

Repossessions during the COVID-19 pandemic

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During normal times, creditors face a number of requirements when looking to exercise their self-help repossession rights in the event of a borrower's default. Some of the factors a creditor must normally consider are required notices to the borrower prior to and after repossession, the borrower's redemption or reinstatement rights, and the time they must wait before selling the motor vehicle after repossession.

For creditors doing business in multiple jurisdictions, this often means having to abide by sets of rules that can be quite different. To make matters more confusing, some jurisdictions have imposed additional motor vehicle repossession requirements and limitations that creditors need to be aware of as a result of the COVID-19 pandemic.

Jurisdictions have imposed various ways to regulate motor vehicle repossessions. A handful has enacted emergency legislation that placed **moratoriums on motor vehicle repossessions**, including Alaska, the District of Columbia, and Massachusetts. Others, such as Illinois and Maryland, have executive orders that have placed moratoriums on motor vehicle repossessions. Some — such as Arizona, Nevada, and Texas — have taken a less restrictive approach and simply **requested that creditors cease** motor vehicle repossessions without going a step further and banning them altogether.

New Mexico even took the approach of **reminding creditors** that towing services for repossessions were not considered an “essential business” during the public health emergency and business engaging in that activity would be subject to enforcement penalties. Michigan issued similar guidance that self-help repossessions did not fit into the definition of “financial services” for the purposes of being considered a “critical infrastructure worker.”

An extra wrinkle is that each mandate, or request in some cases, is applicable for a different period of time. Some are for a set period of days, while others are tied to the length of time the state of emergency or public health emergency lasts in that jurisdiction. Creditors must ascertain the exact date each limitation expires before they begin to repossess in each jurisdiction.

As a result of these additional requirements, we have also seen some questions that arise related to “**voluntary surrenders**” of motor vehicles during the COVID-19 pandemic. The most typical question is: If moratoriums on repossessions are in place, what if the borrower voluntarily surrenders the motor vehicle? Is that OK? To this, I suggest there is no one-size-fits-all answer.

Creditors need to examine the law in each jurisdiction to determine whether what they consider a voluntary surrender really is just that. If the creditor suggests to the borrower that they voluntarily surrender the vehicle

because the borrower is having trouble making payments, then is that really voluntary on behalf of the borrower? If the creditor repossesses the vehicle from an impound lot, did the borrower actually voluntarily surrender that motor vehicle? The answer will likely not be the same in every jurisdiction.

The result of all this is an inconsistent approach to how creditors must proceed with their self-help repossession rights in what is an already convoluted set of laws across the country. When this is all over, regulators will undoubtedly be looking at how creditors handled repossessions during this time, and creditors will need to show the steps they took to help ensure compliance.

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