



LEGAL BRIEF

VEHICLE REPOSSESSION

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PREPARED BY

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VEHICLE REPOSSESSION

I. INTRODUCTION TO VEHICLE REPOSSESSION

A vehicle purchase contract is among the most basic and common contracts in the United States. When the buyer has to borrow money to pay for the car, certain universal contract terms will govern the transaction. The most basic principal is that the entity which provides the financing, the Creditor, will take what is known as a secured interest in the vehicle that the purchaser, or Debtor. A secured interest is a legal status where the Creditor has the right to repossess the goods (the vehicle) secured under the contract if the Debtor fails to abide by the terms of the contract. In other words, if payments are not made in full and on time, the Creditor has the contractual right to repossess the vehicle from the Debtor. Until the Debtor completely pays off the vehicle, the security interest remains in force.

II. REPOSSESSION AFTER BREACH OF CONTRACT

A Creditor may repossess a vehicle at any time if the Debtor is in default on payments. There are certain ways, under Nevada law, which this must be done.

The first manner in which a Creditor may repossess a car may be spelled out in the contract itself. A vehicle contract may contain a clause requiring the Debtor to deliver the vehicle back to the Creditor, or provide some other method for the Creditor to retake possession of the vehicle if the contract has been breached.

If there is no contractual method for returning the vehicle to the Creditor, there are two other ways in which a Creditor may retake possession of a vehicle. The first is by what is known as “self-help” repossession. This merely means that the Creditor locates the vehicle and retakes possession of it. However, Nevada law requires that if a Creditor elects to exercise his right to self-help repossession, he must do it without causing a “breach of the peace.” A breach of the peace under Nevada law is very general and can range from causing loud noise to fighting amongst the parties. This means, essentially, that if the Debtor personally objects to a repossession, the Creditor likely cannot repossess by self help. Creditors will generally attempt to avoid causing a breach of the peace by repossessing a vehicle when the Debtor is unlikely to notice the event when it is occurring, such as late at night or while the Debtor is at work.

III. CREDITOR ACTION AFTER REPOSSESSION

Once a vehicle has been repossessed, the Creditor may take action to dispose of the vehicle by reselling to another party to cover the unpaid portions of the original contract price. However, before a Creditor may do this, they must inform the Debtor, in writing by personal delivery or by mail of their intent to do so. The notice must set forth the following:

- The Debtor's right to redeem, and a statement of the payment required to bring the contract back up to date
- Creditor's intent to sell or lease the vehicle to a third party 10 days after notice is given
- Set out the place the vehicle may be returned to the Debtor if redemption is made
- Designate the name and address of the person to whom payment must be made to redeem

The right of the Creditor to redeem the vehicle merely means that the Debtor has the right to make a payment sufficient to bring the contract current and retake possession of the vehicle. If, at the conclusion of the 10 day notice period, the Debtor has not redeemed the vehicle by paying the amount owed under the terms of the contract, the Creditor may resell the vehicle to a third party to recover their losses. Any resale must be done in a commercially reasonable manner. This merely means that the Creditor must sell the vehicle in a manner which is reasonably designed to sell the vehicle for market value. The fact that a sale did not result in a maximum value for a vehicle or that adjustments in the nature of a transaction could have netted a greater sale price do not indicate that a sale was not commercially reasonable. If the vehicle is sold in the usual commercial manner that vehicles are sold, the sale is considered to be commercially reasonable under the law.

Be aware that even after a vehicle is repossessed and sold, a Debtor may still be liable for any amount due on the contract that is not recovered by the resale.

As an example, if a Debtor agrees to borrow \$35,000 for a vehicle, and the vehicle is repossessed when the total amount the Debtor owes is still \$30,000, the Debtor is liable for the complete amount still due. Therefore, if the vehicle only sells for \$22,000 at resale, the Debtor will still owe \$8,000 to his Creditor, even after the car has been resold. In short, do not purchase a vehicle which you cannot realistically afford.

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