

PERSONAL PROPERTY SECURITY ACT PART 2



BY TODD HARVEY

corporate, commercial, real estate,
estate and estate planning law

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In the last edition of the Bailiwick, Todd introduced the B.C. Personal Property Security Act. He discussed its scope, some terminology, and the methods and steps of attachment and perfection of security interest. In this second part, Todd will discuss the issues surrounding Priority Rules alluded to in the last edition.

The General Priority Rules

One of the basic functions of the PPSA is to provide for a set of priority rules to govern which secured parties have priority in different situations. Priority rules are important when there is more than one secured party claiming a security interest in particular collateral. It should be noted the priority rules can only be applied in relation to particular collateral held by a particular debtor at a particular time because the priorities will usually be shift over time. The priority rules establish a ranking for the secured parties in relation to certain collateral at a certain time. The secured parties with a lower ranking are called subordinate secured parties.

The priority rules under the PPSA fall into two basic types. The first type is the general priority rules. The second type is the special priority rules. The general priority rules only apply when there is no special rule that applies to determine the priorities in a particular situation. Therefore, it needs to be determined first that none of the special rules apply before the general rules will apply.

There are three general priority rules. First, when there are two unperfected security interests in the same collateral, priority goes to the first to attach. Second, when there is a perfected and unperfected security interest in the same collateral, the perfected security interest has priority. Third, when there are two perfected security interests, the first to perfect has priority. That is, generally speaking, the first secured party to register a financing statement or to take possession of the collateral has priority.

The Special Priority Rules

There are 14 special priority rules in the PPSA. It must be determined whether any of these special rules apply before the general rules can be applied to determine who has priority. A brief explanation of the special priority rules that are most commonly encountered is as follows.

(a) Buyer or Lessee of Goods - Generally, a person who buys or leases goods in the ordinary course of the business of the seller or lessor has priority over any security interest granted by the seller or lessor unless the person buying or leasing the goods knows that the transaction is a breach of a security agreement.

(b) Priority by Agreement - The PPSA allows a secured party to enter into an agreement that gives priority to another interest.

(c) Priority for Lienholders - The PPSA gives liens on goods, such as a lien under the *Repairers Lien Act* (British Columbia), priority over perfected and unperfected security interests in the goods unless the legislation creating the lien states otherwise.

(d) Priority for Purchase Money Security Interests - This is the most commonly applied special priority rule. A purchase money security interest or "PMSI" is a security interest held by a secured party who provides the debtor with the funding necessary to acquire the collateral. A PMSI will have priority over all other perfected security interests in the collateral provided the holder of the PMSI takes certain steps. If the PMSI is in inventory, the holder of the PMSI must give notice to other secured parties that have security interests in the collateral. If the PMSI is in intangibles, the holder of the PMSI must perfect the PMSI within 15 days after the security interest attaches. If the PMSI is in collateral other than inventory or intangibles, the holder must perfect the security interest within 15 days of after the debtor obtains possession of the collateral.

(e) Priority for Security Interests in Fixtures - Fixtures are articles of personal property that have been attached to real property in such a way that the law treats them as part of the real property. Generally, a security interest in goods that attaches before or at the time the goods become fixtures has priority over claims made by parties with an interest in the land. Also, if notice of the security interest in the fixtures is registered in the Land Title Office, the security interest will have priority over subsequent owners or mortgagees of the land after the goods became fixtures and the notice was registered. If the security interest attaches after the goods become fixtures, priority over interests in the land can be obtained by agreement with the parties holding such interests.

(f) Priority for Security Interests in Crops - The PPSA treats crops as personal property even when they are still attached to the land. The priority rules for security interests in the crops and competing interests in the land are similar to the rules for fixtures.

Once priority between competing secured parties in relation to collateral are determined, if the debtor is in default under the obligations secured by the security interests, the next step is to enforce the security. This will be discussed further in the final installment of this article in next edition.

To learn more about Todd Harvey, his areas of practice and view other Articles written by lawyers at our firm, visit us online at www.bakernewby.com.