

## **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 and must get a fair price for your property.

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 send you a notice that tells 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 didn't get a fair price, then the creditor has to prove differently in order to get a judgment against you.

*Adapted from materials created by Martin Wegbreit.*

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# **Repossessions And Deficiency Judgments**

This pamphlet contains general information about your rights. Consult a lawyer if you have specific questions.

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CVLAS is a non-profit organization providing free legal advice, and representation to low income or elderly people in Central Virginia. Contact us Monday - Thursday 9-12 to see if you qualify for services.

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When you borrow money to buy property (like a car loan), the creditor (a person or business you owe money to is called a creditor) usually takes a security interest in the property you buy. This means that if you don't pay, the creditor can repossess (or take) that property. However, if you are not more than 10 days late on your payment you can prevent repossession and acceleration by paying the money you owe and the late fees.

### **WHAT IS REPOSSESSION?**

In Virginia, a creditor may repossess only if you are more than 10 days late with a payment. You can prevent repossession if you pay all missed payments and any late fees, within 10 days of the due date. 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 or reservation.

### **WHAT IS ACCELERATION?**

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. For a creditor to accelerate the contract or loan, you must be 10 days late. You can prevent acceleration by paying missed payments and any late fees, within 10 days of the due date.

### **CAN A CREDITOR REPOSSESS IF I CATCH UP ALL MY MISSED PAYMENTS?**

Maybe. It depends on whether the creditor has accelerated the loan. If the creditor has accelerated the loan then he can repossess even if you pay all the missed payments and

late fees. You can avoid repossession if acceleration has taken place by paying all of the loan. Another option which might allow you to keep your property is to file for bankruptcy.

### **MUST A CREDITOR GIVE ME A NOTICE BEFORE REPOSSESSION?**

In most cases no. A creditor doesn't have to give you a notice before repossession. 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.

### **HOW MAY A CREDITOR REPOSSESS?**

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:

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

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

If you object to a repossession in any manner, the creditor must leave. If the creditor does not leave they are trespassing. 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.

If the creditor breaches the peace in repossessing your property, you may sue the creditor for damages or to stop the creditor from selling 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 he 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. The creditor must send you a written notice if he sells your property. This notice 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 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, such as a stereo or luggage rack. A creditor must take good care of your other property and must return it to you.