

REPOSSESSION

What is repossession?

Repossession is a remedy, that allows a creditor to take possession of your property to enforce a debt you owe to the creditor. This brochure discusses repossessions of personal or household property. It does not discuss foreclosure of real estate, enforcement of liens (e.g., tax liens; mechanics liens), or actions against property used in a business.

In most cases, a creditor's right to repossess comes from a contract with a purchaser or debtor. The creditor's right to repossess must clearly be stated in the contract.

When can a creditor repossess my property?

Usually, you must be in default, meaning violation of the contract, before a creditor can repossess. Default usually means you are behind in your payments, but it can also occur if you violate your contract in other ways (such as failing to have required insurance on the property).

If I am going to be late with my payment, how can I avoid repossession?

You should contact the creditor and try to work out a schedule to catch up on your payments. First you should determine exactly what you can afford to pay, and when. Whenever possible, contact the creditor before you get behind on your payments. Even if a creditor has allowed

late payments in the past, it is not required to do so again.

What can a creditor do to repossess my property?

The creditor can repossess your property without going to court if it can be done without a "breach of the peace". This means that a creditor cannot enter your home, garage or enclosure without your permission. The creditor can, however, repossess a vehicle from a driveway or public street or even your yard, unless you are there and you object. If you object to the repossession, the creditor must take the matter to court.

The creditor cannot use threats or force. The creditor cannot use fraud or deception (such as showing you fake court papers), or threaten to have you arrested.

What if the creditor decides to file a lawsuit?

The creditor may file a lawsuit against you for "replevin". This is a lawsuit which asks that you return property to the creditor. If the creditor wins, you may have to surrender the property, pay money to the creditor, or both. You may also have to pay court costs, repossession fees, and attorney fees (depending on the terms of the contract). The creditor may also elect to simply sue you for the balance of the debt, and not repossess at all.

What if the creditor takes my car and I have personal belongings in it?

A creditor cannot keep, sell or get rid of personal belongings that are not part of the vehicle. However, don't assume the creditor will automatically give these things back to you. You should immediately make arrangements with the creditor to get these things back.

What can the creditor do with my property after it is repossessed?

In most cases, the creditor will re-sell the property and apply the sale proceeds to the debt. The creditor may sell the property at a public or private sale. You are entitled to notice of the sale. In certain limited situations, the creditor may elect to keep the property instead of selling it.

At any time before the sale, you may try to negotiate return of the property, but you cannot make the creditor return the property to you, even if you are able to catch up the payments. If you do work out an agreement to get the property back, get it in writing.

What happens after my property is sold?

If the creditor re-sells the property, it applies the money made from the sale toward the debt. If you still owe the creditor money, the creditor can sue you for the rest of the money owed. The creditor can also ask that you pay the costs of repossession and court costs and attorney fees.

However, there are certain times when a creditor CANNOT sue you after your property has been repossessed. This includes certain small transactions, and cases in which the creditor has kept the property. You should contact an attorney if you are sued after your property has been repossessed.

What if the creditor re-sells the property for a very low price?

The creditor must sell the property in a “commercially reasonable” way. The method, manner, time, place and other terms of the sale must follow reasonable commercial practices. A low sale price does not necessarily mean that the sale price was not “commercially reasonable”. If the price seems very low, however, you may want to talk to an attorney.

Does it help if I turn the property over voluntarily?

You may save costs (such as the costs of repossession) if you turn it over voluntarily. However, the creditor’s rights are generally the same whether it repossesses the property or you turn it over voluntarily.

Can bankruptcy stop repossession or help me get my repossessed property back?

Bankruptcy can stop a threatened repossession, at least temporarily. Some kinds of repossessions can be prevented altogether in bankruptcy. If your property has already been repossessed, you might be able to stop the creditor from reselling it if

you file bankruptcy immediately. If the creditor has already sold the property, bankruptcy will not help you get it back, but it will, in most cases, prevent any collection of the debt after sale.

Can I sue a creditor who repossessed my property? You may have a remedy against the creditor if the repossession was wrongful, if the creditor used force, threats, lies or damaged your property, or if you were not given proper notices of the resale. You should contact a private attorney or Indiana Legal Services if you think there was a problem with a repossession.

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ILS Office Contact Numbers	
Bloomington: (812) 339-7668 1-800-822-4774	Hammond: (219) 853-2360
Columbus: (812) 372-6918 1-866-644-6407	Indianapolis: (317) 631-9410 1-800-869-0212
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