

PPSA Registrations for a GSA vs for a Guarantee

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Is there a difference between perfecting a general security agreement through a PPSA registration and registering a PPSA in respect of a loan guarantee? Why are they different and why will some lenders forgo the PPSA against a guarantor?

The *Personal Property Security Act* (Ontario) ("**PPSA**") sets out the framework for creating, registering and perfecting security interests in Ontario against personal property. Moreover, the Personal Property Security Registration system establishes priorities between secured parties with competing interests in the same personal property.

Most lenders utilize a general security agreement to take security on all of a debtor's existing and after-acquired personal property. In a real property loan transaction, the general security agreement creates a security interest in favour of the lender over all of the borrower's personal property located at the mortgage loan real property. The general security agreement does not extend to the real property itself. In order to properly perfect the security provided to the lender through a general security agreement, the lender must file a PPSA registration in respect of such general security agreement.

A guarantee, on the other hand, is a security document used to support borrower financing, whether secured or unsecured, by the guarantor providing guarantee assurances to the lender. It states, among other things, the conditions where the guarantor must take over the borrower's repayment obligations upon default. As well, under a guarantee the guarantor should assign and postpone any debt obligations of the borrower to the guarantor in favour of the lender so that the lender is assured on default by the borrower that the guarantor does not assert any claims of priority over the lender. Since the assignment and postponement of claim element of the guarantee is security in favour of the lender, the lender should file a PPSA registration against the guarantor in order to perfect such security element of the guarantee.

However, unlike a general security agreement, the guarantee itself does not create a secured interest in the personal property of the guarantor. It is a contractual obligation at law of the guarantor irrespective of a PPSA registration. A PPSA registration in respect of a guarantee only perfects the security interest in the assignment and postponement of claim within the guarantee so that if a guarantor is owed money by and receives money from the borrower, those funds would be covered by such security interest. If a lender wanted to secure the personal property of a guarantor, they would require a general security agreement from the guarantor.

That is the difference between a PPSA in respect of a borrower's general security agreement and a PPSA in respect of a guarantee and why lenders sometimes do not require or forego a PPSA registration to support a guarantee.

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