

Real Property Transactions and the Personal Properties Securities Act (PPSA)



What Conveyancers Need to Know.

The Personal Property Securities Act 2009 (“PPSA”) deals with “personal property” and specifically excludes land, buildings and fittings. Some property professionals believe that PPSA does not apply to land transactions at all. This is not always true.

What is the PPSA?

The PPSA is a nationwide law which came into effect in 2012. It creates a national Personal Properties Securities Register (**PPSR**) which incorporates the old ASIC register (eg: fixed and floating charges), REVS (vehicle finance) and the shipping register amongst others. It allows persons (the **Secured Party**) who are owed money or have an interest in goods or equipment to register and protect their interest.

How does the PPSA affect land transactions?

Many commercial, rural and some residential land transactions include chattels (eg: cool rooms, cranes, air-conditioning units etc.) or other items that are not considered fixtures to the land. There is no clear line between “fixtures” and chattels but considerations such as the method of fixing the items and whether or not those items were intended to be removed or could be removed in a commercially viable manner are used in determining whether goods are fixtures or not.

Those chattels sold with land which are not fixtures would be considered “personal property” and fall within the PPSA. There is however an exception for “household and domestic” goods under \$5,000 value.

Do conveyancers need to comply with the PPSA?

Licensed conveyancers are required to make all searches and enquiries as may be necessary in regard to a transaction under rule 10 of the Settlement Agents Code of Conduct 1982. Where a transaction involves:

- a. a company either buying or selling a property;
- b. a commercial property;
- c. a rural property; or
- d. chattels such as air-conditioners or relocatable buildings,

a PPSR search would most likely be “necessary” for such a transaction.

As you are aware, sellers are required to sell property (which includes property chattels) “free of any encumbrance” under clause 2.1 of the General Conditions for The Sale of Land (2011) and to hand over at settlement all documentation required to discharge an encumbrance under clause 3.10(4). It is likely that these PPSA obligations fall upon the conveyancer as the seller’s representative.



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What happens if transaction parties simply ignore the PPSA?

If a purchaser buys chattels or equipment that have a security interest registered against them on the PPSR at settlement then the Secured Party who has the security interest can repossess the chattels or equipment. The purchaser would be left to sue the seller for breach of contract by selling encumbered property chattels. The conveyancer as representative of the seller may also be included in the proceedings.

The purchaser could also arguably bring proceedings against its own conveyancer and/or agent for breach of their duties under the Settlement Agents Code of Conduct.

What can conveyancers do to protect themselves?

The prudent approach would be for conveyancers to ensure that they

carry out a search of the PPSR prior to settlement and make sufficient enquiries to satisfy themselves that none of the chattels in the transaction had security interests over them. Searches cost \$4.00 and take a matter of minutes, given practice.

If security interests against property chattels are discovered, then the purchaser's conveyancer could require the seller's conveyancer to ensure that these encumbrances were removed prior to or contemporaneously with settlement.

If in doubt conveyancers should seek legal advice from a lawyer who regularly deals with PPSA matters in accordance with rule 11 of the Settlement Agents Code of Conduct. Murfett Legal can assist you with all of your PPSA enquiries or training needs.



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