
Judgment and Repossession Procedures

Default:

Closed-end loan: when an amount greater than 1 payment is unpaid more than 10 days after due date.

Open-ended loan: when customer fails to make two required payments when due, within a 12-month period.

A judgment is usually required for repossession or garnishment of property.

What is a judgment?

It is court decision mandating payment of debt or requiring surrender of property.

Why get one?

A creditor must have it to legally garnish or repossess collateral (except in cases of voluntary surrender/abandonment exceptions noted on page one).

What are the Procedures?

1. The customer must be in default or breach a provision that materially impairs the collateral or the customer's ability to pay.
2. The customer must receive Notice of Right to Cure Default, which includes but is not limited to the amount that must be paid to cure the debt. If payment occurs within 15 days of the date of the Notice, repossession cannot occur.
3. If the amount owed is not paid, legal action may commence. A summons and complaint are provided to the customer. The judgment may provide for repossession through the sheriff, the creditor, or the creditor's agent.
4. Right to redeem collateral: the customer has the right to redeem the collateral within 15 days after it is repossessed, by paying the amounts due, doing what is necessary to cure the default (e.g., insure collateral); paying court or repossession costs and advance payment of three scheduled installments. If the collateral is not redeemed, creditor may retain it or sell it. The creditor **MUST** sell the property if a customer has paid more than 60% of the principle or if the customer objects to the creditor retaining the property. If a motor vehicle is sold, customer may be liable for costs of cleaning/repairs.

Under some circumstances, the customer must be given reasonable notice of sale of the property. The court must review the sale for reasonableness of terms and the customer has the opportunity to contest any aspect of the sale. Finally, the customer may be held liable for the remainder of the debt if the amount raised from sale of asset is insufficient to cover the total amount owed.

HOW TO MAKE THE BEST OF REPOSSESSION: If you know repossession of an item is likely, you may consider attempting to sell it on your own so that you get a better price to apply against your



outstanding debt. Otherwise, a creditor will sell your collateral at an auction and apply the sales proceeds to your outstanding balance. Since you are liable for any remainder of the balance, it's in your best interest to get the best price possible.

For example, a mother leased an \$85,000 BMW for her son who died one month later. The mother surrendered the car, which was then sold, but there was still \$24,000 of outstanding balance on the contract. The mother was liable for covering that amount.