

Repossession

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What is a creditor?

A creditor is a person or business that you borrowed money from and have not repaid. For example, if you took out a loan to buy a car and are making monthly payments, then the car dealership is your creditor.

What is Repossession?

Repossession is when a creditor takes back property that's attached to a loan with an unpaid balance. An item that's attached to a loan is known as "collateral". Cars, homes, and rent-to-own items are typical types of collateral.

What property can my creditor repossess?

A creditor can only repossess property that is 'attached' to a loan on which you still owe money. Property 'attached' to a loan is property that you give the creditor a right to take if you default on the loan. For instance, in order to get a loan to buy a house, creditors will require you to sign a mortgage. A mortgage gives the creditor rights to your house if you default on that home loan.

However, a creditor can only take what your agreement with them allows. For example, the car dealership can't keep your TV just because it was in the trunk of the car they repossessed. If they take anything extra and won't give it back, send them a letter right away demanding it back. Keep a copy of the letter. If a creditor takes property they don't have a legal right to, you can sue to get it back.

Some things can't be repossessed, unless the creditor lent you the money to buy them. For example, all of your family's clothing, food, utensils, and one television are protected.

How can a creditor legally repossess your property?

There are two ways in which a creditor can legally repossess your property:

1. The creditor wins a lawsuit against you for an unpaid debt on a good, such as a car or large appliance, purchased with credit.
2. The creditor performs a legal “self-help” repossession, meaning they repossess property that has an outstanding debt without going to court.

What are my rights under Wisconsin Repossession Laws?

In Wisconsin, a creditor can legally file a claim for repossession or start a “self-help” repossession if the following conditions are met:

1. **Your loan is in default**, meaning you owe more than one full payment for more than 10 days.
2. **Your creditor provided you with a notice of default** and your right to cure (right to repay the debt) if applicable. This notice must be sent by regular postal mail.
 - a. The creditor is not required to give you a right to cure more than twice within 12 months if:
 - i. You were in default before for the same item

AND
 - ii. You received notice of right to cure in a previous default

AND
 - iii. You already paid the previous default(s)
 - b. The notice must include the following:
 - i. The name, address, and telephone number of the creditor (the lender);
 - ii. A brief identification of the consumer credit transaction (the documents signed by the consumer);

- iii. A brief description of the collateral or goods (property being repossessed).

Important: Lenders are only required to send these letters – there is no requirement that they have to be actually received. If you have moved, it is your responsibility to update your address with the lender or have your mail forwarded to your new address.

- c. If your property that the creditor is attempting to repossess is leased property, then the creditor must include the following in their notice of default.
 - i. A statement that because you didn't pay back the loan as agreed, the creditor might be able to take back the things you put up as collateral without telling you again or going to court.
 - ii. A statement saying if you didn't default on the loan or if you disagree with the creditor's right to take back your things, you can ask the creditor to take you to court by telling them in writing within 15 days of getting the notice. See our [template letter](#).
 - iii. A statement that if the creditor takes the loan default issue to court, you may be required to pay court costs and attorney fees.

3. **Fifteen days have passed since you received the notice of default.**

Once you receive the notice of default by mail, a creditor must give you the opportunity to pay the outstanding debt (cure the default). Specifically, creditors must wait 15 days before they can legally repossess your property.

Example: If the creditor placed their notice of default in the mail on May 1st, the creditor could not repossess your property until May 16th.

A “self-help” repossession (without a court order) is only legal if in addition to 1-3, the following are also true:

- **You did not request in writing within 15 days of receiving the notice of default that the creditor take you to court.**

Remember, your rights under Wisconsin repossession laws require the creditor to send you a notice of default which includes a statement saying if you didn't default on the loan or if you disagree with the creditor's right to take back your

things, you can ask the creditor to take you to court by telling them in writing within 15 days of getting the notice. If you send them that request to take you to court within 15 days of receiving the notice of default, *the creditor cannot legally perform a self-help repossession*. They must go to court first.

- If you send a request for the creditor to take you to court, keep a copy of the request for your records. It's a good idea to send one copy of the request to the creditor by regular mail and another copy by certified mail so you can prove to the court that you sent the request.

- **The creditor did not disrupt the peace.**

In Wisconsin, “no means no”. Even if the creditor has met all the above criteria and can legally repossess your property, they cannot do so if you verbally object while the repossession is occurring. A simple “stop” or “get away from my property” is all that is required to object to the repossession. You may want to record the interaction on your phone if there are no witnesses so there is documentation that you objected. There is no need to use violence, in fact, it will make your situation worse.

- **The creditor did not invade your privacy.**

During the repossession, the repossession agent may not enter your home or a garage (even if it is a detached garage) to conduct the repossession. A repossession agent also cannot open an unlocked gate to access the vehicle and they cannot break into anything that is locked.

Important: The presence of a police officer during a repossession does not mean that the repossession is legal. Repossession is a civil matter, not a criminal one, and for that reason the police should not be involved. The police cannot arrest you for objecting to an otherwise lawful repossession (unless you break the law), and they **cannot search your car or residence without a warrant**. A repossession that occurs despite a verbal objection breaks the peace, which makes the repossession illegal.

What happens after a creditor takes my property by using a self-help repossession method?

If your property has been repossessed without a court order (“self-help” method), you have 15 days to use your “right to redeem” or get back your property. Within these 15 days you can have your property returned to you by completing all of the following:

1. Pay the total of all unpaid debts, this includes any late fees.
2. Plus “performance necessary to cure any default other than nonpayment of amounts due”
3. Plus any court costs, filing and service fees, or bond premium charges that the creditor accrued (only exist if you have a bond premium loan).
4. Plus any costs that the creditor is due based on any previous written agreement.
5. Plus whichever is less:
 - a. A “performance deposit” to repay any default other than nonpayment which is equal to three scheduled installments or minimum payments, depending on your payment plan type.
 - b. One third of the total remaining unpaid balance.

If you provide the creditor with the payments listed above, then you can get your property returned to you along with all the rights of your original agreement, as if you paid all the previous payments on time.

Can my creditor still sue me afterward?

If the creditor repossesses your car and sells it, they can sue you for the amount remaining after the purchase price of the car is applied to the debt. However, the creditor must act in good faith when selling the car, meaning they cannot sell the car for an unreasonably low amount and then sue you for the remaining amount. It is the responsibility of your creditor to prove that they sold your vehicle at a reasonable price.

What can I do if my rights were violated?

If you think your rights have been violated, contact a lawyer. Compensation for winning an “illegal” repossession claim are substantial, as you will be permitted to keep the vehicle (or receive the fair market value of the vehicle), release of the loan

on the vehicle, return of all payments made on the loan, and reasonable attorney's fees and costs.

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