

Article Information

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Service: Banking & Finance

Sector: Financial Services

Myth Busted - Understanding the removal and release of PPS interests

There is a common misconception that the removal of a security interest from the Personal Property Securities Register (PPSR) is conclusive evidence that the secured party has discharged the underlying security agreement. Normal market practice to evidence the formal discharge of the underlying security agreement calls for either:

- 1. a 'Release and Undertaking to Amend Registration' form to be signed and dated by the secured party; or***
 - 2. a formal deed of release to be provided by the secured party. This deed is more appropriate when dealing with multiple security agreements and guarantee and indemnities, among other securities.***
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Understanding the PPSR and Security Agreements

The PPSR is an online register which records security interests in personal property. The PPSR acts as a national *noticeboard* which informs individuals about whether personal property, such as cars, equipment and company assets, among other things, are the subject of security interests. Chapter 5 of the *Personal Property Securities Act 2009* (Cth) (**PPSA**) sets out rules detailing the process of registration, searching and removing of security interests.

This noticeboard concept is very similar to the concept surrounding the registration of a caveat in respect of a title deed on a Torrens Title register, being that it is merely a notice to the world evidencing the existence of an underlying security.

It is also important to understand that normal market practice is for the underlying security agreement to contain security interests and charges (among other things) over all real property and all personal property (as applicable), this is namely to address any issues that may arise in respect of the secured party being exposed to administration risk.

Access and Registration

Section 150 of the PPSA allows a person to register a financing statement, or financing change statement, with respect to a security interest.¹ Registering a security interest correctly on the PPSR protects the secured party (e.g. a lender) and may offer further protection by way of perfection of the security interest. Section 170 of the PPSA allows for anyone to access and search the PPSR for information relating to a security interest or personal property.² A search of the PPSR may be useful to enquire whether someone has a security interest over particular personal property, to find the historical details of a PPSR registration or to check if a registration is expired.

Request for Information

Section 275(1)(a) of the PPSA provides for an interested party to make a request to the secured party for evidence (i.e. a copy of the underlying security agreement) supporting their security interest in the collateral.³ This information must be provided before the end of 10 business days after the date that the request is received.⁴ If the secured party fails to provide this information within that time frame, the interested party may make a formal amendment demand in writing that will require the secured party to remove the security interest within 5 business days after the date that the formal demand is issued.⁵

Removal and Release

Pursuant to section 178(1) of the PPSA, a person with an interest in collateral (i.e. personal property) that is described in a registration, may give an amendment demand, *in writing*, to the secured party for a financing change statement to be registered to remove the security interest.⁶ A release of the underlying security must also be obtained in the market accepted form provided by the Australian Banker's Association (ABA) ['Release and Undertaking to Amend Registration'](#) (**PPS Release and Undertaking**). The PPS Release and Undertaking must be dated and signed pursuant to section 127 of the *Corporations Act 2001* (Cth) for a company or in the alternate 'signed, sealed and delivered' by an individual.

It is not sufficient to merely remove the security interest notation from the PPSR, as this does not provide evidence of the discharge of the underlying security agreement and is merely removing the security interest notation from the PPSR / 'noticeboard' which you (as an incoming lender or otherwise) would now be on notice of its existence. In order to have conclusive evidence that the secured party will discharge the underlying security agreement, the incoming secured party *must* also obtain a signed PPS Release and Undertaking.

In respect of a PPS Release and Undertaking evidencing a full discharge, after signing the PPS Release and Undertaking, the security interest notation on the PPSR must be removed pursuant to the market acceptable undertaking to register a financing change statement on the PPSR within 10 business days. For a partial release, the property being released needs to be specified in the 'Released Property' section of the PPS Release and Undertaking to evidence the partial release of the specific property from the underlying security agreement, and normal practice is that a financing change statement will not be registered in respect of this partial release.

Summary

- The PPSR acts merely as a noticeboard which notifies the world of the existence of security interests pursuant to an underlying security agreement.
- It is not sufficient to merely remove the security interest notation from the PPSR as this does not provide evidence of the formal discharge of the underlying security agreement.
- In order to have conclusive evidence that the secured party has discharged the security interests and the underlying security agreement, the incoming secured party must obtain a signed PPS Release and Undertaking in usual market acceptable form.

For further information relating to the PPS register and protecting a lender's interest, please contact Banking and Finance Partner, Greg Conomos.

[1] *Personal Property Securities Act 2009* (Cth) s 150.

[2] *Personal Property Securities Act 2009* (Cth) s 170.

[3] *Personal Property Securities Act 2009* (Cth) s 275(1)(a).

[4] *Personal Property Securities Act 2009* (Cth) s 277.

[5] *Personal Property Securities Act 2009* (Cth) s 179(1).

[6] *Personal Property Securities Act 2009* (Cth) s 178(1).