



## **(Nearly) insolvent tenants and protecting commercial landlords**

Set out below are the main types of security interests a landlord will have under a lease and an analysis of what (if any) steps a landlord should take to protect that interest, including whether they should register on the PPSR.

Landlord interest	PPSA analysis	Should the landlord register their interest on the PPSR?
<b>Type of bond/security</b>		
<b>Cash bond held by landlord</b>	<p>The landlord's interest in a cash bond is a security interest. If the landlord holds the cash, or holds it in an account that the landlord controls, then the landlord's security interest will be sufficiently perfected under the PPSA without the need for registration on the PPSR.</p> <p>However, registration on the PPSR out of an abundance of caution to ensure 'perfection' of the landlord's interests will do no harm.*</p>	No.
<b>Cash bond held by third party (eg landlord's agent)</b>	<p>As above, the landlord's interest in a cash bond is a security interest. If the cash bond is held by a third party registration on the PPSR is required in order to perfect the security interest.</p>	Yes.*
<b>Retail bond held by the NSW Small Business Commissioner</b>	<p>This situation applies to retail landlords, and the same PPSA analysis applies as for cash bonds held by a third party above.</p>	Yes.*
<b>Bank guarantee</b>	<p>The landlord's interest in a bank guarantee <i>may</i> be a security interest (there is some academic conjecture on this). However, if it is, it is a security interest granted to the landlord by the <i>bank</i>, not the lessee. Therefore any steps to perfect this security interest would only protect the lessor from an insolvency event of the bank. This is not likely to be a material risk to most lessors so the need to perfect this security interest by registration is not an action most landlord's consider worthwhile (particularly as the Federal Government has previously guaranteed bank deposits of \$200,000 or less during times of financial crisis).</p>	No.



Landlord interest	PPSA analysis	Should the landlord register their interest on the PPSR?
<b>Other interests</b>		
<b>Landlord's property (non-fixtures)</b>	<p>If the lease is for a term of 2 years or more, or has an indefinite term, then the landlord's interest in any of its own property located in the premises (that are non-fixtures), including plant and equipment or parts of the fit out not affixed to the property, is a 'PPS Lease' (which is a type of 'security interest') and needs to be protected by registration.</p> <p>Registration <i>should occur within 15 business days</i> from the tenant taking possession of the premises (or new tenant under an assignment) in order to obtain a 'super priority' of the landlord's security interest over other secured creditors of the tenant. If this time has passed, registration is still recommended to perfect the security interest, and the sooner the better.</p>	Yes.*
<b>Landlord's right to tenant's abandoned property</b>	<p>If the lease provides that title to abandoned property of the tenant or proceeds from the sale of abandoned tenant's property becomes the landlord's, then a security interest most likely arises (depending on the terms of the lease) which should be perfected by registration.</p> <p>However, if this security interest is not valuable to the landlord because of expected low re-sale value of the tenant's property or significant prior-registered secured creditors of the tenant, registration may not be important.</p>	Yes.*

\* If the landlord proposes to register a financing statement in respect of a security interest on the PPSR, check whether any PPSA or security clauses exist in the lease. In the absence of contractual waivers by the tenant, the landlord will be required to notify the tenant of it registering a security interest, amongst other considerations.

If you require any assistance navigating the PPSA or making a registration on the PPSR, please contact [Ron Zucker](#) (Property) or [John Nash](#) (Commercial & Corporate).

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