

Protecting Your Position When Selling or Leasing Goods

By Wade Glass, Director, Spire Chartered Accountants Limited

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If you are selling or leasing goods, then you should be aware of the Personal Property Securities Act, which came into force in 2002. There still appears to be confusion among some business owners as to how the Act affects their businesses.

Take note that:

1. The Act covers all “personal property”. Personal property does not simply mean your *personal* property, rather it includes business assets, and is a legal term that encompasses all property that is not land and attached buildings. For example, a Portacom could be personal property.
2. Retention of title or “romalpa” clauses are not sufficient to preserve your ownership of goods sold on credit.
3. If your business leases goods to customers for a period greater than 1 year, you may lose title to these goods unless precautions are taken.

The Act sets out the rules for protecting your position in relation to property in which your business has an interest. Your “interest” may arise because the customer has not yet paid for the goods, or where you wish to retain ownership of goods in possession of the customer (e.g. leased home appliances).

Perform the following steps to ensure that where applicable, your business has adequate protection under the Act. Obtain advice from your solicitor where you are unsure.

1. If you sell or lease goods on credit, read on. If not, turn to the sports page.
2. Does your business have signed security agreement (e.g., terms of trade) that creates a security interest in the goods sold/leased? If not, ensure that all current clients sign a valid security agreement.
3. Is the description of the secured goods in your terms of trade either wide enough (e.g., all present and after acquired personal property) or specific enough (e.g., serial numbers of leased equipment).
4. Have you registered your security interest in the Personal Property Securities Register? This step is vital, as the Act gives priority to the earliest registered security interest in any collateral (personal property).

For previous instalments, refer to www.spireca.co.nz