



## REPOSSESSION OF SECURED GOODS

*Disclaimer: Consumer Credit Legal Service (WA) Inc. produced this information as a general guide only. The information is not legal advice. You may ring us on (08) 9221 7066 for more help.*

### CASE STUDY

Nick took out a loan to buy a car 2 years ago. He stopped making repayments on the loan after 6 months and last week his car was repossessed. He is still receiving letters saying that he has to make payments on the car loan. Nick called CCLSWA for advice on whether he has to keep paying the loan after his car has been repossessed. Nick is advised that he is still required to repay the loan even though his car has been repossessed. He is also told that if the car is sold by the lender for an amount less than the amount owing on his loan that he will have to pay this difference. Nick is advised that if he is having difficulty making repayments that he should consider negotiating with the lender.

### Secured loans

A secured loan is a loan that is secured over certain goods. Where a borrower has missed repayments on a secured loan, the lender may repossess the goods that were secured under that contract.

### What happens if I miss a payment?

If you miss a repayment on a secured loan contract, the lender may issue you with a default notice. They can do this even if you only missed **one** repayment.

You have 30 days from the date of the default notice to remedy the default. To remedy the default, you must pay the amount of any payments you missed **as well as** the usual payments due.

If you remedy the default within the 30-day period, the lender is not allowed to take any further enforcement action.

If you do not remedy the default within the 30-day period, the lender is allowed to repossess the goods.

### **How can the lender try to repossess the secured goods?**

A lender or their agent (such as a debt collector) must not enter a residential property to repossess the secured goods unless they are authorised to do so:

- (a) by a court; or
- (b) by an occupier of the residential premises, in writing.

If an occupier does not provide consent, this may result in extra enforcement costs added to the debt as the lender may attempt to obtain a court order allowing entry or try to repossess again.

### **What happens if the secured goods are not with me?**

The lender may write to you to request information about the location of the goods. You will have 7 days to comply with their request and you must provide all information to the lender that may assist them to trace the goods.

It is a criminal offence if you refuse to comply with a lender's request for information to trace the secured goods.

### **What happens after the goods are repossessed?**

Within 14 days of the repossession, the lender must give you a written notice, which must state:

1. the estimated value of the goods;
2. the enforcement expenses accrued and accruing; and
3. a statement of your rights and obligations.

### **Will the lender sell the goods straight away?**

The lender is not allowed to sell the goods within 21 days after the written notice.

### **Your options within the 21-day period**

The goods will be returned to you if you pay:

- (a) the amount in arrears and the enforcement expenses; or
- (b) the amount owing on the contract, that is, the remaining part of the loan as well as the amount in arrears and enforcement expenses.

### **What happens if you do not pay within the 21-day period?**

The lender has two options:

- (a) Sell the goods for the “best price reasonably obtainable”; or
- (b) Sell the goods to a person you nominate. You may nominate a person, in writing, who is prepared to buy the goods from the lender at the estimated value or greater. The lender must offer to sell the goods to the nominated person for that amount.

### **What happens after the secured goods have been sold?**

After the sale of the goods, the lender must provide you with a written notice stating:

- the gross sale proceeds;
- the net sale proceeds;
- the amount required to pay out the credit contract or the amount due under the guarantee, if any; and
- any further recovery action the lender may take.

### **What happens if the sale proceeds are not enough to pay the debt?**

If this is the case, there will be a ‘shortfall debt’. You are still liable for this shortfall debt even after your goods have been repossessed and sold. If you are struggling to repay your shortfall debt you can contact us for advice.

#### **For further information contact:**

Consumer Credit Legal Service (WA) Inc.

Website: [www.cclswa.org.au](http://www.cclswa.org.au)

Advice line number: (08) 9221 7066

Financial Counsellors’ Association of Western Australia

Website: [www.financialcounselling.org](http://www.financialcounselling.org)

Telephone number: 1800 007 007

Australian Financial Complaints Authority

Website: [www.afca.org.au](http://www.afca.org.au)

Telephone number: 1800 931 678