



NOVA SCOTIA  
BARRISTERS' SOCIETY

## MEMORANDUM TO COUNCIL

**From:** Lawrence Rubin

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**Date:** November 23, 2018

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**Subject:** Professional Standards – Real Estate– Standard 5.2 Personal Property

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DATE November 23, 2018	Council	Introduction
	Council	Approval

### **Recommendation/Motion:**

This is the introduction to Council of a revised standard 5.2 – Personal Property - by the Professional Standards (Real Estate) Committee. Following introduction, the Committee will communicate this proposed revised Standard to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

### **Executive Summary:**

One of the Committee's mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. In this regard, the Committee has noted that the current Personal Property standard as approved by Council on February 28, 2014, only addresses searching. The Committee as determined that in addition, it should address registration of security interests.

The Committee's proposed revisions are intended to include registration standards as failure to comply often results in a complete failure of the security, universally so in the case of bankruptcy.

Rather than communicating the proposed revisions to real estate practitioners only, the Committee proposes to send it to the entire membership as not all personal property registrations relate to a real property transaction.

Existing Standard	Proposed Standard	Rationale
<p>NOTE: Standard 5.2 and 5.3 combined on February 28, 2014 to form Standard 5.2</p> <p>A lawyer who represents a buyer of real property in a transaction that includes the purchase and sale of personal property must consider whether to search the Personal Property Registration System (“P.P.R.S.”) for encumbrances and judgments which attach to the personal property. A lawyer who represents a lender where the collateral includes personal property must search the P.P.R.S. for encumbrances and judgments which attach to the personal property.<sup>1</sup></p> <p>A lawyer who considers whether to conduct a P.P.R.S. search may consider the exemptions for consumer goods having a value of \$1,000.00 or less.<sup>2</sup></p> <p>A lawyer who conducts a P.P.R.S. search must search the serial</p>	<p><b>STANDARD</b></p> <p>A lawyer who represents a buyer of real property in a transaction that includes the purchase and sale of personal property must consider whether to search the Personal Property Registration System (“P.P.R.S.”) for encumbrances and judgments which attach to the personal property. A lawyer who represents a lender where the collateral includes personal property must search the P.P.R.S. for encumbrances and judgments which attach to the personal property.<sup>1</sup></p> <p>A lawyer who considers whether to conduct a P.P.R.S. search may consider the exemptions for consumer goods having a value of \$1,000.00 or less.<sup>2</sup></p> <p>A lawyer who conducts a P.P.R.S. search must search the serial number if the personal property includes serial numbered goods as defined,<sup>3</sup> or in all other cases search the <b>full name of the “debtor,”<sup>4</sup> including the debtor’s middle name.<sup>5</sup></b> When reporting the results of such searches, the lawyer should heed the caution against certifying title to personal property.<sup>6</sup></p> <p>A lawyer must consider the possibility of other security instruments, statutory liens, or deemed trusts affecting the personal property.<sup>7</sup></p>	<p>The standard in its present form only addresses searching and not registrations concerning personal property. The revision is intended to include registration standards.</p> <p>Compliance with registration requirements is important because failure to comply often results in a complete failure of the security, universally so in the case of bankruptcy.</p>

<p>number if the personal property includes serial numbered goods as defined,<sup>3</sup> or in all other cases search the name of the “debtor.”<sup>4</sup> When reporting the results of such searches, the lawyer should heed the caution against certifying title to personal property.<sup>5</sup></p> <p>A lawyer must consider the possibility of other security instruments, statutory liens, or deemed trusts affecting the personal property.<sup>6</sup></p> <p>A lawyer who represents a lender where the collateral includes personal property must consider registering a notice in the land registry to protect perfection of the security interest in the event the personal property becomes a fixture.<sup>7</sup></p> <hr/> <p><b>Notes:</b></p> <p><sup>1</sup> <i>Personal Property Security Act</i>, S.N.S. 1995-96, c. 13.</p> <p><sup>2</sup> <i>Personal Property Security Act</i>, S.N.S. 1995-96, c. 13, s.31 &amp; <i>Creditors Relief Act</i>, R.S.N.S. 989, c.112, s.2B(6).</p>	<p>A lawyer who represents a lender where the collateral includes personal property must:</p> <p><b>a. register the security by serial number if the personal property includes serial numbered goods as defined;</b><sup>8</sup></p> <p><b>b. in all cases register the security by the pledgor’s full name, including middle name;</b><sup>9</sup> and</p> <p><b>c. consider registering a notice in the land registry to protect perfection of the security interest in the event the personal property becomes a fixture.</b><sup>10</sup></p> <p><b>The lawyer must register the full name as required by the Regulations.</b><sup>11</sup></p> <p><b>FOOTNOTES</b></p> <p>1. <i>Personal Property Security Act</i>, S.N.S. 1995-96, c. 13.</p> <p>2. <i>Personal Property Security Act</i>, S.N.S. 1995-96, c. 13, s.31 &amp; <i>Creditors Relief Act</i>, R.S.N.S. 1989, c.112, s.2B(6).</p> <p>3. See <i>Personal Property Security Act - General Regulations</i>, N.S. Reg. 129/97 for the definition of “serial numbered goods.”</p>	
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<sup>3</sup> See *Personal Property Security Act General Regulations*, N.S. Reg. 129/97 for the definition of “serial numbered goods.”

<sup>4</sup> *Personal Property Security Act*, S.N.S. 1995-96, c. 13, s.2(1)(m) defines “debtor” to include owners, obligors and transferees in various circumstances. Therefore the buyer and seller should both be searched in purchase and sale transactions, and the owner should be searched in refinancing transactions.

<sup>5</sup> R. Wright, “Certifying the Uncertifiable - Chattels” (1993) 5 *The Claims Wise Bulletin*, Claims Wise No. 29 at 2.

<sup>6</sup> These may arise, for example, under the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), *Excise Tax Act*, R.S.C. 1985, c.E-15, the *Bank Act*, S.C. 1991, c.46, s.427, municipal liens and liens in foreign jurisdictions. While these will not apply to personal property in most residential transactions, the lawyer should have regard to these kinds of charges when considering transactions involving personal

4. Personal Property Security Act, S.N.S. 1995-96, c. 13, s.2(1)(m) defines “debtor” to include owners, obligors and transferees in various circumstances. Therefore the buyer and seller should both be searched in purchase and sale transactions, and the owner should be searched in refinancing transactions.

**5. Robie Financial Inc. v. PricewaterhouseCoopers Inc., 2009 NSSC 397.**

6. R. Wright, “Certifying the Uncertifiable - Chattels” (1993) 5. *The Claims Wise Bulletin* No. 29 at 2.

7. These may arise, for example, under the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.), *Excise Tax Act*, R.S.C. 1985, c.E-15, the *Bank Act*, S.C. 1991, c.46, s.427, municipal liens and liens in foreign jurisdictions. While these will not apply to personal property in most residential transactions, the lawyer should have regard to these kinds of charges when considering transactions involving personal property.

**8. Personal Property Security Act - General Regulations, supra.**

**9. Robie Financial, supra.**

10. Personal Property Security Act, S.N.S. 1995-96, c. 13, ss. 37 and 50; Registry Act, R.S.N.S. 1989, c. 392, ss. 1A(1) and 18A; Land Registration Act, S.N.S. 2001, c. 6, s. 59.

property.

<sup>7</sup> *Personal Property Security Act*, S.N.S. 1995-96, c. 13, ss. 37 and 50; *Registry Act*, R.S.N.S. 1989, c. 392, ss. 1A(1) and 18A; *Land Registration Act*, S.N.S. 2001, c. 6, s. 59.

**Practice Notes:**

The potential for personal property to become a fixture will often affect security interests in mobile homes, modular homes, furnaces and water heaters, for example. Typical lenders' instructions on mobile home and modular home transactions vary, and often include express instructions not to register the security in the land registry. It is recommended that lawyers review the lenders' instructions in each case to determine the extent of their obligations.

**11. Personal Property Security Act General Regulations, O.I.C. 97-621 (October 1, 1997, effective November 3, 1997), N.S. Reg. 129/97, as amended to O.I.C. 2015-96 (March 31, 2015, effective April 1, 2015), N.S. Reg. 143/2015.**

**PRACTICE NOTES**

The potential for personal property to become a fixture will often affect security interests in mobile homes, modular homes, furnaces and water heaters, for example. Typical lenders' instructions on mobile home and modular home transactions vary, and often include express instructions not to register the security in the land registry.

It is recommended that lawyers review the lenders' instructions in each case to determine the extent of their obligations.

**The Rules under Regulation 20 concerning identifying the debtor's name for registration are complicated. For example, for a debtor born in Canada whose birth was registered in Canada, the name is as is set out in the birth certificate even if the name on a more recent official document is different, unless there has been a legal change of name whether resulting from a marriage or otherwise. Not all marriages are effective to legally change the name. There are rules for individuals with more than one middle name. It is best practice**

	<p><b>to enter all variations of the individual's name, including maiden and married names, and using all middle names, which is expressly permitted under Regulation 20(7).</b></p> <p><b><u>DO NOT RELY ON THE NAME GIVEN BY THE LENDING INSTITUTION.</u></b></p> <p><b>ADDITIONAL RESOURCES</b></p> <p>Manufactured Home Transfer Form: Bridgewater (PVSC)</p> <p>Manufactured Home Transfer Form: Dartmouth (PVSC)</p> <p>Manufactured Home Transfer Form: Port Hawkesbury (PVSC)</p> <p>Manufactured Home Transfer Form: Truro (PVSC)</p> <p>MacLean QC, Ian H. / "Personal Property Security Act and Regulations as they apply to mobile homes: Some basic principles" (April 2014)</p> <p>Approved by Council on February 28, 2014</p>	
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