If you lease a car or truck, or if you borrowed money from a bank or finance company to purchase a car or truck, your contract probably says that the lessor or creditor can "repossess" it if you "default." This language in the contract means that if you miss payments—sometimes even a single payment—or in any other way don't live up to the terms of the contract, the lessor or creditor can take back the vehicle.

In Vermont the lessor or creditor can take the vehicle without first going to court and without even notifying you that they intend to take the vehicle. After the repossession they can sell the car and—if the amount they receive from the sale is less than what you owe on the vehicle plus the cost of the repossession—they can collect the difference from you. This amount is called a "deficiency." They will also report the repossession to credit bureaus, which will include the information in your credit report.

AVOIDING REPOSSESSION

Because of the severe consequences of repossession—the deficiency can be substantial and the negative information in your credit report may prevent you from getting credit for up to seven years—you should avoid repossession at all costs. Fortunately, most creditors and lessors are more interested in receiving regular payments than in taking back the vehicle. So if your financial condition has worsened since you purchased or leased the vehicle—e.g., you or your spouse lost your job, you had unexpected medical expenses or there has been some other unforeseen occurrence that hampers your ability to make full payment in a timely manner—let the creditor or lessor know of the circumstances. It may be possible to work out a different payment schedule. If the person you initially deal with rejects your offer, ask to speak to his or her supervisor. Don't give up on your first try!

If things can't be worked out with this creditor or lessor, try other creditors. You may qualify for another loan, such as a personal loan. You can use the money to catch up on your back payments.

THE REPOSSESSION

Contrary to popular belief, the creditor or lessor does not have to give you advance notice of the repossession. If you are in default on the contract, the creditor can take the vehicle at virtually any time and any place. Thus, for example, your vehicle can be taken while parked at your place of employment, the supermarket parking lot or your driveway. The only limitation is that the creditor cannot commit a "breach of the peace." An example of a breach of the peace is taking your car from a closed garage without your permission. Also, if you are present and state your objection before the vehicle is taken, there may be a breach of the peace if the creditor or lessor then proceeds to take the vehicle over your objection.

Regardless of the method or time of repossession, the creditor or lessor is obligated to return to you any personal items found in the vehicle, either at the time of the repossession or within a reasonable period of time afterward.

VOLUNTARY REPOSSESSION

If you are having trouble making payments on time and you seek advice from the creditor or lessor, they may encourage you to allow the vehicle to be "voluntarily repossessed." In this case, instead of having the creditor or lessor take the vehicle, you turn in the vehicle to the dealer or financing agency. While this may lower the cost of the repossession and thus lower your deficiency somewhat, the end result of the repossession remains the same: you are still likely to owe money and the repossession will still appear on your credit report. If an employee of the creditor or the lessor promises that these things will not happen, make sure you get that promise in writing before allowing the repossession.

SELLING THE VEHICLE

After the repossession, the creditor or lessor must give you written notice of the date after which it will be sold. They must also give you an opportunity to buy the vehicle back—or "redeem" it. In order to redeem the vehicle you must pay the balance in full, plus the costs of the repossession—such as the cost of towing and attorneys' fees. You will be credited for any unearned interest. This is your last chance to avoid the harsh results of repossession and you should take advantage of it if at all possible.

If you cannot redeem the vehicle, the creditor or lessor will sell it by public or private sale and reduce the amount you owe by the selling price. Unfortunately, the vehicle will rarely be sold for its fair market value. The usual practice in Vermont is to sell repossessed vehicles at out-of-state auctions, where they are purchased by used car dealers for resale. Thus the amount you will be credited with is likely to be the wholesale value of the vehicle—which is often less than the amount of your outstanding debt.

COLLECTING THE SURPLUS AND PAYING THE DEFICIENCY

If the repossessed vehicle is in good condition and your debt is relatively small, the sale of the vehicle may result in a "surplus" rather than a deficiency. For example: Let's say that you owe $4,000, the cost of the repossession is $300 and the vehicle is sold for $5,000. The creditor or lessor would have to return to you the surplus of $700 ($5,000 - $4,300 = $700).

Because of a combination of a number of factors—the speed with which vehicles depreciate, the fact that in leases there is a minimal or no down payment, and the way vehicles are sold after repossession—it is more likely that you will end up with a deficiency. For example: Let's say that you owe $4,000, the cost of the repossession is $300 and the vehicle is sold for $3,000. You would owe the lessor or creditor $1,300 ($4,300 - $3,000 = $1,300).

The creditor is entitled to use lawful means to collect the deficiency, which may include filing a lawsuit against you or enlisting the assistance of a collection agency.

SOME TIPS ON HOW TO AVOID REPOSSESSION PROBLEMS

Often consumers run into repossession problems because of unexpected events, such as layoffs and uninsured medical costs. However, many consumers encounter difficulties simply because they spend more on vehicles than they can afford. Automobile leasing allows consumers to obtain vehicles with a minimal or no down payment and with relatively low monthly payments. As a result, consumers are often encouraged to lease much more expensive cars than they would have purchased in the past. Adding to the problem is that competition in the credit industry has led creditors to offer car loans to individuals who in the past would not have qualified for credit based on their current income and past credit history.

- Try to keep your purchase costs as low as possible. Don't buy or lease a more expensive vehicle than you can afford. Shop around for the lowest rate of interest—expressed as the "annual percentage rate" or APR. Don't buy overpriced and unnecessary options, such as credit life and disability insurance, rustproofing and paint protection, and extended warranties or service contracts.

- Remember that leasing a vehicle is not the same as renting one. You are obligated to make your payments until the lease expires. You cannot simply return the vehicle and walk away from the transaction without risking a substantial deficiency.

- If you are having trouble making payments, contact the creditor or lessor and explain the situation. Try to work out a new payment schedule that will work for both of you.

- Finally, if you simply can't make your payments, ask the creditor or lessor to help you find a buyer for the vehicle at fair market value.

WHERE TO GO FOR HELP

If you believe that you have been treated unfairly by the lessor or creditor in the course of a repossession, you should contact the Attorney General's Consumer Assistance Program at the following address:

Consumer Assistance Program
Morrill Hall-UVM
Burlington, VT 05405-0106
Phone: 800-649-2424 (toll-free) or
802-656-3183 (Chittenden County)
e-mail: Consumer@uvm.edu

If you are having difficulty managing your debts, the National Foundation for Consumer Credit may be able to provide assistance. For more information about their services, or to schedule an appointment, contact them at:

Consumer Credit Counseling Service of Vermont and New Hampshire
P.O. Box 676
Concord, NH 03302
Phone: 800-327-6778 (toll-free)

BROCHURES AVAILABLE:

Car Leasing

New Car Lemon Law

Car Repossession

Charitable Solicitations

Consumer Assistance Program

Credit Card Rights

Your Rights Under Credit Reporting Laws

Debt Collection

Home Improvement

Identity Theft

Telemarketing Fraud

Work-at-Home Schemes and Multilevel Marketing

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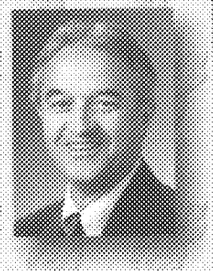
Tips

FOR SMART CONSUMERS

Car Repossession

From the Office of
Attorney General
Bill Sorrell