

# Are you sure you have the best claim to your own wine?

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## Are you:

- a winegrower who regularly has wine processed under contract by a processor or another winery?
- a winegrower who has offsite storage arrangements in place for your wine?
- a winegrower who sells wine on consignment through a third party?

**If you answered "yes" to any of the above questions then you need to know about the Personal Property Securities Act 1999 ("PPSA") and its potential application to your business.**

The PPSA introduced into New Zealand the concept of a "security interest" in personal property. Under the PPSA, whoever has the best "security interest" in the personal property in question will have the best rights to that personal property – including the rights of possession and sale, and the right to recover any proceeds from that personal property. Importantly, title or ownership of personal property is in many cases "trumped" by those who have a better "security interest" in the personal property than the true owner. This is a major conceptual shift from the previous law and to many people the new regime is counter-intuitive (with the common cry "But I own it – I must have the best rights to it!") and can lead to unexpected results in claims over the property.

Personal property under the PPSA includes grapes, and bottled and barrelled wine.

So how do you protect your grapes and wine in light of the PPSA?

- If you are contracting to have your grapes or wine processed, stored or sold on your behalf, always have a written agreement signed by both parties which clearly sets out the parties' rights and obligations
- If your grapes or wine is processed or stored by another party out of your possession, ensure that it is agreed under your contract that you retain ownership of the grapes and wine and that this constitutes a security interest in the grapes and wine in your favour
- Register your security interest. The PPSA created a public online register called the Personal Properties Securities Register ("PPSR") – see [www.ppsr.govt.nz](http://www.ppsr.govt.nz). The PPSR effectively operates as a "notice board" of security interests in personal property. For your security interest to

be effective against other parties who may have a security interest over your grapes or wine (which may include the processor or storage company, or their secured parties), you need to register your security interest on the PPSR. Registration needs to be within the applicable timeframe for your security interest to gain the best priority - usually you should register at or before the time that you part with possession of the grapes or wine to give you the best protection

- Be aware that even if you haven't expressly agreed to retain yourself, or to grant to another party, a security interest in your grapes or wine, a security interest may be deemed to be created in certain circumstances under the PPSA. These circumstances include where wine has been leased or bailed for a period of more than one year (even if it was not originally intended that the grapes or wine be away that long) or you sell wine or grapes on a consignment basis in the ordinary course of your business. If there is the possibility that you may part with possession of your grapes or wine stock for a year or more (without being paid in full for it) you need to consider your arrangements at the outset to properly protect your position.

As the stark reality of business failure in recessionary times gives rise to enforcements of security and claims over assets, the impact of the PPSA is catching many business people by surprise. Are you secure in your position if your winemaker, storage facility or seller's business fails and your wine stock with them is claimed by another party with a security interest over it?

The PPSA may not apply to some or any of your contracting arrangements, but the business risk in not investigating this and protecting your position could be significant. The good news is that this is a risk which can be easily managed given the comparatively small cost in documenting your arrangements properly

and registering a financing statement (\$3) on the PPSR.

***For specific legal advice please contact Fraser Goldsmith, Anne Wilson or Ben Johnston of Anderson Lloyd Lawyers on (03) 477 3973 or (03) 379 0037 or visit [www.andersonlloyd.co.nz](http://www.andersonlloyd.co.nz).***