

CALR Repossession Quick 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 and Professions Code (BPC), Vehicle Code (VCH), Penal Code (PEN), Civil Code (CIV), Government Code (GOV) and Financial Code (FIN), California and United States Constitution for further clarification. You may also visit www.CALR.org "Laws" page for the complete wording of each code.

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. (Revised may 2016)

IMPOUND, STORAGE, REPAIR SHOP & REDEMPTION 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. [VEH 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. Only charges shall be collected by the local or state authority only from the registered owner or an agent of the registered owner. Not the legal owner. [VEH 22850.5(b)(2)]

3. Is a repossessed vehicle exempt from current registration?

Yes. A vehicle repossessed pursuant to the terms of a security agreement is exempt from 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. [VEH 4022]

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

The Impounding agency within 2 working days of the impoundment, unless the vehicle is in a vehicle abatement program, or abandoned, the public agency is required to notify both legal and registered owner. [VEH 14602.6(2), 14602.7(a), 14602.8(3), 2110.4(4)]

5. 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) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle. 2) pays all towing and storage fees related to the seizure of the vehicle. no lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment and, 3) They provide certain foreclosure documents required by Vehicle Code Section [VEH 14602.6(f)]

6. What documents shall a reposessor give to the Impounding Authority to get a release for a vehicle impounded while his or her driving privilege was suspended or revoked?

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 governmental agency, only if required by the agency; a government-issued photographic identification card; and any one of the following, as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether paper or electronic, 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 other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code. [VEH 14602.6(f)(3)]

7. What documents shall a reposessor give to the Impounding Authority to get a release for a vehicle impounded when it is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following: (A) Pays the cost of towing and storing the vehicle. (B) Submits evidence of payment of fees as provided in Section 9561. (C) 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. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. [VEH 22651(i)(4)]

8. 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. [CIV 3070(d1), (d2), (A)]

9. 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. [VEH 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)]

10. 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. [VEH 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. [CIV 3068.1] [VEH 10652.5]

11. 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. [CIV 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 [CIV 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], [CIV 3068, 3071 & 3072]

12. 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 this 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 motor or other number of the vehicle, 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. [VEH 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 business or accepts employment to locate or recover collateral, whether voluntarily or involuntarily, including, but not limited to, collateral registered under the provisions of the Vehicle Code which is subject to a security agreement [BPC 7500.2]

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

A repossession agency shall not include any of the following:

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. [BPC 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 BPC 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. [BPC 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. [BPC 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. [BPC 7500.1(b)]

8. May a licensed Repossession Agency demand payment in lieu of repossession?

A licensed repossession agency or its registrants shall not make demand for payment in lieu of repossession [BPC 7507.4]

9. May a Repossession Agency charge for Transporting, Repair Work, Cleaning or Detailing of recovered collateral?

No charge shall be made for services incurred in connection with the recovery, transportation, and storage of collateral except under terms agreed to by the legal owner at the time of the repossession authorization or specifically agreed upon at a subsequent time. Repair work, cleaning, or detailing shall not be performed and shall not be charged to the legal owner. [BPC 7507.5]

10. May a licensed Repossession Agency employee wear logo shirts, caps, badges or jacket patches?

Yes. An oval, shield, round, square, or non-seven-point badge, cap insignia, or jacket patch may be worn by a licensee, officer, director, partner, manager, independent contractor, qualified certificate holder, qualified manager, or employee of a repossession agency. If a badge, cap insignia, or jacket patch is worn, it shall bear on its face all of the following: (1) All or a substantial part of the repossession agency's name. (2) The repossession agency license number. (3) The word "repossessioner." (b) A repossessioner shall **not** wear a badge on his or her belt or hang a badge around his or her neck.

(c) All badges, cap insignias, and jacket patches worn by a reposessor shall be a standard design approved by the director and shall be clearly visible. (d) This section shall not apply to a holder of a temporary registration pursuant to Section 7506.9. [BPC 7508.8]

FIELD REPOSSESSION QUESTIONS

1. Who may legally undertake repossession assignments?

Unless exempted pursuant to BPC 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. [BPC 7500.3]

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

Typically 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. If the buyer intentionally provided false or misleading information on the credit application. If the buyer has committed threats or acts of destruction, violence or bodily harm against an agent, employee or officer of the seller. If the buyer failed to maintain the collateral in a reasonable manner. If the buyer knowingly used the vehicle or permitted it to be used in connection with criminal offenses. If the vehicle has been seized by federal, state, or local public agency.

[CIV 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 BPC 7500.3 and would therefore be in violation relating to unlicensed activity. Violators are subject to fines of \$5,000.00 and/or one year in the county jail. [BPC 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 reposessor 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 / embezzlement. Punishable by imprisonment and/or a fine not exceeding \$1,000.00 or both.

[PEN 154, 504a and 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 if any of the following occurs:

(1) The reposessor gains entry to the collateral.(2) The collateral becomes connected to a tow truck or the reposessor’s tow vehicle, as those terms are defined in Section 615 of the Vehicle Code. (3) The reposessor moves the entire collateral present. (4) The reposessor gains control of the collateral. (b) No person other than the legal owner may direct a reposessor to release a vehicle without legal authority to do so. [BPC 7507.12]

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

Yes. In most cases, however, a reposessor 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.

[BPC 7500.1(s), 7508.2(d)]

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

No. Peace officers may not advance or hinder repossessions. Because they are acting under “color of state law,” they may not force a debtor to surrender a car than they may, after a car has been repossessed, force the reposessor to return it. 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 reposessor to release a vehicle without legal authority to do so. [BPC 7507.12(b)]

9. May a Repossession Agency take Personal Effects Connected to the Collateral at the time of Repossession?

Yes. 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. Nothing in this chapter prohibits the removal of a locking mechanism or security device on the collateral, before, during, or after a repossession. No storage fee shall be charged for the first week on any personal effects used to effectuate a recovery pursuant to this section. Any personal effects used or taken pursuant to this section shall be processed in a reasonably expedient manner. [BPC 7507.125, 7507.9 and 7507.10.]

10. May a law enforcement officer force a reposessor to give back personal effects at the time of repossession?

No. Personal effects shall be removed and inventoried. (BPC 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 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 REPOSESSION QUESTIONS

1. Is a police report required on all repossessions?

Yes. Whenever possession is taken of any vehicle by or on behalf of its legal owner under the terms of a security agreement or lease agreement, the person taking possession shall contact, for the purpose of providing the information required pursuant to subdivision (d), within one hour after taking possession of the vehicle, 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 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. If, after an attempt to notify, law enforcement is unable to receive and record the notification required pursuant to subdivision (d), the person taking possession of the vehicle shall continue to attempt notification until the information required pursuant to subdivision (d) is provided. For the notification required by this section, the person shall report only the following information and in the following order:

- (1) The approximate location of the repossession.
- (2) The date and approximate time of the repossession.
- (3) The vehicle year, make, and model.
- (4) The last six digits of the vehicle identification number.
- (5) The registered owner as provided on the repossession assignment.
- (6) The legal owner requesting the repossession as provided on the repossession assignment.
- (7) The name of the repossession agency.
- (8) The telephone number of the repossession agency. [VEH 28]

2. 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. A licensee shall not appraise or determine the value of any collateral, whether damaged or not. A licensee may complete a condition report that makes a general assessment of the collateral. A condition report shall include the following statement: "In accordance with Section 7507.115 of the Business and Professions Code, this condition report is a general assessment of the collateral and does not include all damage or missing parts." [BPC 7507.115], [BPC 7507.3]

3. What is to be done with personal effects?

Personal effects shall be removed from the collateral, including any personal effect that is mounted but detachable from the collateral by a release mechanism. A complete and accurate inventory of the personal effects shall be made, and the personal effects shall be labeled and stored by the licensee for a minimum of 60 days in a secure manner, 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. If the licensee or the licensee's agent cannot determine whether the property attached to the collateral is a personal effect or a part of the collateral, then that fact shall be noted on the inventory and the licensee or agent shall not be obligated to remove the item from the collateral, unless the item can be removed without the use of tools, in which case it shall be removed and inventoried. The licensee or the licensee's agent shall notify the debtor that if the debtor takes the position that an item is a personal effect, then the debtor shall contact the legal owner to resolve the issue. [BPC 7507.9]

4. What is to be done with deadly weapons & dangerous drugs contained in or on collateral at time of repossession?

Deadly weapons and dangerous drugs shall be turned over to any 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, and a receipt from the law enforcement agency shall be maintained in the records of the repossession agency. [BPC 7507.9(b)(1)]

5. 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. [BPC 7507.9(b)(2)]

6. What is to be done with Food items after being removed from repossessed collateral?

Food and other health hazard items shall be inventoried and noted as “disposed of, health hazard,” and disposed of in a reasonable and safe manner. [BPC 7507.9(b)(3)]

7. How long must a repossession agency hold on to personal effects from repossessed collateral?

Personal effects may be disposed of after being held for at least 60 days. [BPC 7507.9(c)]

8. What is to be done with Special Interest License Plates from repossessed collateral?

Environmental, Olympic, special interest, or other license plates issued, remains the personal effects of the debtor. They shall be removed from the collateral and inventoried. If the plates are not claimed by the debtor within 60 days, they shall either (1) be effectively destroyed and the licensee shall, within 30 days thereafter, notify the Department of Motor Vehicles of their effective destruction on a form promulgated by the chief that has been approved as to form by the Director of the Department of Motor Vehicles; or (2) be retained by the licensee indefinitely to be returned to the debtor upon request, in which case the licensee shall not charge more than 60 days’ storage on the plates.

[BPC 7507.9(f)]

9. May a repossession agency charge a fee for storing personal effects?

Yes. A licensee may charge the debtor for storing personal effects. The inventory shall include the name, address, business hours, and telephone number of the repossession agency to contact for recovering the personal effects and an itemization of all personal effects removal and storage charges that will be made by the repossession agency.

[BPC Code 7507.9(d)]

10. Must a debtor pay a fee normally \$15, to the police department or sheriff’s department before redeeming the repossessed vehicle?

Yes. This fee is not the obligation of the lien holder or reposessor. [GOV 26751, 41612] The recovering agency cannot pay or submit the the fee on behalf of the client or debtor.

11. May a individual working for a repossession agency pay the fee to, or retrieve the receipt from, the chief of police or parking authority.

No. An individual working for a repossession agency shall **NOT** pay the fee to, or retrieve the receipt from, the chief of police or parking authority. [GOV 41612]

REPOSSESSION TOWING VEHICLE QUESTIONS

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

No. A person licensed as a repossession agency 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. [VEH 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.

[VEH 5201(1)]

3. How far can a reposessor tow a repossessed vehicle on a public highway with only one safety chain attached?

A vehicle towed by a reposessor's tow vehicle, as defined in subdivision (b) of Section 615, is exempt from the multi safety chain requirement, so long as the vehicle is not towed more than one mile on a public highway and is secured by one safety chain. [VEH 29004(f)]

4. Do tow lights have to be connected with an extension cord?

No. Tow lights may be cordless. [VEH 24605]

If you have any questions please contact:

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