

REGISTERING AGAINST AND SEARCHING THE NAMES OF GENERAL PARTNERSHIPS IN THE MANITOBA PERSONAL PROPERTY REGISTRY

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Sections 15(3) and 15(4) of Manitoba Regulation 80/2000, being a Regulation enacted pursuant to the Personal Property Security Act (Manitoba), provides, in effect, that where a lender takes a security interest in personal property belonging to a general partnership, the lender is to register a financing statement in the Personal Property Registry which names as debtors both the partnership name plus the names of each of the partners of the partnership. This is to be contrasted with the situation where a lender takes personal property security from a limited partnership where the lender's financing statement need only state the (legal) name of the limited partnership. This requirement presents two problems for counsel:

- (a) where counsel is acting for a lender and the borrower [or guarantor] partnership has a very large number of partners (think of a national - or international - law firm or accountancy firm), it is virtually impossible to track down and properly record the required particulars of each partner. The problem is made worse where the partnership's partners are continuously "coming and going".
- (b) where counsel is searching in the Personal Property Registry to determine whether or not the partnership has granted security interests in its assets to other creditors, the search result will (if other pre-existing creditors have proceeded properly) reveal registrations against both the partnership name and against each of its partners. This may create uncertainty as to whether or not pre-existing registered security interests affect partnership property only, or affect property belonging to one or more of the partners in their "personal" capacities only, or against all of such property.

This situation calls out for reform. The writer believes that the solution is simply to require secured creditors to name the partnership as the debtor and to indicate whether the partnership is a general partnership or a limited partnership.