This is the third in a series of articles from NCLC that provide advice for families in financial difficulty. (The other articles are Dealing with Medical Debt [1] and A Reverse Mortgage Primer [2].) The Consumer Debt Advice series is targeted directly to a consumer audience and includes information about legal rights and best strategies for dealing with debt. Readers are encouraged to share these articles with individuals who may benefit—clients, counselors, community groups, clergy, and others. Use the “email” icon at the top of this screen to reach your networks directly.

The focus of this article is on motor vehicle repossession including limits on self-help repossessions, ten strategies to prevent repossessions, six steps to take after your car is repossessed, and advice on responding to the creditor’s demand for additional payment even after the repossession. Far more detail with legal citations is found in NCLC’s Repossessions [3], a comprehensive legal treatise on consumer rights when dealing with motor vehicle repossessions.

Overview

When buying a car on credit, you almost always must put up the car as collateral for the loan. Sometimes consumers also use their cars as collateral for an unrelated small loan. Most of these are high-cost auto title or “auto pawn” loans, which are legal in some states but illegal in others.

If your car is collateral for a loan and you get behind on your payments or violate other loan terms, you risk the immediate repossession of your car. Miss one or two payments and your car may be gone.

A repossession agent may break into your car and drive or tow it away. The process is called “self-help” because the creditor is not required to go to court to get permission from a judge to repossess your car. In most states, the creditor does not even have to notify you that a repossession is about to take place.

There are important exceptions to a creditor’s right to use “self-help” repossession:

• The creditor must have taken the car as collateral or the car must have been leased to you. For example, if you do not pay a medical debt or a credit card debt, the medical provider or card issuer cannot repossess your car.
• In some states, the creditor must first give you notice of the right to catch up on delinquent payments. (See Curing a Default below.)
• A self-help repossession cannot breach the peace.
• Self-help repossession is generally illegal on certain American Indian reservations. In Louisiana, self-help repossession is illegal unless the creditor is a licensed financial institution or bank that has a state or U.S. charter and the repossession agent has a state license. In Wisconsin, the consumer can object to self-help repossession if the consumer does so within 15 days of receiving notice of a pending repossession. Self-help repossession is legal in Maryland only if the credit agreement allows it.
• A creditor cannot use self-help to repossess a car owned by active duty military personnel if the debt was incurred before the individual entered active duty. Children, spouses, and other dependents of active duty military personnel are similarly protected, but only if they apply to a court for an order prohibiting repossession.

After the creditor repossesses your car, the creditor will then sell it, typically for much less than it is worth. If so, you may find yourself being sued for the amount of money that the creditor claims remains to be paid on the loan after deducting the proceeds of the sale. This can be thousands of dollars.

Strategies to Prevent Repossession

Keeping Current on Car Payments. Do not pay credit card debts, medical bills, or other low-priority debts ahead of car payments. If you skip payments on low-priority debts, you will not be in immediate danger of losing your property. Skip one or two car payments and you risk losing your car. If you find it necessary to miss payments on low-priority debts, try to get caught up on your back-payments as soon as possible.

Keep Your Car’s Damage Insurance Current. If your damage insurance lapses, the creditor is likely to add replacement insurance to your car payments that is much more expensive and offers much less protection than insurance you could purchase yourself. You will have even more trouble keeping up your now higher-cost car payments.
Consider Cancelling Other Insurance and Add-ons. Often, as part of a car sale, the dealer has sold you add-on products—a service contract, credit life insurance, credit accident and health (or disability) insurance, credit unemployment insurance, GAP insurance, theft protection, tire protection, key fob replacement, or an auto club membership. These add-ons are often overpriced or even worth very little. Find out whether you can cancel these add-ons and get a rebate of the unused part of their cost. The rebate may help you make one or more of your payments on the car and may make future payments lower.

Negotiate with the Creditor. Some creditors may be willing to allow you to skip a payment or make a payment late. If you get an agreement, confirm it in writing. Make sure the agreement is one that you can comply with. For example, if the creditor allows you to make a payment ten days late, make sure before you agree to this that you really can make the payment then.

Curing a Default. The following states give consumers a right to cure—second chance to make up late car payments before repossession: California, Colorado, Connecticut, the District of Columbia, Iowa, Kansas, Maine, Massachusetts, Missouri, Nebraska, New Hampshire, Puerto Rico, Rhode Island, South Carolina, South Dakota, Virginia, West Virginia, and Wisconsin.

Pay attention to the notice you will get telling you how many days you have to pay the amount past due to avoid repossession. Rights to cure auto leases are available in Connecticut, the District of Columbia, Illinois, Iowa, Kansas, Maine, New Hampshire, New Jersey, New York, Rhode Island, West Virginia, and Wisconsin.

Sell the Car. If you cannot afford your car loan payments, insurance, and maintenance costs, you are generally better off selling the car than having it repossessed. Selling the car yourself before it is repossessed will bring in a much higher price than a repossession sale would, you will not have to pay the creditor for the creditor’s repossession, storage, and sales expenses, and you can obtain a larger rebate on any service contract, automobile insurance, or credit insurance that you cancel along with the sale. Your credit rating will also be higher than if the car is repossessed.

Because the creditor has a lien on your car, you can only sell it with clear title if you use the sale proceeds to pay the creditor the full outstanding balance. If you cannot sell the car for as much as is owed on the loan, you will have to pay the creditor the difference, unless you convince the creditor to take less.

Avoid anyone who offers to “broker” a sale or lease of your car to another consumer. In many states car brokerage is illegal. A scammer may take money from both you and the new “purchaser,” but not complete the paperwork for a real transfer in ownership or forward payments to your lessor or creditor. Instead, you will lose the use of your car but still owe the creditor or lessor the full amount.

Return the Car to the Creditor, but Make Sure You Get a Fair Deal. Done incorrectly, voluntarily turning the car in to the creditor will not help you much. You will still owe the creditor if the repossession sales proceed are less than what you owe and you will have waived your claims and defenses. Voluntarily turning the car in might make sense if you obtain a written agreement from the creditor that you do not owe anything else on the loan. Also try to have the creditor state in the agreement that it will not report the default to a credit reporting bureau.

The situation is similar when you turn in a leased car. It is a common mistake to believe that you will have no further obligation after you turn the car in early. You will have no further obligation (except excess mileage or unusual wear) if you turn the car in at the scheduled termination of the lease. Your liability at early termination may be thousands of dollars. Before turning in a leased car early, negotiate to reduce or eliminate your early termination liability. Make sure to get this agreement in writing.

Thwarting a Self-Help Repossession. Self-help repossession can take place on the street or even in your driveway. But a repossession cannot legally break into a locked garage. Repossessors also cannot seize a car they cannot find, but most states make it a criminal offense to conceal collateral (such as your car) or to move it out of state. It is also becoming more and more difficult to hide a car because of technological advancements in tracking cars.

Most courts say that if you or a family member is present during the repossession and objects, the repossession should not continue. But your objection should not involve force. Politely and firmly tell the repossession not to take the car. Do not be swayed by any legal advice offered by the repossession.

Never resort to force. Never meet force with force. If the repossession uses force or threats, or otherwise breaches the peace, call the police. Do not take matters into your own hands. After the fact, consult an attorney. There are significant legal remedies available to challenge an illegal repossession.

Never resist government officials in the performance of their duties, but make sure the person is not just impersonating a government official. Government officials should only operate pursuant to written court orders and should not assist self-help.
repossessions. Ask for the official’s identity and the reason why the official is there. Inspect any documents the official waives around claiming to be a court order.

When you are delinquent on a car loan, it is risky to bring your car in for repairs to the dealer or anyone else the creditor would know. Do not drive the car to the creditor’s place of business to discuss a work-out agreement. You may have to walk home if you fail to reach a satisfactory arrangement.

File for Bankruptcy Protection. Once you file for either a chapter 7 or 13 bankruptcy, no one can take any action against your property, including repossession. Although a lender may later ask the bankruptcy court for permission to take the car, there can be no repossession before obtaining that permission. A chapter 13 bankruptcy can help you keep the car in the long run because you can spread out your payments (both past-due and new payments) over three to five years. Keeping the car will be more difficult if you file under chapter 7, because at some point you will have to pay the creditor either the lesser of the car’s value or the total amount that remains owed on the car loan.

Minimize the Loss of Personal Property Inside the Car. Property left in a car has a way of disappearing after the car is seized. If you anticipate a repossession, remove your personal property such as tools, GPS devices, media players, clothes, and sporting equipment from your car. Remove any important records from the glove compartment. There are some items, however, such as children’s car seats and a spare tire, that should be left in the car while you use it. Make a list of these items and photograph them so that you will be in a better position to claim them if the car is repossessed.

Get Back Personal Property Left in the Car. Creditors cannot keep your personal property that was left in your car after it has been repossessed. The lender can only keep the car itself. As soon as possible, demand both by phone and in writing any property left in the car specifying each item. Make the request quickly before the property disappears.

In Some States You Can Reinstate the Contract and Get the Car Back. The following states allow a consumer to reinstate the contract after repossession in at least some circumstances: California, Connecticut, the District of Columbia, Illinois, Maryland, Mississippi, New York, Ohio, Rhode Island (although the phrasing of the law is not completely clear), and Wisconsin. Reinstating the contract allows you to recover the repossessed car by paying only the back-due payments, not the full amount of the debt. You may also have to pay the costs of the repossession and any storage charges, plus possibly one or two payments in advance. You must act quickly. In most states where it is allowed, you have only a few weeks to reinstate after repossession.

You Can Redeem the Car. In every state, after a repossession, you can redeem the car. This means that you can get the car back by paying the full remaining amount due plus expenses (redemption does not apply to leases). The creditor must notify you of the date of the car’s sale or a date after which the car will be sold and the creditor must include a telephone number to call to find out how much you have to pay to redeem the car. You can redeem the car up until the very moment before the car is sold.

If you are having trouble keeping up with monthly payments, you are unlikely to be able to pay off the whole debt at once. If a car is important to you and worth more than the debt, consider borrowing from friends, relatives, or elsewhere. Don’t mortgage your house to get your car back because defaulting on that loan may result in your losing your home.

Try to Negotiate with the Creditor. If your car has just been repossessed, you might be able to negotiate to get the car back. You are in a particularly strong position if you have significant claims or defenses relating to the car, its credit terms, or its repossession. If a car has minimal resale value, the creditor should also prefer a workout agreement to a worthless asset.

Get the Car Back by Filing Bankruptcy. You can get your car back by filing bankruptcy, even after it has been repossessed, as long as you do so before the creditor sells it. Once you get the car back, if you want to keep it for the long term, you must make payment arrangements, which as explained below, will vary depending on whether you file a chapter 7 or 13 bankruptcy.

In a chapter 7 bankruptcy, you must pay the creditor the lesser of the full remaining balance of the debt or the car’s value. Some creditors let you make this payment in installments, but other creditors will require you to pay the full amount in one lump sum.

In a chapter 13 bankruptcy, you have several ways of keeping the car. Probably the best one is to set up a plan to pay off the car loan in monthly installments over a period as long as five years. The interest rate charged in a chapter 13 plan can, in some
instances, be lower than what you are paying on the car loan. You may even reduce the amount owed to the current value of the car, if the car’s value is less than the amount you owe, particularly if you bought the car over 910 days before your bankruptcy filing.

When the Repossession Was Wrongful. You can file a lawsuit to get the car back and receive damages if the car was taken improperly, but this will require the help of an attorney.

Creditors’ Collection Efforts After the Repossession Sale—The Deficiency Action

After repossession, the creditor will sell your car and apply the sale price (after deducting all repossession and sale expenses) against the amount you owe. If the net sales proceeds are more than the amount you owe, the creditor must pay you the “surplus.” Far more commonly, however, the net sale proceeds will be less than the amount you owe. When the net sale proceeds is less than the amount you owe, it is called a “deficiency.” If there is a remaining amount due, creditors will then come after you for the deficiency. When a lessor repossesses a leased vehicle, the result is the same. The car is sold and the lessor seeks a further amount called “an early termination charge.”

Once your car has been repossessed, your deficiency obligation is no longer backed up by any collateral, and should be treated as a low priority debt just like a hospital bill or a credit card debt. You should not pay it ahead of more pressing obligations, such as rent or utility bills. With a repossession already indicated on your credit record, an unpaid deficiency amount will not do much more to hurt your credit score.

Many defenses may be available to you if a creditor attempts to collect this deficiency through a lawsuit. The flip side of creditors being able to seize and sell your car without court supervision is that they have to strictly follow certain rules, and they often do not. Your legal rights are strong where the creditor or lessor trips up and you may be able to eliminate the amount demanded, or even end up with a positive recovery for yourself. But you will need help from a lawyer to effectively defend a lawsuit seeking a deficiency or early termination charge. Here are some defenses to look for (see NCLC’s Repossessions [3] for more detail):

1. Claims concerning the car or the credit terms. Was the car a lemon, or did the dealer misrepresent the car’s quality or the credit terms?
2. Is the car collateral on the loan? Sometimes the creditor trips up on a technical requirement to make the car collateral for the debt. Does one spouse own the car and the other spouse is obligated on the loan? Is the car collateral for an earlier loan but not listed as collateral in a refinancing of the original car loan? If the creditor has not taken the car as collateral, it cannot repossess the car, even if you defaulted on a loan used to purchase the car.
3. Were you in “default” when the car was seized? If a creditor routinely accepts your late payments, the creditor may be prohibited from seizing the car just because a payment is late. It may have to notify you first that it will no longer accept late payments. You may not be in default if you gave the creditor notice you were withholding payments because the car was a lemon. Did the creditor repossess before you right to cure period had expired?
4. Did the car’s repossesson breach the peace? When a seizure is wrongful, the creditor generally should not keep the car or collect a deficiency. The creditor may owe you money instead.
5. Improper repossession sale or miscalculation of the deficiency. If the creditor does not sell your car, but instead keeps it, the creditor cannot seek a deficiency. If the creditor sells the car, it must strictly follow correct procedures as to notices and the sale. Failure to follow the procedures exactly often can eliminate the deficiency. You must be notified that the creditor will sell your car, describing the car, the nature of the sale, the time and place of a public auction or the date after which the car will be sold privately, and other important information. The sale cannot be too rushed and it cannot be overly delayed. Every aspect of the sale, including the advertising, the manner, the time, the place, and the terms must be “commercially reasonable.” Look out for low-price sales to insiders.

Check to see if the creditor correctly calculated the amount of its claimed deficiency. If the creditor asks you to pay a deficiency after the car has been sold, in most states the creditor must send you a summary of its calculations, along with an address or phone number where you can get additional information.

6. Auto leases. Your defenses will be different if the car you leased is repossessed. The amount the creditor (also known as “the lessor”) claims you owe must follow the complex formula stated in the lease and must also be reasonable. The terms of the lease also must be properly disclosed and not misrepresented.
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[3] https://library.nclc.org/nclc/link/Repo.01