

What is a private party repossession? Why won't this Repoman do them?

I get several calls every week about private party repossessions. Let me start by explaining what I have been taught about self-help repossessions.

In most states self help repossession is authorized by the Uniform Commercial Code. Each state adopts their own version into their state laws. Some states have specific repossession statutes. In most states the right to repossess collateral without judicial process exists when there is a breached contract and a perfected lien. (Repossession must also be done without a breach of peace)

The present right to repossess is a very important term to remember. Performing or authorizing repossession without having all your ducks in a row is very risky business.

If a person decides to experiment in the buy here / pay here used car business and sell a friend or relative a vehicle they should acquire a motor vehicle purchase contract, transfer the vehicle into the buyer's name and take back a lien on the vehicle. In most states that is the proper and legal way to do it. Should the buyer fail to make the required payments called for in the contract the person would have the right to have the vehicle repossessed. This is a repossession performed for a secured party. This is not what I would call a private party repossession.

One type of private party repossession is a situation where someone has allowed a third party to take control of their vehicle. They have an agreement (even in writing) that the third party is to pay something for a vehicle. But the vehicle remains the registered and titled property of the seller.

This is not the type of repossessions that a professional repossession company is set up to perform. I am not saying a person has no right to hire someone to go and get their vehicle. But the right to take the vehicle back does not exist as a self help repossession that is authorized by statute. This is not the type of repossession that your professional recovery agency's insurance is expected to cover.

In most states if someone sells a vehicle they are required to provide the buyer with a viable title and if there remains money owed the seller should take back a lien. Otherwise the law has already violated. The seller tries to protect their interest by not transferring the vehicle but taxes on the transaction are expected to be paid at the time of sale. The system is in place to provide a remedy if the buyer doesn't pay. Ignoring the system removes quick and easy self help repossession as an option in case of a default.

Another type of private party repossession is when a person has allowed someone to take over their payments on a vehicle. This is another situation where a person has already done something wrong (and foolish). Most retail sales contracts do not provide a person with the option to substitute their position as the buyer/owner/driver of the vehicle.

In these cases the primary buyer is still responsible to make the payments and they are also liable for damages in case of an accident or even intentional act(s) done with the vehicle.

The next private party repossession is my all time favorite. Someone goes out and co-signs a loan for someone else. It could be their child, grandchild, best friend or significant other. This 'other' person has the vehicle and co-signer is just along for the ride. The payments are supposed to be made and insurance is to be kept up to date. The co-signer's only task was supposed to be to just drop by and sign their name one time.

In all these instances the person with the vehicle falls behind or completely ignores their obligations and someone finds them self stuck. What ever is the stuck person to do?

More often then I appreciate they call me. I am the Repoman. According to the Uniform Commercial Code I am an enforcer of liens. In none of these cases does the person have a perfected lien. A perfected lien is reflected on the title and recorded by the motor vehicle records department. In the absence of a perfected lien there may not exist a present right to repossess by self help repossession. Remedy should be sought in court.

My repossession company refuses to act on anyone's behalf in these types of scenarios. From a legal standpoint we have a great deal more exposure than stuck person does. If there is no perfected lien or agreement (written) does not contain a repossession clause there may be no present right to repossess. Should I decide to repossess the vehicle anyway I may very well be in violation of the Fair Debt Collection Practices Act (FDCPA) -This is one of the instances where the FDCPA actually applies to me as an enforcer of a security agreement.

This is extremely bad news for me because I could land in Federal Court over this. Just the cost to have my company defended will be in the thousands of dollars. If I lose I have to pay the attorney fees for the other side and the fines. Did I mention that my insurance provides me no protection from this type of mistake because I broke the law?

That explains why I won't do it. What is the downside for person that feels stuck?

Recent history is loaded with examples of instances where the reposessor, the person in custody of the vehicle or another bystander is injured or killed during the course of an attempted repossession. Are you fully aware of your exposure if/when you hire a reposessor? Would the average know what kind of insurance coverage to expect a recovery agency to have? Would someone expect the repossession company's insurance carrier to pay a claim when I have already explained that these types of repossessions fall beyond acceptable business practices?

Let me provide one important note....
The actions taken on someone's behalf by a reposessor are the responsibility of the person or company that hires the reposessor ... 100%.

How sure can someone be that the repossession company won't take any un-needed risk or ignore their obligations to act professionally? Well, if they agree to provide this type of repossession service right off the bat they have already demonstrated that they either don't know the law or don't care. Sound bad? Well it gets worse.

There is another possibility behind door number three. Some of the companies out there that offer to provide private party repossession service will quote a reasonable fee. They will send out a cute little contract to be signed and once they have custody of the vehicle they will jack everybody up.

One such instance was a \$90K Cadillac convertible. Quoted price was \$350 and once the vehicle was recovered it was whisked out of the state and the invoice was sent out for \$15K. Now what kind of mess is everyone in? You may be thinking... they can't do that... that has to be illegal. Guess what? They don't care.

In this case it took the nearly six months to find the vehicle and \$10K had to be deposited to the court where the vehicle wound up. Legal fees on this case are through the roof already and it is not over yet. The repossession company that provided the service for the private party repossession service was under the false impression that the recovery was being performed for the lienholder. In fact they were a blind party to a car-napping.

So what is the answer? Well in many cases there is actually a lienholder in the picture.

If someone co-signs a loan or lets someone take over payments the lienholder may have the right to repossess the vehicle. Their collateral is in jeopardy. It is almost always in the lender's best interest to have the collateral repossessed in these cases. Their right to repossess will be much more sound if the account is past due but if the collateral has been re-sold without their consent the contract has certainly been breached.

Most, if not all banks and finance companies are well versed in the repossession process. They know what type of insurance coverage to expect the repossession agency to have. They have repossession agencies working for them that they know and trust.

The lender should always be consulted before a person considers the huge risk of authorizing repossession on their own. Your first point of contact is usually with a collector. That collector's job is to make sure you know you are responsible to pay and collect from you if possible. The average collector is unaware of the information discussed in this article. Asking for a supervisor is well advised. In many cases you can eventually succeed in getting the lender to have the collateral repossessed.

I often hear that people are concerned about having a repossession reflected on their credit report. It should be made clear to the lender that payment for the cost of the repossession and any missed payments will be made and the loan will remain current in future. Missing payments result in poor marks on your credit. When a vehicle is repossessed and redeemed right away there should be no ill effect to credit standing.

Here is a bit of sage advice for anyone that may find themselves stuck as discussed in this article.....

Be sure to carefully look at your financial exposure in these issues.

If the vehicle has little value just write it off as a loss and get on with your life.

Stay out of the amateur used car business.

Don't grant anyone permission to take your car.

Don't co-sign a loan for anyone unless you are willing to pay for them if they don't.

Avoid the risk of extreme financial loss and a court battle to try and get some satisfaction on a matter of principle or simply because you don't want to feel abused.

Learn your lesson, don't compound it and don't repeat it.

As a bit of a side note... don't confuse any of these issues with a situation where a person takes your vehicle, even with your permission, and will not bring it back. If someone has your vehicle and you did not agree they could pay for it later or take over your payments or anything like that you should be able to report the vehicle stolen and get your vehicle back through legal channels.

Quite often the police will brush you aside and say that you gave up your right to report the vehicle stolen when you've allowed someone else to use it. At this point ask the following questions....

If the mayor of the city allowed his Tuesday night poker buddy to use his Rolls Royce to go get a couple of cases of beer and he decided not to come back and just keep the vehicle.... Would the Police take a stolen vehicle report?

If the Chief of Police took his wife to a nice restaurant and handed the keys to his brand new Lexus along with a \$10 bill to someone he thought was a valet... would the vehicle be listed as stolen?

A police officer may also tell you to hire a reposessor in any or all of these instances. Now you know different... so don't call me.