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Backgrounder

LRC 143—Report on Land-Related Interests and the Personal Property Security Act

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Our legal system divides most property into real property or personal property, a distinction that can be explained broadly as a division between property that is land or interests in land and property that is not. Some assets and rights can sometimes be difficult to characterize, and may have attributes of both real and personal property. This causes uncertainty as to whether the *Land Title Act* or the *Personal Property Security Act* (PPSA) applies to them. This report recommended amendments to clarify the application of these Acts with respect to three major types of asset.

Fixtures

Fixtures create priority problems between holders of PPSA security interests in the fixtures and holders of land-based security (like a mortgage) in the land to which the fixtures are annexed. Section 36 of the PPSA allows the PPSA security to prevail over land-based security if the PPSA security attached to the fixture before it was annexed to the land. In the case of building components, this result is not appropriate unless the PPSA security holder financed their acquisition. The Commission recommended amending section 36 of the PPSA to create a special priority rule for building components. Under this proposed amendment, the holder of an interest in the land at the time the building component became a fixture would have priority over the PPSA security unless it was a purchase-money security interest.

The Commission also recommended inserting a definition of the term “building component” into the PPSA, along with a schedule of examples that could be amended by regulation.

Money Payments Connected with Land

The PPSA describes intangible property, such as a right to receive payment, as an “account.” The PPSA allows assignees of accounts to register transfers of them in the Personal Property Registry to protect their rights to the intangible property. Assignments of rents

are excluded from the PPSA, however. As a matter of practice, assignments of rents can be registered in the Land Title Office, but there is a lack of legislative authority for this. The status of assignments of other accounts that are closely associated with an interest in land, such as payments under a mortgage or agreement for sale, is unclear.

The Commission recommended that the practice of treating assignments of rents as an interest registrable in the Land Title Office be regularized by an amendment to the *Property Law Act*. In addition, a provision should be added stating that a dispute between successive holders of rights with respect to rents must be decided as if the assignment of rents were an interest in land. The Commission also recommended that these amendments extend to assignments of payments under a land mortgage or agreement for sale of land, and that these assignments too be expressly excluded from the scope of the PPSA.

Securities with an underlying land component

The definitions of “instrument” and “security” in the PPSA are drafted to include security interests in bonds or debentures providing for a security interest in mortgages owned by the issuer. They exclude bonds, debentures, and similar documents evidencing obligations secured by a mortgage of an interest in land. There is general agreement that this is appropriate, but it is not clear whether the definitions cover documents relating to debt obligations that otherwise would be an “instrument” or “security” within the meaning of the PPSA, if the underlying debt obligation happens to be secured by a separate land mortgage. In order that such documents be clearly identified as coming under the PPSA and attract the priority rules applicable to PPSA “instruments,” the Commission recommended that the definitions of “instrument” and “security” in the PPSA be amended to expressly exclude documents that create or provide for a mortgage or charge of land that is specifically identified.

The report includes draft legislation to give effect to its nine recommendations.

Further Developments

The report’s recommendations have not been implemented.