



PREVENTIVE LAW SERIES

AUTOMOBILE REPOSSESSION



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If you borrowed money to purchase your car, either the dealer or a lending institution probably has a security interest in the car if the loan is not yet fully paid. If you fail to make the scheduled payments or otherwise breach your contract, the lender may repossess your car and sell it. This repossession will appear on your credit report.

TYPES OF REPOSSESSION

Voluntary: A voluntary repossession occurs when you personally return the car to the lender or otherwise consent to the lender taking possession of the car. This will normally occur when you are unable to continue making payments, or have already failed to make scheduled payments. Beware, because a voluntary repossession does not relieve you of your duty to pay off the loan and will negatively affect your credit report! If the car is sold for less than the amount you owe, **you are still liable to pay the difference!**

Involuntary: As mentioned above, if you fail to make scheduled payments or otherwise breach your contract, the lender may repossess your car. If repossession is done without your approval, it is an involuntary repossession. An involuntary repossession is legal as long as the lender follows the applicable state guidelines. If there is a court order, a lender may repossess over your objection.

CONSEQUENCES OF REPOSSESSION

Repossession **does not relieve you of your obligation to pay for the car.** A lender has two basic options: to take the car in full satisfaction of the loan or sell the automobile and apply the proceeds from the sale to the outstanding balance on the loan. The second option is the one most dealers choose, because if the car is sold for less money than what you owe to the leasing company, they can still come after you for the balance of the loan. When a lender intends to resell the car, the sale must be conducted in a "commercially reasonable" manner. State law defines what this means. Once sold, the proceeds are applied to the balance of the loan after all repossession, auction, and court costs are paid off. If the sale brings in more money than you owe the auto lender, you are entitled to the amount above what you owe on the loan AFTER repossession, auction, and court costs are paid off. **This almost never happens.** If the proceeds from the sale are less than what you owe, as is usually the case, you are responsible for the difference, and the money is due immediately. Most lenders will accept a payment plan, but you must negotiate this as a new contract and there might be interest payments added on to the balance owed.

OPTIONS TO YOU AS A CONSUMER AND CAR OWNER

It is easier to prevent vehicle repossession from taking place than to dispute it afterward. When you realize that you may be late with a payment, your first action should be to contact your lender. Sometimes you may be able to negotiate a delay in your payment or a revised schedule of payments. Be sure to get any agreements you reach in writing to avoid misinterpretations or the lender claiming they never agreed to change the contract. If your car has not yet been repossessed, you should consider making up any back payments, as well as continuing to make future payments. If you are unable to catch up on the amount you owe on the loan, you should try to sell the car yourself. By selling the car on your own, you will most likely receive more money than a lender will receive at the auction sale. To ensure that title to the vehicle will transfer when you sell it, check with the lender beforehand to determine what the lender will require in order to release title to the automobile. It is advisable that you speak to a legal assistance attorney to discuss the particulars of your situation.

If your car has already been repossessed, you have the following options:

1. Pay the balance of the contract owed, plus back payments and costs the lender incurred in repossession (towing and storage charges); or
2. Some lenders may give you the car back if you pay the past due payments, late fees, costs of repossession, and agree to make all future payments; or
3. Allow the lender to sell the car, possibly at a loss, and risk having to make up the difference between the sale price and the amount you still owe.

If your car has been repossessed, you are entitled to your personal belongings which were in the car at the time of repossession. The repossession company is only forced to store these items for a minimum of 60 days (See California Business and Professions Code §7507.9 for more information).

PLEASE REFER TO THE “AUTOMOBILE REPOSSESSION: REDEMPTION RIGHTS” HANDOUT FOR MORE INFORMATION ON CONSUMER RIGHTS AFTER THE AUTOMOBILE HAS BEEN REPOSSESSED.

LEGAL ASSISTANCE SERVICES

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1100 and 1300 - 1500, and Friday from 0900 - 1045. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

RESOURCES

Federal Trade Commission: (877) FTC-HELP; www.consumer.ftc.gov/features/feature-0009-military-families

- Consumer Information: www.consumer.ftc.gov; (877) FTC-HELP
- File a Consumer Complaint: www.ftccomplaintassistant.gov

California Department of Consumer Affairs: (800) 952-5210; www.dca.ca.gov

California Department of Motor Vehicles: (800) 777-0133; www.dmv.ca.gov

Better Business Bureau San Diego Field Office: (858) 496-213; www.sandiego.bbb.org

National Automobile Dealers Association: www.nada.org

Navy AutoSource: (877) 696-2892; www.navyautosource.com

California Civil Code Section §§ 2981 et seq. (2015).

California Business and Professions Code §§ 7500 et seq. (2015).