

# TAB 3

Alberta Statutes

Personal Property Security Act

Part 2 — Validity of Security Agreements and Rights of Parties (ss. 9-18)

**Most Recently Cited in:** Servus Credit Union Ltd v. Dalmac Energy Inc, 2020 ABQB 478, 2020 CarswellAlta 1519, [2020] A.W.L.D. 2895, 322 A.C.W.S. (3d) 630 | (Alta. Q.B., Aug 20, 2020)

R.S.A. 2000, c. P-7, s. 10

## s 10. Enforceability of security interest

### Currency

#### 10. Enforceability of security interest

**10(1)** Subject to subsection (2) and section 12.1, a security interest is enforceable against a third party only where

- (a) the collateral is not a certificated security and is in the possession of the secured party,
- (b) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 68 of the *Securities Transfer Act* pursuant to the debtor's security agreement,
- (c) the collateral is investment property and the secured party has control under section 1(1.1) pursuant to the debtor's security agreement, or
- (d) the debtor has signed a security agreement that contains
  - (i) a description of the collateral by item or kind or as "goods", "chattel paper", "investment property", "documents of title", "instruments", "money" or "intangibles",
  - (ii) a description of collateral that is a security entitlement, securities account, or futures account if it describes the collateral by those terms or as "investment property" or if it describes the underlying financial asset or futures contract,
  - (iii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property, or
  - (iv) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property except specified items or kinds of personal property or except personal property described as "goods", "chattel paper", "investment property", "documents of title", "instruments", "money" or "intangibles".

**10(2)** For the purposes of subsection (1)(a), a secured party is deemed not to have taken possession of collateral that is in the apparent possession or control of the debtor or the debtor's agent.

**10(3)** A description is inadequate for the purposes of subsection (1)(d) if it describes the collateral as consumer goods or equipment without further reference to the kind of collateral.

**10(4)** A description of collateral as inventory is adequate for the purposes of subsection (1)(d) only while it is held by the debtor as inventory.

**10(5)** A security interest in proceeds is not unenforceable against a third party by reason only that the security agreement does not contain a description of the proceeds.

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R.S.A. 2000, c. P-7, s. 12

## s 12. Attachment of security interests

### Currency

#### 12.Attachment of security interests

**12(1)** A security interest, including a security interest in the nature of a floating charge, attaches when

- (a) value is given,
- (b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party, and
- (c) except for the purpose of enforcing rights between the parties to the security agreement, the security interest becomes enforceable within the meaning of section 10,

unless the parties specifically agree in writing to postpone the time for attachment, in which case the security interest attaches at the time specified in the agreement.

**12(2)** For the purposes of subsection (1)(b) and without limiting other rights that the debtor may have in the collateral, a debtor has rights in goods leased to the debtor or consigned to the debtor when the debtor obtains possession of them in accordance with the lease or consignment.

**12(3)** For the purposes of subsection (1), a debtor has no rights in

- (a) crops until they become growing crops,
- (b) the young of animals until they are conceived,
- (c) minerals until they are extracted, and
- (d) trees other than crops until they are severed.

**12(4)** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

**12(5)** The attachment of a security interest in a futures account is also attachment of a security interest in the futures contracts carried in the futures account.

#### Amendment History

2006, c. S-4.5, s. 108(10)

#### Currency