

CALR REPOSSESSION QUESTIONS & ANSWERS (Q&A)

This Question and Answer Section is revised annually and is prepared with the assistance of many members of CALR and its counsel in the hope that it will enlighten and benefit individuals and firms concerned with the repossession industry. For all laws referred to in this question and answer section, please refer to the full sections of the Business & Professions Code (B&P), Vehicle Code (VC), Penal Code (PC), Civil Code (CC), California and United States Constitution for further clarification.

CAUTION: The answers provided in this section are for general reference only and CALR warns that they should not be relied upon as legal authority. Minor differences in the facts may require different answers. The law is also subject to change at any time. Therefore, consult your legal counsel concerning individual problems.

IMPOUND QUESTIONS

1. When must law enforcement agencies be open to issue impound releases?

A law enforcement agency must be open to issue impound releases whenever it is open to serve the public for regular, nonemergency business. [VC 14602.6(a)(2), 14602.7(a), 14602.8(a)(3), 21100.4(a)(4)]

2. May local law enforcement collect an administrative fee from a legal owner or their agent to release impounded collateral?

No. Effective January 1, 2000, the administrative fee may be collected only from the registered owner or agent of said registered owner. [VC 22850.5 (b)(2)]

3. Must a debtor pay a fee (normally \$15) to a police department or sheriff's department before redeeming the repossessed vehicle?

Yes, pursuant to Government Code Sections 26751 and 41612. This fee is not the obligation of the lien holder or reposessor.

4. Is a repossessed vehicle exempt from current registration?

A vehicle repossessed pursuant to the terms of a security agreement is exempt from the registration solely for the purpose of transporting the vehicle from the point of repossession to the storage facilities of the reposessor, and from the storage facilities to the legal owner or a licensed motor vehicle auction provided that the reposessor transports with the vehicle the appropriate documents authorizing the repossession and makes them available to a law enforcement officer on request. [VC 4022]

5. When a vehicle has been impounded by a public agency, who should notify the legal owner?

Within 48 hours of the storage, unless the vehicle is in a vehicle abatement program, or abandoned, the public agency is required to notify both legal and registered owner.

6. Does the mandatory 30 day vehicle impoundment for driving with a suspended, revoked, or invalid license apply to the legal owner?

No. A legal owner or its agent (but not the registered owner) may obtain a release from the impounding authority prior to the 30 days if they meet three conditions: 1) They are a financial institution or they otherwise have a security interest in the vehicle; 2) They pay all towing and storage fees related to the seizure of the vehicle; and, 3) They provide certain foreclosure documents required by Vehicle Code Section 14602.6(f).

7. What documents shall a reposessor give to the Impounding Authority to get a release for a vehicle impounded under VC 14602.6?

The legal owner or the legal owner's agent presents a copy of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code, a release from the one responsible government agency, only if required by the agency, a government-issued photographic identification card, and any one of the following: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies shall not require any documents to be notarized.

8. What documents shall a reposessor give to the Impounding Authority to get a release for a vehicle impounded under VC 22651?

A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

- Pays the cost of towing and storing the vehicle.
- Submits evidence of payment of registration fees as provided in Section 9561.
- Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. Note: The legal owner or reposessor is not required to pay any outstanding parking tickets on the vehicle to obtain its release from impound. [VC 22651(i)(4)]

9. What can happen to a tow company if the legal owner is not notified?

Under Civil Code Section 3070, a legal owner has a right to accuse the tow company of "improperly causing a vehicle to be towed" if the tow company tries to collect storage over 15 days when Vehicle Code 10652.5 is violated. A notice must be sent to the legal owner by the 16th day of possession in order to collect more than 15 days of storage fees. [CC 3070(d1), (d2), (A)]

10. Must a person operating a storage facility accept credit cards for the release of impounded vehicles?

Yes. The storage facility must accept valid bank credit cards for towing and storage fees when registered or legal owners redeem their vehicles. [VC 14602.6(f)(2)(B), 14602.7(e)(2)(B), 14602.8(f)(2)(B), 21100.4(e)(2)(B), 22651.1, 22658(k)(1), 23118(e)(2)(B)]

11. Are there limits on the number of days storage can be charged by lien holders?

Yes. Civil Code 3068.1 limits public agency and private tows to a certain number of days chargeable for storage. A vehicle under \$4,000.00 in value shall not accrue storage charges beyond the 15th day unless lien sale proceedings have commenced. If the lien is filed by the 15th day of possession, the storage is limited to 60 days. This would include a required notice to be signed by the legal owner before the 16th day of possession. [VC 10652.5] A vehicle with a value over \$4,000.00, the lien sale shall commence by the 30th day of storage and allowing the storing party to collect for storage up to 120 days. If the lien sale commenced after 30 days–60 days of storage, then Vehicle Code 10652.5 applies and the storing party may only collect up to the 16th day of storage.

12. What is the maximum amount a repair garage may charge on a repair or storage to a legal owner?

On work or services performed, up to \$1,500.00 is allowed and the garage must have permission from the legal owner to exceed that amount. [CC 3068(c)] Storage is allowed up to \$1,025.00 for a vehicle under \$4,000.00 in value and \$1,250.00 if the vehicle is valued over \$4,000.00 [CC 3068(c)] There is also a requirement to notify the legal owner by the 16th day of possession if storage fees are charged and if legal owner is not notified, storage is limited to 15 days. [VC 10652.5 and CC 3071 & 3072]

13. Are there any reporting requirements when a vehicle is stored in a private building?

Yes. Every person other than the keeper of a garage renting any private building used as a private garage or space therein for the storage of a vehicle of a type subject to registration under the Vehicle Code, when the agreement to rent includes only the building or space therein, shall, within 24 hours after the vehicle is stored therein, report such fact together with the name of the tenant and a description of the vehicle, including the name or make, the VIN and the license number to the sheriff's office of the county or the police department of the city wherein the building is located. "Private garage" as used in this section does not include a public warehouse or public garage. [VC 10654]

REPOSSESSION AGENCY QUESTIONS

1. What is a "repossession agency" as defined by the State of California?

A repossession agency means and includes any person who, for any consideration whatsoever, engages in the repossession business or accepts employment to locate or recover personal property, including but not limited to, personal property registered under provisions of the Vehicle Code which is subject to a security agreement. [B&P 7500.2]

2. What is not a "repossession agency" as defined by the State of California?

The following are exempt from the definition of a "repossession agency":

1. Banks.
2. Licensed lending institutions.
3. Attorneys performing legal duties.
4. Legal owners of collateral which is subject to a security agreement.
5. Federal, state or municipal officers or employees performing official duties.
6. A bona fide employee employed exclusively and regularly by the legal owner of the collateral.
7. Qualified certificate holders and registrants when performing services for a licensee. [B&P 7500.3]

3. How may it be determined whether or not a person or agency holds a valid repossession license?

Any person may contact the Bureau of Security and Investigative Services at 2420 Del Paso Blvd, Suite 270, Sacramento, CA 95834, (916) 575-7054 to determine whether or not a particular person or agency is licensed. Or visit the Bureau's website at: <http://www.bsis.ca.gov/>

4. Should a legal owner have a copy of the repossession state issued license number on file prior to assigning an account to them?

Although it is not required by law, it would provide a positive defense to any allegation of having assigned an account to a nonexempt unlicensed person in violation of B&P Code Section 7502.2 which is punishable by a fine of \$5,000.00

5. May a financial institution be penalized for using an unlicensed repossession agency or person?

Yes! Any person who knowingly engages an unlicensed repossession agency or person to repossess personal property is guilty of a misdemeanor which is punishable by a fine of \$5,000.00 or by imprisonment in the county jail for not more than one year, or both. [B&P 7502.2a]

6. May unlicensed repossession activity be penalized?

Yes! Any person who violates any provision of the Collateral Recovery Act or who conspires to violate any provision or who engages in repossession activity (other than a licensed repossessioner), is guilty of a misdemeanor which is punishable by a fine of \$5,000.00 or by imprisonment in the county jail for not more than one year, or both. In addition, the unlicensed agency's tow truck may be impounded. [B&P 7502.1(a)]

7. May a licensed repossessioner accept an assignment to repossess from a registered owner?

Yes. Assignment also means an authorization by the registered owner to recover collateral registered under the Vehicle Code where an employer/employee relationship exists or existed between the registered owner and the possessor of the property and the possessor is wrongfully in possession of the property. [B&P 7500.1(b)]

FIELD REPOSSESSION QUESTIONS

1. Who may legally undertake repossession assignments?

Unless exempted pursuant to B&P Code 7500.3, only persons holding a valid repossession agency license or registration, issued by the State of California, may engage in the activities of a repossession agency. [B&P 7500.3]

2. When may a vehicle secured by a contractual agreement be repossessed?

Normally, only when the buyer has defaulted in the performance of any obligation under the contract. Ordinarily a default occurs when an installment payment is delinquent. However, if the consumer is required by the contract to maintain insurance, a failure to do so may constitute a default, as allowing the collateral to be jeopardized. [CC 2983.3]

3. May a tow service, auto drive away service or a transport company not specifically licensed as a “repossession agency” repossess collateral VOLUNTARILY or INVOLUNTARILY?

No! These businesses are not exempt under B&P Code 7500.3 and would therefore be in violation relating to unlicensed activity. Violators are subject to fines of \$5,000 and/or one year in the county jail. [B&P 7502.1a]

4. Is police notification required prior to an attempted repossession?

No. Some jurisdictions, however, request a courtesy call prior to a repossession to eliminate the possibility of a repossessioner being stopped at gunpoint in the event someone reports a stolen vehicle or a prowler.

5. Is it a crime to conceal a motor vehicle or other collateral?

Yes. Any person in possession of collateral who conceals property with the intent to defraud a creditor may be guilty of a felony. [PC 154, 504a or 538]

6. At what point has a motor vehicle been legally repossessed?

With regard to collateral subject to registration under the Vehicle Code, a repossession is complete when the repossessioner gains entry to the collateral, or when the collateral becomes connected to a tow truck or the repossessioner's tow vehicle. Once the repossession is complete, no person other than the legal owner may direct a repossessioner to release a vehicle without legal authority to do so even if the vehicle is still on private property. [B&P 7507.12]

7. May a repossessioner lawfully enter an area for purposes of repossession?

In most cases, yes. However, a repossessioner may not enter a fenced and locked area or a private building such as an enclosed structure without the consent of the owner or person in legal possession of the property. [B&P 7500.1(r), 7508.2(g)]

8. May a law enforcement officer force a repossessioner to give up possession of collateral?

Peace officers may not advance or hinder repossessions. Because they are acting under “color of state law,” they may no more force a debtor to surrender a car than they may, after a car has been repossessed, force the repossessioner to return it. Without a court order, both things violate the “due process” requirements of the 14th Amendment of the United States Constitution and Article 1, Sections 13 and 15 of the California Constitution. No person other than the legal owner may direct a repossessioner to release a vehicle without legal authority to do so. [B&P 7507.12]

9. Can the repossessioner take personal effects that are attached to the repossessed collateral?

Yes. Nothing in the Collateral Recovery Act prohibits the using or taking of personal effects that are connected, adjoined, or affixed to the collateral through an unbroken sequence, if that use or taking is reasonably necessary to effectuate the recovery in a safe manner or to protect the collateral or personal effects. (B & P 7505.2)

10. May a law enforcement officer force a repossessioner to give back personal effects at the time of repossession? No. Personal effects shall be removed and inventoried. (B&P 7507.9)

11. Should a reposessor have a police officer accompany him/her on a repossession?

Self-help repossession provisions of UCC 9-609 do not violate the 14th Amendment if it is the conduct of a private individual dealing with a private individual. However, the presence of a police officer or a patrol car accompanying a reposessor has been found by several courts to constitute “color of law” and has taken the repossession out of the area of “purely private conduct without state assistance.” Do not take a sheriff or police officer out on a self-help repossession.

12. Is possession by a registered reposessor of tools described as “burglary tools” and of vehicle or wheel lock master keys as defined in Sections 466 and 466.5 of the California Penal Code prohibited by law?

No. Those sections specify that possession with the “intent feloniously to break or enter any building or vehicle” is a misdemeanor, and that possession of vehicle master keys with the intent to use them “in the commission of an unlawful act” is a misdemeanor. Tools used by repossessors are “tools of the trade” and are legally possessed without any intent to commit a crime.

POST REPOSSESSION QUESTIONS

1. How far can a reposessor tow a repossessed vehicle on a public highway with only one safety chair attached? One mile.VC 29004(f)

2. Do tow lights have to be connected with an extension cord? No. Tow lights may be cordless. [VC 24605]

3. Is a police report required on all repossessions?

Yes. Whenever possession is taken of any vehicle by or on behalf of any legal owner thereof under the terms of a security agreement or lease agreement, the person taking possession shall (a) notify, within one hour after taking possession of the vehicle, and by the most expeditious means available, the city police department where the taking of possession occurred, if within an incorporated city, or the sheriff’s department of the county where the taking of the possession occurred, if outside an incorporated city, or the police department of a campus of the University of California or the California State University, if the taking of possession occurred on that campus, and shall within one business day forward a written notice to the city police or the sheriff’s department. Any person failing to notify the city police department, sheriff’s department or campus police department as required by this section is guilty of an infraction, and shall be fined a minimum of \$300.00 and up to \$500.00. The district attorney, city attorney, or city prosecutor shall promptly notify the Bureau of Security and Investigative Services of any conviction resulting from a violation of this section. [VC 28]

4. Must licensees make condition reports of repossessions?

Yes. Repossession agencies are required to keep and maintain adequate records of all transactions including condition reports reflecting the condition of a vehicle at the time of repossession and its odometer reading. [B&P 7507.3]

5. What is to be done with personal effects?

Personal effects shall be removed and a complete and accurate inventory shall be made. Said items shall be securely stored for a minimum of 60 days except those personal effects removed by or in the presence of the

debtor or the party in possession of the collateral at the time of the repossession. It is required that the repossession agency notify the consumer of this inventory by written notice or by personal service within time limits prescribed by law. [B&P 7507.9]

6. What is to be done with deadly weapons contained in or on collateral at time of repossession?

Deadly weapons and dangerous drugs shall be turned over to a local law enforcement agency for retention. These items shall be entered on the inventory and a notation shall be made as to the date, time and place the deadly weapon or dangerous drug was turned over to the law enforcement agency. A receipt from the law enforcement agency shall be maintained in the records of the repossession agency. [B&P 7507.9(b)(1)]

7. What is to be done with combustibles after being removed from repossessed collateral?

Combustibles shall be inventoried and noted as “disposed of, dangerous combustible” and disposed of in a reasonable and safe manner. [B&P 7507.9(b)(2)]

8. May a repossession agency charge a fee for storing personal effects? (Referring to inventory of effects from a repossession.)

Yes. A licensee may charge the debtor for storing personal effects since B&P Code 7507.9 and 9(d) states in part, “The inventory shall include . . . an itemization of all personal effects removal and storage charges that will be made by the repossession agency.” A licensee may not charge a legal owner for storage of personal effects unless specifically agreed to at the time of the assignment or at a subsequent time.

REPOSSESSION TOW VEHICLE QUESTIONS

1. Must a reposessor’s tow truck be equipped with signs on the door of the truck indicating the repossession agency’s name, address and phone number?

No. A person licensed as a repossession agency pursuant to the B&P Code (commencing with Section 7500), or a registered employee of the agency, may use the State issued repossession license number in lieu of a sign containing a name, business address, and telephone number. [VC 27907]

2. Must a reposessor’s tow vehicle comply with the usual height requirement for the placement of its rear license plate?

No. The rear license plate on a tow truck or reposessor’s tow vehicle may be mounted on the left-hand side of the mast assembly at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

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