



## **WHAT TO DO IF YOUR CAR IS ABOUT TO BE REPOSSESSED**

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When you buy a car or truck on credit, the contract typically gives the lender the right to take back—or repossess—the vehicle as soon as you default on your loan. The contract will tell you what events cause a "default" but the most common one is not making your monthly payments on time.

### **What to Do if You Want to Keep the Car**

- Consider re-financing your loan so that you can better afford the payments. Credit unions usually offer better rates than more conventional auto lenders.
- Ask friends or family to help you with the loan payments.
- See if your lender will work with you and temporarily reduce your payments until you get back on your feet. Be sure to get any agreement in writing.
- Is filing bankruptcy an option? You might be able to wipe out other debts so that you can better afford your car payment. Talk to a consumer bankruptcy lawyer for more information.

### **None of These Things are an Option for Me. Now What?**

- See if your lender will negotiate waiving any deficiency balance if you voluntarily surrender the car to them. This is probably only realistic if your car has substantial value and there is only a small potential deficiency. Your lender also might be willing to negotiate a less damaging mark on your credit if you voluntarily surrender the vehicle to them. Be sure to get any of these promises in writing. You may want to talk to a lawyer before voluntarily turning over your vehicle to make sure you don't have any defenses to the repossession.
- Can you sell the car to a private party and get enough money to pay back the rest of your loan? This will probably only work if you have a lot of equity in your car and it still has significant value.

## **What to Do if Repossession Can't be Prevented**

- Keep all letters and documents from your lender, including the envelopes.
- Remove any non-essential personal property from your car (don't forget the glovebox and trunk). Make a detailed list of any things you must keep in the car, like car seats, jumper cables, flashlights, tools, etc. Or better yet, take pictures or video.
- You do not have to consent to the repo man entering your house or garage. Be persistent and polite and tell them to leave your property. Never use violence against the repo man.

## **Something to Know if You've Made Repeated Late Payments**

If your lender has accepted late payments, it can't repossess your car until the loan is again in default. And the lender has to give you notice, usually in the form of letter, that it will not accept further late payments. In Minnesota, this is called a *Cobb* letter. If your lender has accepted repeated late payments and then takes your car without sending you a *Cobb* letter, it may have wrongfully repossessed your car.

## **Even if You Are Behind on Payments, the Repo Man Can't Do Certain Things During the Repossession**

In Minnesota, the repossession agent has the right to take your car without any notice at any time of day or night. No court order is necessary, as long as the repo agent does not breach the peace. Breach of the peace usually occurs when the repo man uses physical force or threats of force to take your car. And taking the car out of a locked garage is usually considered a breach of the peace. Once the repo man breaches the peace, he loses the right to take your car without a court order. If he still seizes the car, he's broken the law.

If your car or truck has been wrongfully repossessed, you have the right to sue the lender and repo agent for damages. Depending on the terms of your loan, the damages can be substantial. And if the repo man physically assaulted you during the repossession, your damages could be much higher.

## Tips for Defending a Repossession Deficiency Lawsuit

After your car is repossessed, your lender will sell it and apply the sale price to the amount remaining on your loan. In most cases, there is still a deficiency remaining on your loan after applying the sale proceeds. More often than not, your lender will then sue you for that deficiency. If that happens, here are some possible defenses to the deficiency lawsuit:

- **Statute of limitations.** In most Minnesota debt collection cases, such as those involving credit cards, the statute of limitations is six years. However, the statute of limitations for a repossession deficiency claim is four years. If the creditor brings the deficiency lawsuit over four years after you made your last payment, the statute of limitations on the claim may have passed.
- **Incomplete or ineffective assignment of the loan.** Like credit card debts, many repossession deficiency accounts are sold to third-party debt buyers. The debt buyer must be able to provide a complete and detailed chain of title of ownership of your account. Often, the chain of title is either incomplete or does not specifically identify your account.
- **The sale of your car after repossession was not commercially reasonable.** The general rule is that every aspect of the sale of a car after repossession must be commercially reasonable. This essentially means that the creditor must act in good faith and use its best efforts to get a fair price for your car.
- **The creditor accepted your car as a full satisfaction of the loan.** Occasionally, creditors tell people that if they turn over their car voluntarily, they will not pursue the person for a deficiency. Creditors may later deny making this promise. Some courts have held that promising not to pursue you for a deficiency if you turn over your car voluntarily bars that creditor from pursuing a deficiency.