Alberta Personal Property Security Act: What it Means to Farmers

In 1990, the Government of Alberta passed the Personal Property Security Act (PPSA) to govern dealings between creditors and debtors. This act modernized credit law in the province by amending or repealing several acts, some of which traced their origins back to the nineteenth century.

The PPSA applies to many transactions in which creditors obtain an interest in a debtor’s personal property to secure payment or performance of an obligation. The act simplified registration procedures for security interests by creating the Personal Property Registry.

The PPSA does not affect federal statutes such as Section 427 of the Bank Act. When a conflict exists between federal credit legislation and the PPSA, the federal laws prevail. Where provincial law applies, the PPSA clearly explains the rights and obligations of both creditors and debtors.

Farmers and the PPSA

Most lenders require security before they provide credit or financing. A security agreement is one of the documents used to obtain such security. Creditors obtain a “security interest” under the PPSA in such assets as livestock, grain, machinery and vehicles.

The PPSA does not govern liens but does establish priority between liens and purchase money security interests. As well, the PPSA does not govern an assignment in bankruptcy and certain leases or land mortgages (although fixtures attached to land can be covered) or such federal legislation as Section 427 of the Bank Act.

The PPSA applies to a number of security agreements. These include general security agreements as well as other types of specific security agreements such as debentures and various financing agreements, which are categorized as purchase-money security agreements.

General security agreements provide creditors with the broadest coverage over a farmer’s assets. Most general security agreements pledge all a farmer’s assets including “after-acquired property” — assets a farmer may own in the future. However, it is possible for a farmer to negotiate the extent to which assets are included in a general security agreement.

Specific security agreements provide creditors with security over a specific asset or assets. An example of a specific security agreement is a “purchase-money security agreement,” which can be used by a seller for the purchase of a specific asset or chattel, such as a tractor or other machinery.

A creditor normally registers a “financing statement” that contains the names and addresses of both the creditor and debtor as well as a description of the collateral given as security. In some cases, chattels must also be identified by serial number for the registration to be valid. One purpose of registration is to create priorities among creditors and provide information about the security interests to anyone searching the Personal Property Registry.

Enforcement

When security agreements are enforced, the rights of the creditor and the farmer are determined by the provisions of the security agreements themselves. However, certain provisions of the PPSA and other legislation regarding rights and remedies on enforcement are mandatory. Any rights or remedies contained in security agreements that conflict with or vary from
these mandatory provisions of the PPSA are not enforceable. In addition, these provisions can neither be waived nor varied by agreement or otherwise.

Essentially, a creditor with a security agreement that provides a security interest in a farmer’s chattels can enforce its agreement by seizing the chattels through a civil enforcement bailiff employed by a civil enforcement agency or by appointing a receiver or receiver/manager. If the civil enforcement bailiff or appointed receiver seizes the chattels, the creditor can either have the chattels sold and the sale proceeds applied against both the debt owing to it and the expenses of collecting the debt, or the creditor may be able to obtain ownership of these chattels as full satisfaction of the debt.

Some of the key points regarding enforcement include the following:
- Creditors can appoint a receiver to act for them.
- Only the civil enforcement bailiff or appointed receiver can seize chattels.
- Creditors have the right to seize assets in cases of default even if the security agreement does not contain any specific seizure provision.
- Farmers may be asked to sign a “bailee’s undertaking,” which is a promise to care for seized assets until they are sold.
- The chattels seized by a civil enforcement bailiff can be sold by private or public sale, including public auction or closed tender. The proceeds of the sale are first applied to pay the reasonable expenses incurred in connection with the seizure and sale of the chattels and then to pay the debt obligations owing to the creditor.
- Unless otherwise agreed to by the creditor, and with some exceptions to the Act, the debtor is liable for any deficiency after seizure and sale of the chattels.
- A creditor can elect to retain seized chattels rather than sell them. However, a farmer can file a “notice of objection” within 15 days, which would force the creditor either to sell the assets or go through the courts to determine the legitimacy of the farmer’s objection. A farmer might want to object because selling assets would generate more than sufficient funds to meet his debt obligations. Any surplus would then be returned to the farmer or be distributed to pay other creditors.

The Farm Debt Mediation Act applies to the enforcement of all security agreements, including purchase-money security agreements, which relate to farming chattels. A creditor would have to adhere to the procedures prescribed by this Act before it could act to enforce its security agreement. A secured creditor would also have to serve the required “Notice of Intent to Seize Property” pursuant to the Bankruptcy and Insolvency Act before seizing the chattels.

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**Key features of the PPSA**

**Who can use it?**

The Agriculture Financial Services Corporation, Alberta Treasury Branches, credit unions, the Farm Credit Corporation, trust companies and private creditors can use security agreements in accordance with the PPSA, as can chartered banks even though they have access to broader legislation, section 427 of the federal Bank Act. A farmer selling machinery can also use the PPSA to protect his interest in the machinery from the purchaser’s creditors.

Machinery dealers can also use security agreements. A machinery dealer would normally be reluctant to extend credit to a farmer who has previously signed a “general security agreement” with a bank. The bank’s agreement, properly registered, would normally give it priority over the dealer. However, the dealer can use a purchase-money security agreement to establish its priority in the machinery or equipment sold to the farmer.

**Priority of creditor claims**

It is possible for several creditors to have a security interest in a farmer’s chattels. One of the PPSA’s principal features is to determine the priority of creditor claims when a farmer defaults on loan payments or credit obligations.

A legal concept known as “perfection” is an important factor in establishing this order of priority. Perfection means that a creditor has taken legal steps to ensure that its claims are protected from the claims of other creditors.

One of the more simple and common means of perfection is registration of a financing statement.

Perfection generally occurs when a creditor lends money or advances credit to a debtor, or when a debtor takes possession of an asset purchased with borrowed money or on credit. Once a loan or credit has been advanced and a debtor has taken possession of a financed asset, the creditor’s security interest is deemed to have attached, which establishes priority in default proceedings.

Timing plays a role, too. The first creditor to properly register a security interest against a chattel normally obtains priority. Farmers who extend credit to other farmers or agricultural businesses should act promptly to perfect their security interests.

When the security interest of a creditor has been perfected, that creditor, in most cases, has first claim on the secured chattel in case of default. Generally, perfected security interests take priority over creditors who perfect at a later time and over creditors with unperfected security interests.
**Registration process**

When the PPSA is applicable, a creditor can file a financing statement with the Personal Property Registry to perfect a security interest. The registry can also be searched for security interests that other creditors might have in a farmer’s chattels.

Creditors may file a financing statement before a farmer has even signed a security agreement. The security agreement must eventually be signed for perfection to occur. A financing statement does not require a debtor’s signature. The creditor must, however, provide the debtor with a copy of the financing statement unless the debtor has waived his right to receive one. A properly registered financing statement establishes the priority of a creditor with respect to other creditors within a fixed period of time as set in the financing statement.

To be properly registered, a financing statement must specify how long (in years) the registration is to remain in effect. The term can be renewed by the creditor. When farmers retire an obligation, they should ensure the creditor discharges the registration.

**Super priority**

To ensure farmers have access to vital inputs, the PPSA offers a “super priority” to creditors who provide funds to farmers to produce crops and/or raise livestock. Similar priority is extended to creditors who advance money to farmers to buy feed, drugs or hormones to be fed or administered to livestock, fish and fowl.

This super priority can be vitally important to farmers who extend credit to other farmers. For example, a farmer selling grain to a feedlot could file a financing statement and take a security interest in the debtor’s livestock through a purchase money security agreement, and thereby ensure he or she has priority over most other creditors with a security interest in the debtor’s livestock.

**After-acquired property**

Farmers should be aware that the PPSA allows creditors to claim a security interest in “after-acquired property,” i.e., chattels acquired by the debtor after signing the existing security agreement. In other words, a creditor would retain a security interest in chattels a debtor acquires subsequently through other financing arrangements with other creditors, except those chattels subsequently purchased pursuant to a purchase money security agreement with respect to which a financing statement is properly registered.

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**Farmer’s rights**

The PPSA establishes certain rights and obligations to both the farmer and the creditor. Some of these rights and obligations are outlined below:

- A creditor must deliver a copy of any written security agreement to a debtor no later than 10 days after the agreement was signed. A debtor can also request various statements from a creditor and can force compliance through the courts.
- Creditors are obliged to act in a “commercially reasonable manner.” If a creditor seized seeding equipment in October, for example, and decided to hold a public sale in January, the farmer could argue in court that an April sale would be more appropriate.
- Farmers have the right to redeem seized chattels by paying the total amount owed to a creditor or creditors. The farmer would also be obliged to pay any reasonable expenses creditors incurred in connection with the seizure.
- A creditor can irrevocably agree with the farmer to retain the seized chattels in satisfaction of the debt and in doing so, cannot pursue the farmer for any shortfall.
- Farmers have the right, up to two times per year, to reinstate their security agreement by paying the amount in arrears and associated expenses before seized assets are sold. However, there are limits on how often farmers can reinstate security agreements.
- A farmer can sue a creditor who causes unnecessary damage as a result of a seizure.

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