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“Inconsistent Debtor Name Rules for Registration between Writs and Security Interests: The Effect on Priority”



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Creditors' Remedies: The Personal Property Security Act and Civil Enforcement Act

In Alberta, the *Personal Property Security Act* ("**PPSA**") governs the rights of creditors and debtors relating to security interests. A security interest is a legal right granted by a debtor to a creditor over the debtor's property (the collateral), which enables the creditor to have recourse against the debtor by seizing the collateral if the debtor defaults in making payment or performing his obligations.

The *Civil Enforcement Act* ("**CEA**") provides for the enforcement of court judgments against all forms of property of a judgment debtor. The CEA creates a unitary enforcement device called a writ of enforcement.

These two pieces of legislation govern the rights of secured creditors and judgment creditors, and notably, the rules of priority as between competing security interests and writs.

Priority: Discoverability of Security Interests and Writs

Priority of security interests and writs largely depends on the theory of risk allocation through discoverability, which grounds the central role of "perfection" of security interests and the Personal Property Registry (the "**Registry**") in creditors' remedies. Though there are several methods of perfecting a security interest, registration of the security interest is by far the most common. A security interest that is registered is thus discoverable by other creditors who may take an interest in the debtor's property. The foundation of the judgment enforcement system in Alberta is the registration of a writ in the Personal Property Registry. Until a writ is registered, it has no effect on a creditor's rights to take action against the debtor's property, or the priority of the creditor's claim.

Requirements for Registration of the Debtor's Name

The Personal Property Security Regulations ("**PPSR**") set out the requirements for the debtor's name in the registration of a financing statement relating to a security interest, as well as for a writ. Registering with the correct debtor name as set out in the PPSR is crucial for enforcement. However, the requirements for security interests and writs differ.

For the registration of a financing statement relating to a security interest, the debtor's name ***must be their legal name as demonstrated by the official documents specified.***

For a writ, the registration should be registered ***in the name of the debtor as it appears on the judgment***. It is optional to include other names by which the debtor may be known. However, a registration will still be valid as long as the name on the judgment is used; the name may not be the same as their legal name, or even the name by which they are known.

Given this inconsistency in the rules for the registration of a debtor's name, the result is that secured creditors who register after the writ may have no way of finding the writ in the Registry, and yet may be subordinated to the writ in a priority competition.

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