

VEHICLE REPOSSESSION



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INTRODUCTION

When you buy a car, truck, or other vehicle on credit, be aware that, until you have made the last payment, your creditor retains important rights in your vehicle. These rights are established by the contract you signed and by the law of your state. Your failure to make timely payments gives your creditor the right to repossess your car.

SEIZING THE CAR

Normally, your creditor has legal authority to seize your car as soon as you "default" on your loan. "Default" will be defined in your contract, but failure to make a payment on time would certainly be an example.

Once you are in default, the laws of most states permit the creditor to repossess your car at any hour of the day or night, without prior notice, and to come onto your property to do so. However, when seizing the vehicle, your creditor may not commit a "breach of the peace." Taking your car over your protest or removing it from a closed garage without your permission may constitute a breach of the peace.

Your creditor may also obtain a court order to repossess the car. If you refuse to relinquish control of the car after being served with the court order you will be

held in contempt of court and may face severe penalties. In Idaho, a creditor may not enter a dwelling or use force to effect a repossession without a court order.

RESELLING THE CAR

Once your car has been repossessed, your creditor may decide to keep the car as full compensation for your debt or to resell it in either a public or private sale. In any case, your creditor must notify you of what will happen to the car. Your creditor must tell you if it wants to keep the car because you have the right to demand that the car be sold instead. You may want to exercise this right if the car is worth more than what you owe on it. Most creditors prefer to sell the car, however, rather than keep it. If your creditor chooses to resell the car at public auction, it must notify you of the date so that, if you wish, you can attend and participate in the bidding. If the vehicle is to be sold privately, you are entitled to a notice of the date after which it will be sold.

In any of these circumstances, you are entitled to buy back the vehicle by paying the full amount owing on it, plus the expenses connected with its repossession, such as storage and preparation for sale.

Any resale of a repossessed car must be conducted in a "commercially reasonable manner." This does not mean that your creditor must get the highest possible

price (or even a good price) for the vehicle. A resale price that is below fair market value, however, may indicate that the sale was not commercially reasonable. A sale made according to standard custom in a particular business or in an established market will be considered commercially reasonable in almost all cases. Failure to resell your car in a commercially reasonable manner may give you either a claim against your creditor for damages or a defense against a deficiency judgment.

Whatever method is used to dispose of a repossessed car, a creditor may not keep or sell any personal property found inside. (This does not include most improvements made to the car itself, such as the addition of a stereo player or luggage rack).

PAYING THE DEFICIENCY

Any difference between what you owe on your loan and what your creditor gets for reselling the vehicle is a “deficiency.” For example, if you owed \$2,500 on the car, and your creditor sells it for \$1,500, the deficiency is \$1,000. If the creditor has followed proper procedures for repossession and sale, it can sue you for a “deficiency judgment” to collect the loan balance. Once a deficiency judgment is entered by the court, the creditor can normally garnish your wages to recover the deficiency.

If you are sued for a deficiency judgment, you will be notified about the date of the court hearing. It may be important for you to appear at this hearing, because it will be your only chance to use any legal defenses you may have. If your creditor breached the peace when seizing the

vehicle or failed to resell the car in a commercially reasonable manner, these may be defenses against a deficiency judgment.

TALKING WITH YOUR CREDITOR

Because it is difficult to dispute a repossession once it has occurred, you should contact your creditor when you first realize you will be late with a payment. Many creditors will agree to a delay, if they believe you will be able to pay later.

Sometimes, it may be possible to negotiate with your creditor to improve your position. If you do reach an agreement to modify your original contract, be sure it is in writing so that it cannot be questioned later.

VOLUNTARY REPOSSESSION

Your creditor may refuse to accept late payments and may demand that you return the car. By agreeing to a “voluntary repossession,” you may reduce your creditor’s expenses in retaking the car, which you otherwise would be responsible for paying. But remember, even if you return the car voluntarily, you are still responsible for any deficiency on your loan, and your creditor may still enter the repossession on your credit report.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

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