corner posts;
- the trailer hitch (if there is one and if it is still with the mobile home);
- the area above the furnace; if there is a furnace;
- the interior door frame of one of the entry doors;

What do you do if no serial number is available? In that case one can be created. Pursuant to PPSA Regulation 25(3), a serial number of at least six characters can be created by marking such serial number on or attaching it to the collateral.

Purchase from a Dealer

Pursuant to Section 31(2) of the Personal Property Security Act, the Buyer (or a lessee) of a mobile home will take free of any security interests granted by the Seller or lessor if the Seller or lessor sells or leases mobile homes in the ordinary course of business, unless the Buyer or lessee knows that the sale or lease of the mobile home constitutes a breach of the security agreement under which the security interest was created.

Registration of Interest under PPSA

The debtor must sign a Security Agreement creating the charge. The security agreement cannot be registered; rather a financing statement or notice is registered. If the filing is not done properly (if for example the serial number is incorrectly stated), the creditor's claim may be defeated by that of a subsequent secured creditor. See PPSA Regulation 44 (8A). As well, pursuant to Regulation 44(8) "a registration is invalid if a search of the records of the Registry using the name, as prescribed, of any of the debtors required to be included in the financial statement other than a debtor who does not own or have rights in the collateral does not disclose the registration."

Duration of Registration

The Lender's Instructions should be checked carefully. Some call for a registration period equal to the amortization period of the loan; others for a shorter term. In any event bear in mind the fact that the registration will cease to exist upon expiration of the registration and thus there is a liability issue. Responsibility for renewal, if applicable, must be clearly delineated.

Proceeds

Pursuant to Section 29(1) of the Act, a security interest extends to proceeds of the sale of the secured asset. However it is good practice and many Lenders require that the security document and registration refer specifically to proceeds.

General Conveyance/Bill of Sale

A General Conveyance/Bill of Sale is not a security interest and thus it cannot be registered pursuant to the provisions of the Personal Property Security Act.

Application of Matrimonial Property Act

Section 8 of the Matrimonial Property Act governs disposition or encumbrance of an interest in a matrimonial home. Section 3(1) of the Act defines a matrimonial home as a “dwelling and real property occupied by a person and that person’s spouse as their family residence . . .” Pursuant to Section 2(d), a “dwelling” includes a mobile home occupied as a residence.

Verification Statement

The secured party must give each debtor, within thirty (30) days after registration, a Verification Statement (ie. the document which is generated upon registration of a financing statement). Section 44(11) of the Act establishes the notice requirement, but it permits waiver (in writing) of the right to receive such notice. If notice is given, it must be in accordance with Section 70(1) of the Act.

Notice of Security Interest

A PPSA Form 1 Notice of Security Interest is recorded at the Land Registration Office using a LRA Form 26. The recorded interest type is “Notice (All Other)”. The Interest Type is “Party To Agreement”. The Lender is identified as the “Interest Holder”. If the debtor is a corporation, an Affidavit of Execution meeting the requirements of the LRA must be completed.

Attachment and Perfection

As stated by Steven R. Kelley in his “Attachment, Perfection and Registration of Security Interests under the Nova Scotia Personal Property Security Act” presented to the CBA Personal Property Security Act seminar on November 1, 1996 “*the feature distinguishing attachment and perfection is that attachment relates to the rights of the creditor vis-a-vis the debtor whereas perfection relates to the rights of the creditor versus the rights other parties may have in the collateral. Note that a security agreement that has achieved attachment but has not been perfected is still binding and enforceable against the debtor*”.

Discharged Security Interests

A discharged Notice of Security Interest will still appear in the system for thirty (30) days. During that thirty (30) day period it can still be reinstated pursuant to Section 36(7) of the Act.

Legal Opinions/Certification

We cannot certify title to goods under the PPSA. As well, remember that our ability to certify with respect to encumbrances hinges upon the integrity of the names and serial numbers we are given. A lawyer who is called upon to provide a legal opinion or certificate needs to tread carefully and must consider, among other issues, those relating to perfection and attachment.

Resources

- An Introduction to the New Brunswick Personal Property Security Act by Catherine Walsh, (July 1995, New Brunswick Geographic Information Corporation)

Note: The corresponding section of the Nova Scotia Act is one section ahead of its New Brunswick counterpart. The numbers of the Nova Scotia Regulations correspond exactly with those of New Brunswick, from 1 to 55.

- Personal Property Security Act Seminar, Canadian Bar Association (November 1, 1996)
- The New Personal Property Security Act, The Continuing Legal Education Society of Nova Scotia (September 1996)
- Personal Property Security Act Update, The Continuing Legal Education Society of Nova Scotia (January 9, 1998)
- Trailer Park Boys & Girls, Canadian Bar Association (February 6, 2014) presented by George P. Ash and Amanda M. Carew
- Professional Standard 5.2 (Personal Property)
- Mobile Home Transfer forms (4 different locations) found on Property Valuation Services website: <http://www.pvsc.ca/en/home/howassessmentworks/toolsresources/formsguides.aspx>

Procedure if acting on a Purchase of a Mobile Home

Note: Much of this procedure applies as well to refinancing of an already-owned mobile home.

1. Obtain and verify (to the extent reasonably possible) the serial number and other particulars of the mobile home.
2. Obtain and verify full names of the Seller(s) and any commonly used names. If applicable, also obtain the maiden surname or other formerly used names. Be aware of the naming standards cited in this document.
3. Conduct Personal Property Registry System searches:
 - a) By serial number;
 - b) In the name of the Seller (using each combination or variation of that name or names);
 - c) In the name of the Buyer (using each combination or variation of that name or names);
4. Consider conducting a fixtures search at the Land Registration Office, searching the parcel upon which the mobile home is located in case a Notice of Security Interest (PPSA Form 1) has been recorded. In fact determination of whether or not the mobile home has retained its character as personal property or has become a fixture is fundamental to this process. If in doubt, do parallel searches in the Personal Property Registry System and at the Land Registration Office.

If the mobile home is already a fixture, the "Seller" may have nothing to sell as the mobile home has become part of the realty.

5. If the Buyer is acquiring the land upon which the mobile home is or will be located, conduct the usual Land Registration Office searches of the Parcel Register and of the Buyer and Seller in the Judgment Roll.
6. Determine if zoning by-laws or restrictive covenants prevent the placement or continued existence of a mobile home on the subject property.
7. Consider Harmonized Sales Tax issues: Does the used residential housing exemption apply? Even if land is being purchased with the mobile home, and HST is payable with respect to the land, there may be an exemption with respect to the mobile home portion of the purchase price, or vice versa.
8. Obtain a General Conveyance/Bill of Sale and consider the requirements of compliance with the Matrimonial Property Act. As with a Deed, ensure that the General Conveyance/Bill of Sale addresses the manner of tenure, if there is more than one Buyer.
9. Consider calculation of Deed Transfer Tax. Is it possible and prudent to allocate the purchase price and legitimately reduce payment of Deed Transfer Tax by reasonable allocation if dealing with land and a mobile home not affixed to that land? If so, the written consent of the Seller/Owner will be required in order to communicate with Property Valuation Services Corporation (PVSC). The request to PVSC can be submitted electronically or by facsimile; original ink signatures are not required.

Bear in mind the possibility, when dealing with a mobile home which is a business asset, that the allocation for Canada Revenue Agency purposes may be different than that for Deed Transfer Tax purposes.

10. If the mobile home is to be on land owned by a third party:
 - a) Check the terms of the existing lease and determine if there has been any default; and
 - b) Consider obtaining an assignment of the site lease or entering into a new lease. Pay strict attention to the Lender's Instructions.
 - c) Consider the provisions of the Residential Tenancies Act (see the definitions of "land-lease community" and "manufactured home" in Section 2(d) and 2(e), respectively) and consider the effect of the "Statutory Conditions Respecting Lease of a Manufactured Home Space or a Manufactured Home in a Land-Lease Community" in Section 9(2) of the Act. The consent and subordination of the owner of the mobile home park may be required in order to give the required priority to the Buyer's Lender. This will be required (as will the consent/subordination of the Landlord's mortgagee) in cases where the mobile home is affixed to the land.
11. Do final searches at the time of closing in addition to the search you should conduct as soon as you have the pertinent data.
12. Follow the Lender's Instructions for registering a Notice. Sometimes it is not clear or the Lender doesn't address the issue in which case you will need to seek further instructions.
13. If security is being given, the Security Agreement will have to be prepared and signed. Use care when drafting the charging terms and consider adding "and proceeds".

Consider the possibility that the mobile home does not fall within the definition of "consumer goods" in Section 2(1)(i) of the Personal Property Security Act, and thus may not qualify for the higher level of protection accorded to "Consumer Goods".

14. Effect the registration immediately at the time of closing, to preserve priorities. Be sure to err on the side of caution by adding "and proceeds" to the registration. Choose the duration of registration carefully. In order to protect the interests of the Lender the security must be registered before the mobile home becomes a fixture, in order to have priority over those who already have an interest in the land. Section 50 Notice must be registered in order to preserve the priority against subsequent purchasers or mortgagees of the land.
15. Send the required Verification Statement to the debtor.
16. Ensure that existing Personal Property Registry System Notices are discharged if being paid, and that any Form I recorded in the Land Registration Office be removed from the Parcel Register. Use LRA Form 27 for this purpose.
17. If there is not common ownership of the mobile home and the land, there will be issues with respect to municipal assessment/taxation and the confusion is compounded if the mobile home is moved from one municipal jurisdiction to another. There is a mobile home transfer form which can be used to notify Property Valuation Services of the change of ownership (and change of location, if applicable) and this will assist in the transition.