

Attachment and Perfection, Proceeds, and Priority under Section 31 of the *Personal Property Security Act*

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**ATTACHMENT AND PERFECTION, PROCEEDS, AND PRIORITY UNDER
SECTION 31 OF THE *PERSONAL PROPERTY SECURITY ACT***

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I. Attachment and Perfection

In order to understand the operation of the Personal Property Security Act¹ (“PPSA”) in relation to priorities within the PPSA, it is essential to understand the concepts of attachment and perfection. While a number of priorities are established by the first to register², or by the first to take possession of the collateral³, other priorities are determined by the first to perfect⁴, and an unperfected security interest is not effective against a trustee in bankruptcy⁵. In addition, as between two unperfected security interests, priority is determined by the first to attach.⁶

A. Attachment

The PPSA uses the term “attachment” to denote the creation of a security interest itself.⁷

The relevant provisions dealing with attachment are as follows:

12(1) A security interest, including a security interest in the nature of floating charge, attaches when

(a) value is given,

(b) the debtor has rights in the collateral, and

(c) except for the purpose of enforcing rights between the parties to the security agreement, the security interest becomes enforceable within the meaning of section 10,

unless the parties specifically agree in writing to postpone the time for attachment, in which case the security interest attaches at the time specified in the agreement.

(2) For the purposes of subsection (1)(b) and without limiting other rights that the debtor may have in the collateral, a debtor has rights in goods leased to the debtor or consigned to the debtor when the debtor obtains possession of them in accordance with the lease or consignment.

(3) For the purposes of subsection (1), a debtor has no rights in

¹ RSA 2000, c P-7

² PPSA, s.35(1)(a)(i)

³ PPSA, s.35(1)(a)(ii)

⁴ PPSA, s.35(1)(b), s. 34(2), s. 34(3)(a)

⁵ PPSA, s.20(a)(i)

⁶ PPSA, s.35(1)(c)

⁷ See R.C.C. Cuming, C. Walsh, R.J. Wood, *Personal Property Security Law*. (Irvin Law 2012) at page 161

- (a) crops until they become growing crops,
- (b) the young of animals until they are conceived,
- (c) minerals until they are extracted, and
- (d) trees other than crops until they are severed.

13(1) Except as provided in subsection (2), where a security agreement provides for a security interest in after-acquired property, the security interest attaches in accordance with section 12, without the need for specific appropriation.

(2) A security interest does not attach to after-acquired property that is

- (a) a crop that becomes a growing crop more than one year after the security agreement has been entered into, except that a security interest in crops that is given in conjunction with a lease, agreement for sale or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of the lease, agreement for sale or mortgage, or
- (b) consumer goods, other than an accession, unless the security interest is a purchase-money security interest or a security interest in collateral obtained by the debtor as replacement for collateral described in the security agreement.

10(1) A security interest is enforceable against a third party only where

- (a) the collateral is in the possession of the secured party, or
- (b) the debtor has signed a security agreement that contains
 - (i) a description of the collateral by item or kind or as “goods”, “chattel paper”, “securities”, “documents of title”, “instruments”, “money”, or “intangibles”,
 - (ii) a statement that a security interest is taken in all of the debtor’s present and after-acquired personal property, or
 - (iii) a statement that a security interest is taken in all of the debtor’s present and after-acquired personal property except specified items or kinds of personal property or except personal property described as “goods”, “chattel paper”, “securities”, “documents of title”, “instruments”, “money”, or “intangibles”.

(2) For the purposes of subsection (1)(a), a secured party is deemed not to have taken possession of collateral that is in the apparent position or control of the debtor or the debtor’s agent.

(3) A description is inadequate for the purposes of subsection (1)(b) if it describes the collateral as consumer goods or equipment without further reference to the kind of collateral.