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PPSR Information Sheet - #1

What happens if a dealer sells a car to an individual (who is not a dealer) and the dealer's financier claims the vehicle is encumbered?

Holding Redlich say...

If a licensed motor vehicle dealer sells a car to an individual then under the PPS regime that individual will generally take the vehicle free of any security interest even if a financier has registered a security interest in that vehicle on the PPS register. This means that an individual buying a motor vehicle from a licensed dealer will generally not be required to obtain a clear PPS search prior to buying the vehicle.

There are however some important exceptions which apply and a buyer will not necessarily take a motor vehicle free of a security interest if:

- the secured party (eg a financier) was in possession of the vehicle immediately before the buyer acquired the vehicle;
- the vehicle is sold by or on behalf of an execution creditor (eg a financier);
- the buyer holds the vehicle as inventory or on behalf of someone who would hold the vehicle as inventory (eg the buyer is a motor vehicle dealer); or
- the buyer has actual or constructive knowledge that the sale would breach the security agreement that provides the security interest.

However, even if the consumer takes the vehicle free of the security interest, typically a financier will have a security interest in the proceeds of the sale as well as the vehicle itself. It would therefore be prudent for dealers to ensure that all security interests are released and it is also likely that failure to do so will have adverse consequences under the finance facility in place with the financier (depending on the terms of that facility).

As motor vehicle dealers are required to give certain guarantees with respect to vehicles sold to consumers under the Australian Consumer Law in relation to title and undisclosed securities and dealers cannot contract out of these statutory obligations, dealers will generally need to procure that all registered security interests over a vehicle are removed prior to it being sold to the customer.

Dealer Solutions Opinion...

Under PPSR, a financier's interest in a vehicle will include the proceeds of any sale. Dealers should ensure that interests are released prior to a vehicle being sold to the customer.

Dealers should also contact their financier now to ensure that any special requirements they have for PPSR are met. This may include changes to your delivery process and documentation.



Dealer Solutions has invited Holding Redlich to participate in our industry education program aimed at unravelling the new PPSR legislation and providing you with practical general business advice about its application.

For advice specific to your business, we recommend contacting Holding Redlich directly.

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