



## **REPOSSESSION OF YOUR CAR IF NOT ENTITLED TO SERVICEMENS CIVIL RELIEF ACT PROTECTIONS**



(NOTE: Many servicemembers have protection from vehicle repossession under the Servicemens Civil Relief Act (SCRA). You are protected under the SCRA if you took out a car loan and made a payment before entering military service. Please review that fact sheet as well to ensure you are fully informed.)

When you financed or leased your car, you entered into a contract with the business granting you the car or providing you the funds to purchase the car. Through this contract, you entered a binding deal with a creditor where there was an agreement for you to pay some amount of money by some date in your effort to repay the lending company. By giving you the car or funds, the creditor receives a security interest in the car itself in case you fail to abide by the terms of the contract. Failing to abide by the terms of the contract is often labeled as being in default of your obligation. A common example of being in default is when your payment is late. When you enter a state of default, the creditor has a right to repossess your car. However, just because you are in default with regard to the contract, it does not mean that the creditor has an automatic right to repossess your car; the contractual language is controlling. Be aware, however, that a single instance of default is sufficient to enable your creditor to seize your car.

Just because you have defaulted on a car payment, it does not necessarily mean that the creditor will seek repossession immediately. Usually, although not required, the creditor will seek means to collect the overdue payment to rectify the default, sometimes also applying a late fee. However, if the creditor's attempts are unsuccessful, or if the creditor wishes to initiate repossession, even a day after a default payment, they may do so. To avoid losing your car, make sure you review the contract you signed carefully. The business lending you the car or money was required to tell you the amount and date that payments are due per the Truth in Lending Act (TILA); an important disclosure given the frequency and commonality of missed payments constituting default and leading to repossession.

In the event that you are in default of your contract regarding your car, and the creditor does seek to repossess your car, there are certain things of which you should be aware.

1. After default a secured party, the creditor, is permitted by Georgia law to take possession of the car or render the car unusable (such as putting a boot on it). They may take this action at any time of day or night, without judicial process or notice given to you.
2. Just because your car has been repossessed, it does not mean that you are without rights. Although the creditor may repossess your car, he cannot do so in

a manner that “breaches the peace.” There are numerous instances that might result in a breach of the peace but a common example is breaking into your garage to repossess the car. If the individual repossessing your car breaches the peace, the creditor seeking your car may be liable via penalty or compensation to you for the harm incurred.

3. Instead, Georgia law requires the creditor to pursue commercially reasonable ways to obtain the car. Commercially reasonable is defined as “the usual manner [of] any recognized market; at the price current in any recognized market at the time of the [default]; or otherwise in conformity with reasonable commercial practices among dealers in the type of property that was subject to the [repossession].”

4. If your car is repossessed and you have private goods inside the car, the creditor is not permitted to keep, sell, or dispose of your personal property. The creditor is required to notify you after repossession of your car and you have ten days to retrieve any items therein. If the creditor cannot account for any private personal item that was in the car, they may be liable for the amount of the unaccounted for property.

After your car has been repossessed, the seller, or holder of the car, is entitled to pursue a deficiency judgment (a civil suit for additional money owed) against you *within ten days after* the repossession. This is permissible because, oftentimes, the repossession of the car is insufficient to satisfy the amount owed to the creditor. If ten days pass and the creditor fails to notify you of a deficiency judgment suit, they forfeit their right to do so.

In addition to notice of a deficiency suit to recover additional money owed, notice is required to inform you, the debtor, of: the parties involved; the collateral that is subject to the repossession (your car); the intended method of disposition of your car (whether the creditor intends to hold on to your vehicle or sell it); the accounting of the payments you owe; advise you of your right of redemption (the right of the debtor to reclaim their property by paying the amount of the debt owed); contact information; and your right to demand a public sale of your car. If you choose to require the creditor to dispose of the car by public sale, they are required to do so in the same state or country of the sale of the car, where repossession occurred, or your residence. If you elect the car to be sold at a public auction, you must let the creditor know within ten days of him providing notice to you.

Similar to the commercial reasonableness required in repossessing the car, any public resale of the car must also be conducted in a commercially reasonable manner. To ascertain commercial reasonableness, consider the asking price at the public sale; is it drastically above or below fair market value? The creditor is not required to get the highest possible price but failure to resell in a commercially reasonable manner may entitle you to a claim for damages or, possibly, a defense to the creditor’s suit for deficiency against you. Ideally, once the car is sold, the remainder of your payments

will disappear with the car, but if there is any remainder owed to the creditor, such as where the sale of the car was insufficient to repay your creditor, they may pursue a civil suit to recoup the remainder.

After your car has been repossessed there are some options you have in saving yourself some money or even getting your car back. First, if you expect to be late on upcoming payments, let your lender know and negotiate the amount or payment date. If your creditor does not want to renegotiate payments or payment dates and repossession is imminent, voluntary repossession is a viable option to save yourself some money. By returning the car to the lender you will save them multiple expenses that you would eventually have to pay. These expenses might include the costs of locating the car and/or paying for the repossession company's services.

Just because your car is repossessed, it does not mean your car is gone forever. You may be able to "redeem," or pay back, the amount owed on the car and regain it. However, as referenced above, you will be liable for the unpaid balance owed, in its entirety, in addition to any miscellaneous expenses incurred in the repossession of your car. If you pay this amount before your car is disposed of by the creditor, you can receive your car back. Regardless of your decision to try and save some money or regain your car, it is never a good idea to conceal the car and prevent repossession. In some states, this qualifies as fraud and is a felony crime. Additionally, the creditor will have to put more work, and money, in locating the car which you will be liable for at a later date.

If repossession is inevitable, an option might be filing for bankruptcy under Chapter 13. In filing for bankruptcy, your creditor is barred from repossessing your car until your case is adjudicated. However, please be advised that filing for bankruptcy may carry significant ramifications of its own. These ramifications include, but are not limited to, any military person's ability to obtain security clearance. Although an attorney is not necessary to file for Chapter 13 bankruptcy and many of the forms required to do so are available online, it is highly encouraged that you discuss the matter with an attorney to make sure you file the claim appropriately. Please see legal assistance to ensure that you are fully informed before filing.



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