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REPOSSESSIONS

When you borrow money to buy personal property (like a car loan), the creditor usually takes a security interest in the property you buy. You give the creditor the security interest in a written agreement signed by you and the creditor. This is usually part of the purchase contract. The secured property is called collateral. If you don't pay, the creditor can repossess (or take back) that property. However, the creditor can't repossess unless you are at least 10 days in default under the contract. If you are not more than 10 days late on your payment you can prevent repossession by paying the money you owe and any late fees.

WHAT IS DEFAULT?

The creditor can only repossess if you're at least 10 days in default under the purchase contract. The definition of "default" needs to be set out in the written security agreement. The most common kind of default is missing payments or being a certain number of days late with your payment. But default may also include such things as failure to maintain insurance on the collateral (this is typically included in vehicle purchases), moving the collateral without the permission of the creditor, selling it, or hiding it from the creditor. Check your contract.

WHAT IS ACCELERATION?

The contract may allow the creditor to give you notice of acceleration if you are more than 10 days in default. Acceleration means that all the money you owe is due all at once, right now. If the creditor properly accelerates the loan, you no longer have the right to make payments over time. You can prevent acceleration by catching up on missed payments and any late fees, or otherwise correcting the default, within 10 days of the due date.

CAN A CREDITOR REPOSSESS IF I CATCH UP ALL MY MISSED PAYMENTS?

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Maybe. It depends on whether the creditor has accelerated the loan. If the creditor has accelerated the loan then he can repossess even if you pay all the late payments and any late fees. You can avoid repossession by paying the entire loan balance if the creditor has already given you notice of acceleration.

Another option which might allow you to keep your property is to file for bankruptcy. Filing a bankruptcy is a serious step, and it may not be a good idea to do it just to keep one certain piece of property, such as a car or furniture. You need to look at the big picture of your financial situation -- all your debts, your property, your income, your ability to make payments for all your other needs, etc. Consult an attorney who is experienced in bankruptcy practice.

SHOULD I VOLUNTARILY GIVE THE COLLATERAL BACK TO THE CREDITOR IF I'M UNABLE TO KEEP UP WITH THE PAYMENTS?

This is usually not a good idea, unless the creditor signs a well-worded written agreement that they are taking the property back as full settlement of your debt, and that they will not come after you for any more money or fees. If you don't get such an agreement, the creditor is still free to try to collect the balance from you, or to resell the property and then sue you for the amount the sale doesn't cover. You may want to consider selling the property on your own instead of giving it back, and then use that money to pay the creditor, if this is allowed by your contract.

MUST A CREDITOR GIVE ME A NOTICE BEFORE REPOSSESSION?

The creditor doesn't have to give you a notice before repossession. However, if you are buying a mobile home, a creditor must give you a notice stating that you are behind on payments, and that you have 30 days to catch up.

HOW MAY A CREDITOR REPOSSESS?

A creditor may repossess any hour of the day or night, without prior notice. A creditor may come onto your property to repossess, but may not commit a breach of peace. Any of the following things is a breach of peace:

- Physical force or threats of physical force.
- Entering your house without permission.
- Taking your property from a closed garage without your permission.
- Taking your property over your objection.
- Pretending to be a police officer.
- Having a police officer present, unless the officer was court ordered to be there.
- Not leaving your property (whether you own it or rent it) after being asked to.

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Unless there is a court order, you have not committed a crime if you refuse to allow repossession or to turn over property you haven't paid for.

If you object to a repossession in any manner, the creditor must leave. If the creditor does not leave after you've asked them to, they are trespassing. You may call law enforcement for help. If you object to a repossession, the creditor can't repossess without first getting a Virginia court order and having a Virginia law officer enforce it.

If the creditor breaches the peace in repossessing your property, you may sue the creditor for damages or to stop the creditor from selling the property.

WHAT IF I DECIDE TO HIDE THE PROPERTY SO THE CREDITOR CAN'T REPOSSESS?

It is a crime for you to hide, destroy, or dispose of the collateral with the intent to defraud the creditor. However, if you keep your car in your garage, for example, the creditor cannot go into the garage to repossess it unless you give permission.

WHAT HAPPENS AFTER REPOSSESSION?

You have the right to redeem (get back) your property after it's been repossessed, but before it is sold. You can do that by paying the full amount due and reasonable costs of the repossession, including towing and storage.

After your property has been repossessed, a creditor can decide to keep it as full satisfaction of your debt, or to resell it. A creditor must tell you in writing if they want to keep your property as full payment of your debt. If you disagree, you have the right to demand that your property be sold instead. Most creditors prefer to sell your property rather than hold onto it.

WHAT NOTICE DOES THE CREDITOR NEED TO GIVE ME BEFORE SELLING THE REPOSSESSED PROPERTY?

The creditor must send you a written notice if they intend to sell your repossessed property. The notice must include: 1) the date, time, and place of sale if it's going to be a public sale; 2) if it's to be a private sale, the date after which it will be sold; 3) a description of the collateral that will be sold; 4) that you will have to pay the balance still owing if the sale does not bring enough to cover the amount due; and 5) that you will be entitled to get the surplus back if it sells for more than the amount you still owe.

WHAT IS A DEFICIENCY JUDGMENT?

If the money from the sale doesn't cover your debt, you may owe the difference (a deficiency). Your creditor may file a lawsuit to get a deficiency judgment. You may have a defense if your creditor illegally repossessed, didn't give proper notice, or didn't sell in a reasonable way. If you

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explain to the court that the creditor didn't get a fair price, then the creditor has to prove differently in order to get a judgment against you. If you get sued for the deficiency, it is a good idea to consult with an attorney to see if you have possible defenses.

WHAT HAPPENS TO OTHER PROPERTY TAKEN ALONG WITH THE PROPERTY I WAS BUYING?

The creditor can only repossess the property that's included in the written security agreement. For example, if you bought certain items of furniture that you gave as collateral for the loan, the creditor can't repossess other items of furniture that were not part of that purchase and security agreement.

A creditor can't keep or sell any property that was taken along with the property you were buying. This includes property or paperwork you may have had inside a repossessed car. However, you're not entitled to get back certain improvements you added to the car, such as a sound system, new wheels, or luggage rack. A creditor must take good care of your other property and must return it to you. If it is not returned, send a demand letter to the creditor to get it back. If it's still not returned, you may sue by use of a Warrant in Detinue. You can visit the General District Court clerk's office to do that.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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