



Avoiding Finance Delays

When Buying Or Selling Assets

The next time you need to borrow money to purchase a new or second hand asset for your business you may have to prove to the lender (or other financier) that you have valid Personal Property Securities Register (PPSR) registrations in place before the lender will provide the funds (or drawdown).

This lender requirement, that came into effect in January 2012, is still not well known to business owners and can cause significant delays when financing equipment or selling your existing equipment.

The Personal Property Securities Register (PPSR) allows lenders and businesses to register their security interests. Secured parties, buyers and other interested parties can search the federal government's recently updated website www.ppsr.gov.au where for a minor fee (only \$2 for an online search and \$7 for a phone-assisted search) you can find out if a security interest is registered over the personal property.

Examples of personal property include:

- art
- cars, boats and caravans
- crops and livestock
- inventory
- plant and machinery
- shares

Personal property can also include non-material items such as:

- accounts
- intellectual property
- investment instruments, or
- licences

You can now also easily conduct an inexpensive online search on organisations or individuals, along with searches related to IP, point in time, individual PPSR registration numbers and the order of PPSR events.

If you are purchasing second hand equipment you need to establish if a security interest is registered over the personal property prior to taking on the additional equipment. If you are selling your assets and they are not de-registered after you have repaid the finance it can add to settlement delays when processing the application.

Buying assets with finance

The introduction of the Personal Property Securities Act (PPSA) abolished ownership (title) of an asset as the right to recover it from a customer or client in liquidation. Registration of a security interest (ie a charge, mortgage or debenture over business assets) on the PPSR is the only way that parties with an interest in an asset, such as plant or equipment, can ensure that they are able to recover it.

In many transactions there are two separate relationships: one between the lender and the owner and the second between the owner and the customer. There is no relationship or 'privity of contract' between the lender and the customer. Lenders are generally very efficient at registering their security interests, but if the owner does not register its security interest in the asset against the customer and the customer faces liquidation the owner will lose the asset.

Having lost the asset the owner may potentially be unable to repay the lender and face liquidation or bankruptcy themselves, leaving the lender out of pocket even with a valid security registration over the asset.



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Lender requirements

Lenders are using a number of methods to minimise the risk of losing their security. The first is the inclusion of provisions within their loan agreements prohibiting the sale or hire of the financed asset without the lender's prior written consent. This means that the owner must notify the lender before it parts with possession of the asset, otherwise it would be in breach of the loan agreement. The lender would then be allowed to terminate the agreement and immediately recover the asset with the owner usually liable for any possible significant lender recovery costs, including legal costs.

Another increasingly common lenders' requirement for owners who are in the business of leasing or selling assets is for the owner to provide proof of a valid security interest registration against the entity leasing or purchasing the assets before providing the purchase funds. This adds another layer of complexity to the asset transaction. Failure to comply with the lender's requirements may result in significant delays and costs to the owner.

We have seen a number of instances where owners tried to record the required registrations themselves only to discover that the registrations were invalid and that drawdown was going to be further delayed with severe penalties.

Receiving professional advice at an early stage on these occasions would have saved significant time and money.

What about vehicles?

For vehicles, watercraft and aircraft, a chain of registrations from lender to owner and owner to end user may not be required. A type of registration for vehicles known as a 'serial number registration' may be found by searching the serial number alone (VIN, chassis or manufacturer's number) as with the old REVS register (now part of the PPSR).

Each of these asset classes is also easily and inexpensively searched via the www.ppsr.gov.au website.

Some liquidators are returning these assets whilst others are retaining the assets based on the lack of privity of contract argument mentioned above, although this is an untested area of law in Australia.

Many lenders are taking the conservative approach in assuming that the serial number registrations alone are not sufficient to protect their secured asset.

The PPSA has been around for 9 years and is here to stay with lender compliance requirements becoming stricter. Business owners need to be aware of the potential for the PPSA to disrupt and delay financed equipment purchases and should equip themselves with the skills and knowledge to comply with lender requirements. A little professional advice in this area goes a long way to avoiding potential delays.



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Contact us for our article 'How To Maintain Accurate Records Of Your Business Assets'

