

# Primer on Repossessions in New Jersey

OVERVIEW OF LAW AND BEST PRACTICES

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Unfortunately, repossessions happen. When they do, it's important to understand the parameters under which a vehicle may be repossessed and the processes surrounding repossession to reduce costs and legal exposure. Below is an overview of New Jersey law and best practices to guide you in the event that a consumer fails to make timely payments on his or her vehicle.

## Notice Prior to Repossession

Under New Jersey law, an auto lender is not required to wait to repossess a financed vehicle from a retail consumer following default. In other words, as soon as a consumer is late on his or her payment, the lender may immediately repossess the car.

Typically this doesn't occur because not only is it bad for customer relations but makes little economic sense for either the lender or borrower. Additionally, a lender may be subject to certain restrictions if they are spelled out in the financing agreement, such as the provision of a grace period in the consumer contract. For leased vehicles, however, the lessor may not repossess a vehicle without providing written notice of the default 15 days after it occurs and then an additional 15 days to cure the default – meaning make the late payment and avoid repossession.

In seizing the vehicle, it is important to remember a collateral recovery agent cannot "breach the peace" in taking physical possession. Typically, state courts have construed a breach of the peace as meaning violence or the threat of violence in connection with the physical repossession of a car. If a confrontation begins, the repossession agent cannot proceed with the repossession at that time, or there may be more serious consequences for the lender.

## Post-Repossession

Once a vehicle is repossessed in New Jersey, the law provides a two-step process. First, the lender must issue a Notice of Intent ("NOI") to sell the vehicle prior to doing so. Second, the lender must provide a post-sale

accounting of the proceeds of a repossession sale.

## Mandatory Pre-sale NOI

New Jersey law provides a form of NOI, which is considered adequate notice before the sale of the vehicle occurs. While the use of the exact form is not mandatory, the form will be deemed insufficient if it does not contain all of the elements provided in the law, including, among other things:

- When and where the sale will take place.
- Statement that the "money we get from the sale (after paying our costs) will reduce the amount you owe."
- Indicate a retail consumer may redeem the property (not reinstate the account) at any time prior to sale by paying the full amount owed including fees.
- Contact number to obtain the payoff amount.

Under New Jersey law, lenders are permitted to apply or pay over the cash proceeds of disposition, including reasonable expenses for retaking, holding, preparing for disposition, processing and disposing, and to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party. While the amount of the fees in total do not need to be included in the NOI, if the calculation of amount owed is requested, it may be stated to the extent known.

## Manner of Resale:

### "Commercially Reasonable"

In the event of the resale of a repossessed vehicle, such resale must be made in a "commercially reasonable" manner. For example, the vehicle could be resold at a dealership or at a wholesale auction. New Jersey law permits a repossessed vehicle to be sold at auction, despite the fact that it could sell for a higher price elsewhere.

## Mandatory Post Resale Notice

Following the resale of a repossessed vehicle, New Jersey requires the lender send the consumer one additional notice, which essentially provides an accounting of the transaction.

Failure to send the post-repossession resale notice is a violation of the Uniform Commercial Code in New Jersey and potentially a violation of the New Jersey Consumer Fraud Act (CFA).

CFA violations are particularly costly, as they subject the offending party to treble damages and attorneys' fees. The law requires certain information to be included in the post-sale explanation, including, but not limited to:

- The debtor's aggregate amount due to the lender after deducting the amount of sale proceeds.
- The amount in the aggregate or by type of expenses related to the repossession, holding, preparation, disposition and processing.

Importantly, the applicable statute does not cap expenses or fees.

## Political and Regulatory Environment: Impact on Repossession Laws

The political and regulatory environment, at both the state and federal level, is increasingly hostile towards the used auto industry and related lenders. Members of the New Jersey legislature are showing increasing interest in passing new laws they claim will offer further protections to consumers. We continue to monitor proposed regulations or legislation that would impact the current unregulated fees that can be charged in connection with repossessions. 🚗

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UNDER NEW JERSEY LAW, AN AUTO LENDER IS NOT REQUIRED TO WAIT TO REPOSSESS A FINANCED VEHICLE FROM A RETAIL CONSUMER FOLLOWING DEFAULT. IN OTHER WORDS, AS SOON AS A CONSUMER IS LATE ON HIS OR HER PAYMENT, THE LENDER MAY IMMEDIATELY REPOSSESS THE CAR.