

Factsheet: Repossession of Motor Vehicles

This factsheet explains your rights and what you can do if you are facing repossession of your car.

In this factsheet, 'Credit Law' refers to the National *Consumer Credit Protection Act 2009* (NCCP) and the National Credit Code (NCC).

What is repossession?

When you buy a car on credit (by borrowing some or all of the price of the car), the lender (e.g. a bank, finance company or car dealer) will usually take a mortgage (also known as a security agreement) over your car, as security for the loan to you.

A mortgage gives the lender the right to take your car from you if you stop making payments on your loan, without having to go through the court process. Taking your car is called repossession.

The rights of the borrower (you) and the lender (the bank, finance company or car dealer) are set out in the mortgage and the loan contract that you sign when you purchase your car.

There are also laws that may protect you, regardless of what your mortgage or loan document says. However, these laws do not apply in all circumstances.

If you are borrowing money to buy a car or other goods, do not sign a statement that your loan is for business purposes unless it really is.

Signing a statement that says your loan is for business purposes may cause you to lose the Credit Law consumer protections.

If you have signed a business purpose declaration but you did not intend to use the car for a business purpose (or you intended to use the car only partly for business), seek legal advice about whether the declaration is valid.

Requirements of lawful repossession

If the Credit Law applies to you then there are rules the lender must follow if they want to repossess your car:

1. You must have signed a written mortgage;
2. You must have "defaulted" on your loan (for example, failed to make one or more payments on your loan);
3. The lender must give you a default notice giving you at least 30 days to fix the default. You can use the 30 days to pay the outstanding amount or negotiate a reduction in payments (see our Factsheet **Negotiating with Creditors**);
4. A lender generally cannot repossess your car if the amount currently owing on your loan is less than 25% of the total amount of your original loan, or \$10,000, whichever is less;
5. The lender cannot take your car from your or anyone else's premises unless there is a court order or you or the person living there agree in writing (after being told of your or their rights);

6. If the lender requests consent from you in person, they may only request that consent between 8am and 8pm, Monday to Saturday (and not on public holidays);
7. If you do not agree to repossession, the creditor may apply to the court for an order requiring you to hand over your car. You must comply with the court order or you can be fined. You should ask to see the court order.

Your rights after repossession

After your car has been repossessed, there are rules the lender must follow:

1. Within 14 days, you must be notified in writing of the car's estimated value, the enforcement expenses and, if enforcement expenses are increasing, the rate of that increase. You must be provided with a statement of your rights. Your car cannot be resold for 21 days after the notice has been issued;
2. You can object if the lender charges you unreasonably high expenses for repossessing and reselling your car;
3. You can find a buyer yourself who you can introduce to the lender at any time during the 21 days after you have been notified of the repossession. This may help ensure your car is sold for the highest possible price;
4. If the lender sells your car for more than the amount outstanding on the loan plus their reasonable costs, they must give you the rest of the money received from the sale of your car;
5. If you still owe money on the loan after your car has been sold, the lender must notify you of how much you still owe. This 'residual amount' will then be payable by you. Unless you can reach an agreement with the lender, they may start legal action to recover this.

What can you do if repossession has started or is threatened?

- Pay the arrears, reasonable enforcement costs and your regular repayment to get the contract reinstated;
- Try to negotiate with the lender;
- Check that the lender has followed all the requirements listed above. If not, you can lodge a dispute with the Australian Financial Complaints Authority (AFCA) if the lender is a member of AFCA; or
- If the lender has breached their obligations, you can apply to a court to have the car returned, even if you have not fixed the default.

If you have not been able to make repayments because of financial hardship or another reason, you can get free, confidential help from a financial counsellor or a community legal centre.

What happens after the sale of the motor vehicle?

The lender is obliged to notify you in writing of the amount the car was sold for, the amount left from the sale after their costs have been deducted, any residual amount required to pay out the loan, and details of any further recovery action.

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This factsheet is not a substitute for legal advice. If you have a problem, please contact Redfern Legal Centre at www.rlc.org.au/contact or phone 02 9698 7277.