

REPOSSESSION FACTSHEET

You're falling behind on loan repayments and your credit provider is threatening to seize your property. This fact sheet lets you know your rights at law regarding repossession of mortgaged property and steps you can take before repossession occurs.

A. KNOW YOUR RIGHTS ON REPOSSESSION

This fact sheet lets you know:

- What **credit providers** (banks, finance companies or other creditors) can and can't do with regards to repossession; and
- **Your responsibilities** under the law in Queensland.

Checklists are included in this factsheet to help you take steps to protect and assert your rights.

B. BEFORE REPOSSESSION OCCURS, KNOW YOUR POSITION AND OPTIONS

1. Check what type of loan you have – secured or unsecured?

If your loan is not secured, your credit provider **cannot repossess** your goods or property without an order from the court.

- A **secured loan agreement** is one where the credit provider has taken security over goods, a motor vehicle or land such as a mortgage. In such cases, *if you fail to make repayments, the credit provider may repossess and sell the secured property to satisfy the debt.*
- So, if you are worried that your credit provider may try to repossess your property, check:
 - ✓ whether you have taken out a loan that is **secured**.

For example, a car loan is normally a secured debt. In contrast, credit card debts are normally unsecured.

- ✓ If the loan is secured, check your contract to see **which property the credit provider may repossess to satisfy the loan.**

For a car loan, it is standard practice for a credit provider to secure the loan against the car you purchased.

- ✓ You should know that **without a court order, your credit provider cannot repossess property that is not secured by the loan.**

For example, if you have a loan securing your family car, they cannot repossess and sell your motorbike.

2. Check that you have received a default notice

If you have not received a default notice, your credit provider **cannot repossess** your goods or property.

- If you fall behind on your loan repayments, your credit provider must send you a default notice telling you how much you owe.

- The default notice must also state:
 - ✓ What the default is (for example, not following the terms of the loan such as not paying on time or missing payments);
 - ✓ The action you need to take to remedy the default; and
 - ✓ A warning that if you continue to remain in default for 30 more days, your goods or property, which is secured by the loan, may be repossessed.
- However, the credit provider does not have to give you a default notice if you:
 - Used fraud to gain finance; and/or
 - Intend to remove or dispose of the secured goods without the credit provider's permission.

A credit provider can be penalised if it repossesses mortgaged property unless the mortgagor (the person taking out the mortgage) is in default under the mortgage.

3. "So I've got a secured loan and I've received a default notice. What are my options?"

- ✓ Carefully read the default notice. If you believe the credit provider's demand has no basis under the terms of the loan, contact the credit provider to seek clarification. Ask that a **written explanation** be sent to you.
- ✓ Try to remedy the default as soon as possible by making repayments. If you are unable to make the repayments on time, **contact the credit provider to make an alternative payment arrangement.**
- ✓ Negotiate with your credit provider for a postponement of your repayments. There are **hardship provisions** under the law that may allow some flexibility in loan repayments for people who are experiencing financial difficulties. Your local legal centre may be able to help you with the drafting of this letter (see below for contact numbers).
- ✓ See a **financial counsellor** to discuss how you can manage your finances to repay the loan (see below for contact numbers).

4. "Do I have to hand over the goods?"

If you are disputing that you are in default, you can refuse to allow the credit provider to take possession of the goods. However, the credit provider can write to you asking you to tell them where the goods are within 7 days. You will be guilty of an offence if you don't reveal this information.

C. WHEN CAN THE CREDIT PROVIDER REPOSSESS MY GOODS?

If you are unable to negotiate alternative paying arrangements, the **credit provider must strictly comply with the law before they repossess your property.**

A credit provider **cannot repossess** the mortgaged goods without the court's consent where a **credit contract is**

substantially paid. This is applicable if:

- the amount owing is less than \$10,000; or
- less than 25% of the loan amount is owing, (whichever is the lesser).

However if the credit provider reasonably believes that you:

- have removed or disposed of the mortgaged goods; or
- that you intend to remove or dispose of them; or
- that urgent action is necessary to protect the goods;

the above conditions don't apply.

D. DURING REPOSSESSION – ASSERT YOUR RIGHTS AND INSIST ON SEEING A COURT ORDER

A credit provider **cannot enter** any part of your residential premises (i.e. your home) unless:

- they have a court order to do so; or
- they have obtained written consent from you, after giving you written notice that they cannot enter your residential premises without your consent or a court order.

Make it clear to them that you do not consent to the entry of the repossession agents on your property. Ask to see the court order. If they are unable to produce a court order, ask them to leave your property immediately.

However, if your car is parked on the street the credit provider can tow it away without your consent. **Make sure that the car is on your property eg. park it in the garage.**

E. WHAT CAN YOU DO AFTER REPOSSESSION?

If a credit provider has taken possession of your goods they must send you a written notice within 14 days which states:

- the estimated value of the goods
- the enforcement expenses incurred
- a statement of your rights and obligations

They cannot immediately sell or dispose of the goods without sending you this letter.

The creditor must also wait 21 days after sending you this letter before selling the goods. It is offence for the credit provider if they do not comply.

During anytime within this 21 day period, **you can still repay the money in arrears and the goods must be returned to you.** However at this stage remember that you must also pay for reasonable enforcement expenses in addition to the amount owing on the loan.

If the credit provider does go ahead and sell the goods after this 21 day period, they must sell the goods for the best price reasonably obtainable.

Remember that if the proceeds from the sale of the goods are less than the amount owing under the loan, you are still liable for the balance.

F. PRACTICAL TIPS ON REPOSSESSION OF CARS

✓ If your vehicle is going to be repossessed then it is sensible to **remove all personal possessions from the car.** Things that are not attached like car seat covers, steering wheel covers and road directories should simply be removed.

Things that are an essential part of the car like spare tyres, mats, jacks, fire extinguishers and medical kits that were in the car at the time it was mortgaged were probably mortgaged along with the car.

✓ The easiest excuse for a credit provider justifying a low resale price is that the car was in poor condition from things like 'worn upholstery' or 'small dints in bodywork'. Make sure **you take photos of the car from all sides, under the bonnet and inside the boot and inside the car to prove the condition that it was in when it was repossessed.** Get two sets of photos printed and send one to the credit provider for its file and keep one for your own records.

✓ **Get a valuation done on the car** for both mechanical and body work. Once again send a copy of the valuation to the credit provider before sale to put pressure on the financier to get the best possible price for the car.

✓ After sale, make sure you **cancel any insurance** that you've taken out on the car, or any loan insurance. Cancel and refund the car registration.

G. USEFUL CONTACT NUMBERS

If you need legal or financial assistance, you may like to contact the centres or organisations below.

Pro Bono Legal Centres	Telephone Number
Queensland Public Interest Law Clearing House	3012 9773
Consumer Law Advice Clinic	
Caxton Legal Centre	3254 1811
Townsville Community Legal Service	4721 5511

Financial Counsellors	Telephone Number
Anglicare (Whitsunday Region)	4957 7191
CQ Financial Counselling Service (Rockhampton)	4922 5924
Mackay Regional Financial Counselling Service (Mackay)	4957 2626
Lifeline Cairns	4050 4955
Lifeline Fortitude Valley (Brisbane)	3250 1900