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| **PHARMACY PREMISES COMMITTEE OF THE NORTHERN TERRITORY**  **PG4: NT GUIDANCE – LOAN AGREEMENTS & SECURITY AGREEMENTS** |

It is very common for persons purchasing or operating a pharmacy business to finance the purchase or operation though a loan.

A loan can be given on a secured or unsecured basis.

If you are borrowing money on a secured basis, you will usually need to enter into a separate security agreement (in addition to the loan agreement).

Usually:

* the loan agreement will set out the terms on which money is lent by the lender and repaid by the borrower (including the amount, the interest rate and repayment terms); and
* the security agreement will give the lender an interest in a particular asset or property, that is pledged by the borrower as security for the money lent to the borrower. In the event that the borrower defaults, the security can be seized and sold by the lender.

The *Health Practitioners Act 2004* (**the Act**) places restrictions on who can own a pharmacy business. In particular,

Schedule 7 clause 2 (1)(a) of the Act provides that a person must not own a pharmacy business unless the person is:

* 1. a registered pharmacist; or
  2. a partnership of which all partners are registered pharmacists; or
  3. a corporation-
     1. whose directors are all registered pharmacists; and
     2. all shareholders are registered pharmacists.[1](#_bookmark0)

# Loan Agreements, Security Agreements and undue influence

Schedule 7 clause 2 of the Act in effect makes void any provision of a commercial arrangement that gives any person other than an authorised pharmacy business owner, the right to exercise **any** control over the conduct of a pharmacy business. This may include, for example;

* 1. the right to access books of accounts or records kept in respect of that business, otherwise than for the purpose of determining whether or not the conditions of a relevant document are being complied with; or
  2. the right to receive any consideration that varies according to the profits or takings of the business.

Further, clause 11 of Schedule 7 of the Act makes it an offence for anyone to directly or indirectly attempt to coerce or otherwise cause a pharmacist to engage in conduct that contravenes the Act.

*1 Schedule 7 sub-clause 2(4) of the Act sets out some limited exceptions to this requirement which are beyond the scope of this Guidance.*

Prospective pharmacy business owners should be wary of certain contractual provisions that may be used by money lenders or creditors.

In particular, be wary of clauses that:

* allow the lender or security holder to dictate or control the way the business is operated;
* provide that any payment made pursuant to the loan or security agreement (including interest or loan fees) increases or decrease in accordance with the profits of the pharmacy business;
* give the lender or security provider a right to access the records and accounts of the pharmacy business (extending beyond that required to ascertain whether the terms of the loan or security agreement are being complied with- for example whether the pharmacy business is solvent or has not restructured).