

Are you repossessing responsibly?

Motor vehicle financing can be full of compliance minefields. Defaults and repossessions provide more than their fair share of potential mines. However, there are some steps you can take to try to avoid some key issues that arise when customers default, and repossession seems to be the next step.

Strict Compliance

Sometimes you want to be the nice guy and let the customer slide on a few late payments. But when that customer becomes chronically late, you may get fed up and decide that it is time to declare the customer in default and repossess the vehicle. However, Tennessee courts have held that a secured party must give the consumer a notice of "strict compliance" before repossessing collateral, if the creditor has accepted payments in the past without taking action to accelerate the debt. In other words, if you've allowed the customer to make late payments in the past, you have to notify the customer that you plan to hold them to the payment due dates agreed to in the retail installment sales contract **before** you hold them in default under the original terms of the agreement.

The notice of strict compliance could state that:

- from this date forward, the creditor will require strict compliance with the contract terms; and
- if the consumer does not strictly comply with the contract terms, the creditor will enforce its rights under the contract, and may repossess the vehicle.

Personal Property

Another potential mine in repossessions is charging customers storage fees when personal property is found inside a repossessed motor vehicle. While Tennessee does not have a law explicitly addressing the treatment of personal property storage fees, we caution that the Consumer Financial Protection Bureau has expressed concern in this area, stating that it is an unfair practice to require a customer to pay storage fees for personal property in order to get the property back. That is, the customer cannot be required to pay a personal property storage fee as a precondition of getting their personal items--such as car seats, CDcDs, and cell phone chargers--back when their vehicle has been repossessed. Check with your repossession company to see if they make any of these charges.

Instead, customers must be allowed to retrieve their personal items without paying such charges upfront. Note that even though creditors cannot require consumers to pay personal

property storage fees as a condition of getting the property back, the CFPB has said that creditors may recoup personal property storage fees by adding them to the customer's balance that will be due either when the customer redeems the vehicle or when the vehicle is sold pursuant to Article 9.

Sharing Customer Information with the Repossession Company

Federal law allows you to share customer's nonpublic personal information with 3rd parties (including repossession agents) as necessary to enforce or administer a transaction. However, federal law requires that you have a written agreement with all parties you share customer information relating to the sharing, safeguarding, and destruction of such information. In addition, federal law requires that you implement a vendor management policy to ensure your vendors comply with federal compliance laws. These laws cover your dealings with repossession companies. Don't forget to review your compliance obligations when dealing with 3rd parties.

Defaults and repossessions present many minefields. But, making sure you are complying with legal requirements concerning strict compliance and personal property storage fees, as well as proper vendor management, can help you avoid some compliance bombshells.

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