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Simplified requirements for goods mortgages

The Security Interests in Goods Act 2005 (NSW) ('the Act') is designed to simplify and modernise the requirements for, and registration procedures relating to, goods mortgages such as bills of sale, stock mortgages, crop liens. The Act commences on 1 March 2006, repealing the *Liens on Crops and Wool and Stock Mortgages Act 1898 (NSW)* and the *Bills of Sale Act 1898 (NSW)*.

What are the benefits of the Act?

The Act simplifies the requirements for bills of sale (or chattel mortgages) in NSW. In particular, the Act will:

- remove the distinction between 'ordinary' and 'traders' bills and the mandatory registration requirement for them
- simplify the registration process for non-agricultural bills.

The Act introduces a new regime to replace the existing regime in NSW for liens on crops and agricultural products and stock mortgages, including various prescribed forms for agricultural goods mortgages.

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 and goods mortgages

The requirements for bills of sale have been significantly simplified.

The previous requirement for registration of 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 the introduction of the Act will no longer need to be renewed every five years.

Execution of bills of sale or 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 four separate categories of agricultural goods mortgages:

Crop mortgage

The definition of 'crop' includes:

- wheat, maize, canola, sorghum, barley, oats, lucerne, grass (whether for hay or grain), cotton, tobacco, rice, sugarcane and any other kind of agricultural produce
- oranges, grapes (whether as fruit or for wine or spirit) and any other kind of fruit or horticultural produce (s 3).

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 (s 7).

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 five years.

Stock mortgage

'Stock' is defined to include '...any sheep, goats, cattle, horses, swine, poultry, alpacas, llamas, ostriches or other animals (except fish)' (s 3).

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 (s 12(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 (s 13). A wool mortgage will be limited to the next clip of wool of the stock concerned unless the mortgage expressly provides otherwise (s 12(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* (NSW), 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 (s 15).

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 forms

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 mortgages 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 s 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* (NSW). The formal requirements for preparation of documents are contained within the Conveyancing (General) Regulations 2003 (NSW).

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
- the parties.

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 Act 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 1898* 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 Act applies to motor vehicles or boats or any other goods to which the *Registration of Interests in Goods Act 1986* (NSW) applies. Encumbrances on motor vehicles or boats should continue to be registered in the REVS Register maintained by the NSW Office of Fair Trading.

Security Interests granted by corporations

Corporations are bound by the *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*.

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 would normally be undertaken.

Practical implications

On a practical level, the Act will provide a mortgagee or creditor with greater certainty that they will obtain security over the assets they expected to receive, with the added comfort that they will not need to incur further legal costs to either renew an existing security or obtain a fresh security.

In contrast, the old regime was unduly pedantic. For example, under the old regime, a bill of sale was void if it was not registered within the applicable time period. Moreover, it was ineffective against the trustee in bankruptcy of the mortgagor or debtor if it was not renewed within 5 years of its creation. Similarly, a crop lien was only effective for 1 year under the old legislation. The Act allows for a crop mortgage to specify the period of its duration (s 17(1)(vii)).

Text of the legislation is available at:

[Security Interests in Goods Act 2005](#)

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