

# Auto Repossession

## What is Automobile Repossession?

When you buy or lease a car on credit or get a loan, the person or business you owe the money to is called the “creditor.” Often, you will sign an agreement or contract giving the creditor the right to take back your automobile if you miss payments or break your agreement with the creditor (default). When your creditor takes your automobile back, it is called “repossession.”

Repossession is lawful only when the written contract for the purchase or lease of the vehicle states that the creditor has the right to repossess the vehicle. The contract will state the circumstances under which your automobile may be repossessed. Usually the contract will specify that missing one or more payments or damaging the vehicle will result in repossession.

## How and When a Creditor Can Repossess Your Vehicle

The vehicle can only be repossessed if the buyer fails to fulfill all the duties under the contract. The most common failure is the failure to make payments. Other ways to default include filing for bankruptcy and damaging or destroying the vehicle. If there was a co-signer on the contract, he or she must be given notice of the intent to repossess the vehicle prior to repossession.

## After A Vehicle Is Repossessed

### Property Left in the Vehicle

The creditor does not have a right to keep or destroy the personal property that was in the vehicle at the time it was repossessed. Once it is determined there was property in the vehicle, send the creditor a written demand letter asking for the return of the property, and if possible, includes the value of each item in the letter. If your creditor does not return the property, you can sue the creditor for the value of the property, or for its return plus damages.

### Deficiency Actions

If the loan is not reinstated your vehicle will be sold at auction, typically for an amount far less than what is owed to the creditor. You will owe the creditor the difference between the total amount owed on the contract and the amount they received from selling the vehicle, plus any interest. The creditor can also deduct from any sale proceeds any advertisement costs, sales commissions, insurance, storage, clean up, or repair cost incurred prior to the resale of the vehicle. If you do not pay the deficiency when requested by the creditor, you might be sued by the creditor for recovery of the deficiency.

**Don't Delay!**

If you are being sued for a deficiency balance of your auto loan, you only have 30 days to respond to the lawsuit with a written Answer filed with the Superior Court!

## Ways to Prevent Your Vehicle from Being Repossessed

### Keep Up with Payments

A default is often defined as missing even one payment, so the best way to prevent repossession is to keep on top of your payments. Consider making your car payment a priority, ahead of your credit card debts, doctor bills, and other non-secured debts. Delaying on non-secured debts may not have serious consequences.

### Negotiate Before You Default

If you know you are going to be late with your payment, talk with your creditor right away. Many creditors will accept an occasional delay in payment or modify your payment due date. Some may agree to make small adjustments to your loan for a long term solution. Whatever agreement is made between you and the creditor, be sure to get it writing. It is very difficult to prove oral agreements.

### Sell the Car

If you decide you cannot afford the car, another option is to try to sell the car before it gets repossessed. If the creditor repossesses and sells the car, they typically receive much less than the value of the car, and can sue you for the difference. You may be able to get more money by selling the car yourself. This option only works if you can sell the car for an amount that will pay off the loan in full.

### Return the Car (Voluntary Surrender/Repossession)

If you are unable to make payment arrangements with the creditor, the creditor might allow you to voluntarily surrender the vehicle. This is not the most desirable solution, because the vehicle is still likely to be sold, and a deficiency judgment might still be sought. However, it may slightly reduce the amount of the deficiency by eliminating the costs of repossession. Most importantly, you may be able to negotiate with the creditor to get them to waive the right to sue you for a deficiency ("waiver of the right to deficiency").

### "Breach of the peace"

It is against the law for someone who is repossessing a vehicle to "breach the peace" when seizing a car. ( [California Commercial Code §9609](https://tinyurl.com/qpiq48z) (<https://tinyurl.com/qpiq48z>) ) Breaching the peace means that the repossession cannot involve bodily force or threats and they cannot take property over your oral objections. The objection

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does not have to be loud or done with force. You must simply tell the repossession agent not to take the car.

You will not be able to object if you are not physically there, and it is perfectly legal for a locked vehicle in your driveway to be seized. In fact, repossessions often occur in the middle of the night.

Common examples of breaching the peace include:

- Entering a locked garage to take the vehicle.
- Using a police officer to get you to consent to the repossession.
- Using trickery to get consent to repossess or to access the vehicle.
- Using violence or abusive language to intimidate you.
- Disobeying your “in-person” request to leave the car alone.

If a creditor breaches the peace when repossessing your vehicle, they may have to pay the value of the vehicle, less any amount you owe (a tort called “conversion,”) or may lose the right to resell the vehicle, if challenged in court.