

# Sheridans' View



## Migrated security interests – protection gone

**The final protection for defective PPSA registered security interests ended on 31 January 2017.**

The *Personal Property Securities Act 2009 (Cth)* ("PPSA") regime commenced on 30 January 2012. It applies to security interests arising both before and after that date.

There was initially a two-year transitional period (ending on 31 January 2014) which gave parties a grace period in which to register interests created prior to the commencement of the PPSA that are considered security interests under the PPSA but which were not registrable under prior law. Such security interests are termed "transitional security interests".

Transitional security interests also include security interests that were automatically migrated from pre-PPSA registers (e.g. the ASIC Register of Company Charges or the Vehicle Securities Register) onto the PPSR.

This automatic migration of security interests was not seamless. Certain registrations were migrated with data that did not conform with the data required by the PPSA.

In anticipation of such defects, the registrar of the PPSR made a determination to ensure that these registrations remained effective temporarily despite a defect (*Personal Property Securities (Migrated Security Interest and Effective Registration) Determination 2011*).

This temporary period of effectiveness allowed secured parties time to amend migrated registrations. Importantly, this protection ceased on 31 January 2017 (midnight). Unrectified defective security interests that were subject to the migration ceased to be effective after 31 January 2017.

It is recommended that any secured parties or person(s) with a security interest should perform an audit or review of their registrations and/or seek a professional review of their PPSR system and registrations to ensure their rights are protected.

## Bankruptcy term – reducing to one year?

**In December 2015 the Federal Government announced its National Innovation Statement ("NIS") which outlined proposed reforms to, among other things, insolvency laws designed to encourage innovation and entrepreneurial behaviour, while still protecting creditors.** One controversial proposal is to reduce the current minimum bankruptcy term from three years to one year (see *Sheridans' View* Issue 34, March 2016).

### Where is this proposed reform at?

Following the announcement of the NIS, the government called for submissions on the proposal to change the bankruptcy term. The cut-off date for submissions was 27 May 2016 and 72 submissions were made by various parties including ARITA (Australia's peak insolvency body), various law societies and insolvency practitioners Australia-wide.

However, since this call for submissions, and the Federal Election in July 2016, progress appears to have slowed. In particular, no draft legislation has been released, which would:

- Show that the proposed reform is progressing, and
- Provide details on the proposed reform and how it would work in practice.

We wait and see.

## FOREWORD

*"It's the little details that are vital. Little things make big things happen."*  
John Wooden

*"It is the small things in life which count; it is the inconsequential leak which empties the biggest reservoir."*  
Charles Comiskey

*"Notice the small things. The rewards are inversely proportional."*  
Liz Vassey

*"I alone cannot change the world, but I can cast a stone across the water to create many ripples."*  
Mother Teresa

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## Frequently Asked Questions

### How long does a liquidation last?

There is no prescribed or set time within which a liquidation must be completed. The time it takes to complete a company liquidation will vary depending on how complicated the company's affairs are, in particular the structure of the company, its dealings prior to liquidation and whether litigation is necessary.

Rough timeframes: Unlikely to be less than 6 months, earliest likely to be 9 months, average probably 1 to 2 years and can be longer than 5 years if it is a 'large' administration or there is some residual 'run off' matter or litigation.

### When will creditors be notified of my bankruptcy?

Your trustee will notify your creditors in writing as soon as possible. Your trustee will provide creditors with details of your assets and liabilities, as disclosed in the non-confidential section of your Statement of Affairs. Where appropriate, your trustee will provide creditors with an update as to the status of your bankruptcy.

## Recent Assignments

- Liquidation of an electrical contractor and voluntary administration of a flooring wholesaler and installer.
- Continuing liquidations involving:
  - Resolution of a debt claim (including compromise of debt) and offsetting competing claim.
  - Continuing pursuit of insolvent trading claims against various directors.
  - Finalisation and receipt of an ATO preference claim.
  - Commencement of action to obtain re-registration of a deregistered company.
- Personal insolvency administrations, including those involved with hardwood flooring and continuing personal insolvency administrations involving:
  - Investigations regarding possible equitable interest claims in property.
  - Pursuit of a claim regarding an investment property involving a Family Court settlement.
  - Instigation of legal proceedings to pursue significant debt.
  - Pursuit of a preference recovery claim.
- Informal insolvency advice to various businesses, including those involved in property investment, hospitality, construction, car washing franchises, white goods franchises and hairdressing.
- Litigation support, including:
  - Valuation of a recruitment business.
  - Valuation of a mortgage broking business.

**"I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel."**

Maya Angelou

## DID YOU KNOW?



A marketer for Kraft Foods rotated their 67-year-old square Shreddies cereal 45 degrees, and re-marketed them as the new "Diamond Shreddies".

The new Shreddies had an immediate 18% increase in sales within the first month, and for months thereafter. Test groups reported the triangular shape to be "better", "crunchier" and "more flavourful", although the Shreddies had not been changed in design, formulation, size or any other way.

The marketer (Ogilvy & Mather) won several prestigious marketing and advertising awards for the campaign.



## EDITORIAL

# Rob the builder - can we fix it?

**The start of the year saw builder Bultion Group (Platinum Homes and Aspireon Homes) go into administration (owing about \$16 million to 350 unsecured creditors, mainly subcontractors), adding to a growing list of WA residential builders and subcontractors that have recently crumbled.**

The closure comes two months after Collier Homes went into liquidation in November 2016, and shortly after Quattro Homes went into administration in September 2016, Pitara Homes and Nominated Homes went into liquidation in August 2016, the collapse of Shane Crothers Homes in June 2016, and of Capital Works Construction in May 2015 (when it was in the process of building 229 houses).

### Why is the WA building industry falling down?

The key issues, almost all attributable to the decline in the resources sector, are:

- Residential building activity has dropped significantly from record highs in 2014/15. The Housing Industry Association is predicting a figure of 19,780 WA housing starts for 2016/17 compared to approximately 30,000 per year three years ago.
- Since June 2014, fewer people are moving to WA and more are going to the eastern states.
- Rising unemployment, with WA's current unemployment rate being higher than the national average.
- Lack of consumer confidence.
- Market pressure resulting in tight margins for builders.
- Some builders using increased advertising and incentives as their key sales strategy, which chips away at already tight margins.

On the basis of eight indicators, including economic growth and housing, CommSec's January 2017 State of the States report ranked WA in last place amongst Australia's states and territories. Only time will tell as to when the WA building industry will pick itself up and raise the roof. In the meantime, for all in the residential building industry there is no blueprint for survival and this is a testing time to be making any long-term concrete decisions.

## CONTACTS



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