

PERSONAL PROPERTY SECURITY ACT PART 3



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As discussed in the last edition, 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. Under the PPSA, the secured party is permitted to exercise the rights and remedies set out in the security agreement between the parties and the rights and remedies available to the secured party under the PPSA itself.

The set of remedies for secured parties contained in the PPSA apply only to security interests that secure payment or performance of an obligation. These remedies include seizure or repossession of the collateral and the sale of collateral. If collateral is to be sold, certain notice requirements must be met such that notice is given to the debtor and subordinate secured parties. Unless otherwise agreed between all interested parties, the surplus from the sale of collateral, after the expenses of the sale are paid and after paying out the secured party conducting the sale, must be paid first to the holders of any perfected, subordinate security interests, second to the holders of any other interests in the collateral who have given notice to the party conducting the sale, and third to the debtor.

The PPSA also allows the secured party to retain the collateral in satisfaction of the obligations of the debtor secured by the security interest. There are notice requirements that must be met in order to retain the collateral. Once a certain period has elapsed since the notice have been given, the secured party may retain the collateral and may either hold onto it or sell it.

If a debtor is in default and the security interest relates to consumer goods, the PPSA allows the debtor to reinstate the security agreement on payment to the secured party of the amount in arrears plus any expenses incurred by the secured party in dealing with the collateral. This right of redemption may also be exercised by other parties with interests in the collateral. This right may be waived by the debtor or other interested person in writing after default.

Also, if the security interest relates to consumer goods the secured party must make an election whether to sue the debtor for judgment under the security agreement, or by seizure, possession or surrender of the goods by the debtor. If the secured party proceeds by seizure, possession or surrender, the debtor's obligations are generally extinguished, subject to some exceptions.

Parties with interests in collateral such as a debtor, a creditor of the debtor and other secured parties may apply to court under the PPSA for orders relating to directions with respect to their under the enforcement rules of the PPSA. These parties may also apply for orders such as binding declarations of right, injunctions necessary to effect compliance with the PPSA enforcement rules, preservation or protection of the collateral, relief from compliance with the enforcement rules, stays of enforcement rights, priorities and entitlement to the collateral.

Security agreements may provide for the right of the secured party to appoint a receiver or receiver manager for the debtor. If the security agreement does not provide for this, the secured party may apply to court to have a receiver or receiver manager appointed.

Finally, if a security agreement includes an acceleration clause that makes all amounts that were to have been paid to the secured party in the future immediately due and payable on default, the PPSA states that such a clause can only be used when the secured party has good reason to believe that the likelihood of payment is impaired or that the collateral is in jeopardy.

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