



Repossession

Creditors can only repossess your goods if they have included the right to repossess in a contract signed by you (usually this right is included in your credit contract) and you have missed payments or broken another term in the contract.

[Find out why a creditor can not take everything you own.](#)

The Credit (Repossession) Act sets out the steps a creditor must follow when they repossess goods. It does not give creditors the right to repossess. You are the only person that can give them this right. You do this when you sign a credit contract which has a repossession clause in it.

If it is not in your contract then they will be breaking the law if they try to take your things.

The repossession process

Who am I dealing with?

The creditor (or their agent) usually carries out your repossession. But sometimes the creditor may give the credit contract back to the trader. This is common with used-car financing. In these cases the creditor may send you the pre-possession notice but from then on you may be dealing with the dealer.

Remember, if the creditor has not provided you with all of the key information in the first place, the contract cannot be enforced against you. This means the creditor can not take any steps to hold you to the contract. They can't demand payments under the contract, add penalty interest, charge extra fees, repossess or threaten to repossess goods listed as security and they cannot send your account to a debt collection agency.

Before a creditor can repossess goods

Before a creditor can repossess your things, the law says they must send you a 'prepossession' notice telling you how much you are in default.

You have 15 days from the day the pre-possession notice was sent to consider your options, these may include paying the payments you missed and stopping the repossession, or voluntarily surrendering the goods.

For more advice about your options, see a budget advisor, but if the creditor has good reason to believe the goods you have listed as security are at risk and they can prove this, they don't have to send you a notice or wait 15 days before taking your goods. The law says goods will be at risk if they have been or are about to be "destroyed, damaged, endangered, disassembled, removed, or concealed" in breach of the terms of your credit contract.

If you move house, make sure you notify the creditor in writing. With any of these notices the creditor can meet their legal responsibilities by sending it by post to your last known address. If you have moved house and not told the creditor, you cannot complain that you did not receive the notice.

Example: Teresa buys a car on finance. Six months later the finance company notices she is trying to sell the car on an online auction. The creditor has reasonable grounds for believing their interest in the car is at risk, so they can repossess the car.

Repossessions and agents

The creditor or repossession agent can only enter your home between 6am and 9pm Monday to Saturday, but not Sundays or public holidays. The agent must have your written consent to come outside those times.

If they arrive outside these times without your consent, you can refuse to let them into your home and ask them to leave. If they refuse to leave, you should call the Police.

Do not let anyone enter your home unless they have identified themselves and proved they are authorised by the creditor to repossess your goods. If you have any doubts about them, contact the Police.

Letting the repossession agent into your house

Before they enter your home, repossession agents must identify themselves and prove that they are authorised to repossess your goods. They must also show you a copy of the pre-possession notice (and if they have arrived outside regular hours, a copy of your written consent). You can ask to see this information again at any time. You cannot get in the way or use force to stop a lawful repossession. If you do, you are committing

an offence.

Repossession agents are professionals and should act that way when they are at your home. Do not tolerate unreasonable behaviour from them. If they make threats, sexual advances, or cause unnecessary damage to your home, call the Police and ask them to leave.

Repossession agents must enter your home in a reasonable manner. Your contract may give them the right to break in and repossess goods when you are not home. However, they must do as little damage as possible and they must not leave your house obviously open. They must also leave, in an obvious place, a note identifying themselves, the date the repossession occurred, a copy of the pre-possession notice, and a list of things of items they took.

After the goods have been repossessed

Creditors must send you a post-possession notice within 21 days of repossessing your goods. This notice must tell you:

- when and what goods were repossessed
- what the repossession costs were (for example, transport and storage)
- how much you need to pay to 'reinstate' the contract (meaning you pay the arrears you owe) or 'settle' the contract (meaning you pay the total amount you owe), and what will happen if you do neither
- how much the creditor estimates your goods are currently worth. The creditor can't sell the goods until 15 days after the date the post-possession notice was sent.

If you return the goods to the creditor yourself, they still must send you a post-possession notice and wait 15 days before they sell the goods. If the creditor agrees that you can voluntarily return the goods and considers their current value to be more than 80% of the cash price, they do not have to send you a post-possession notice.

What are my options if I've received a post-possession notice?

You have 15 days, from the date the creditor sent the post-possession notice, to consider your options before the goods are sold. You need to consider whether it is in your best interests to:

- reinstate the agreement by catching up on the payments
- settle the loan by paying the total amount owing
- find someone who'll buy the goods for their current value
- allow the creditor to sell the goods. A budget advisor can help you figure out what the best option is for you. If the goods are reasonably valuable, say a car, you may want to get your own valuation done before they are sold.

The creditor can sell your goods privately, at auction or by tender. If they choose to sell them by auction or tender, they must tell you the time and place of the auction or the details of the tender. Both you and the creditor have the right to bid for the goods.

The creditor must send you a statement after the goods have been sold

The creditor must send you a 'statement of account' within 10 days of selling the goods.

This letter must tell you the:

- sale price
- costs of the sale (for example advertising, auctioneer's fees)
- how much you owed before the goods Sold the amount you still owe the creditor, or if there is an excess, the amount that you will be refunded.

The creditor can not add any more interest or fees to this final amount.

What if I have not received a prepossession notice and they take the goods?

If the creditor has not proven that the goods were at risk then the property was taken unlawfully. The creditor can't charge you repossession costs and must return the goods to you. They will also have to pay for any losses you have incurred because your property was taken unlawfully.

What if they try to take goods that don't belong to me?

Repossession agents can only take goods that belong to you and are listed as security on your credit contract. If they take other items you own, or things that do not belong to you, they are breaking the law. If this happens to you, call the creditor and ask for the things to be delivered back to you immediately. It is a good idea to follow this request up with a letter. If the creditor sells the goods, you can claim money back from the creditor for the value of the things that were taken. You may need to seek help from a community law centre to do this, or file a claim in the Disputes Tribunal.

[See here for more information about the Disputes Tribunal.](#)

Example: Grace lives in a flat with four other people. She takes out a \$1,200 cash loan. She agrees to list her road bike as security for the loan. She gets behind in her payments and the creditor sends a repossession agent around to pick up her bike. No one is home at this time. The repossession agent takes her flatmate's expensive mountain bike instead.

The creditor can only take the specific bike Grace listed as security for her debt. The repossession agent has taken the bike unlawfully. The creditor should return the bike and the flatmate can claim compensation.

If they take other items you own, or things that do not belong to you, they may be breaking the law by 'converting' the goods. 'Conversion' is taking something that belongs to someone else and treating it as if you own it.

[Find out what to do if a creditor is threatening to take all your household goods.](#)

What if I've sold the goods I listed as security under my credit contract?

You have breached the contract and committed a criminal offence. If you have bought other things with the money, the creditor may take the new goods even if they were not listed as security.

What if I think the repossession costs are too high?

Repossession costs are credit fees and must be reasonable. You can ask the creditor to explain the charges and you can compare them with how much other repossession agencies charge. If the fees aren't reasonable, you can go to the Disputes Tribunal to try to get the fees reduced.

[See here for more information about the Disputes Tribunal.](#)

What if the creditor will not sell the goods?

The creditor must sell the goods within three months of repossessing them. Otherwise you can write to the creditor to tell them to put the goods up for auction.

I paid the agent the money when he came to my door and he didn't repossess anything, why am I being charged repossession fees?

Repossession fees don't just cover the cost of taking the goods away. They cover staff time involved in passing the file on to a repossession agent, the agent's time finding you and calling you or coming to your house, collecting the money and doing the paperwork when the money is paid to the finance company. But remember these fees must be reasonable.

What if I don't receive a postpossession notice?

If the creditor doesn't send a postpossession notice then they must pay the repossession costs. Also, as you have not been told the information on the repossession notice, the creditor will have made the repossession process invalid. That means that if they sell the goods, the amount you owe will be reduced.

What if the creditor sells my things too soon?

If the creditor sells the goods before 15 days are up or without giving you the postpossession notice, you will only have to pay back the rest of the money you borrowed under your credit contract. You won't have to pay the interest, sale costs, repossession or other fees and you could even get a refund for the fees and interest you have already paid.

What if I think the creditor sold the goods too cheaply?

The creditor must make a reasonable effort to get a good price and must be able to prove it – that is, they can't sell the goods to a mate for a cheap price. If they can't prove they have made a reasonable effort your debt should be reduced.

What if the sale of the repossessed goods doesn't cover how much I owe?

You will still have to pay back the extra amount. For example, you owe the creditor \$1000 for a couch you bought on credit including repossession costs. The couch sells for \$700 and it cost the creditor \$50 to sell it. So now you owe the creditor \$350. Under section 35 of the Credit (Repossession) Act, once the goods have been sold the creditor can't charge interest on the \$350 or add on any extra fees or costs. The amount shown on the "account after sale" is all you have to pay.

How much can the creditor charge me to sell the goods?

Creditors should not be making a profit on the sale of repossessed goods. They can only charge you for reasonable costs and expenses related to the sale. You can ask the creditor for receipts that prove the cost relate to the sale of your goods. If the creditor is charged a commission by an auction house or salesperson, then this can be included in the costs of the sale.

What information does the guarantor get?

If you're a guarantor, the creditor must send you the same pre-possession and postpossession notices that are sent to the borrower. This is because under your guarantor agreement, you'll have to pay any money the borrower can't or won't pay. Repossession notices are sent to your last known address, so if you are moving house remember to write to the creditor and let them know. This way you'll have some warning if payments aren't being made by the borrower.

Security in your contract

Secured goods must be listed in the key information in your credit contract. The information must be clear and concise.

[Find out more about what needs to be included in the key information.](#)

When a finance company takes excessive security over goods (for more value than the borrowed amount), the finance company may be acting oppressively.

[Find out if the creditor is acting oppressively and what you can do about it.](#)

Can the creditor ask for security over all of my property?

A contract that claims an interest in "all present property" (meaning everything you own) is not clear enough to meet this requirement. Creditors must identify the particular items that the creditor has a security interest in, the creditor or repossession agent can only take items that are specifically written in the contract.

Some creditors claim the right to repossess anything you own now and in the future, for as long as you owe them money. This is called an "all present and after acquired property clause".

Creditors must not include security clauses in your credit contract which claim an interest in "all present and after acquired property". The law that covers this is section 44 of the Personal Properties and Securities Act 1999.

This is the case even if you are in bankruptcy or a No Asset Procedure.

What can I do if a creditor is threatening to take all my household goods?

If a creditor is threatening to take your property based on a 'all present and after acquired property' clause, you can send them the following letter which explains the law in detail.

[Letter for Creditor available in PDF format \(60 KB\)](#)

When can a creditor take goods I purchased after I entered the credit contract?

The law says 'all present and after acquired property' clauses cannot be used where the security for the loan is consumer goods. The only times a creditor can take goods you have purchased after you entered a credit contract is when:

- you specifically agreed to add those goods as security after you bought them
- you sold the original goods you listed as security and bought other things with the money (or with the money you borrowed from the creditor).

Example: Mike sold a car he listed as security for a loan and bought a motorcycle and a leather jacket. The creditor may repossess the motorcycle and leather jacket to get their money back.