

**Notices of Security Interest
Consultation Paper
Fall 2023**

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Introduction

Background

Ontario's Personal Property Security Act (PPSA) governs security interests in personal property, including the rights and interests of creditors and debtors where personal property is used as security for a loan or lease. Sometimes, the personal property that is used as security is attached to real property (land or buildings) and becomes part of it. This type of personal property is called a "fixture". For example, a furnace or an air conditioner that is installed in a house is a fixture. Fixtures are unique because they exist in both personal and real property law. For example, hot water heaters that are housed in a warehouse could be considered a chattel or personal property, however, once affixed or installed in a home they are now considered to be a "fixture".

Due to a fixture's unique nature, a secured party with an interest in the fixture is entitled to register a Notice of Security Interest (NOSI). The purpose of a NOSI is to signal to anyone else who has an interest in the land, or subsequently obtains an interest in the land, that a fixture on the land is subject to a security interest. For this reason, a NOSI is registered in the Land Registry System (land registry). When a NOSI is registered, it means that if the borrower or lessee (e.g., the consumer) defaults (such as failing to make payments on the loan or lease affiliated with the fixture), the lender or lessor (e.g., the business) that has priority can remove and sell the fixture to recover the debt, subject to certain parameters.

A NOSI must be registered in the land registry through an authorized Teraview user, using a specific form (Teraview is the secure portal used to access and submit registrations in Ontario's land records database). The party registering a NOSI must pay a fee to register. When registered, the information contained in the NOSI form then appears in the land registry system and can be searched by authorized users for a fee.

A NOSI is commonly, but incorrectly referred to as a lien. It is not a lien as it does not provide its holder with an interest in the land nor the right to any proceeds from a sale of the land.

Used properly, a NOSI is a legitimate tool that businesses can use to ensure their priority to remove their financed or leased equipment in certain circumstances. By registering a NOSI on the land registration system, a business effectively notifies a purchaser or mortgagee of the business' interest in the fixture and can avoid any surprises or disputes over interests in the fixtures on the property.

The Problem

The ministry is aware that some consumers are adversely affected by having a NOSI on title, the effect of which usually arises when they try to sell their home or access additional financing.

In many cases, consumers are not aware that a NOSI has been registered on title to their home until they are in the midst of a home sale or mortgage refinancing, with tight timelines adding to the high pressure to resolve the situation expeditiously. Whether selling or refinancing a home, the discharge of a NOSI is usually required for the transaction to proceed, unless, in the case of a sale, the purchaser agrees to assume the contract (e.g., lease for the fixture). In those cases, the sale would move forward and the NOSI would stay on title.

Where the consumer is required to discharge the NOSI in order to complete the sale or refinancing of the property, certain suppliers use the discharge of the NOSI as leverage and unfairly pressure the consumer to negotiate a buyout of the contract in its entirety, including services, and not just for the value of the equipment. This can result in exorbitant payouts.

Objective and Scope of this Consultation

The Ministry of Public and Business Service Delivery is commencing this consultation to gather feedback to support the development of new approaches that could be appropriately scoped to address some of the consumer harms associated with the improper use of NOSIs, as outlined above.

In 2020-2021 and 2023, the ministry published consultation papers on the Regulatory Registry and held several stakeholder roundtables on modernizing the Consumer Protection Act, 2002 (CPA) and strengthening protection for consumers. As part of those consultations, the ministry sought feedback on some potential proposals to help address issues associated with NOSIs. The feedback received at that time reflected the need for a more comprehensive approach beyond the scope of the CPA proposals. As a result, this consultation will more deeply explore issues related to the use of NOSIs and how they affect consumers.

The ministry is seeking feedback from stakeholders, including consumers, businesses, law enforcement, and legal experts, on the current challenges and opportunities related to NOSIs, and to identify potential solutions that could enhance consumer protection and promote a fair and competitive economy.

Among other things, the ministry is seeking feedback related to:

1. **Clarifying “fixtures”** – Clearly outlining what a NOSI can, or cannot, be registered for on the Land Registry, by clarifying the meaning of “fixture” under the Personal Property Security Act.
2. **Limiting the duration of a NOSI registration** – Reducing the possibility that NOSIs are registered indefinitely by requiring certain NOSIs to include an expiry date which cannot exceed a certain number of years from the date of registration (e.g., an expiry date not longer than five years from the date of registration), subject to renewals.
3. **Notice requirements** – Reducing surprises for consumers by requiring businesses to provide notice to consumers when a NOSI has been, or will be, registered, and to provide them with certain additional information.
4. **Notice of assignment** – Ensuring consumers know if a NOSI has been assigned by requiring businesses to provide consumers with notice if a NOSI has been assigned to a third party.
5. **Limiting the amount of a NOSI registration or eliminating the value field** – Limiting/capping or eliminating the amount shown on the NOSI registration to potentially disincentivize their misuse.
6. **Limiting the amount to be paid to a secured party to retain a fixture in certain circumstances** – Limiting the amount that a secured party can demand as a condition of releasing a fixture, in certain circumstances, which may make NOSIs easier to deal with.
7. **Scoping requirements for NOSIs under the PPSA** – Ensuring that any new restrictions or requirements are appropriately scoped to the most problematic NOSIs, without creating any unnecessary burden on businesses.
8. **Alternative means of discharging NOSIs** – Making it easier for consumers to seek a discharge of NOSIs, in certain circumstances.
9. **Limiting who can register a NOSI** – Reducing the risk of registrants abusing the registration system by placing restrictions on who can register a NOSI.
10. **Adding or enhancing available offences** – Punishing bad actors who misuse NOSIs to deter further bad action.
11. **Enhanced education about NOSIs** – Promoting awareness of NOSIs, including consumer and business rights and obligations.
12. **Operational enhancements** – Requiring additional information (to be provided by a business) that can be screened to ensure the NOSI meets the requirements under the PPSA.

The topics presented in this consultation paper are intended to represent a comprehensive approach to addressing the issues related to NOSIs, which, when done collectively, and along

with other ideas/suggestions brought forward during this consultation, may have more impact than if individual proposals were to be implemented in isolation.

The ministry is mindful that issues related to NOSIs can be expansive and complex and may require working with partners and other sectors to make an impact on areas outside of the ministry's mandate. For example, the ministry is aware of media reports of homeowners being persuaded by predatory businesses to use a high-interest mortgage to discharge the NOSIs. This can put the homeowner in a precarious situation since, unlike a NOSI, a mortgage gives rise to an interest in the land and increases the risk of the consumer losing their home in the event of a default. However, the ministry's authority is limited to its mandate and legislation within its purview, including the CPA, the PPSA, the Land Titles Act, and the land registry system. While the ministry may collaborate with other partners, there are components of the NOSI issue that are outside of the scope of the ministry's purview and outside the scope of this paper, including mortgages and fraud committed in connection with NOSIs.

How to Participate

The ministry welcomes responses to the questions in this paper and any additional comments or suggestions related to NOSIs.

Please include feedback and responses in the text boxes provided throughout the document. There is no word limit on any responses. Please provide examples or evidence to support your suggestions, where possible.

A summary list of the consultation questions found in this paper is provided in **Appendix B**.

You may submit comments by **11:59 pm on December 1, 2023** through [Ontario's Regulatory Registry](#) or download this paper and submit your completed responses by mail to:

NOSI Consultation
Manager, Business Law and Burden Reduction Unit
Ministry of Public and Business Service Delivery
56 Wellesley Street West – 6th Floor
Toronto, ON, M7A 1C1

Please provide your name and contact information, including an email address.

Name/Organization (if applicable)

Contact Information

Please also check one of the following boxes to indicate whether you are commenting primarily as a:

- Business
 - Business Association
 - Consumer
 - Consumer Association
 - Academic
 - Legal Organization
 - Law Enforcement
 - Other – You may enter your answer here:
-

Thank you for taking the time to review this paper. If you have any questions about this consultation, please email businesslawpolicy@ontario.ca.

Section A: PPSA Legislative Rules

Topic 1: Clarifying “Fixtures”

Issue:

Under the PPSA, a creditor (e.g., a business) who has a security interest in a fixture may register a NOSI on the land registry. However, the PPSA does not define what a “fixture” is. The PPSA provides that “building materials” do not constitute fixtures, but it does not define “building materials”.

Instead, there has been extensive case law that has attempted to define a “fixture”; however, the rules stemming from those cases are complex and generally depend on specific circumstances.

The ministry has learned that some businesses may be exploiting the lack of clarity about what a “fixture” constitutes and may be registering NOSIs for items that may not be considered fixtures (for example, some NOSIs have been registered for ‘renovations’ including plumbing or electrical upgrades).

Potential Solution and Impact:

The ministry is exploring how to clarify what constitutes a “fixture” which, in turn, would help clarify what a NOSI could be registered for. This could reduce the number of NOSIs registered for items that are arguably not fixtures, such as plumbing or electrical updates.

Questions:

1. Should Ontario add a definition of “fixture” to the PPSA? Why or why not?
 - a) What are the potential benefits or drawbacks, and possible impacts?
 - b) Please provide a proposed definition for “fixture”, along with an example and rationale. See, for example in **Appendix A**, a definition of “fixture” from the Yukon PPSA, the only jurisdiction in Canada that provides a definition of fixture.
2. All Canadian jurisdictions, with the exception of Ontario, define “building materials” in their PPSA. For example, British Columbia (B.C.) defines “building materials” to include goods attached to a building that their removal would necessarily involve the dislocation or destruction of some other part of the building. See the full definition in **Appendix A**.

- a) Should the PPSA be amended to define “building materials”? What are the potential benefits or drawbacks?
 - b) If yes, should the proposed definition of “building materials” mimic the one from B.C.? Do you have a proposed definition for “building materials” that is different than the one from B.C.? Please provide, along with an example and your rationale.
 - c) If you are supportive of incorporating B.C.’s definition of “building materials” into the PPSA, do you think this should be supplemented with additional information (e.g., adding, through regulation, a list of prescribed goods that, for certainty, would become a “building material” once affixed to real property, such as roofs)?
3. Is there an alternative approach not mentioned above that would be preferable?
- a) If so, why would this be a better alternative?
 - b) What are the benefits and drawbacks and potential impacts of this alternative approach?

Please include your responses here.

Topic 2: Limiting the Duration of NOSI Registrations

Issue:

The PPSA currently requires that all NOSI registrations for consumer goods include an expiry date; but there are no restrictions on what that date must be. This requirement is also not always adhered to in the land registry system upon registration (i.e., no date is being provided).

Without an expiry date, it may be difficult for consumers or prospective home purchasers to know whether a NOSI is current. In some cases, an obligation under a security agreement may have been fulfilled (i.e., paid) long before, but the business failed to discharge the NOSI, and the consumer has trouble tracking down the supplier to demand a discharge.

The ministry is also aware that some NOSI registrations have an expiry date that is past what someone could reasonably assume to be the duration of the underlying contract (e.g., 50 years).

Potential Solution and Impact:

The ministry is exploring ways to limit the “duration” of certain NOSI registrations, which could create a means by which NOSIs could effectively cease to be in effect if not intentionally renewed.

If a NOSI expires and the supplier does not renew it or have it discharged, then a consumer may apply, through a Teraview licensee, to delete the NOSI. This could result in significantly less burden for the consumer, relative to the current state which requires a consumer to obtain a court order for a NOSI discharge, in many cases where the supplier does not comply with a request to discharge the NOSI.

Questions:

1. Previously, where the collateral included consumer goods, the PPSA included a requirement that NOSI registrations must have an expiry date that could not be more than five years past the registration date (a “five-year cap”). Do you support re-establishing this rule? Why or why not.
 - a) Would a different time period be more appropriate (i.e., longer or shorter than five years?) Please explain.
 - b) Should the supplier be able to renew or extend the NOSI registration? Why or why not.
 - c) If the supplier can extend, should they be able to only if they extend the registration prior to the expiry date (i.e., if the expiry date has passed, the supplier would be barred from extending), or should they be able to extend so long as the security interest remains active? How long should the supplier be able to extend?
 - d) If a business could renew the registration, should the consumer be notified of the renewal?
 - e) What, if any, additional burden would re-introducing an expiry cap for consumer goods, and the possibility for renewal, have on business?

2. If the ministry were to institute an expiry cap and a NOSI expired and the supplier did not renew it, then the consumer could apply, through a Teraview Licensee, to have the NOSI removed from title, which is expected to be a less burdensome process for the

consumer as compared with the current state. In your opinion, would this result in less burden for the consumer? Do you have a recommendation to streamline the process further that the ministry should consider?

3. Besides re-instituting an expiry cap, are there any other ways the ministry could consider limiting the duration of NOSIs? For example, should the ministry consider limiting the duration of the underlying security interest (e.g., in certain circumstances, a fixture cannot be used to secure an obligation for longer than five years)?

Please include your responses here.

Topic 3: Notice Requirements

Issue:

Currently, the PPSA does not require businesses to provide notice to consumers when a NOSI is registered on title, although some businesses include a clause in the fine print of the contract stating that they “may” register a NOSI.

One key aspect of the problem with NOSIs is that consumers may not be aware that a NOSI is on title of their property until they are in the midst of trying to sell or re-finance their home. In these situations, consumers are often dealing with tight timelines, which creates pressure to resolve the situation expeditiously.

Potential Solution and Impact:

The ministry is exploring whether to require the secured party (i.e., the business or supplier) to provide the debtor (i.e., the consumer) with written notice of a NOSI registration, either:

- before the NOSI is registered and potentially as a condition that must be met in order to register the NOSI,

- after it has been registered (i.e., within a certain number of days of the NOSI being registered),
- or in both circumstances.

Notice of a NOSI registration could alert the consumer to the existence of the NOSI prior to the point of sale/refinancing of the house, and potentially reduce the vulnerability that arises from the pressure of trying to resolve the NOSI under urgent circumstances. Providing confirmation that notice was given could be made a requirement for businesses to register a NOSI, and this added step may help to deter bad actors from using NOSIs inappropriately, given the added burden.

Additionally, the ministry is considering requiring prescribed language for inclusion in a notice, to support accurate, clear, and accessible communication of the existence of the NOSI and what it means for the consumer (e.g., contact information for the business, information included in the NOSI registration (where applicable), an explanation of what a NOSI is and what it means for the consumer/business when on title), as well as requiring the notice to be provided in a prescribed format (e.g., separate from the contract to avoid any messaging being included in the fine print and therefore less visible to consumers).

Questions:

1. In your opinion, should NOSIs have notice requirements? Why or why not?
2. If notice is required, should written notice be provided to the consumer *before* a NOSI has been registered, *after* the NOSI has been registered, or *in both circumstances*? Why or why not?
 - a) How long after the registration should a supplier be required to provide notice of the NOSI (e.g., within a set number of days after the registration (for example, within 30 days of the registration))?
 - b) If notice is required to be sent *before* a NOSI can be registered, should the supplier be required to demonstrate it has fulfilled this step before it can register the NOSI? If so, how?
 - c) Should a business be required to provide notice of the NOSI to consumers at other times, such as prior to the NOSIs expiry date, or if they extend or renew the NOSI? If so, why?
3. To support the sharing of accurate, clear, and accessible information, the ministry is considering specifying what information would need to be included in the notice provided to the consumer (whether before or after the NOSI has been registered). Is there specific

information that, in your opinion, would be important to include in the notice (please provide the type of information and a rationale for why it should be included)? For example:

- a) Should the business be required to provide a copy of the NOSI registration to the consumer (when notice is provided after registration has taken place)?
 - b) Should the name and contact information of the business be required? Other information?
 - c) Should an explanation of what a NOSI is, does, and the consequences of it be required? And should the notice be required in a specific format?
4. In many Canadian jurisdictions with notice requirements in place, consumers may waive their right to be notified about the NOSI. If the ministry pursued notice requirements for NOSIs, do you think that consumers should be able to waive the right to receive notice? Why or why not?
5. Are there other approaches to requiring notice of the registration of a NOSI that the ministry should consider? Please explain.

Please include your responses here.

Topic 4: NOSI Assignments

Issue:

A supplier may assign their interest in a contract to a third party, which means that the business transfers its rights and obligations under a contract to another party (i.e., business).

When a business assigns their interest in a contract to a third party, they will typically assign the associated security interest to that same party and register an assignment of the NOSI in the Land Registry. However, there are currently no requirements to notify the debtor (i.e., consumer) of that assignment. This means that the initial business that registered the NOSI may effectively transfer its security interest associated with the NOSI to another business, without

the consumer being informed of the transaction. This can lead to the consumer being unaware that a new business holds the security interest, and that they now need to reach out to that new business when seeking to have the NOSI removed (or otherwise engage with the business).

Additionally, consumers may be unaware of the practice of assigning a security interest, or what this practice means. In many cases, the consumer is still dealing with the original supplier regarding any issues related to the equipment (e.g., servicing, etc.).

Consumers often only become aware that the security interest associated with a NOSI has been assigned when they attempt to terminate the underlying contract and are told by the original supplier that they now must deal with the new company (or assignee).

Potential Solution and Impact:

Similar to the general notice requirements outlined above, the ministry is exploring changes that would require a consumer to be notified of the assignment of the security interest associated with a NOSI either before the assignment takes place, within a certain number of days of the assignment taking place, or under both circumstances.

This could provide the consumer with relevant information about the party to whom the security interest associated with the NOSI was assigned. If the ministry requires the notice to include specified information, this could help raise consumer awareness of their rights and obligations with respect to NOSIs.

Questions:

1. If the ministry were to mandate notice of an assignment of a security interest associated with a NOSI, should that notice be provided *before* the assignment, *after* the assignment, or under both circumstances? Why or why not? Please provide any reasons.
 - a) When would a business have to provide notice (e.g., a set number of days prior to the assignment, within a set number of days after the assignment)?
 - b) *who* should be responsible for providing the notice (i.e., the assignor, the assignee, other)?
2. The ministry is considering specifying some of the information that would have to be included in the notice, to support the sharing of accurate, clear, and accessible information with the consumer. Is there any information that, in your opinion, would be important to include in the notice (e.g., details of the assignment, the name and contact information of

the new business, a copy of the registered assignment (where applicable)? Please provide the information and a rationale for why it should be included.

3. Is there anything else the ministry should consider with respect to the assignment of a security interest associated with a NOSI? If offering an alternative, please include a discussion of the rationale and the risks associated with your proposal.

Please include your responses here.

Topic 5: Limit or Eliminate the Amount/Value on a NOSI Registration

Issue:

Currently, there is an area marked "consideration" on the NOSI registration form. The secured party can enter a value in this field that reflects the amount secured by the NOSI.

Based on the ministry's review of NOSI filings, it was found that the amount entered in this field may vary. Sometimes, it appears to reflect the value of the collateral and, other times, it may reflect the entire obligation owed by the consumer under the contract with the business, including amounts such as service or installation fees.

The amount listed in the consideration field can be inconsistent or very high, and the ministry has heard that businesses sometimes use the high amount that is registered to intimidate homeowners and pressure them into paying exorbitant fees to pay off the amount listed to have the NOSI removed from title. This can be especially problematic in scenarios where the amount listed does not reflect the actual balance owed by the consumer.

Potential Solution and Impact:

The ministry is exploring limiting the amount/value that can appear in the consideration field of a NOSI or eliminating the consideration field altogether. Doing so may assist in reducing the ability of bad actors to intimidate consumers by pointing to what appears to be excessive

financial obligations associated with the NOSI and demanding large payments to eliminate the perceived debt and discharge the NOSI.

Questions:

1. Should the ministry consider **removing** the “consideration” field from the NOSI registration form altogether?
 - a) What issues would be addressed by eliminating the consideration on the NOSI form?
 - b) Could issues be created by eliminating the consideration on the NOSI form (e.g., do homebuyers rely on this field for anything? Would businesses be negatively affected in some way? Any other repercussions)?

2. Alternatively, should the ministry consider **limiting/capping** the amount that could appear in the consideration field of the NOSI registration, effectively “limiting” the amount of a NOSI registration?
 - a) If so, what should be the limit (e.g., a certain value, the value of the collateral, etc.)?

3. Are there any other approaches the ministry should consider related to limiting the amount of a NOSI registration? Please describe. For example, should the actual obligation that can be secured be limited if a fixture is used as collateral? Why or why not?

Please include your responses here.

Topic 6: Limit the Amount to be Paid to a Secured Party to Retain a Fixture in Certain Circumstances

Issue:

As outlined above, the amount in the consideration field on the NOSI form is sometimes very high and used by the secured party to intimidate the consumer into paying excessive amounts to discharge the NOSI. Issues with the consideration field in the NOSI form can be compounded if a party acquiring a subsequent interest in land (e.g., a mortgage provider or a subsequent purchaser) sees the high amount and demands that the NOSI be removed, so that the purchaser can obtain “clean title” or a priority position.

In other cases, if the homeowner defaults under the contract which is the basis for the NOSI, a party with a subsequent interest in the land that is subordinate to the security interest (like a mortgage provider) may wish to retain the fixture.

Potential Solution and Impact:

The ministry is considering ways to limit the amount to be paid by a person having an interest that is subordinate to the security interest to a secured party in order to retain the goods upon default by the consumer in certain circumstances. This could have the effect of reducing the harmful effects of NOSIs, as it may make it more difficult for bad actors to leverage high pressure situations if the amount to be paid in these circumstances is limited.

For example, the ministry could consider implementing something similar to provisions in the PPSA legislation of several Canadian provinces. Such provisions enable a person having an interest in the land that is subordinate to the security interest (e.g., a home purchaser) to retain the goods by paying the lesser of the amount of obligation owed by the debtor and the market value of the goods if they were removed by the secured party in certain circumstances.

Questions:

1. In your opinion, should the ministry consider limiting the amount that a person having an interest in the land that is subordinate to the security interest (e.g., a mortgage provider or a home purchaser) may pay to retain the fixture? Why or why not?
 - a) If so, what should the limit be (e.g., the lesser of the amount secured by the security interest and the market value of the goods)?
 - b) Under what circumstances should this be allowed? Please explain. For example, should this option only be possible if the debtor has defaulted on the security

- agreement, the secured party has given the required notice and a person having an interest that is subordinate to the security interest (e.g., a mortgage provider or home purchaser) wants to retain the fixture?
2. Should the ministry consider broadening this idea to limiting the amount that a secured party can demand as a condition of discharging the NOSI? Why or why not?
 - a) If so, what should the limit be, and why (e.g., the lesser of the market value of the goods on the date the NOSI is discharged and the outstanding amount of the secured obligation, or some other amount)?
 - b) If so, under what circumstances should this be allowed and who should be entitled to seek a discharge by paying the limited amount (e.g., any interested person, including the debtor and in all circumstances, or only in certain situations)?
 - c) During the [winter 2023 Consumer Protection Act consultation](#), the ministry proposed a change to the CPA that, if introduced and passed, would introduce a buy-out cost schedule for termination costs that a consumer would have to pay to terminate certain long-term leases (e.g., a hot water heater rental). If introduced and passed, would this complement a proposal to limit the amount required to retain the fixture, or make this proposal unnecessary (because with the underlying contract or related contract that provided for the security interest associated with the NOSI could be addressed)?

Please include your responses here.

Section B: Other Overarching Topics

Topic 7: Scoping Requirements for NOSIs under the PPSA

Issue:

Currently, the PPSA includes specific requirements for NOSIs that are applicable only where the collateral is “consumer goods” (under the PPSA, “consumer goods” are goods that are used or acquired for use primarily for personal, family or household purposes). For example, a NOSI registration that includes a consumer good must set out an expiration date, and the secured party is required to register a certificate of discharge of a consumer NOSI within 30 days after all obligations under the security agreement have been performed or forgiven.

Potential Solution and Impact:

The ministry is exploring how to appropriately scope any new requirements or restrictions placed on NOSIs so that they are only applicable to the types of NOSIs that affect consumers (e.g., homeowners). This could reduce consumer harms while limiting any potential burden on business as a result of new requirements or restrictions.

Questions:

1. If you are supportive of the potential solutions outlined in Section A,
 - a) Do you think that any new restrictions or requirements suggested in that section should apply to *all* NOSIs, or just the types of NOSIs that affect consumers? Please list the topics set out in Section A and indicate whether the new restrictions or requirement should apply to *all* NOSIs or just the types of NOSIs that affect consumers.
 - b) If you think that any new requirements or restrictions should apply to all NOSIs, please set out the reasons (e.g., are you aware of problems related to commercial NOSIs to which the topics set out in Section A would apply)?
2. How would you propose to distinguish between the types of NOSIs (i.e., commercial NOSIs and those that affect consumers)? For example, should the ministry establish a new category of “residential NOSIs” and limit any new restrictions or requirements to NOSIs placed on residential property only?

Please include your responses here.

Topic 8: Alternative Means of Discharging a NOSI

Issue:

Currently, NOSIs can generally be discharged only by the secured party filing a certificate of discharge in the land registry or by a court order issued upon application (e.g., by the consumer).

This creates a situation in which debtors (i.e., consumers) have few options if secured parties refuse or fail to register the certificate of discharge. It generally results in the need to engage in a court process to obtain an order to remove the NOSI.

Potential Solution and Impact:

The ministry is exploring alternative NOSI discharge processes that could make it easier for consumers to have a NOSI discharged, without necessarily having to go to court.

This could involve allowing debtors, under certain specific circumstances, to file a discharge statement (through a Teraview licensee) to have a NOSI removed from title.

Other provinces have similar discharge processes in place and, generally, those provinces first require the debtor to request that the secured party cancel the NOSI and, if this does not occur within a certain amount of time:

- The debtor can then submit specified information to the land registrar, including a sworn statement indicating that they, among other things, did write to the secured party.
- The registrar must then make the appropriate entry in the land register to discharge the NOSI unless the registrar has received a court order not to make the entry.

- If the secured party wishes to dispute the claim, then the onus is on the secured party, rather than the debtor, to pursue court action.

Questions:

1. Should the ministry consider an alternative discharge process as described above? Why or why not?
2. If the ministry pursues an alternative discharge process as outlined above, under what circumstances should a consumer be able to seek a discharge through those means?
 - a) For example, consider the approach taken in B.C., which generally only enables the consumer to seek a discharge, as described above, in limited circumstances such as those listed below (see s. 49(10) of B.C.'s PPSA for further context). Should the ministry only consider enabling an alternative NOSI discharge process in limited circumstances such as the following:
 - i) Where all the obligations of the underlying contract have been performed,
 - ii) The secured party has agreed to release part, or all of the collateral described in the notice,
 - iii) The description of the collateral includes an item or kind of property that is not collateral under a security agreement between the parties,
 - iv) The security agreement to which the notice relates no longer exists, or
 - v) The item or kind of property described in the notice is not affixed to the land.
3. Alternatively, should the ministry consider broader grounds upon which a consumer may be able seek a discharge, such as enabling a consumer to seek a discharge if any provisions of the PPSA have been violated or there is otherwise non-compliance with the PPSA or any applicable Land Registry bulletins (e.g., including any of the potential new requirements discussed in Section A)? Please explain.
 - a) If the ministry were to consider even more extensive grounds upon which a consumer can initiate a discharge, beyond non-compliance with the PPSA or Land Registry bulletins, what should those grounds be?
4. Under the approach taken in B.C., before a consumer can submit specified information to the registrar regarding a cancellation of a NOSI, they must first write to the secured party demanding that the NOSI be cancelled and provide the secured party with 40 days to respond. Should Ontario consider a similar approach?
 - a) If so, how much time should the secured party have to respond?

5. Under the approach taken in B.C., provided that the consumer has provided the Land Registry with the appropriate documents (a true copy of the demand to cancel the NOSI and an applicable sworn statement), then the Land Registry must make the appropriate entry unless they receive a court order that says otherwise (note that, in Ontario, a consumer would have to submit this information through a Teraview licensee and not directly to the Land Registry). This effectively reverses the onus in these situations by requiring a secured party to go to court to maintain their NOSI. Should Ontario also consider this approach? Why or why not?
6. Currently under the PPSA, if a secured party does not discharge a NOSI from title within a specified timeframe when required to, they are liable to the person making the demand, or the debtor, for \$500 and any damages resulting from the failure. Is this an adequate way for consumers to recoup losses or damages because of the failure to provide a discharge? If not, is there another amount that you would propose? Please explain.
7. What are the risks to business if, under the approach outlined above, they are required to seek a court order to maintain their NOSI registration?

Please include your responses here.

Topic 9: Place Restrictions on Who can Register NOSIs

Issue:

Currently, only those authorized by the Director of Land Registration may register electronic documents in the Electronic Land Registration System, which requires meeting certain standards and criteria, including providing proof of:

- Identity
- Financial resources
- Good character/accountability

The Teraview user criteria noted above is relatively limited and could provide the opportunity for bad actors to register NOSIs without strict accountability (for example, if their in-house staff are registering NOSIs directly).

Potential Solution and Impact:

Limiting authorization to individuals who meet additional standards, or only to certain professionals such as lawyers, could strengthen the security and integrity of the Teraview system and help to protect consumers. This could reduce the ease by which exploitative NOSIs could be registered in the first place.

Limiting NOSI registration to lawyers only could potentially decrease the number of exploitative NOSIs being registered as lawyers are held to professional ethical standards, and those who improperly register NOSIs may be at risk of disciplinary action from the Law Society of Ontario (LSO), their governing body. There are precedents of lawyers who are facing disciplinary action associated with NOSIs. A [Notice to the Profession](#) was issued on August 16, 2023, that warned licensees against such practices.

Questions:

1. Should only certain professionals such as lawyers be allowed to register NOSIs? Why or why not?
 - a) If limited to lawyers, should paralegals also be allowed to register NOSIs? Why or why not.
2. If the ministry restricted who may register NOSIs, should that requirement be scoped to only include the types of NOSIs affecting consumers? Please explain (for more context refer to Topic 7: Scoping Requirements for NOSIs Under the PPSA).
3. Is there an alternative approach to restricting who may register NOSIs not mentioned above? If so, why would this be a better alternative?

Please include your responses here.

Topic 10: Adding or Enhancing Available Offences

Issue:

The Consumer Protection Act includes requirements and related offences that may address issues with the underlying contract that are related to problems experienced by consumers with NOSIs. However, there are generally no targeted offences for the NOSI itself in the CPA or in the PPSA (which is the Act where the right to register a NOSI arises).

Potential Solution and Impact:

In extreme cases involving the inappropriate use of NOSIs, action may already be taken against the perpetrator. For instance, there are precedents of lawyers facing disciplinary action associated with NOSIs and a [Notice to the Profession](#) was issued warning licensees against such practices which can act as a deterrent. The Financial Services Regulatory Authority of Ontario (FSRA) is also aware of instances where its licensees are involved in harm arising from the inappropriate use of NOSIs. FSRA takes incidents of suspected fraud or non-compliance seriously and has issued Notices of Proposal on [August 22](#) and [September 8](#) to sanction licensees who failed to meet their obligations when dealing in mortgages for older vulnerable adults who were subject to NOSIs. The subjects of the enforcement action have all requested hearings before the Financial Services Tribunal.

FSRA has previously [warned consumers](#) about door-to-door scams and published [Guidance](#) for detecting and preventing mortgage fraud to reinforce the existing requirement that licensed firms should not commit or facilitate fraud. The Guidance also sets out minimum expectations to the mortgage brokering sector on how to prevent and address fraud.

The ministry is considering adding or enhancing available offences to better target the misuse of NOSIs that is occurring in the marketplace. The ministry is also considering adding or amending penalties to appropriately penalize the individual or corporation responsible for an offence related to the inappropriate use of NOSIs (such as minimum fines).

Adding or enhancing offences targeting the misuse of NOSIs, along with adding or amending penalties, could help deter harmful behaviour by bad actors related to NOSIs, increase business accountability, and impact behaviour in the marketplace to the benefit of consumers. It is important to note that prosecutions of offences are conducted in the broader public interest and would not result in compensation or damages for affected consumers.

Questions:

1. If the ministry were to add or enhance available NOSI offences, what risks or considerations should the ministry keep in mind (i.e., what are examples of harmful business practices or instances of NOSI misuse that could be targeted with additional or enhanced offences)?
2. If the ministry were to add or amend penalties related to added or enhanced offences what should the penalty be? What risks or considerations should the ministry keep in mind related to any added or amended penalties proposed?
3. What penalties should businesses face for failing to discharge a NOSI?

Please include your responses here.

Topic 11: Enhanced Education and Awareness of NOSI Issues**Issue:**

Businesses register NOSIs to notify third parties that they have a security interest in a fixture on the land. This is a legitimate business practice which ensures that if the consumer defaults or fails to make payments as required under the contract, the business can remove and sell the fixture to recover the debt.

However, the ministry is aware of bad actors who register NOSIs against title of consumers' property and misuse them to exploit consumers for financial gain. As outlined previously, consumers may not be aware that a NOSI has been registered on their property, what effect the NOSI has, or what rights it gives the business that registered it. As a result, consumers may be manipulated into paying exorbitant amounts to remove the NOSI.

Both consumers and businesses may be unaware of the requirements associated with registering and discharging NOSIs, further complicating the issue.

Potential Solution and Impact:

Promoting greater consumer awareness about NOSIs could help consumers to better understand their rights and the obligations of businesses. Such awareness initiatives would be in addition to consideration of requirements for business to provide consumers with notice and information about NOSIs registered on their property. This could help support consumers if issues arise related to NOSIs.

By further promoting consumer protection awareness, including general information about NOSIs, through multiple channels, the ministry would be in a better position to offer advice and guidance that could assist consumers when they sign contracts or buy goods and services, including fixtures, from suppliers.

Questions:

1. What are the benefits if the ministry provides consumers with information specific to NOSIs? Please explain.
 - a) To whom should awareness information be targeted? (e.g., consumers, businesses, or professions involved in transactions related to NOSIs, such as lawyers and real estate agents?)
 - b) What information would most benefit consumers (e.g., general information about NOSIs – what they are, how they work; how to discharge a NOSI; or when NOSIs apply, etc.)?
 - c) What information would most benefit businesses (e.g., business obligations related to NOSIs)?

2. What would be the best way to receive information about NOSIs and consumer rights:
 - Receive a newsletter or other information by email
 - Read a blog on the Ontario government's website
 - Join a Facebook group
 - Participate in social media surveys
 - Watch YouTube videos
 - Television commercials
 - Join an online chat or Townhall Meeting in my local community with the Minister of Public and Business Service Delivery
 - Get a brochure/pamphlet when making a purchase/buying a house/signing a contract
 - Read online articles on my local media feed or through Google or another search engine
 - Visit a local trade show booth

Are there any other ways the ministry could inform consumers/businesses to help address this issue?

3. To best determine the type of information consumers feel is important to receive about NOSIs, please share your story/experience with NOSIs on title. What were the circumstances under which you learned about the NOSI?

Please include your responses here.

Topic 12: Additional Operational Changes

Issue:

As noted throughout this paper, the ministry understands that issues associated with NOSIs are complex and may require a multi-faceted approach to address consumer harms. Much of what has been explored in this paper would likely require some legislative or regulatory changes, which could take time to implement. Additionally, legislative changes alone may have relatively limited impact if implemented in isolation.

Potential Solution and Impact:

While operational changes may be required to implement the topics outlined throughout this paper, the ministry could consider additional operational changes that may help to reduce consumer harms.

For instance, the current NOSI registration form, which is completed by Teraview Licensees to register a NOSI, requires the following fields to be filled in by the registrant:

1. name of the secured party
2. consideration (or value)
3. description of the item
4. signature

5. name of the person submitting the form (e.g., the secured party’s lawyer)

The ministry could consider amending the NOSI registration form, to require additional/alternative information.

The ministry could also explore options such as property monitoring (in which homeowners sign up to be notified by the land registry system when there is a registration of any type, including NOSIs, on their property), which could enable consumers to receive information about registrations on their title more easily.

Questions:

1. Should the NOSI registration form completed by Teraview Licensees to register the NOSI be changed to require additional/alternative information? If so, what information should be included on the NOSI registration form?
2. Is there anything else the ministry should consider that could represent an operational change, to the land registry system or otherwise, to help address this issue? Please explain.

Please include your responses here.

Topic 13: Any Additional Suggestions

Questions:

1. Besides the topics and ideas raised in this consultation paper, should the ministry consider any other approaches to address the consumer harms that may arise from the inappropriate use of NOSIs?

Please include your responses here.

Conclusion

The issues related to the inappropriate use of NOSIs are complex and require a comprehensive approach to address the consumer harms that can sometimes arise from the misuse of NOSIs. The ministry is aware that a comprehensive approach would likely include changes to legislation, collaboration with other regulators, agencies, or sectors and intervention at multiple stages of the NOSI issue (i.e., prior to the NOSI being registered, at registration, and at the time of discharge).

As outlined throughout this consultation paper, the ministry is exploring a variety of potential new requirements intended to support consumers impacted by the inappropriate use of NOSIs, which, if implemented together, could collectively reduce the inappropriate use of NOSIs by bad actors in the future. At the same time, the ministry intends to minimize the impact to businesses using NOSIs legitimately to carry out their daily business practices.

Currently, a consumer may only discover a NOSI on title when attempting to sell their home. Under pressure to complete the sale, the consumer could be vulnerable to bad actors using the registration of the NOSI to demand large sums of money as a condition of clearing title and facilitating the sale of the consumer's home.

The ministry is seeking solutions that would address such issues. For example, in the future, **the consumer** could be aware of the NOSI because they received clear, accessible and timely notice of its registration. The consumer may also understand how much it would cost to discharge the NOSI, and the ways in which they can seek to discharge the NOSI. They may also have a right to additional damages if the NOSI isn't properly discharged.

The business could be required to use a lawyer to register the NOSI and re-register the NOSI after only a few years. Additionally, the business may no longer be able to include a high value on the NOSI that they can use to coerce a consumer into paying an exorbitant payout, or register a NOSI for the items they used to (such as plumbing or electrical upgrades).

These added requirements may deter bad actors from misusing NOSIs.

The Ministry is grateful for your contributions that will support the development of new approaches to address some of the consumer harms associated with the improper use of NOSIs, as outlined above.

With your feedback, the ministry will be further in identifying potential solutions that could enhance consumer protection and promote a fair and competitive economy.

Privacy Statement

Please note that unless agreed otherwise by the Ministry of Public and Business Service Delivery, all submissions received from organizations in response to this consultation will be considered public information and may be used, disclosed, and published by the ministry to help the ministry in evaluating and revising its proposal. This may involve releasing any response received to other interested parties. The ministry will consider an individual showing an affiliation with an organization to have given their response on behalf of that organization.

Responses from individuals who do not show an affiliation with an organization will not be considered public information. The ministry may use and disclose responses from individuals to help evaluate and revise the proposal. The ministry may also publish responses received from individuals. Should the ministry use, disclose, or publish individual responses, the ministry will not disclose any personal information such as an individual's name and contact details without the individual's prior consent, unless required by law. The ministry may use your provided contact information to follow up with you to clarify your responses.

The collection of this information is authorized pursuant to the ministry's responsibility for the Consumer Protection Act, 2002 and the Personal Property Security Act. Please note that the ministry is subject to the Freedom of Information and Protection of Privacy Act (FIPPA) and may disclose the information you or your organization provides in accordance with FIPPA.

If you have any questions about the collection of this information, please contact the ministry by email – businesslawpolicy@ontario.ca.

Appendix A

Key Terms, Explained

Building Materials (taken in part from B.C.'s PPSA) – materials that are incorporated into a building and includes goods attached to a building that their removal would necessarily involve the dislocation or destruction of some other part of the building.

Debtor – A debtor is a person who owes payment or performance of an obligation that is secured by a security interest in personal property which includes fixtures. A debtor can be a borrower, a lessee, or any other person who receives credit or value in exchange for granting a security interest in personal property to the secured party. In context of this paper, the debtor is typically a consumer.

Fixture – Fixtures are goods that attach to land and become part of the real property (e.g., water heaters, etc.). Fixtures are unique because they can change from personal property and become part of real property once they attach to a structure or to the land.

- Yukon PPSA's definition - Goods that are installed on or affixed to real property in such a manner or under such circumstances that they would, but for this Act, become in law fixtures to the real property, but does not include building materials.

NOSI – A Notice of Security Interest (NOSI) is a registration on the Land Registry that gives notice to third parties that a lender or lessor has an interest in a fixture on the land. Once registered, every person dealing with the fixture is deemed to have knowledge of the security interest.

Security Interest – A security interest in personal property arises under a security agreement and means that an interest in personal property has been provided to secure payment or performance of an obligation and includes true leases with a term of more than a year and is governed by the Personal Property Security Act. For example, a security interest may arise when financing a car. In exchange for providing the financing, the financing company may obtain a security interest in the car, which provides them with certain rights. This is called a “secured transaction”. If the borrower defaults on the car payments, the financier may be able to take possession of the car and sell it and apply the proceeds of the sale to satisfy the amounts owing.

Secured Party – A secured party is a person who has a security interest in personal property, which includes fixtures, to secure payment or performance of an obligation. A secured party can be a lender, a lessor, a seller who provides financing, or any other person who provides credit or value in exchange for a security interest in personal property. In the context of this paper, the secured party is typically the business that entered into a contract with the consumer.

Teraview – Teraview is a secure online portal that provides access to data in the Government of Ontario’s land records database, and is used by lawyers, paralegals, title searchers, search houses, title insurers, financial institutions and government. Through Teraview, an authorized user may perform searches, create and submit title documents for registration, view and print instruments, plans, official parcel registers and search for writs of execution quickly and easily, without having to visit a ServiceOntario Office.

Appendix B

Consultation Questions – Summary List

Topic 1 – Clarifying “Fixtures”

1. Should Ontario add a definition of “fixture” to the PPSA? Why or why not?
 - a) What are the potential benefits or drawbacks, and possible impacts?
 - b) Please provide a proposed definition for “fixture”, along with an example and rationale. See, for example in **Appendix A**, a definition of “fixture” from the Yukon PPSA, the only jurisdiction in Canada that provides a definition of fixture.

2. All Canadian jurisdictions, with the exception of Ontario, define “building materials” in their PPSA. For example, British Columbia (B.C.) defines “building materials” to include goods attached to a building that their removal would necessarily involve the dislocation or destruction of some other part of the building. See the full definition in **Appendix A**.
 - a) Should the PPSA be amended to define “building materials”? What are the potential benefits or drawbacks?
 - b) If yes, should the proposed definition of “building materials” mimic the one from B.C.? Do you have a proposed definition for “building materials” that is different than the one from B.C.? Please provide, along with an example and your rationale.
 - c) If you are supportive of incorporating B.C.’s definition of “building materials” into the PPSA, do you think this should be supplemented with additional information (e.g., adding, through regulation, a list of prescribed goods that, for certainty, would become a “building material” once affixed to real property, such as roofs)?

3. Is there an alternative approach not mentioned above that would be preferable?
 - a) If so, why would this be a better alternative?
 - b) What are the benefits and drawbacks and potential impacts of this alternative approach?

Topic 2 – Limiting the Duration of NOSI Registrations

1. Previously, where the collateral included consumer goods, the PPSA included a requirement that NOSI registrations must have an expiry date that could not be more than five years past the registration date (a “five-year cap”). Do you support re-establishing this rule? Why or why not.

- a) Would a different time period be more appropriate (i.e., longer or shorter than five years?) Please explain.
 - b) Should the supplier be able to renew or extend the NOSI registration? Why or why not.
 - c) If the supplier can extend, should they be able to only if they extend the registration prior to the expiry date (i.e., if the expiry date has passed, the supplier would be barred from extending), or should they be able to extend so long as the security interest remains active? How long should the supplier be able to extend?
 - d) If a business could renew the registration, should the consumer be notified of the renewal?
 - e) What, if any, additional burden would re-introducing an expiry cap for consumer goods, and the possibility for renewal, have on business?
2. If the ministry were to institute an expiry cap and a NOSI expired and the supplier did not renew it, then the consumer could apply, through a Teraview Licensee, to have the NOSI removed from title, which is expected to be a less burdensome process for the consumer as compared with the current state. In your opinion, would this result in less burden for the consumer? Do you have a recommendation to streamline the process further that the ministry should consider?
3. Besides re-instituting an expiry cap, are there any other ways the ministry could consider limiting the duration of NOSIs? For example, should the ministry consider limiting the duration of the underlying security interest (e.g., in certain circumstances, a fixture cannot be used to secure an obligation for longer than five years)?

Topic 3 – Notice Requirements

1. In your opinion, should NOSIs have notice requirements? Why or why not?
2. If notice is required, should written notice be provided to the consumer *before* a NOSI has been registered, *after* the NOSI has been registered, or *in both circumstances*? Why or why not?
 - a) How long after the registration should a supplier be required to provide notice of the NOSI (e.g., within a set number of days after the registration (for example, within 30 days of the registration))?
 - b) If notice is required to be sent *before* a NOSI can be registered, should the supplier be required to demonstrate it has fulfilled this step before it can register the NOSI? If so, how?

- c) Should a business be required to provide notice of the NOSI to consumers at other times, such as prior to the NOSIs expiry date, or if they extend or renew the NOSI? If so, why?
3. To support the sharing of accurate, clear, and accessible information, the ministry is considering specifying what information would need to be included in the notice provided to the consumer (whether before or after the NOSI has been registered). Is there specific information that, in your opinion, would be important to include in the notice (please provide the type of information and a rationale for why it should be included)? For example:
 - a) Should the business be required to provide a copy of the NOSI registration to the consumer (when notice is provided after registration has taken place)?
 - b) Should the name and contact information of the business be required? Other information?
 - c) Should an explanation of what a NOSI is, does, and the consequences of it be required? And should the notice be required in a specific format?
4. In many Canadian jurisdictions with notice requirements in place, consumers may waive their right to be notified about the NOSI. If the ministry pursued notice requirements for NOSIs, do you think that consumers should be able to waive the right to receive notice? Why or why not?
5. Are there other approaches to requiring notice of the registration of a NOSI that the ministry should consider? Please explain.

Topic 4 – NOSI Assignments

1. If the ministry were to mandate notice of an assignment of a security interest associated with a NOSI, should that notice be provided *before* the assignment, *after* the assignment, or under both circumstances? Why or why not? Please provide any reasons.
 - a) When would a business have to provide notice (e.g., a set number of days prior to the assignment, within a set number of days after the assignment)?
 - b) *who* should be responsible for providing the notice (i.e., the assignor, the assignee, other)?
2. The ministry is considering specifying some of the information that would have to be included in the notice, to support the sharing of accurate, clear, and accessible information with the consumer. Is there any information that, in your opinion, would be important to include in the notice (e.g., details of the assignment, the name and contact information of

the new business, a copy of the registered assignment (where applicable))? Please provide the information and a rationale for why it should be included.

3. Is there anything else the ministry should consider with respect to the assignment of a security interest associated with a NOSI? If offering an alternative, please include a discussion of the rationale and the risks associated with your proposal.

Topic 5 - Limit or Eliminate the Amount/Value on a NOSI Registration

1. Should the ministry consider **removing** the “consideration” field from the NOSI registration form altogether?
 - a) What issues would be addressed by eliminating the consideration on the NOSI form?
 - b) Could issues be created by eliminating the consideration on the NOSI form (e.g., do homebuyers rely on this field for anything? Would businesses be negatively affected in some way? Any other repercussions)?
2. Alternatively, should the ministry consider **limiting/capping** the amount that could appear in the consideration field of the NOSI registration, effectively “limiting” the amount of a NOSI registration?
 - a) If so, what should be the limit (e.g., a certain value, the value of the collateral, etc.)?
3. Are there any other approaches the ministry should consider related to limiting the amount of a NOSI registration? Please describe. For example, should the actual obligation that can be secured be limited if a fixture is used as collateral? Why or why not?

Topic 6 - Limit the Amount to be Paid to a Secured Party to Retain a Fixture in Certain Circumstances

1. In your opinion, should the ministry consider limiting the amount that a person having an interest in the land that is subordinate to the security interest (e.g., a mortgage provider or a home purchaser) may pay to retain the fixture? Why or why not?
 - a) If so, what should the limit be (e.g., the lesser of the amount secured by the security interest and the market value of the goods)?
 - b) Under what circumstances should this be allowed? Please explain. For example, should this option only be possible if the debtor has defaulted on the security agreement, the secured party has given the required notice and a person having an interest that is subordinate to the security interest (e.g., a mortgage provider or home purchaser) wants to retain the fixture?

2. Should the ministry consider broadening this idea to limiting the amount that a secured party can demand as a condition of discharging the NOSI? Why or why not?
 - a) If so, what should the limit be, and why (e.g., the lesser of the market value of the goods on the date the NOSI is discharged and the outstanding amount of the secured obligation, or some other amount)?
 - b) If so, under what circumstances should this be allowed and who should be entitled to seek a discharge by paying the limited amount (e.g., any interested person, including the debtor and in all circumstances, or only in certain situations)?
 - c) During the [winter 2023 Consumer Protection Act consultation](#), the ministry proposed a change to the CPA that, if introduced and passed, would introduce a buy-out cost schedule for termination costs that a consumer would have to pay to terminate certain long-term leases (e.g., a hot water heater rental). If introduced and passed, would this complement a proposal to limit the amount required to retain the fixture, or make this proposal unnecessary (because with the underlying contract or related contract that provided for the security interest associated with the NOSI could be addressed)?

Topic 7 – Scoping Requirements for NOSIs Under the PPSA

1. If you are supportive of the potential solutions outlined in Section A,
 - a) Do you think that any new restrictions or requirements suggested in that section should apply to *all* NOSIs, or just the types of NOSIs that affect consumers? Please list the topics set out in Section A and indicate whether the new restrictions or requirement should apply to *all* NOSIs or just the types of NOSIs that affect consumers.
 - b) If you think that any new requirements or restrictions should apply to all NOSIs, please set out the reasons (e.g., are you aware of problems related to commercial NOSIs to which the topics set out in Section A would apply)?
2. How would you propose to distinguish between the types of NOSIs (i.e., commercial NOSIs and those that affect consumers)? For example, should the ministry establish a new category of “residential NOSIs” and limit any new restrictions or requirements to NOSIs placed on residential property only?

Topic 8 – Alternative Means of Discharging a NOSI

1. Should the ministry consider an alternative discharge process as described above? Why or why not?

2. If the ministry pursues an alternative discharge process as outlined above, under what circumstances should a consumer be able to seek a discharge through those means?
 - a) For example, consider the approach taken in B.C., which generally only enables the consumer to seek a discharge, as described above, in limited circumstances such as those listed below (see s. 49(10) of B.C.'s PPSA for further context). Should the ministry only consider enabling an alternative NOSI discharge process in limited circumstances such as the following:
 - i) Where all the obligations of the underlying contract have been performed,
 - ii) The secured party has agreed to release part, or all of the collateral described in the notice,
 - iii) The description of the collateral includes an item or kind of property that is not collateral under a security agreement between the parties,
 - iv) The security agreement to which the notice relates no longer exists, or
 - v) The item or kind of property described in the notice is not affixed to the land.
3. Alternatively, should the ministry consider broader grounds upon which a consumer may be able seek a discharge, such as enabling a consumer to seek a discharge if any provisions of the PPSA have been violated or there is otherwise non-compliance with the PPSA or any applicable Land Registry bulletins (e.g., including any of the potential new requirements discussed in Section A)? Please explain.
 - a) If the ministry were to consider even more extensive grounds upon which a consumer can initiate a discharge, beyond non-compliance with the PPSA or Land Registry bulletins, what should those grounds be?
4. Under the approach taken in B.C., before a consumer can submit specified information to the registrar regarding a cancellation of a NOSI, they must first write to the secured party demanding that the NOSI be cancelled and provide the secured party with 40 days to respond. Should Ontario consider a similar approach?
 - a) If so, how much time should the secured party have to respond?
5. Under the approach taken in B.C., provided that the consumer has provided the Land Registry with the appropriate documents (a true copy of the demand to cancel the NOSI and an applicable sworn statement), then the Land Registry must make the appropriate entry unless they receive a court order that says otherwise (note that, in Ontario, a consumer would have to submit this information through a Teraview licensee and not directly to the Land Registry). This effectively reverses the onus in these situations by requiring a secured party to go to court to maintain their NOSI. Should Ontario also consider this approach? Why or why not?

6. Currently under the PPSA, if a secured party does not discharge a NOSI from title within a specified timeframe when required to, they are liable to the person making the demand, or the debtor, for \$500 and any damages resulting from the failure. Is this an adequate way for consumers to recoup losses or damages because of the failure to provide a discharge? If not, is there another amount that you would propose? Please explain.
7. What are the risks to business if, under the approach outlined above, they are required to seek a court order to maintain their NOSI registration?

Topic 9 – Place Restrictions on Who Can Register NOSIs

1. Should only certain professionals such as lawyers be allowed to register NOSIs? Why or why not?
 - a) If limited to lawyers, should paralegals also be allowed to register NOSIs? Why or why not.
2. If the ministry restricted who may register NOSIs, should that requirement be scoped to only include the types of NOSIs affecting consumers? Please explain (for more context refer to Topic 7: Scoping Requirements for NOSIs Under the PPSA).
3. Is there an alternative approach to restricting who may register NOSIs not mentioned above? If so, why would this be a better alternative?

Topic 10 – Adding or Enhancing Available Offences

1. If the ministry were to add or enhance available NOSI offences, what risks or considerations should the ministry keep in mind (i.e., what are examples of harmful business practices or instances of NOSI misuse that could be targeted with additional or enhanced offences)?
2. If the ministry were to add or amend penalties related to added or enhanced offences what should the penalty be? What risks or considerations should the ministry keep in mind related to any added or amended penalties proposed?
3. What penalties should businesses face for failing to discharge a NOSI?

Topic 11 – Enhanced Education and Awareness of NOSI Issues

1. What are the benefits if the ministry provides consumers with information specific to NOSIs? Please explain.
 - a) To whom should awareness information be targeted? (e.g., consumers, businesses, or professions involved in transactions related to NOSIs, such as lawyers and real estate agents?)
 - b) What information would most benefit consumers (e.g., general information about NOSIs – what they are, how they work; how to discharge a NOSI; or when NOSIs apply, etc.)?
 - c) What information would most benefit businesses (e.g., business obligations related to NOSIs)?

2. What would be the best way to receive information about NOSIs and consumer rights:
 - Receive a newsletter or other information by email
 - Read a blog on the Ontario government’s website
 - Join a Facebook group
 - Participate in social media surveys
 - Watch YouTube videos
 - Television commercials
 - Join an online chat or Townhall Meeting in my local community with the Minister of Public and Business Service Delivery
 - Get a brochure/pamphlet when making a purchase/buying a house/signing a contract
 - Read online articles on my local media feed or through Google or another search engine
 - Visit a local trade show booth

Are there any other ways the ministry could inform consumers/businesses to help address this issue?

3. To best determine the type of information consumers feel is important to receive about NOSIs, please share your story/experience with NOSIs on title. What were the circumstances under which you learned about the NOSI?

Topic 12 – Additional Operational Changes

1. Should the NOSI registration form completed by Teraview Licensees to register the NOSI be changed to require additional/alternative information? If so, what information should be included on the NOSI registration form?

2. Is there anything else the ministry should consider that could represent an operational change, to the land registry system or otherwise, to help address this issue? Please explain.

Topic 13 – Additional Suggestions

1. Besides the topics and ideas raised in this consultation paper, should the ministry consider any other approaches to address the consumer harms that may arise from the inappropriate use of NOSIs?

Appendix C

For Your Information

The Government of Ontario is sharing the potential solutions found in this paper to seek feedback on NOSI issues and the impact of those potential solutions. Your input will be reviewed as Ontario considers ways to address the consumer harms associated with NOSIs.

Please review the “Privacy Statement” section to understand how your comments and feedback may be used.

Please note that nothing in this paper will become law unless it is included in a bill that is passed by the Legislative Assembly of Ontario, or in a regulation approved by the Lieutenant Governor in Council or Minister as applicable.

Once the consultation has closed, the ministry will share updates on the status of any proposals as appropriate.