

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 22

Topic: Section 420A

Senator Williams asked:15/12/2010 9:10 AM

Does Section 420A also bind liquidators when they are selling up properties?

Answer:

Section 420A would not apply to a liquidator unless the liquidator could be classified as a "controller" of property of the corporation of which he or she is liquidator. A "controller" is defined by s9 of the Corporations Act to be a receiver or receiver and manager of property of the corporation or anyone else who (whether or not as agent for the corporation) is in possession of, or has control, of that property for the purpose of enforcing a charge.

There are circumstances where a liquidator could be bound by the duty in s420A however they are rare as usually the holder of the charge will appoint a receiver or other person (other than the liquidator) to deal with the asset on their behalf pursuant to the terms of the charge.

Ends