

Vehicle Repossession: Understanding the Rules of the Road

Chances are you rely on your vehicle to get you where you need to go — and when you need to go — whether it’s to work, school, the grocery store, or the soccer field. But if you’re late with your car payments, or in some states, if you don’t have adequate auto insurance, your vehicle could be taken away from you.

When you finance or lease a vehicle, your creditor or lessor has important rights that end once you’ve paid off your loan or lease obligation. These rights are established by the contract you signed and the law of your state. For example, if you don’t make timely payments on the vehicle, your creditor may have the right to “repossess” — or take back your car without going to court or warning you in advance. Your creditor also may be able to sell your contract to a third party, called an assignee, who may have the same right to seize the car as the original creditor.

The Federal Trade Commission, the nation’s consumer protection agency, wants you to know that your creditor’s rights may be limited. Some states impose rules about how your creditor may repossess the vehicle and resell it to reduce or eliminate your debt. Creditors that violate any rules may lose other rights against you, or have to pay you damages.

SEIZING THE VEHICLE

In many states, your creditor can seize your vehicle as soon as you default on your loan or lease. Your contract should state what constitutes a default, but failure to make a payment on time is a typical example.

Facts for Consumers

However, if your creditor agrees to change your payment date, the terms of your original contract may not apply any longer. If your creditor agrees to such a change, make sure you have it in writing. Oral agreements are difficult to prove.

Once you are in default, the laws of most states permit the creditor to repossess your car at any time, without notice, and to come onto your property to do so. But when seizing the vehicle, your creditor may not commit a “breach of the peace.” In some states, that means using physical force, threats of force, or even removing your car from a closed garage without your permission.

Should there be a breach of the peace in seizing your car, your creditor may be required to pay a penalty or to compensate you if any harm is done to you or your property. A breach of peace also may give you a legal defense if your creditor sues you to collect a “deficiency judgment” — that is, the difference between what you owe on the contract (plus repossession and sale expenses) and what your creditor gets from the resale of your vehicle.

SELLING THE VEHICLE

Once your vehicle has been repossessed, your creditor may decide to either keep it as compensation for your debt or resell it in a public or private sale. In some states, your creditor must let you know what will happen to the car. For example, if the car will be sold at public auction, state law may require that the creditor tell you the time and place of the sale so that you can attend and participate in the bidding. If the vehicle will be sold privately, you may have a right to know the date of the sale.

In any of these circumstances, you may be entitled to “redeem” — or buy back — the vehicle by paying the full amount you owe (usually, that includes your past due payments and the entire remaining debt), in addition to the expenses connected with the repossession, like storage, preparation for sale, and attorney fees. Or you

could try to buy back the vehicle by bidding on it at the repossession sale.

Some states have consumer protection laws that allow you to “reinstate” your loan. This means you can reclaim your car by paying the amount you are behind on your loan, together with your creditor’s repossession expenses. Of course, if you reclaim your car, your future payments must be made on time, and you must meet the terms of your reinstated contract to avoid another repossession.

Any resale of a repossessed vehicle must be conducted in a “commercially reasonable manner.” Your creditor doesn’t have to get the highest possible price for the vehicle — or even a good price. But a resale price that is below fair market value may indicate that the sale was not commercially reasonable. “Commercially reasonable” may depend on the standard sales practices in your area. A creditor’s failure to resell your car in a commercially reasonable manner may give you a claim against that creditor for damages or a defense against a deficiency judgment.

PERSONAL PROPERTY IN THE VEHICLE

Regardless of the method used to dispose of a repossessed car, a creditor may not keep or sell any personal property found inside. In some states, your creditor must tell you what personal items were found in your car and how you can retrieve them. Your creditor also may be required to use reasonable care to prevent anyone else from removing your property from the car. If your creditor can’t account for articles left in your vehicle, you may want to speak to an attorney about your right to compensation.

PAYING THE DEFICIENCY

Any difference between what you owe on your contract (plus certain expenses) and what your creditor gets for reselling the vehicle is called a “deficiency.” For example, if you owe \$10,000 on the car and your creditor sells it for \$7,500,

the deficiency is \$2,500 plus any other fees you owe under the contract. Those might include fees related to the repossession and early termination of your lease or early payoff of your financing. In most states, your creditor is allowed to sue you for a deficiency judgment to collect the remaining amount owed as long as it followed the proper procedures for repossession and sale. Similarly, your creditor must pay you if there are surplus funds after the sale proceeds are applied to the outstanding contract obligation and related expenses, but this situation is less common.

You may have a legal defense against a deficiency judgment if, for example, your creditor breached the peace when seizing the vehicle, failed to sell the car in a commercially reasonable manner, or waited too long before suing you. An attorney will be able to tell you whether you have grounds to contest a deficiency judgment.

ELECTRONIC DISABLING DEVICES

Some creditors might not provide you with financing unless you agree to the installation of an electronic device that prevents your car from starting if you do not make your payments on time. Depending on your contract with the lender and your state's laws, using that sort of device may be considered the same as a repossession or a breach of the peace. How your state treats the use of these devices could affect your rights. Contact your state consumer protection agency or an attorney if you have questions about the use of these devices in your state.

TALKING WITH YOUR CREDITOR OR LESSOR

It's easier to try to prevent a vehicle repossession from taking place than to dispute it after the fact. Contact your creditor as soon as you realize you will be late with a payment. Many creditors work with consumers they believe will be able to pay soon, even if slightly late. You may be able to negotiate a delay in your payment or a revised schedule of payments. If you can reach an

agreement to change your original contract, get it in writing to avoid questions later.

However, your creditor or lessor may refuse to accept late payments or make other changes in your contract — and may demand that you return the car. If you agree to a “voluntary repossession,” you may reduce your creditor's expenses, which you would be responsible for paying. But even if you return the car voluntarily, you still are responsible for paying any deficiency on your contract, and your creditor still may enter the late payments or repossession on your credit report.

Finally, if you are facing, or already in, bankruptcy, ask an attorney for information about your rights to the vehicle during that process.

FOR MORE INFORMATION

To learn more about your rights and specific repossession requirements in your state, contact your state Attorney General (www.naag.org) or local consumer protection agency (www.consumeraction.gov). You can get the phone numbers for these organizations in your phone book, through directory assistance, or through Web directories.

If you need help in dealing with your contract, consider contacting a credit counseling organization. Many credit counseling organizations are nonprofit and work with you to solve your financial problems. “Nonprofit” status is no guarantee that an organization's services are free, affordable, or even legitimate. In fact, some credit counseling organizations charge high fees, which may be hidden, or urge consumers to make “voluntary” contributions that can cause more debt. To learn more about credit counseling, see *Fiscal Fitness: Choosing a Credit Counselor* at ftc.gov/credit.

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To

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file a complaint or to get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP

(1-877-382-4357); TTY: 1-866-653-4261.

The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

FEDERAL TRADE COMMISSION	ftc.gov
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Federal Trade Commission
Bureau of Consumer Protection
Division of Consumer and Business Education

November 2008