

Securing the Loan & Enforcing the Security

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Part 1:

The Unsecured Loan

The Unsecured Loan

I, Johnny Trustme, promise to pay to Easymoney Community Development Corp., on demand, the sum of \$75,000.

X Johnny Trustme

The Unsecured Loan

* Enforcement

a) You have to sue, and to sue you usually need to find Johnny to serve him.

b) Typically, the lawsuit won't be defended, so you will get a judgment fairly soon after service.



The Unsecured Loan

* Enforcement

c) Enforcement of the Judgment is through the Sheriff's Office exclusively – there is no self help.

i) Bank Accounts / Accounts Receivable
- Notice of Garnishment

ii) Chattels & Other Personal Property
- Sheriff's seizure and sale



The Unsecured Loan

* Enforcement

c) Enforcement of the Judgment is through the Sheriff's Office exclusively – there is no self help.

iii) Real Estate:

- Sheriff's sale (poor return on value)
- All proceeds are divided pro rata amongst all execution creditors
- CRA may claim priority



Part II:

Securing the Loan

Securing the Loan

- * When you are securing the loan, you can use:
 - * The **borrower's assets**;
 - * A **third party's assets**; or
 - * A **guarantee** from a third party.



Securing the Loan

* The Guarantee

- * This is really a **promise** by one person to pay the debt of another in case of default.
- * The enforcement is basically the same as enforcement of a **bare promissory note** (you sue, get a judgment and enforce the judgment)



Securing the Loan

* Real Estate

- * The primary form of security on real estate is the **charge or mortgage.**

- * We also regularly see **assignments of rents**, although we rarely see them enforced



Securing the Loan

* Real Estate

- * Priority of a mortgage is governed almost exclusively by priority of registration in the Land Registry Office



Securing the Loan

* Real Estate

- * Some third parties can gain priority, including:
 - * Municipal Taxes (always have priority)
 - * Construction Liens
 - * Canada Revenue Agency



Part III:

Enforcing the Mortgage

Enforcing the Mortgage

- * When a mortgage is in default, you, as the holder of the mortgage, are entitled to several different things



Enforcing the Mortgage

- 1) You are entitled to **possession** of the property.
 - a. Often, you need possession to **appraise** it prior to sale.
 - a. Sometimes, you need possession to **secure** the property.



Enforcing the Mortgage

- 1) You are entitled to **possession** of the property.

However, when you take possession, you also **assume responsibility** for the property!

It is wise to consider whether you *really* need possession before you take it.

Once you take possession, you cannot give it back.



Enforcing the Mortgage

- 2) The second thing you are entitled to is **payment** of what is owing to you.

If you sue for possession, you will also sue for the **balance owing plus expenses.**



Enforcing the Mortgage

The **most important** right you have is **recourse to the property**, and this can take two forms:

- 1) Foreclosure
- 1) Power of Sale



Enforcing the Mortgage

- * **Foreclosure** is a court action resulting in title being placed in the mortgagee's name.
- * This option is almost never used



Enforcing the Mortgage

- * **Power of Sale** is your legal authority to sell the property after giving notice.
- * Generally, this is your primary route to recover your loan.



Enforcing the Mortgage

* **Power of Sale** involves several steps:

- 1) Obtain **possession** (if needed);
- 2) Obtain one to two **appraisals**;
- 3) List for **sale**;
- 4) Sell and collect the **net proceeds**.

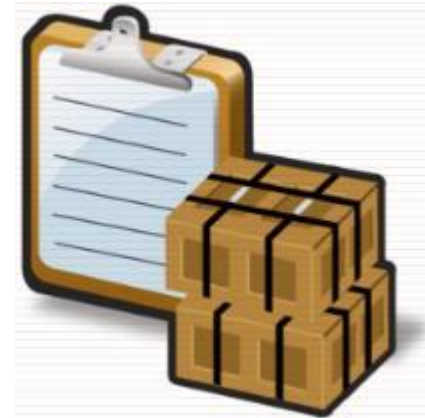


Part IV:

Personal Property

Personal Property

- * **Personal property** includes:
 - * **Tangible items** (inventory, equipment); and,
 - * **Intangible items** (accounts receivable, intellectual property and goodwill).



Personal Property

- * **Personal property** can be attached with either:
 - * A **general security agreement**
(usually covers all business assets); or,
 - * A **chattel mortgage**
(if you are only securing specific tangible property)



Personal Property

- * The **priority** of the lien is generally governed by date of registration in the **PPSA system**
- * There are a number of claims which will take priority over existing registrations:
 - * Canada Revenue Agency (super priority claims)
 - * Repair and Storage Lien Claims
 - * Purchase Money Security Registrations



Personal Property

- * If a business owner is putting up **non-business assets** as collateral, a separate **“consumer” PPSA registration** is required.



Personal Property

* Enforcement:

- * Is much like the enforcement of a real estate collateral:
 1. You almost always need **possession** of collateral to sell it; if the debtor won't voluntarily part with it, you can have a **licensed bailiff** seize it, or sue for possession



Personal Property

* **Enforcement:**

- * Is much like the enforcement of a real estate collateral:
 2. Once you have possession, you need to secure and appraise the property.
 3. Notice of intention to sell or retain must be given.
 4. You then sell or retain (foreclosure).



Personal Property

NOTE:

If the assets you are seizing are all or substantially all inventory, accounts receivable or other property of the business... you must engage a **trustee in bankruptcy** as the receiver.

COST can be substantial, even if the assets have little value.



Part V:

Assets with Potential Problems

Assets with Potential Problems

- * Real Estate:

- * Residential tenants
- * Environmentally challenged property

- * Personal Property:

- * Accounts Receivable
- * Aircraft (logs/location)
- * Heavy Equipment (location)



Questions & Answers