



NOVA SCOTIA  
BARRISTERS' SOCIETY

## MEMORANDUM TO COUNCIL

**From:** Lisa M. Wight and the Professional Standards (Real Estate) Committee

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**Date:** January 31, 2023

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**Subject:** Professional Standards (Real Estate) 5.2 Personal Property Standard

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**For:**      **Approval**       **Introduction**       **Information**

DATE January 31, 2023	Council	Introduction
	Council	Approval

### Recommendation/Motion:

This is the introduction to Council of revised standard 5.2 - Personal Property – by the Professional Standards (Real Estate) Committee. This standard will be concurrently sent to the Equity Committee for review and comment in accordance with the Society's Equity Lens Application in Policy Development guideline. Following introduction to Council, the standard will be circulated to the membership for review and consultation. The RESC will review any comments received by members and the Equity Committee, and then present the final form, amended if necessary, to Council for approval. An equity lens was applied while revising this standard.

### Executive Summary:

One of the Committee's mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. After annual review, the Committee determined that the current standard, approved by Council on February 28, 2014, required updating to align with current practice and legislation.

### Exhibit:

Revised Standard 5.2 – Personal Property - with rationale for the revisions.

## Personal Property Standard 5.2

Existing Standard	Proposed Standard	Rationale
<p><b>STANDARD</b></p> <p>A lawyer who represents a buyer of real property in a transaction that includes the purchase and sale of personal property must consider whether to search the Personal Property Registration System (“P.P.R.S.”) for encumbrances and judgments which attach to the personal property. A lawyer who represents a lender where the collateral includes personal property must search the P.P.R.S. for encumbrances and judgments which attach to the personal property.<sup>1</sup></p> <p>A lawyer who considers whether to conduct a P.P.R.S. search may consider the exemptions for consumer goods having a value of \$1,000.00 or less.<sup>2</sup></p> <p>A lawyer who conducts a P.P.R.S. search must search the serial number if the personal property includes serial numbered goods as defined,<sup>3</sup> or in all other cases search the name of the “debtor.”<sup>4</sup> When reporting the results of such searches, the lawyer should heed the caution against certifying title to personal property.<sup>5</sup></p>	<p><b>STANDARD</b></p> <p>A lawyer who represents a client in a transaction that includes the purchase and sale of personal property must consider whether to search the Personal Property Registration System (“P.P.R.S.”) for encumbrances and judgments which may attach to the property under conveyance, or to all or the vendor’s or purchaser’s personal property.</p> <p>A lawyer who considers whether to conduct a P.P.R.S. search may consider the exemptions for consumer goods having a purchase price of \$1,000.00 or less.<sup>2</sup></p> <p>A lawyer who conducts a P.P.R.S. search must search the serial number if the personal property includes serial numbered goods as defined,<sup>3</sup> and in all cases search the name of the “debtor, having regard to the PPSA naming rules”<sup>4</sup> When reporting the results of such searches, the lawyer should not certify title to personal property except that they have not found any relevant filings in the Nova Scotia PPRS, or as the case may be.<sup>5</sup></p>	<p>The Committee reviewed the current standard and determined that it required updating to align with Current practices. In particular, the committee clarified that you can not certify title to personal property. Additional references to articles were added, as well as reference to notifying PVSC of a transfer.</p>

## Personal Property Standard 5.2

A lawyer must consider the possibility of other security instruments, statutory liens, or deemed trusts affecting the personal property.<sup>6</sup>

A lawyer who represents a lender where the collateral includes personal property must consider registering a notice in the land registry to protect perfection of the security interest in the event the personal property becomes a fixture.<sup>7</sup>

### FOOTNOTES

1. *Personal Property Security Act*, S.N.S. 1995-96, c. 13.
2. *Personal Property Security Act*, S.N.S. 1995-96, c. 13, s.31 & *Creditors Relief Act*, R.S.N.S. 1989, c.112, s.2B(6).
3. See *Personal Property Security Act - General Regulations*, N.S. Reg. 129/97 for the definition of "serial numbered goods."
4. *Personal Property Security Act*, S.N.S. 1995-96, c. 13, s.2(1)(m) defines "debtor" to include owners, obligors and transferees in various circumstances. Therefore the buyer and seller should both be searched in purchase and sale transactions, and the owner should be searched in refinancing transactions.
5. R. Wright, "Certifying the Uncertifiable -

A lawyer must consider the possibility of other security instruments, statutory liens, or deemed trusts that may affect the personal property.<sup>6</sup>

A lawyer who represents a lender where the collateral includes personal property must consider registering a notice in the land registry to protect perfection of the security interest in the event the personal property may be, or to the lawyer's knowledge may become, a fixture.<sup>7</sup>

A lawyer for the purchaser of a mobile home should inform the relevant municipal official or Property Valuation Services Corporation of the transfer.

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Chattels” (1993) 5. *The Claims Wise Bulletin No. 29* at 2.

6. These may arise, for example, under the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), *Excise Tax Act*, R.S.C. 1985, c.E-15, the *Bank Act*, S.C. 1991, c.46, s.427, municipal liens and liens in foreign jurisdictions. While these will not apply to personal property in most residential transactions, the lawyer should have regard to these kinds of charges when considering transactions involving personal property.
7. *Personal Property Security Act*, S.N.S. 1995-96, c. 13, ss. 37 and 50; *Registry Act*, R.S.N.S. 1989, c. 392, ss. 1A(1) and 18A; *Land Registration Act*, S.N.S. 2001, c. 6, s. 59.

### PRACTICE NOTES

The potential for personal property to become a fixture will often affect security interests in mobile homes, modular homes, furnaces and water heaters, for example. Typical lenders’ instructions on mobile home and modular home transactions vary, and often include express instructions not to register the security in the land registry. It is recommended that lawyers review the lenders’ instructions in each case to determine the extent of their

various circumstances. Therefore the buyer and seller should both be searched in purchase and sale transactions, and the owner should be searched in refinancing transactions . See Section 20 of the PPRS regulations, supra, which sets out the naming requirements for registration. See also referenced materials:

<https://www.lians.ca/news/lianswers/whats-name-ppsa-registration-name-requirements>

<https://www.lians.ca/news/lianswers/caught-middle-ppsa-registration-name-requirements>

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<p>obligations.</p> <p><b>ADDITIONAL RESOURCES</b></p> <p>Manufactured Home Transfer Form: <a href="#">Bridgewater (PVSC)</a></p> <p>Manufactured Home Transfer Form: <a href="#">Dartmouth (PVSC)</a></p> <p>Manufactured Home Transfer Form: <a href="#">Port Hawkesbury (PVSC)</a></p> <p>Manufactured Home Transfer Form: <a href="#">Truro (PVSC)</a></p> <p>MacLean KC, Ian H. / "<a href="#">Personal Property Security Act and Regulations as they apply to mobile homes: Some basic principles</a>" (April 2014)</p> <p><b>Approved by Council on February 28, 2014</b></p>	<p><b>PRACTICE NOTES</b></p> <p>The potential for personal property to become a fixture will often affect security interests in mobile homes, modular homes, furnaces and water heaters, for example. Typical lenders' instructions on mobile home and modular home transactions vary, and often include express instructions not to register the security in the land registry. It is recommended that lawyers review the lenders' instructions in each case to determine the extent of their obligations.</p> <p>A lawyer should always search by name, and variants thereof, as well as (where applicable) by serial number. <i>Rizzato (Re)</i>, 2020 NSSC 63</p> <p><b>ADDITIONAL RESOURCES</b></p> <p>Manufactured Home Transfer Form: <a href="#">Bridgewater (PVSC)</a></p> <p>Manufactured Home Transfer Form: <a href="#">Dartmouth (PVSC)</a></p> <p>Manufactured Home Transfer Form: <a href="#">Port Hawkesbury (PVSC)</a></p>	
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	<p>Manufactured Home Transfer Form: Truro (PVSC)</p> <p>MacLean QC, Ian H. / "Personal Property Security Act and Regulations as they apply to mobile homes: Some basic principles" (April 2014)</p>	
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