

## Fixing Mistaken Repos

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Your company gets an irate call from a customer whose car you have just repossessed for non-payment. The caller is furious because he made a payment that was supposed to prevent a repossession. After you confirm the payment, you release the car and waive any repossession charges. All good. Or is it?

Every client I know has experienced this situation. Upping your game to prevent mistaken repossessions and taking appropriate corrective action if one occurs have never been more important. This goes double if you are examined by the Consumer Financial Protection Bureau because you are a large bank or are subject to the CFPB's larger participant rule. The CFPB has repossession practices under a microscope, and one of its main concerns is mistaken repos.

Let's look at how this can happen:

- The consumer made a promise to pay and thought that the promise would prevent a repo if the payment was made as promised. This is a situation I encounter often.
- The consumer made the payment, but the repo occurred before the payment posted. Perhaps the payment came in after business hours or over a weekend. By Monday morning, the car had been picked up.
- The payment was posted, but the collections department failed to promptly cancel the repo.
- The collections department canceled the repo, but the vendor had already hooked up the car by the time it learned of the cancellation. Maybe the payment was received in the morning and the repo was cancelled promptly, but the repo agent didn't get the message until the end of his shift. Or maybe the vendor just made a mistake.

There are undoubtedly other scenarios, but these situations are common. In order to prevent mistaken repossessions, you must understand all the ways they can occur. Sometimes you can prevent the problem by improving procedures and training. In other cases, the best strategy is better customer communication. Here's a game plan for avoiding mistaken repossessions, having upset customers, and having examiners with dollar signs in their eyes begin an enforcement action against you.

## **Step One - Understand the Problem**

Analyze your mistaken repossessions and understand why they occurred. Of course, to be able to do this, you must be able to easily identify the mistaken repos. Do you maintain a list? Is it complete? This first critical step won't be possible if you have to engage in a painstaking review of account notes.

Look for process gaps that almost guarantee some mistaken repossessions will happen, such as after-hours payments or routine delays in posting payments and reporting them to collections. The longer the time between the consumer's payment transmission and the cancellation instruction, the greater the risk of a mistaken repossession. Can you re-engineer this process to eliminate (or shorten) the gap? Sometimes yes, sometimes no, and sometimes yes but not immediately because process changes take time.

## **Step Two - Improve Processes**

Improving processes to reduce the chance of mistaken repossessions is always the first choice. Some solutions may require improved technology (and the time and budget to implement it). But some changes may be simpler. Finding them can involve creative thinking and brainstorming. Can you learn of a customer's payment more quickly? Can you automate repossession cancellation instructions? Can your vendors send real-time cancellation orders to the truck drivers?

## **Step Three - Strengthen Customer Communications**

Sometimes there will be a gap you simply can't plug or at least not right away. The only remedy then is to be completely frank with your customer, and the CFPB wants this communication to happen before the consumer makes the payment. A customer whose car is out for repossession is almost always having money stresses. He or she should understand the consequences of his or her choices. If a payment still might not prevent a repossession, maybe he or she will use the money for groceries instead. You can be sure the CFPB is thinking this way.

Collectors can believe the customer understands the risk of a repossession. After all, the payments are seriously late, or we wouldn't be in this situation. But customers can be unreasonably hopeful and hear what they want to hear. We must train collectors to be ruthlessly honest, even blunt. "I'm glad you want to make this payment now, Ms. Customer, but I must tell you that the repossession company already has the instructions to pick up the car. We will cancel those instructions when we receive your payment, but there is a chance the car could be picked up anyway. Do you understand?" Of course, you can add that you will try your best and tell the customer to notify you if the repossession happens despite the payment and what you will do in that case.

Be sure your training and scripts make this risk clear, if the risk is present, and check for this clarity when monitoring recorded calls. If you mislead a consumer into thinking the payment will stop a repossession when it might not, the CFPB will call this a deceptive practice. Process changes can be hard, but clear communications are much easier.

## Step Four - Fix a Mistake

"Mistake" can be an overbroad term. Yes, forgetting to cancel a repossession is a mistake, but a mistake hasn't really happened if the consumer phones in the payment after the tow truck is halfway down the street with the car behind it. My clients often will not make this distinction in their policies, and this choice is understandable. It may be too hard to tell exactly what happened; all you know is that you repossessed the car around the same time you received a payment. Besides, you want to maintain customer goodwill.

If the mistake was yours (and perhaps even if it wasn't), you will want to return the car in the way the customer prefers. Usually this means having the towing company return the car to the customer, but it also can mean allowing the customer to pick up the car at the tow lot if the customer wants. You will want to ensure that your company and not the customer pays for the tow and that any personal property in the car is returned to the customer. You also must ensure that the repossession is not reported to credit reporting agencies.

Even if you decide to extend these courtesies to a customer when the customer did not make the payment in time to prevent the repo - and was fully informed of this risk - you may not want to code it as a mistaken repossession. Use another term, and another code or a separate list, such as "courtesy repossession return." Here's why: If you treat it as a repossession that was your mistake, or might have been your mistake, that's how the regulator will view it. Any wrongful repo will make you look bad and may set you up to pay damages to the customer in a CFPB enforcement action. Words matter; take the extra effort to use them carefully when classifying a repossession, even if the outcome for the customer is the same.

Repossessions are upsetting events for consumers, and upset customers complain. Not often do the CFPB, auto finance creditors, and consumers all agree, but everyone agrees that mistaken repossessions are bad. Following these steps will greatly reduce your risk and make everyone a little happier.

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