

# Legal Services Corporation of Delaware, Inc.

A non-profit law firm and community education organization assisting low-income families in Delaware.

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## Vehicle Repossession: Seizing the Vehicle <sup>[1]</sup>

### Does the creditor have a valid security interest in the vehicle?

A creditor must have a legally enforceable security interest in the vehicle before they can seize it. "Security interest" means a legal share of the vehicle which secures payment of the debt. The security interest is created when you sign a security agreement with the creditor. The security agreement is usually part of the contract you sign when you buy a vehicle on credit.

In order for the security interest to be valid all of the following must be present: (1) You must have signed the security agreement; (2) The security agreement must provide a description of the vehicle used as collateral; and (3) The security agreement must say that you give the creditor a security interest in the vehicle. **Without a valid security interest a creditor has no legal right to repossess the vehicle.**

### Were you in default?

In addition to the requirement that a creditor must have a legally enforceable security interest in the vehicle, the debtor must also be in default before they can seize the vehicle. The Delaware Commercial Code does not define the word "default." Typically, the security agreement defines the word "default." For example, an agreement for Ford Motor Credit Company defines default as follows:

You will be in default if:

1. You do not make a payment when it is due; or
2. You gave false or misleading information on your credit application relating to this contract; or
3. Your vehicle is seized by any local, state, or federal authority and is not promptly and unconditionally returned to you; or

4. You file a bankruptcy petition or one is filed against you; or
5. You do not keep any other promise in this contract.

If you are not sure what your security agreement says, keep in mind that you will be in default on your car loan if you fail to make loan payments on time, fail to maintain adequate insurance on your vehicle, or violate some other provision of the agreement.

## **Was the self-help repossession properly conducted?**

The secured creditor has a right to repossession after default. Advanced notice of the repossession is not required in Delaware unless your contract otherwise requires it. The secured creditor may take possession of your vehicle without going to court, but it must seize the vehicle without a breach of peace. Whether a breach of peace has occurred is ultimately determined by the courts. Remedies are available for you if the creditor wrongfully seized your vehicle. You should consult an attorney to determine whether the self-help repossession was properly conducted and to determine whether any remedies are available.

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