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Repossessions and Deficiency Judgments

When you buy property on time or borrow money to buy property, the creditor usually takes a security interest in the property you buy. This means that if you don't pay, the creditor can take (or repossess) that property. (A person or business you owe money to is called a creditor.) However, you have important legal rights that protect you.

When may a creditor repossess?

In Virginia, a creditor may not repossess unless you're more than 10 days late with a payment. If you make all missed payments and any late fees, within 10 days of the due date, a creditor may not repossess. If you are more than 10 days late with all or part of a payment, a creditor may repossess. However, if your creditor has agreed to accept your late payments or to change your due date, repossession may not be allowed. A change in your due date may happen orally or in writing, or by your creditor repeatedly taking late payments without complaint.

What happens when a creditor "accelerates" a contract or loan?

If your contract or loan is accelerated, all the money you owe is due all at once, right now. In this case, you no longer have the right to make payments over time. In Virginia, a creditor may not "accelerate" a contract or loan unless you're more than 10 days late with a payment. If you make all missed payments and any late fees, within 10 days of the due date, a creditor may not accelerate.

May a creditor repossess if I catch up all my missed payments?

If a creditor has not accelerated your contract or loan and you make all missed payments and any late fees, the creditor may not repossess. Even after you're more than 10 days late with a payment, a creditor can't refuse your payment and repossess if the creditor hasn't accelerated.

If a creditor has accelerated your contract or loan, you can't simply make all missed payments and any late fees. Even if you make all missed payments and any late fees, all the money you owe is due all at once, right now. In this case, you may need to file bankruptcy to keep your property.

Must a creditor give me a notice before repossession?

A creditor doesn't have to give you a notice before repossession. A creditor usually

doesn't have to give you a notice that you are behind on payments, or a notice that you may catch up your payments. However, if you're buying a mobile home, a creditor must give you a notice that you are behind on payments, and that you have 30 days to catch up your payments

How may a creditor repossess?

A creditor may repossess only if that can be done without a breach of the peace. 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 the peace. Any of the following things is a breach of the peace.

- Using physical force or threats of physical force.
- Entering your house without your permission.
- Taking your property from a closed garage without your permission.
- Taking your property over your objection or protest.
- 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.

If you object to a repossession in any manner, the creditor must leave. If the creditor doesn't leave, that is a trespass. Whether you are an owner or a renter, 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.

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

If the creditor breaches the peace in repossessing your property, you may sue the creditor. You may sue for damages. You also may sue to stop the creditor from selling your property. If there is a breach of the peace, a creditor may lose the right to get a "deficiency judgment." This is the difference between what you owe on your debt and what the creditor gets when reselling your property.

What happens after repossession?

After your property has been repossessed, a creditor can decide to keep it as full payment of your debt, or to resell it. A creditor must tell you in writing if it wants 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. If so, a creditor must tell you these things in a written notice.

- Your name and the creditor's name.
- A description of your property.
- How they plan to sell your property.
- Your right to a statement of charges and payments (an accounting)

- The time & place of any public sale, or the time after which there will be a private sale.
- A phone number to call to find out how much you must pay to get back your property.
- A phone number to call to find out more about the sale.

The notice also must tell you that the money from the sale will reduce the amount you owe. If the creditor gets less money than you owe, then you will owe the difference. If the creditor gets more money than you owe, then you will get the extra money, unless the creditor must pay it to someone else.

What happens if I return my property voluntarily?

Even if you return your property without being forced to, that does not wipe out your debt. A creditor still must decide whether to keep it as full payment of your debt, or to resell it. If a creditor wants to keep your returned property as full payment, it still must tell you in writing. If you disagree, you have the right to demand that your property be sold instead.

If a creditor wants to sell your returned property, it still must give you the same type of written notice needed to sell repossessed property. Even if you return your property without being forced to, if the creditor gets less money than you owe, then you will owe the difference.

What happens to other property taken along with the property I was buying?

A creditor can't keep or sell any property that was taken along with the property you were buying. This includes property you may have had inside a repossessed car. This doesn't include improvements made to the car itself, such as a stereo or luggage rack. A creditor must take good care of your other property and must return it to you.

What do I do if the creditor does not return my other property?

If the creditor does not return your other property, you may file a lawsuit against the creditor to get your property. You can file a lawsuit in the General District Court for up to \$25,000. You may file the lawsuit by yourself, without an attorney. Each General District Court also has a Small Claims Division, where attorneys are not allowed. You can file a lawsuit in the Small Claims Division for up to \$5,000.

To file this lawsuit, you must go to the General District Court Clerk's office. Ask for a "Warrant in Detinue." Even though this court form is called a "warrant," it is not used in a criminal case. It is used in a civil (non-criminal) case.

You will need to list each item of property you want returned and give a value for each item. If you forget to list any item, you will not be able to get that item back without filing another Warrant in Detinue.

You must file in one of two places. One place is the county or city where the property is located. The other place is the county or city where the business you want to sue is located.

The filing fee is \$44, plus \$12 for each person or business you are suing. If you win, the judgment will include your filing & service fees. If you win, the judgment will include your filing & service fees. If you can't afford the filing and service fees, ask for the "Petition for Proceeding in Civil Case Without Payment of Fees or Costs." This also is called "Form CC-1414."

What happens when the creditor sells my property?

A creditor must give you at least 10 days' notice before selling your property. A creditor also can't delay too long before selling your property. Several months usually is not too long, but a year usually is. A creditor must sell your property in a reasonable way. This doesn't mean a creditor must get the highest possible price for your property. It does mean a creditor must get a fair price for your property.

The method, manner, time, place and terms of the sale must be reasonable. A creditor must advertise the sale enough to get a fair price. A resale price significantly below the fair market value may show your property was not sold in a reasonable way. After your property is sold, a creditor must tell you these things in a written notice.

- Your debt before the sale.
- How much your property was sold for.
- Your debt after the sale.
- Any expenses of repossession and sale.
- Any credits or rebates owed to you.
- The amount you still owe (deficiency) or the amount of extra money you get (surplus).

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 explain to the court that the creditor illegally repossessed, didn't give proper notice, didn't sell in a reasonable way or didn't get a fair price, then the creditor has to prove differently in order to get a judgment against you.