

Post-repossession: Can a borrower ‘cure’ a default and get their car back?

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Coming out of the COVID-19 pandemic, the auto finance industry will face a number of issues when it comes to self-help repossession following a borrower’s default. A number of jurisdictions across the country have put protections into place that were meant to provide customers with relief during the midst of the pandemic, including prohibitions on creditors from repossessing motor vehicles in the event borrowers defaulted on their payments.

As the industry is beginning to see the light at the end of the COVID-19 tunnel, the protections that were afforded to borrowers during the emergency period are also going away. During his nomination hearing before the **U.S. Senate Committee on Banking, Housing and Urban Affairs** on March 2, **Consumer Financial Protection Bureau** Director nominee **Rohit Chopra** acknowledged that “experts expect distress across a number of consumer credit markets, including an avalanche of loan defaults and auto repossessions.”

Accordingly, creditors are on notice that regulators are anticipating an uptick in repossessions and will be watching. Therefore, while things begin to get back to business as usual, now is a perfect time for creditors to look at their policies and procedures and make sure that everything they are doing, as it relates to motor vehicle repossessions, is by the book.

Auto finance companies regularly ask about the borrower’s right to “cure” the default following repossession and before the sale of the repossessed motor vehicle. This post-repossession “right to cure” the default is referred to as a “right to reinstate,” meaning the borrower can pay past due fees and repossession expenses as a way to reinstate the contract and get their motor vehicle back.

This is different than the “right to redeem” the motor vehicle, which requires the borrower to pay the entire accelerated amount owed on the contract in order to get their car back before it is sold. Why is this something creditors need to worry about? Because almost every state provides the borrower a right to redeem the motor vehicle. It is a standard requirement set forth in the Uniform Commercial Code that creditors can address the same way in almost every state where they do business.

The right to reinstate or cure, however, is only provided in a handful of states. Therefore, it’s a bit harder for creditors from a policy and procedure perspective because it’s not a one-size-fits-all approach like the one creditors may take with the right to redeem. It’s imperative that creditors are aware of the states where the

right to reinstate or cure the contract exists, because a creditor who fails to offer this right when required may be forced to waive their right to a deficiency balance, or open themselves up to costly lawsuits.

The right to reinstate the contract is further complicated because the states that do provide this right to the consumer generally have varying requirements. For instance, some states establish a certain time period during which a consumer may reinstate before the vehicle sale and these time periods can vary, for example, 15 days or 20 days. Additionally, some states impose a right to reinstate perpetually, while others may limit a consumer's right to do so to only once or twice during the term of the contract.

As the industry comes out of the COVID-19 pandemic, it is especially important for creditors to know which states give the consumer a post-repossession right to cure the default, and which states simply allow for a right to redeem, and the specific requirements for the states that do provide a right to "cure."

As the avalanche of auto repossessions gets underway, it is likely that consumers will look for options to recover their vehicle by paying only the past due payments, rather than the entire accelerated amount remaining on the contract. It is also likely that regulators and plaintiffs' attorneys will be keeping a close eye on creditors engaging in repossessions, and will come down harshly or file suit against those who run afoul of the law.

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