

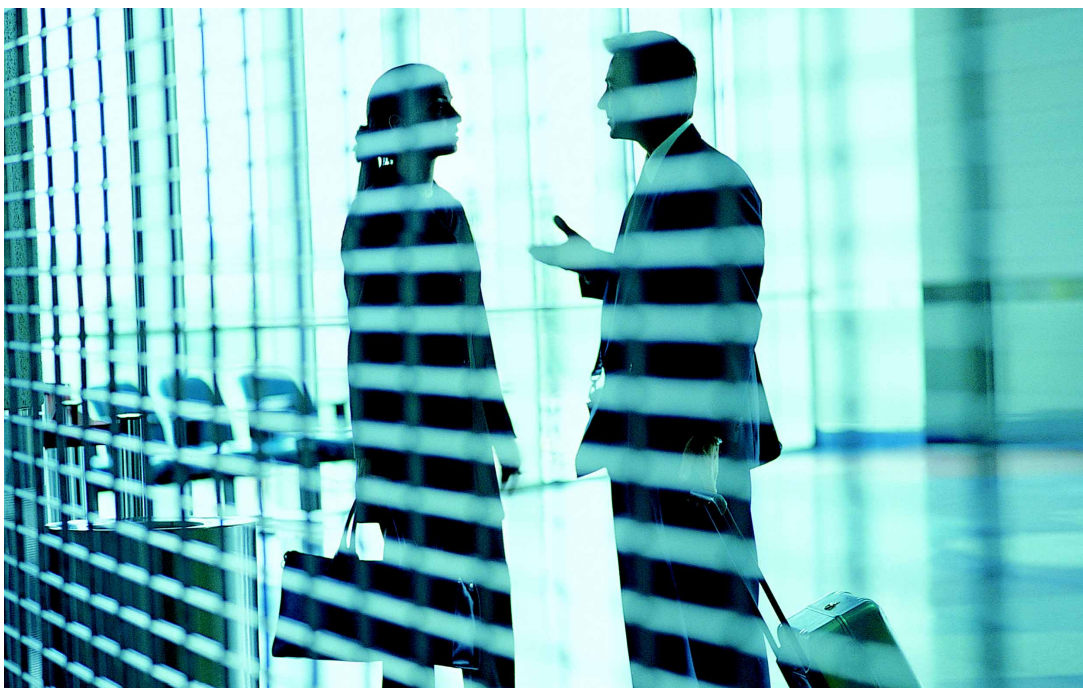
Death of the NSW Bills of Sale Act

The Security Interests in Goods Act 2005 ("New Act") was passed on 16 September 2005 and assented to on 19 October 2005. It has effectively repealed the Bills of Sale Act 1898 ("Bills Act") together with the Liens on Crops and Wool and Stock Mortgages Act 1898. However, the new regime is not due to come into effect until 1 March 2006.

Once the New Act is in force the regimented and antiquated requirements of the Bills Act would no longer apply and a lender that wishes to take a mortgage of an individual's goods or assets will only need to have a mortgage executed. Previously, under the Bills Act unless the Bill of Sale was registered within the prescribed time (either 15 or 30 days, depending on the type of Bill of Sale), the Bill of Sale would be void as against the bankruptcy trustee and other third parties.

The New Act has the following effect:

- To dispose of the outdated distinction between traders bill of sale and ordinary bill of sale and introduce a concept of "security interest" in goods.
- To make the registration of certain instruments optional rather than mandatory.
- The period of registration is no longer limited to 5 years.



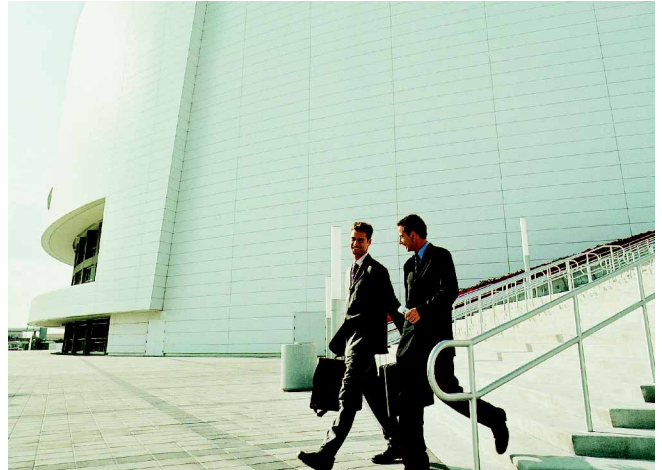
Death of the NSW Bills of Sale Act (cont)

- The registration of a security interest in goods confers priority over unregistered interests and subsequently registered interests over the same goods but a failure to register another valid interest will not affect its validity (in certain circumstances).

There should be little need to change the terms and conditions of most bills of sale instruments or mortgages prepared on behalf of financiers (apart from any references to the Bills Act).

The Department of Lands has indicated that the previous antiquated requirements of affidavits and statutory declarations will no longer be necessary once the regime is in force. Further, registration of bills of sale will require only the original and a copy of the original for registration purposes.

While registration of a security interest in goods is not mandatory, registration generally confers priority on registration. However a mortgagee who has possession of the goods even if unregistered, may have priority over a later registered interest even if the holder of the later registered interest does not have any notice of the prior unregistered interest. It is foreseeable that this concept of an unregistered mortgagee in possession of mortgaged goods having priority over a later registered mortgagee will cause lenders some concern at least from a practical perspective. One would expect that physical inspection and other due diligence of the assets may reduce the likelihood of such circumstances arising.



Soon the financier will be able to take security over an individual's assets and undertaking and register that interest in a similar way to a charge is registered with ASIC.

While much of the antiquated and regimented requirements of the Bills Act will soon go, there is no uniform nationwide registration of security interest (similar to REVS) yet. So the age old concern for financiers of a mortgagor relocating personal property and chattels from one state to another continues.

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