

Civil Enforcement Agencies within the province of Alberta are required to protect the rights of all creditors with an interest against an enforcement debtor's goods, not just their instructing party. Civil Enforcement Agents have an obligation to determine which of creditor(s) take priority over the debtor's goods or the proceeds from the sale of the debtor's goods. These priority rules are outlined in the Civil Enforcement Manual, prepared by the Sheriff of Alberta for all Civil Enforcement Agencies and Agents.

The one area that often requires research and clarification to determine these priorities, is Security Agreements. The above noted priority rules clearly state that a Purchase Money Security Interest takes priority over a General Security Agreement. Unfortunately, there is no requirement in the Alberta Personal Property Registry for creditors to note if their registration is in fact a Purchase Money Security Interest (PMSI) or if it is a General Security Agreement (GSA). Therefore it falls to the Civil Enforcement Agency to determine the correct nature of the security agreement before they proceed with the sale of the debtor's goods or the distribution of the sales proceeds from the same.

Purchase Money Security Interest (PMSI):

“A Security Interest taken or reserved in collateral, other than investment property, to secure payment of all or part of its purchase price. A Security interest taken in collateral, other than investment property, by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights. The interest of a lessor of goods under a lease for a term of more than one year, or the interest of a person who delivers goods to another person under a commercial consignment, but does not include a transaction of sale by lease back to the seller, and, for the purpose of this definition, “purchase price” and “value” include credit charges or interest payable in respect to the purchase or loan”

A civil enforcement agent looks for the following to confirm whether a security agreement registration is a PMSI or if in fact it is a GSA:

1. If the creditor states this is a **Purchase Money Security Interest** the agency must confirm the following:
 - a. Does the agreement adhere to the requirements noted above: the security agreement is taken or reserved in collateral (*PPSA Act – Interpretation 1(II)*)
 - b. Was the registration perfected not later than 15 days after the day that the debtor or a third party at the request of the debtor, obtained possession of the collateral (*PPSA Act Section 22 (1)*)

It is not uncommon for a creditor to state/believe that their security agreement is in fact a PMSI and therefore takes priority over all general security agreements. Unfortunately though, often upon further review by the civil enforcement agency it is determined that the security agreement does not or did not adhere to one or both of the above noted requirements, therefore the security agreement becomes a general security agreement, and not a purchase money security interest as originally intended at the time of the agreement.

Under the Personal Property Security Act, if these two requirements are not met, your client does not hold a priority claim as a purchase money security interest; instead your client's claim becomes a general security agreement and falls into the priority rules for general security agreements:

“Which ever General Security Agreement is registered first – takes priority”.

Civil Enforcement Monthly Bulletin – PMSI vs. GSA – Ensuring you are protecting your client’s priority (October 2012)

There are a few simple steps you can take to help ensure that your client’s interest is protected as much as possible when a seizure action is commenced:

1. **Ensure that the security agreement registration is perfected within the above noted 15 day requirement.** *This is the most common mistake found when determining if a security agreement is a PMSI or a GSA.*
2. **Include the Collateral’s details (serial numbers, descriptions etc.) in the PPR registration.** *This will not prove you have a PMSI, but it will provide other creditors and seizing agencies, information pertaining to what specific goods fall under your client’s security agreement, prior to them seizing these goods.*
3. **Note in the “Additional Information” section of your PPR Registration that your registration is a Purchase Money Security Interest.** *This will not protect your priority if you have not fulfilled the PMSI requirements, but it will provide other creditors and seizing agencies advance notice that this registration was created with the intent of maintaining the priority allowable under a Purchase Money Security Interest.*
4. **Ensure that your client responds to a “Request for statement from secured party” under Section 18 of the Personal Property Security Act, within 10 days of receipt of the same.** *This section of the Personal Property Security Act allows an agency or related creditor to request information pertaining to the nature of your client’s security agreement registration. It is imperative that your client respond to this request as soon as possible, especially if your client holds a PMSI. If your client delays responding to these requests, an agency/other creditor could proceed to act on this matter, believing that your client’s claim is a GSA and not a PMSI. It is also important to note that the same section of the PPSA allows for a creditor to have your client’s registration removed from PPR for non- response.*

It is important to remember the only way to ensure that your client’s PMSI is fully protected is to ensure that your client has adhered to all the requirements under the Personal Property Security Act relating to Purchase Money Security Interests.

If you have any questions relating to the information provided above, or if I can assist you with any other civil enforcement questions/needs, please do not hesitate to drop me an email at patricia.wilson@ccebailiff.ca or contact me by phone at (403) 668-8804 or (780) 448-5833 ext. 8804.

Have fun with the little ghosts and goblins visiting this week,

Patricia Wilson

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