

My Car Was Repossessed! Can I Get It Back By Filing Bankruptcy?

by Adrian Lapas, Eastern North Carolina Bankruptcy Attorney on February 5, 2010

We all know that if you do not make your car payments, at some point the car creditor is likely to have your car repossessed. We know from the multiple posts on this blog that once a bankruptcy case is filed, the automatic stay prohibits a creditor from repossessing the car. What happens if your car is repossessed before you file bankruptcy? Can you get your car back by filing bankruptcy?

The answer is—it depends!

We can be sure that this situation occurs often enough. But that does not mean it will be easy getting a vehicle back. First, once your car is repossessed, you will need to see a bankruptcy lawyer right away. You should tell that lawyer that you need to file bankruptcy right away because your car was repossessed. Unfortunately, for this to happen, you will need sufficient money to pay the attorney as well as the bankruptcy court's filing fees and any credit counseling fees just to get started. This may require several hundred dollars!

Additionally, you must have enough information about your finances at hand for the lawyer to size up your situation and to be able to prepare your paperwork quickly. You will have a limited amount of time, typically, ten days, from the date of repossession to the time that the creditor actually sells the car. If you are to stand any chance of getting the car back, you and your lawyer will need to move fast.

Once you file bankruptcy, any further creditor action is stopped or “stayed” by the automatic stay under Section 362 of the Bankruptcy Code. This means that the creditor cannot sell the car once you file (if the car has not been sold already) but that does not necessarily mean that you get the car back.

For a pre-petition repossession, most districts have developed procedures by which a debtor whose car was car was repossessed may be allowed to get the vehicle back once the bankruptcy case is filed. This may be nothing more formal than knowing what the judge has done in the past and will likely do in the future. In my district, typically, the court will generally require the debtor to pay the repossession and storage fees up front and as a condition of getting the car back. The court will also require that proof of insurance be furnished before the car is released to the debtor. This can mean that a debtor must have several hundred dollars on hand to be able to get the car back if it is repossessed prior to a bankruptcy filing. This can present quite a hardship.

Ultimately, if you are going to file bankruptcy, do so before your car gets repossessed. If you are struggling with your debts, seek competent advice from a qualified bankruptcy lawyer before your car gets repossessed so that you will know what options are available to you. If you wait until after your car is repossessed, it may be too costly to get the car back.