



Your Rights in Repossession

What is a creditor?

A creditor is a person or business you owe money to. For example, if you buy a car and are making monthly payments to the car dealership, then the dealership is your creditor.

When can a creditor repossess?

- The creditor must have a paper, usually a loan signed by you, which describes the property and gives the creditor the right to take it if you do not pay (default on) the loan. The property is the “collateral,” and the creditor’s right to take it is the **security interest**.
- A default is usually a missed, partial, or late payment. But it can also be the violation of other parts of your loan – for example, if you do not buy car insurance and the car loan said you had to.
- Paying **part** of what you owe usually will not stop a repossession – unless you make a new, written agreement with the creditor. But if a creditor *regularly* takes late or partial payments from you and does not tell you that you still face repossession, they **may** give up the right to repossess.
- If you have filed for bankruptcy, the creditor can’t repossess without permission of the bankruptcy court.



What property can my creditor repossess?

- The creditor can only take what your agreement with them allows. For example, they can’t keep your TV just because it was in the trunk of the car they repossessed. If they take anything extra and won’t give it back, send them a letter right away demanding it back. Keep a copy of the letter. You can sue to get it back.
- Some things can’t be repossessed, unless the creditor lent you the money to buy them. For example, all of your family’s clothing, food, utensils, and one watch are protected.
- The first \$10,800 of your family’s household furniture, appliances, stereo, radio and TV are also protected unless the loan was to buy these items. But if you bought them on a charge card from a store, and you didn’t pay the bill, then the store might be able to repossess them.

What methods can a creditor use to repossess?

- The creditor can use self-help. They can take back the property without a court order and the sheriff if it does not cause a “breach of peace” by anyone. This means they can ask you for the property, but if you won’t give it back, they have to leave. If you are not there to say no, they can take the property back. But they can’t break into your home or garage to do it. For example, they can tow your car from your driveway or the street if it can be done without conflicts.

OR

- They can start a lawsuit in court called “replevin.” In a replevin, the sheriff does the repossession with a court order. You must obey the sheriff. If you don’t think the repossession was correct, you can file papers with the court asking for the property back.

What if a creditor threatens repossession?

- If possible, talk to a lawyer. A lawyer can look at the loan papers to see if the creditor really has the right to repossess. If you also have other debts, you need to think about an overall strategy – like setting up payment plans or filing bankruptcy.
- Remember that you **can** bargain with the creditor. Repossession costs them money. They might not repossess if they can get money. You may be able to set up a payment plan that will work for you. **Do not ignore the problem.** Talk to them and get any agreement you make with them in writing.



Should I let them repossess?

You have to think over the good and bad side to this based on your case:

- **Good side** – giving them the property back might save you money in the long run. They spend less money getting it back, and can re-sell the item more quickly. This might mean you end up owing less money. Also, you can bargain for some things in return for giving back the property. Ask if they will lower the amount you owe if you return the property. **Get any agreement in writing.** It must be dated and signed by you and the creditor. Keep a copy.
- **Bad side** - If you do not give up the property they have to file a court action to get the property. A court action can be good if you have a legal defense to the repossession or the loan. The problem with it is that the creditor might be able to charge you for their legal costs. This might mean you end up owing more money.

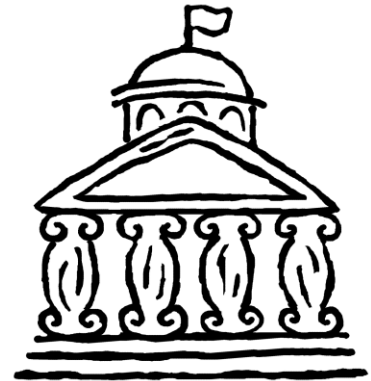
If you decide to not give up the property, be firm but polite. Don’t get into a fight or make threats. But say loudly, “I object! Please leave! Don’t touch my car!” If you have any trouble, call the police. Write down what happened.

What happens after they repossess?

- They can sell the property and put the money toward your debt. The sale must be “commercially reasonable”. This means they must try to get a fair price, but those prices are very, very low. **They must give you notice of the time and place of a public sale.**
- The lender must send you a letter before and after the sale. The first letter tells you when, where, and how the car will be sold. It must also tell you how much you can pay to get the car back. You can get the property back by paying off the loan and repossession costs. You may also be able to work out a payment plan or find another buyer who would pay a good price.
- The second letter comes after the sale. It must tell you how much the car sold for and say whether you still owe any money to the creditor.
- **Note:** Often, they use private sales. If it is a private sale, you must get reasonable notice of a date after which it will be sold.
- Sometimes the creditor can keep the property and cancel the debt. BUT they can’t do this if you have already paid 60% or more of the purchase price. They must notify you first. If you think a sale of the property would bring more money than you owe, you can object within 30 days and force a sale. This can be risky, so talk to a lawyer first.

Can my creditor still sue me afterward?

Sometimes. If you owe them more than they get from the sale, they can sue you for the difference if the loan you signed said they can do this. But state law says they **cannot** do this if the loan was \$7,200 or less when the loan started. You may have other defenses too, so call a lawyer right away if you get sued.



What can I do if my rights were violated?

If you think your creditor acted illegally, get legal help. If you have a low income, call your legal aid office. If the creditor broke a law, they may not be able to win a judgment against you. You might also be able to sue for money damages and to get the property back.

National Association of Consumer Advocates.

www.consumeradvocates.org/find-attorney

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