

Factsheet No.10

Repossession of Motor Vehicles



This factsheet looks at your rights and what you can do if you are facing repossession.

- **What is repossession?**
- **The requirements for a lawful repossession**
- **Your rights after repossession**
- **What should you do if repossession has started or is threatened?**
- **What happens after the sale of the motor vehicle?**

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 (for example a bank, finance company or car dealer) will usually take a mortgage (also known as a charge) 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 is also law that may protect you, regardless of what your mortgage or loan document says. However, the law does 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 mean that you could lose the consumer protections in the Credit Law.

If you have signed a business purpose declaration when you do not intend to use the goods for a business purpose (or you intend to use the goods partly for business and partly for personal use), seek legal advice as to whether the declaration is valid.

The requirements for a lawful repossession

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

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 (which tells you the payments you have failed to make) prior to repossessing your car. The notice must give you at least 30 days to remedy the default. You can use the 30 days to pay the outstanding amounts, or negotiate a reduction in payments (see Factsheet: "[Negotiating with Creditors](#)");
4. a lender cannot without the consent of the court repossess your car if the amount currently owing on your loan is less than 25% of the total amount of your original loan or \$10,000.00, whichever is the lesser (note, there are some exceptions);
5. the lender cannot take your car from your premises or anyone else's unless you agree or the person living in those premises agrees in writing (after being informed of your or their rights) to the lender entering the premises or

there is a court order;

6. a lender can only repossess your car 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

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After your motor vehicle has been repossessed, there are some rules the lender must follow.

1. Within 14 days of repossession, you must be notified in writing of the estimated value of the vehicle, and the enforcement expenses that have been incurred up to that point. You must also be provided with a statement of your rights as a consumer. Your car cannot be resold until 21 days after this notice has been issued;
2. You can object if the lender charges you expenses for repossessing and reselling your car if they are unreasonably high;
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. Finding a buyer yourself may be the best way to 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 the reasonable costs of repossession and sale, the lender must give you the rest of the money received from the sale of your car;
5. If you still owe money on the loan even after your car has been sold, the lender must notify you how much you still owe ("the residual amount"). This residual amount will then be payable by you. Unless you can reach an agreement with the lender for the repayment of the residual, the lender may start legal action to recover this amount.

What can you do if repossession has

started or is threatened?

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- Pay arrears, reasonable enforcement costs and contract repayment to get contract reinstated.
- Try to negotiate with the lender.
- Check that the lender has followed all the requirements listed above. If you suspect that they have not, lodge a dispute to the external dispute resolution scheme (EDR) of which the lender is a member.
- If the credit provider has breached their obligations under Credit Law, the consumer can apply for the return of the vehicle, even if the consumer has not remedied the default. Goods can be returned at the credit provider's expense, plus compensation.

What happens after the sale of the motor vehicle?

The credit provider must sell the vehicle as soon as is reasonably possible for the best price it can reasonably obtain. Enforcement and sale expenses are deducted from the sale amount, and the balance goes to paying the loan.

The credit provider is obligated to notify you in writing of the amount for which the vehicle was sold, the amount left from the sale after costs have been deducted, the amount required to pay out the loan, and details of any further recovery action.

In the majority of cases, there will still be an amount left owing on the loan. If this is the situation in your case, it will be necessary for you to make a repayment arrangement with the credit provider to pay out the remaining amount left owing on the loan.

Therefore, it is generally advisable to maintain repayments throughout the repossession process to minimise the amount you have to pay back following the sale of the goods or vehicle.

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Produced by Redfern Legal Centre.

This factsheet is a guide to the law in New South Wales, Australia. It is not a substitute for legal advice. If you have a legal problem seek legal advice from your local community legal centre or legal aid office.

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