



Are you a Landlord who has leased-out premises together with chattels (i.e. plant and equipment) you own?

As the title suggests, the Personal Property Securities Act 2009 (“PPSA”) deals with “personal property” and specifically excludes land, buildings and fittings. Some Property Leasing agents might tell you that PPSA does not apply to leases of land (i.e. “real property”). This is not entirely correct.

Typically, Landlords of Commercial and/or Retail Premises have goods such as plant and equipment, lessor’s chattels and other “personal property” which is often included with the lease of the premises. In premises used as restaurants/bars, specialised workshops or furnished offices there are often numerous landlord items that are included, rightly or wrongly, in the premises lease (e.g. furniture, cool-rooms, cranes/hoists etc).

So what happens if you ignore the PPSA and fail to register your “security interest” in your goods on the Personal Property Securities Register (“PPSR”)? The short answer is that, if your tenant becomes insolvent, you will lose all of your premises-leased goods to the liquidator who may sell them to pay secured creditors. of the tenant!

This is as a result of the PPSA providing that lease of personal property, which your goods are, for a term of more than 1 year is deemed to be a 'PPS Lease' and the security interest that it created in the goods must be registered on the PPSR.

The fact that you own the goods and never meant to transfer 'title' to the tenant makes no difference. Without a valid PPSR registration you will lose your personal property (i.e. those premises leased goods). Ownership is less important than registering your security interest in your goods which are in the possession of your tenant.

To make matters worse there are strict time frames to register your security interest over those premises-leased goods. For most goods this is 15 business days from the date that the tenant takes possession. If you miss this window you may find yourself ranking behind the tenant’s bank on the priority ladder to get your goods returned.

Registration is not optional and insurance will not cover this type of loss as your premises-leased goods simply become the property of the insolvent tenant by force an act of law.

Registration is not difficult once you have proper advice and training on how to do it and what registrations to perform. Too often landlords try to register their interests themselves, receive a “verification statement” from the PPSR and think all is well.

Unfortunately, the verification statement simply means that the Registrar has accepted your registration payment. It does not necessarily mean the registration is correct, and in the majority of cases these DIY-PPSR registrations are either incorrect (void) or insufficient to get the full protection that the PPSR can afford.



Did you also know that you can register over any tenant guarantors' under your lease to increase your chances of getting paid even if they threaten bankruptcy? Hint: you'll need their full name and date of birth from the outset.

You can also perform general security registrations to secure amounts owed in unpaid rental and other amounts under the lease. These registrations all depend on the terms of your lease which should have been updated to provide for the PPSA if they have been renewed or varied since 2009. The good news is that it's not too late and you can still get your goods registered and regain priority if you have the right advice.

Don't believe us? Think the PPSA doesn't apply to leases of land? Below is a link to the Government PPSR website specifying that Plant and Equipment (i.e. premises-leased goods) are "Personal Property" and need to be registered.
<http://www.ppsr.gov.au/ForBusiness/whyregister/Pages/default.aspx>

Murfett Legal are able to:

- Review your lease and other tenant documentation;
- Provide comprehensive experience based advice on the best ways to protect your goods;
- Amend and draft robust contemporary lease and contractual documentation to ensure that you are secured for your goods and amounts owing;
- Perform PPSR registrations for you and manage all of the data;
- Train you and your staff to properly perform PPSR registrations and provide support and documentation for your PPSR policies and procedures;
- Review and audit your PPSR and credit control process to ensure you are protected and getting paid on time;
- Deal with tenant disputes in relation to amounts owed including full debt collection and litigation services; and
- Provide a comprehensive range of land and business leasing and sale documentation and transactional expertise.

Often there isn't much you can do once a tenant defaults or becomes insolvent. So please save yourself money and aggravation and put the right, contemporary lease documentation and security in place today.

For further information contact Murfett Legal by telephone on +61 8 9388 3100, via our website at www.murfett.com.au or email one of the following directors:

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