

Circular

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Security Interests in Goods Act 2005

What is the reason for the Act?

The Act is designed to simplify and modernise the registration procedures for goods mortgages such as bills of sale, stock mortgages, crop liens etc. The Act repeals the *Liens on Crops and Wool and Stock Mortgages Act 1898* and the *Bills of Sale Act 1898*.

Commencement

The Act will commence on 1 March 2006.

Security Interests in Goods

The phrase "security interest" has been used to describe the interest created by a bill of sale, mortgage or charge granted by way of security for the payment of a debt or the performance of an obligation. The document that creates a security interest is referred to as a "security instrument".

Bills of Sale/Goods Mortgages

The requirements for bills of sale have been significantly simplified. The previous distinction between "Ordinary" and "Traders" bills of sale has been abolished. Furthermore, there is now no time period within which a bill of sale or goods mortgage must be registered as registration will be optional rather than mandatory. Registration will, however, confer priority over unregistered interests or subsequent interests granted over the same goods.

Under the new regime there will be no limit to the period for which a bill of sale may be registered. Bills of Sale executed after introduction of the *Security interests in Goods Act 2005* will not need to be renewed every 5 years.

Execution of bills of sale/goods mortgages will also be simplified with the abolition of the current requirement for a statutory declaration by the mortgagor and an affidavit by the witness.

Agricultural Goods Mortgages

At common law there has always been a difficulty with granting a mortgage over goods not yet in existence. This is a problem particularly for agricultural goods such as crops not yet sown or wool still growing on a sheep's back. The legislation enables a person to grant a mortgage over certain identified agricultural goods.

Special provisions apply to security instruments granted over agricultural goods, the most significant being that an agricultural goods mortgage must be registered within 45 days of its execution.

The Act makes provision for 4 separate categories of agricultural goods mortgages:

Crop Mortgage

The definition of “crop” includes:

(a) wheat, maize, canola, sorghum, barley, oats, lucerne, grass (whether for hay or grain), cotton, tobacco, rice, sugar-cane and any other kind of agricultural produce,

(b) oranges, grapes (whether as fruit or for wine or spirit) and any other kind of fruit or horticultural produce (s3).

A crop mortgage may be granted by a person who owns the land on which the crops are grown or has exclusive possession of it with a right to harvest the crops grown. A sharefarmer may also grant a crop mortgage provided that the written consent of the owner or lessee is obtained (s7).

A crop mortgage must be in the prescribed form and must identify the crops secured as well as the land on which the crops are growing or will grow. The duration of the mortgage must be specified but can not exceed a total period of 5 years.

Stock Mortgage

“Stock” is defined to include “...any sheep, goats, cattle, horses, swine, poultry, alpacas, llamas, ostriches or other animals (except fish)” (s3).

A stock mortgage may be granted over stock owned by the mortgagor and/or over the wool produced by the stock. A person may grant a stock mortgage over the wool of stock already mortgaged but only with the consent of the stock mortgagee (s12(2)).

A stock mortgage must be in the prescribed form and must identify the stock secured by the mortgage as well as identifying the land on which the stock are, or will be, kept.

Wool Mortgage

A stock mortgage that relates only to wool may be referred to as a wool mortgage (s13). A wool mortgage will be limited to the next clip of wool of the stock concerned unless the mortgage expressly provides otherwise (s12(6)). A wool mortgage must comply with the general requirements for a stock mortgage.

Aquaculture Fish Mortgage

The Act introduces a new category of agricultural mortgage which can be granted over fish. The definition of fish is taken from s. 5 of the *Fisheries Management Act 1994* which includes marine, estuarine or freshwater fish or other aquatic animal life, including oysters and other aquatic molluscs and crustaceans.

A person may grant an aquaculture fish mortgage over any fish that is cultivated or kept for the purposes of aquaculture (s15).

An aquaculture fish mortgage must be in the prescribed form and must identify the fish secured by the mortgage as well as identifying the land or water source on or in which the fish are being, or will be, kept. The fish can be described by reference to their species or in some other way that reasonably allows the fish to be identified.

Prescribed Form

The Act prescribes a form which can be used for agricultural goods mortgages. The prescribed forms are:

- Crop mortgage (set out in Schedule 1 of the Act);
- Stock Mortgage or Wool Mortgage (set out in Schedule 2 of the Act);
- Aquaculture Fish Mortgage (set out in Schedule 3 of the Act).

All agricultural goods mortgage must either be prepared in or to the effect of the Forms set out in Schedules 1-3 or must include the matters specified in section 17 of the Act.

There is no prescribed form for a bill of sale or security instrument granted over non agricultural goods.

Lodgment and Registration

Security interests in goods are registered in the General Register of Deeds kept by the Registrar General under the provisions of the *Conveyancing Act 1919*. The formal requirements for preparation of documents are contained within the *Conveyancing (General) Regulations 2003*. For further information on the standards required see the fact sheet titled **Preparing Instruments for Registration in the General Register of Deeds**.

A Deeds Index Particulars Form must accompany security instruments lodged for registration. The Deeds Index Particulars Form will contain details such as the type of security instrument, its date and the parties involved. Information obtained from the Form will be used to index registered instruments and enable them to be searched. Security Instruments will be classified as either a:

- Bill of sale/ security instrument;
- Agricultural mortgage (crop);
- Agricultural mortgage (stock);
- Agricultural mortgage (fish).

In addition, a further category will be introduced to enable classification of security instruments granted over agricultural goods as well as non-agricultural chattels. Such instruments will be classified as:

- Agricultural mortgage (business)

This category is provided for indexing purposes only. It should be noted that the Act requires an instrument to specify that it is either a "crop mortgage", "stock mortgage" or an aquaculture fish mortgage". This requirement will not be satisfied if the instrument is described only as a "business mortgage".

Where an instrument that secures agricultural as well as non-agricultural goods is lodged for registration the stricter requirements that apply to agricultural mortgages (such as the 45 day period for registration) must be complied with.

Transitional Provisions

The *Security Interests in Goods Act 2005* applies to all security instruments executed on or after 1 March 2006. The *Bills of Sale Act 1898* or the *Liens on Crops and Wool and Stock Mortgages Act 1989* will continue to apply to relevant instruments

executed prior to 1 March 2006 even where the instrument is presented for registration after that date.

Old forms of bills of sale or stock mortgages etc may continue to be used after 1 March, with appropriate amendments. The pre printed affidavit and statutory declaration that appears on the old form of bill of sale need not be completed if executed after 1 March 2006.

Register of Encumbrances on Cars and Boats (REVS)

Nothing in the *Security Interests in Goods Act 2006* applies to motor vehicles or boats or any other goods to which the *Register of Interests in Goods Act 1986* applies. Encumbrances on motor vehicles or boats should continue to be registered in the REVS Register maintained by the Office of Fair Trading.

Security Interests granted by Corporations

Corporations are bound by the Commonwealth *Corporations Act 2001* which requires companies to register charges over certain property of the company. Security interests granted by a corporation should be registered with ASIC as a company charge under the provisions of the *Corporations Act 2001*.

Searching Security Interests

Security instruments may be accessed through a search index in the same way as other deeds registered in the General Register of Deeds. A search of the mortgagors name may be made in the index available through the public computer terminals at the Lands Queen's Square office.

Searching of the security interests index will initially be provided free of charge. However it is proposed to make the security interests inquiry available through the Lands' network of information brokers and the Lands' website from 1 July 2006 after which a fee will apply.

Requests for copies of security interests instruments will incur the current fee that applies to other deed copies.

A further circular providing more detail on how to search security interests instruments will be issued in coming weeks.

For further information about the relevant legislation and associated registration issues please contact Leanne Hughes on telephone 9228 6669 or email leanne.hughes@lands.nsw.gov.au.

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