

REPOSSESSIONS



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REPOSSESSIONS

What is repossession?

Repossession is when a creditor (such as a bank or car lot) comes and physically takes your car or other possession. Repossession typically happens when you fall behind in your payments or you do not make your payments on time.

When can they repossess?

Read your contract carefully. It spells out what the creditor's rights are when you fail to make a payment ("default" on your payment). There may be a grace period written into the contract, but there may not. Most repossessions happen when the full payment is not made on time. Partial payments will not necessarily stop repossession.

Your car might also be repossessed if the creditor believes you are about to run away with the vehicle, or because you have not taken out insurance on the car and the contract requires that you do so.

How can they repossess?

- *You are not entitled to notice before your car is repossessed.
- *They can take your car in the middle of the night.
- *They can take it from a parking lot while you are at work.
- *They cannot take it if doing so will cause a "breach of the peace".

A breach of the peace is when the person repossessing the car engages in any sort of disorderly conduct or destruction of property. For example, even though they can take your car out of your driveway, they cannot take it from a locked garage where they would have to break the lock to get to it. Even though they can take it from the gas station while you are paying for your gas, they cannot drag you out of the car to take it.

What happens after my car is repossessed?

After the car is taken, you may be able to work something out with the creditor to have the car returned to you. This could involve catching up your payments and paying for the repossession expenses. If you are unable to negotiate a new agreement with the creditor, the creditor may try to sell the car.

Under the law, the creditor must notify you in writing that the car will be sold to pay off the contract you signed. This notice gives you the chance to "redeem" the property. This means that you have the chance to get the car back if you are able to come up with the rest of the contract price in full. If you cannot redeem the car, it will be sold.

The sale can be a private sale or a public sale; the notice will tell you which type. After the car is sold, you will probably be sent a bill for a deficiency balance.

ABOUT DEFICIENCY BALANCES

A deficiency balance is the difference between what you owed on the car when it was repossessed and what it was purchased for at the sale. Most sales on repossessions result in deficiency balances, sometimes in thousands of dollars.

Here's how it might work:

1. You purchase the car for \$5,000.
2. You make payments of \$1,000, then quit paying.
3. The car is repossessed and sold at an auction. It brings \$800 at the auction. The repossession fees were \$200.
4. When the car was repossessed, you owed \$4,000. Add the \$200 repossession fee and subtract the \$800 it brought at the auction. Your deficiency is \$3,400. You can be sued for this amount. If this happens, you could end up with a judgment against you for \$3,400 plus court costs and attorney fees that may be provided for in your contract. All this for a car you no longer have.

VOLUNTARY AND INVOLUNTARY REPOSSESSIONS

An involuntary repossession is one in which the creditor has to send someone out to find and repossess your car. This can result in extra expense for you in the end.

A voluntary repossession is one in which you take the car back on your own. While this will save you the repossession fees, it does not change your legal liability under your contract. You signed a contract to purchase a car for a set amount, and that amount is what you will be expected to pay.

If there is something wrong with the car, and you decide you have made a bad deal, do not simply take the car back to the lot and leave it there. This will be a voluntary repossession; you may still be responsible for a deficiency balance. Get some legal advice about your rights under your contract before you voluntarily take the car back to the dealer. If you find you cannot make your payments, see if you can negotiate with the creditor, or find someone to take over your payments.

LAET'S OFFICES ARE OPEN MONDAY THROUGH FRIDAY FROM 8:30 AM TO 5:00 PM

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This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.

