# Storage Liens and (PPS) Interests – How do they interact?

## What is a Storage Lien?

A storage lien is a lien that exists over stored goods because storage fees have not been paid. Storage liens can be created by contract (for example the AFRA Terms and Conditions September 2015) or by law (for example, the storage/warehouseman's liens legislation that exists in all states except Tasmania).

## What is a PPS Interest?

A security interest is an interest in personal property that is recorded against particular assets and indicates that someone other than the property owner has a financial interest in that property. For example, if a Business borrows money from a Bank to purchase computers for their office, the Bank may register a security interest over the computers and that interest, if recorded on the PPS Register, will not be released until the loan is paid off.

A PPS Interest which has been registered on the PPS Register is a security interest over real and personal property, including vehicles. Registration gives the secured party priority (if they have registered before anyone else) and this assists them to assert a right which can prevent the on-sale of the goods.

In the example above, the Business goes on to store the computers with a Removalist, but then goes into liquidation and cannot pay the storage fees.

Where does this leave the Removalist? Can the Removalist sell the computers to recover the storage fees? Does the PPS Interest interfere with this right?

## PPS Interests - Priority and protection

Registering a security interest on the PPS Register is not a legal requirement but registration allows anyone to search the PPS Register to find out whether there are pre-existing security interests over property. This is particularly important if two parties are both trying to enforce their competing security interests over property.

In the example above, if the Removalist wants to sell the computers to recover the storage fees, and the Bank wants to sell the computers to recover the remaining amount of the loan, whose interest has priority?

'Priority' refers to the order in which competing security interests over one piece of property will be enforced. Generally, the security interest has priority depending on the order in which they were registered on the PPS Register.

For example, if there was more than one bank that had loaned money to the Business then Banks A, B and C may all have interests over the computers and other assets of the business. If Bank B's interest was registered first in time, it has 'priority' over the other two Banks, Bank B's interest will be enforced first, and Banks A and C will need to wait their turn to try and recover their money.

*There are a number of exceptions to the 'priority' rule. One exception is where another piece of legislation creates an interest and those laws specifically state that the interest created by that law has priority.*

## Priority of Storage Liens

In **Queensland**, **Western Australia** and **New South Wales**, the storage liens legislation specifically state that storage liens have priority. This means that regardless of when the storage lien was created, the storer can enforce their lien and auction the goods to pay storage costs at any time and without having to wait for any other party to act.

In **Victoria**, **South Australia, Northern Territory** and the **Australian Capital Territory**, the storage liens legislation does not specifically state that storage liens have priority over other PPS interests. Tasmania, of course, does not have any warehouseman's liens legislation.

However, if you have possession of goods then you are treated as having a security interest in the goods.

In the example above, if the Business's computers are stored in **Queensland**, **Western Australia**, or **New South Wales**, the Removalist is automatically entitled to sell the computers.



If Business's computers are stored in Victoria, South Australia, Northern Territory or the Australian Capital Territory, then it depends on whose security interest was created first.

This is a complicated area of law and there may be a number of other relevant factors, so if you come across questions or problems like this, seek legal advice before taking any action.

## So do you need to check the PPS Register before you sell goods?

Unless the item stored is a vehicle, you do not need to search the PPS Register before you sell goods in Queensland, Western Australia and New South Wales.

**In the other states**, before you exercise the right to sell the goods at auction, assess the items and prepare an inventory. If there are any vehicles or other items with a VIN (Vehicle Identification Number), search the PPS Register using that number to see if a financial institution or anyone else has a registered interest. Also search the person's name (i.e. the individual's name and date of birth or the company name) to see if there is a general security interest or PMSI (this is a special type of interest). Seek legal advice if any interests are shown on the Register.