

SECURITY INTERESTS IN PERSONAL PROPERTY ACT, 2013

AN OVERVIEW OF THE LAW BY
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WHEN DID THIS LAW COME INTO EFFECT?

THIS LAW CAME INTO EFFECT JANUARY 2, 2014

**365 DAYS AFTER THIS WERE GIVEN FOR
REGISTRATION OF SECURITY INTERESTS
CREATED BEFORE LAW CAME INTO EFFECT**

GENERAL STATEMENT OF THE PURPOSE OF THE ACT

- ***ALLOW FOR THE EASE AND EFFICACY OF THE TAKING OF SECURITY IN RELATION TO WIDER CLASS OF PERSONAL PROPERTY TO PROMOTE COMMERCE.***
- ***PROVIDE A CLEAR FRAMEWORK FOR THE ENFORCEMENT OF SECURITY INTERESTS WHERE THE OBLIGATION WHICH IS SECURED IS NOT FULFILLED***
- ***ESTABLISH A CENTRAL PUBLIC REGISTRY FOR THE RECORDING OF SECURED INTEREST IN ALL PERSONAL PROPERTY TO ALLOW FOR NOTICE THAT PARTICULAR PROPERTY IS THE SUBJECT OF A SECURITY INTEREST AND***
- ***CLARIFY AND CRYSTALLIZE THE PRIORITIES THAT WILL EXIST WHERE THERE IS MORE THAN ONE SECURITY INTEREST REGISTERED IN RESPECT OF SECURED PROPERTY***

TO WHAT TRANSACTIONS DOES THIS ACT APPLY

SECTION 3

**THE ACT APPLIES TO EVERY TRANSACTION
THAT CREATES A SECURITY INTEREST IN
PERSONAL PROPERTY.**

MEANING OF “SECURITY INTEREST”

SECTION 2

SECURITY INTEREST MEANS AN INTEREST CREATED :

- CONTRACTUALLY RELATING ONE OR MORE ITEMS OF PERSONAL PROPERTY AND
- THE PROPERTY CAN BE SPECIFICALLY OR GENERICALLY DESCRIBED AND CAN BE AN INTEREST THAT IS A PRESENT ONE OR A FUTURE ONE AND
- THE CONTRACT IS DESIGNED TO SECURE THE FULFILMENT OF ONE OR MORE PRESENT OR FUTURE OBLIGATIONS BY THE PERSON GIVING THE SECURITY

MEANING OF “PERSONAL PROPERTY”

SECTION 2

- **PERSONAL PROPERTY INCLUDES GOODS, DOCUMENTS, FINANCIAL INSTRUMENTS, ACCOUNTS RECEIVABLE, AND INTELLECTUAL PROPERTY AND OTHER KINDS OF INTANGIBLES**

HOW IS A SECURITY INTEREST CREATED

SECTION 4

- THE NON-POSSESSORY SECURITY INTEREST MAY ONLY BE CREATED BY A WRITTEN CONTRACT BETWEEN THE DEBTOR AND THE SECURED CREDITOR***

THE CONTRACT MUST :

- SUFFICIENTLY DESCRIBE THE SECURED PROPERTY IN SUCH A MANNER THAT ENABLES IT TO BE IDENTIFIED, AND***

NON-POSSESSORY SECURITY INTEREST

SECTION 2

“POSSESSORY SECURITY INTEREST”

- **A SECURITY INTEREST WHICH UNDER THE TERMS OF THE SECURITY CONTRACT REQUIRES THE DEBTOR TO GIVE POSSESSION OR CONTROL OF THE SECURED PROPERTY TO THE SECURED CREDITOR IN ORDER TO SECURE THE PERFORMANCE OF THE OBLIGATION CONCERNED.**

SECTION 4

NOTE: THE DEBTOR’S CONSENT TO GIVE CONTROL MUST BE IN WRITING

NON-POSSESSORY SECURITY INTEREST.....cont'd

“NON-POSSESSORY SECURITY INTEREST”

- RELATES TO THE CASE WHERE THE DEBTOR IS NOT OBLIGED TO GIVE POSSESSION OR CONTROL OF THE SECURED PROPERTY TO THE SECURED CREDITOR IN ORDER TO SECURE THE PERFORMANCE OF THE OBLIGATION CONCERNED.

WHEN IS A SECURITY INTEREST EFFECTIVE IN RELATION TO PROPERTY AND WHAT ARE THE IMPLICATIONS OF THIS ?

SECTION 5

THE SECURITY INTEREST IS EFFECTIVE IN RELATION TO SECURED PROPERTY AND CAN BE ENFORCED AGAINST THE DEBTOR AND THIRD PARTIES WHEN

- VALUE IS GIVEN***
- THE DEBTOR HAS RIGHTS IN THE SECURED PROPERTY OR THE POWER TO TRANSFER RIGHTS IN THE SECURED PROPERTY TO A SECURED CREDITOR, AND***

WHEN IS A SECURITY INTEREST EFFECTIVE IN RELATION TO PROPERTY AND WHAT ARE THE IMPLICATIONS OF THIS ? (Cont'd.)

EITHER

- THE DEBTOR HAS SIGNED A SECURITY CONTRACT THAT DESCRIBES THE SECURED PROPERTY;***
- THE SECURED PROPERTY IS IN THE POSSESSION OF THE SECURED CREDITOR AND IS OF A TYPE THAT MAY BE PERFECTED BY POSSESSION; OR***
- THE SECURED PROPERTY IS IN THE CONTROL OF THE SECURED CREDITOR AND IS OF A TYPE THAT MAY BE PERFECTED BY CONTROL***

WHAT ARE THE RIGHTS OF THE SECURED CREDITOR UNDER THE SECURITY CONTRACT

SECTION 5

UNLESS THE DEBTOR AND THE SECURED CREDITOR AGREE OTHERWISE UNDER THE SECURITY CONTRACT, THE ATTACHMENT OF THE SECURITY INTEREST IN:

- THE SECURED PROPERTY GIVES THE SECURED CREDITOR THE RIGHT TO PROCEEDS [OF SALE OR OTHER DISTRIBUTION] OF THE SECURED PROPERTY EVEN IF THE SECURITY CONTRACT SAYS NOTHING ABOUT THE PROCEEDS***
- THE SECURED PROPERTY IS ALSO ATTACHMENS OF A SECURITY INTEREST IN A SUPPORTING OBLIGATION FOR THE SECURED PROPERTY***

WHAT ARE THE RIGHTS OF THE SECURED CREDITOR UNDER THE SECURITY CONTRACT...cont'd

- A RIGHT TO PAYMENT OR PERFORMANCE SECURED BY A SECURITY INTEREST IN PERSONAL PROPERTY IS ALSO ATTACHMENT OF A SECURITY INTEREST IN THE PERSONAL PROPERTY***
- A RIGHT TO PAYMENT OR PERFORMANCE SECURED BY A SECURITY INTEREST IN A MORTGAGE IN REAL PROPERTY IS ALSO ATTACHMENT OF A SECURITY INTEREST IN THE MORTGAGE***
- A SECURITIES ACCOUNT IS ALSO ATTACHMENT OF A SECURITY INTEREST IN ANY RIGHTS OR BENEFITS DERIVED FROM FINANCIAL ASSETS CREDITED TO THE SECURITIES ACCOUNT***

WHAT ARE THE OBLIGATIONS OF SECURED CREDITOR WHERE IT HAS/RETAINS POSSESSION OF THE SECURED PROPERTY?

SECTION 7

A SECURED CREDITOR WHO RETAINS POSSESSION OF THE SECURED PROPERTY MUST

- **EXERCISE REASONABLE CARE IN THE CUSTODY AND PRESERVATION OF THE PROPERTY**
- **MUST MAINTAIN THE PROPERTY IN SUCH A WAY THAT IT REMAINS IDENTIFIABLE; UNLESS IT IS PERISHABLE**
- **MAY USE THE PROPERTY ONLY AS AGREED BY THE PARTIES TO THE SECURITY CONTRACT**

WHY AND HOW IS THE SECURITY INTEREST PERFECTED?

SECTION 8

A RIGHT GIVEN IN A SECURITY INTEREST IS ENFORCEABLE AGAINST THIRD PARTIES ONLY WHEN THE SECURITY INTEREST IS PERFECTED.

– THE SECURITY INTEREST IS PERFECTED WHEN:

(a) THE SECURITY INTEREST IS ATTACHED AND

– (i) THE SECURITY INTEREST IS REGISTERED AT THE SECURED INTEREST REGISTRY

AND

– (ii) THE SECURED CREDITOR, OR HIS AGENT, HAS POSSESSION OR CONTROL OF THE SECURED PROPERTY

PERFECTION OF SECURITY IN AN ACCOUNT

- **THE DEBTOR, SECURED CREDITOR AND THE FINANCIAL INSTITUTION AGREE IN WRITING THAT THE FINANCIAL INSTITUTION WILL COMPLY WITH THE INSTRUCTIONS OF THE SECURED CREDITOR**
- **IF THE SECURED CREDITOR BECOMES A CUSTOMER WITH RESPECT TO THE RELEVANT ACCOUNT**

SPECIAL PROVISIONS FOR SECURITY INTERESTS IN PARTICULAR KINDS OF PROPERTY...cont'd

SECTION 15

- ***CROPS***

- **THE SECURITY INTEREST CAN EXIST EVEN WHEN THEY ARE SEEDS GROWING IN THE GROUND AND WHETHER THE CROPS ARE CUT, PICKED, SEPARATED FROM THE SOIL AND WHETHER THEY ARE STORED ON LAND WHERE THE CROPS WERE GROWN OR ON ANY OTHER LAND OR PREMISES**
- **THE SALE, LEASE OR MORTGAGE OR OTHER ENCUMBERANCE OF THE LAND ON WHICH THE CROPS ARE GROWN DOES NOT PREJUDICE A PERFECTED SECURITY INTEREST IN THE CROPS.**
- **THE PERFECTED SECURITY IN CROPS HAS PRIORITY OVER A CONFLICTING INTEREST OF AN OWNER, MORTGAGEE OR OTHER PERSON WITH AN INTEREST IN THE REAL PROPERTY IF THE DEBTOR HAS A REGISTERED INTEREST IN, OR IS IN POSSESSION OF THE REAL PROPERTY.**

WHAT ARE THE RIGHTS AND OBLIGATIONS OF A DEBTOR WHO RETAINS POSSESSION OF THE SECURED PROPERTY

THIS IS THE NON-POSSESSORY SECURITY INTEREST I.E. WHERE THE DEBTOR RETAINS POSSESSION OF THE SECURED PROPERTY HE HAS THE OBLIGATION

TO:

- USE AND DISPOSE OF THE PROPERTY AND ANY PROCEEDS FROM THE PROPERTY IN THE ORDINARY COURSE OF HIS BUSINESS***
- MUST DISCONTINUE THE EXERCISE OF THOSE RIGHTS IF THE SECURED CREDITOR GIVES NOTICE OF HIS INTENTION TO ENFORCE HIS SECURITY***

WHAT ARE THE RIGHTS AND OBLIGATIONS OF A DEBTOR WHO RETAINS POSSESSION OF THE SECURED PROPERTY...cont'd

- ***MUST DO WHATEVER IS REASONABLY
NECESSARY TO PREVENT DAMAGE TO OR LOSS
OF THE PROPERTY***
- ***MUST ALLOW THE SECURED CREDITOR TO
INSPECT THE PROPERTY TO VERIFY ITS
QUANTITY, QUALITY OR THE STATE OF ITS
CONSERVATION***

CIRCUMSTANCES WHERE A BUYER OR LESSEE WILL BE DEEMED TO ACQUIRE PROPERTY FREE OF THE SECURITY INTEREST THAT HAS ATTACHED TO THE PROPERTY...cont'd

SECTION 19

- ***MOTOR VEHICLES***

- **A BUYER OR LESSEE OF A MOTOR VEHICLE TAKES THE MOTOR VEHICLE FREE OF ANY SECURITY INTEREST PERFECTED BY REGISTRATION, IF:**
 - **THE BUYER BOUGHT OR THE LESSEE LEASED, THE MOTOR VEHICLE WITHOUT KNOWLEDGE OF THE SECURITY INTEREST**
 - **IF THE MOTOR VEHICLE WAS NOT CORRECTLY DESCRIBED BY SERIAL NUMBER IN THE REGISTRATION OF THE REGISTRATION NOTICE**

PRIORITY OF SECURITY INTERESTS IN THE EVENT OF DEFAULT OF THE DEBTOR

SECTION 22

- **A PERFECTED SECURITY HAS PRIORITY OVER AN UNPERFECTED SECURITY INTEREST IN THE SAME PROPERTY.**
- **PRIORITY BETWEEN UNPERFECTED SECURITY INTERESTS IN THE SAME SECURED PROPERTY IS RANKED BY THE ORDER IN TIME AT WHICH THE SECURITY INTEREST ATTACHES, WITH THE EARLIEST IN TIME TAKING FIRST PRIORITY.**

PRIORITY OF SECURITY INTERESTS IN THE EVENT OF DEFAULT OF THE DEBTOR...cont'd

- PRIORITIES OF CONTINUOUSLY PERFECTED SECURITY INTEREST IN THE SAME SECURED PROPERTY WILL BE BASED IN THE ORDER OF FIRST REGISTRATION OR POSSESSION OR THAT THE SECURITY IS TEMPORARILY PERFECTED.

SECTION 23

- PURCHASE MONEY SECURITY INTEREST HAS PRIORITY OVER NON-PURCHASE MONEY SECURITY INTEREST IN THE SAME PROPERTY

ENFORCEMENT OF SECURITY INTERESTS WHERE THERE IS DEFAULT OF THE DEBTOR

SECTION 34

- *WHERE THE DEBTOR DEFAULTS ON THE SECURITY CONTRACT THE SECURED CREDITOR CAN EXERCISE ITS RIGHTS UNDER THE SECURITY CONTRACT TO TAKE POSSESSION OF THE SECURED PROPERTY AND ANY RIGHT HE MIGHT HAVE UNDER THIS ACT IN RESPECT OF CROPS AND ACCESSIONS. WHERE THE SECURED CREDITOR IS IN POSSESSION OF SECURED PROPERTY HE CAN EXERCISE THE RIGHTS HE HAS BEING IN SUCH POSSESSION.*

ENFORCEMENT OF SECURITY INTERESTS WHERE THERE IS DEFAULT OF THE DEBTOR...cont'd

SECTION 35

- WHERE THE SECURED PROPERTY IS AN INTANGIBLE OR A FINANCIAL INSTRUMENT HE MUST NOTIFY THE DEBTOR (OR ANY PERSON OBLIGATED TO MAKE PAYMENT UNDER THE FINANCIAL INSTRUMENT) TO MAKE THE PAYMENT OR PERFORM WHATEVER OBLIGATION THE DEBTOR HAD AGREED TO PERFORM UNDER THE SECURITY CONTRACT.*
- THE SECURED CREDITOR MAY ALSO TAKE CONTROL OF ANY PROCEEDS OF ANY SALE OR DISPOSAL OF THE SECURED PROPERTY TO WHICH HE IS ENTITLED.*

ENFORCEMENT OF SECURITY INTERESTS WHERE THERE IS DEFAULT OF THE DEBTOR ...cont'd

- ***THE SECURED CREDITOR CAN APPLY THE MONEY OR ANY ACCOUNTS RECEIVABLE OR SECURITY TO SATISFY THE PAYMENT OR OBLIGATION OWED TO HIM BY THE DEBTOR AND CAN DEDUCT REASONABLE EXPENSES FROM THESE PROCEEDS FOR THE COLLECTION OF THAT DEBT OR OBLIGATION.***

HOW A SECURED CREDITOR CAN DISPOSE OF SECURED PROPERTY IN SATISFACTION OF THE DEBT OR OBLIGATION OWED.

SECTION 36

- AFTER REPOSSESSING OR SEIZING THE SECURED PROPERTY THE SECURED CREDITOR MUST GIVE AT LEAST SEVEN DAYS NOTICE TO THE DEBTOR OR ANY OTHER PERSON WHO IS KNOWN TO BE OWNER OF THE PROPERTY THAT THEY INTEND TO DISPOSE OF THE PROPERTY AND TO OTHER PERSONS WHO HAS AN INTEREST IN THE SECURED PROPERTY WHICH IS SUBORDINATE TO THE SECURED CREDITOR.**
- THE DISPOSITION CAN BE BY PRIVATE SALE OR PUBLIC AUCTION. IT CAN BE OF THE WHOLE PROPERTY OR IN COMMERCIAL UNITS OR PARTS. IT CAN ALSO BE BY LEASE, CREDIT SALE, LICENCE OR ANY OTHER REASONALBE COMMERCIAL WAY.**

DEBTOR MAY REDEEM THE SECURED PROPERTY FROM THE SECURITY INTEREST

SECTION 41

- AT ANY TIME BEFORE A SECURED CREDITOR HAS DISPOSED OF THE SECURED PROPERTY OR ENTERED INTO A CONTRACT FOR THE DISPOSITION OF THE SECURED PROPERTY OR HAS ELECTED TO RETAIN THE SECURED PROPERTY; THE DEBTOR MAY FULFILL THE OBLIGATIONS SECURED UNDER THE CONTRACT AND PAY THE EXPENSES OF SECURED CREDITOR IN RESPECT OF SEIZING, REPOSSESSING, HOLDING OR REPAIRING ETC THE SECURED PROPERTY .**

REGISTRATION OF SECURED INTERESTS

SECTION 47 - 58

- **THE ESTABLISHMENT OF THE SECURED INTERESTS REGISTRY AND A REGISTRAR OF SECURITY INTERESTS**
- **REGISTER TO BE ELECTRONIC FORM**
- **AVAILABILITY FOR INSPECTION BY THE PUBLIC**
- **SEARCH DATA INCLUDES NAME OF DEBTOR ; REGISTRATION NUMBER (ASSIGNED AT REGISTRATION AND WILL RELATE TO ALL NOTICES THEREAFTER); MOTOR VEHICLE SERIAL NUMBER IDENTIFICATION OF FIXTURES INCLUDING THE VOLUME AND FOLIO OF LAND WHERE AFFIXED.**
- **REGISTRATION NOTICE; AMENDMENT NOTICE AND TERMINATION NOTICE BY SECURED CREDITOR**
- **LENGTH OF TIME THE REGISTRAR WILL RETAIN NOTICES - PERIOD OF TIME DEBT OR OBLIGATION REMAINS OUTSTANDING**

IMPACT ON EXISTING LEGISLATION

REPEALED LEGISLATION

- AGRICULTURAL LOANS ACT***
- BILLS OF SALE ACT***
- DEBENTURE REGISTRATION ACT***

• AMENDED LEGISLATION

- AGRICULTURAL CREDIT BOARD ACT***
- COMPANIES ACT***
- FARM LOANS ACT***
- HIRE PURCHASE ACT***
- TRADE MARKS ACT AND TRADE MARKS RULES, 2001***
- WORKMEN'S COMPENSATION ACT***



THANK YOU