Article - Commercial Law

[Previous][Next]

§12–1021.

(a) (1) A credit grantor may repossess tangible personal property securing a loan under an agreement, note, or other evidence of the loan if the consumer borrower is in default.

(2) The credit grantor may repossess tangible personal property from a consumer borrower only by:

(i) Legal process; or

(ii) Self-help, without use of force.

(b) Nothing in this section authorizes a violation of criminal law.

(c) (1) At least 10 days before a credit grantor repossesses any tangible personal property, the credit grantor may serve a written notice on the consumer borrower of the intention to repossess the tangible personal property.

(2) The notice shall:

(i) State the default and any period at the end of which the tangible personal property will be repossessed; and

(ii) Briefly state the rights of the consumer borrower in case the tangible personal property is repossessed.

(d) The notice may be delivered to the consumer borrower personally or sent to him at his last known address by registered or certified mail.

(e) Within 5 days after the credit grantor repossesses the tangible personal property the credit grantor shall deliver to the consumer borrower personally or send to him at his last known address by registered or certified mail, a written notice which briefly states:

(1) The right of the consumer borrower to redeem the tangible personal property, and the amount payable for it;

(2) The rights of the consumer borrower as to a resale, and his liability for a deficiency; and

(3) The exact location where the tangible personal property is stored and the address where any payment is to be made.

(f) For 15 days after the credit grantor gives the notice required by subsection

(e) of this section, the credit grantor shall retain any repossessed property.

(g) During the period provided for in subsection (f) of this section, the consumer borrower may:

(1) Redeem and take possession of the property; and

(2) Resume the performance of the agreement.

(h) To redeem the property, the consumer borrower shall:

(1) Tender the amount due under the agreement at the time of redemption, without giving effect to any provision which allows acceleration of any installment otherwise payable after that time;

(2) Tender performance of any other promise for the breach of which the property was repossessed; and

(3) If the discretionary notice provided for in subsection (c) of this section was given, pay the actual and reasonable expenses of retaking and storing the property.

(i) (1) Notwithstanding subsections (g) and (h) of this section, the credit grantor shall have the right to require the consumer borrower to tender payment of the entire balance due under the agreement if:

(i) The date of the default in the payments due under the agreement that led to the present repossession occurred within 18 months after the last repossession; or

(ii) The consumer borrower was guilty of fraudulent conduct, intentionally and wrongfully concealed, removed, damaged, or destroyed the property, or attempted to do so, and the property was repossessed because of that conduct.

(2) Under paragraph (1) of this subsection, the payment by the consumer borrower of the entire balance due under the agreement shall:

(i) Constitute redemption by the consumer borrower; and

(ii) Entitle the consumer borrower to take possession of the property.

(j) (1) (i) Subject to subsection (l) of this section, the credit grantor shall sell the property that was repossessed at:

1. Subject to paragraph (2) of this subsection, a private sale; or

2. A public auction.

(ii) At least 10 days before the sale, the credit grantor shall notify

the consumer borrower in writing of the time and place of the sale, by certified mail, return receipt requested, sent to the consumer borrower's last known address.

(iii) Any sale of repossessed property must be accomplished in a commercially reasonable manner.

(2) In all cases of a private sale of repossessed goods under this section, a full accounting shall be made to the borrower in writing and the seller shall retain a copy of this accounting for at least 24 months. This accounting shall contain the following information:

(i) The unpaid balance at the time the goods were repossessed;

(ii) The refund credit of unearned finance charges and insurance premiums, if any;

(iii) The remaining net balance;

(iv) The proceeds of the sale of the goods;

(v) The remaining deficiency balance, if any, or the amount due the buyer;

(vi) All expenses incurred as a result of the sale;

(vii) The purchaser's name, address, and business address;

(viii) The number of bids sought and received; and

(ix) Any statement as to the condition of the goods at the time of repossession which would cause their value to be increased or decreased above or below the market value for goods of like kind and quality.

(3) The Commissioner of Financial Regulation may make a determination concerning any private sale that the sale was not accomplished in a commercially reasonable manner. Upon that determination, the Commissioner may enter an order disallowing any claim for a deficiency balance.

(k) (1) The provisions of this subsection apply to a public sale of property which secured a loan in excess of $2,000 at the time the loan was made.

(2) The proceeds of a sale to which this subsection applies shall be applied, in the following order, to:

(i) The actual and reasonable cost of the sale;

(ii) The actual and reasonable cost of retaking and storing the property; and

(iii) The unpaid balance owing under the agreement at the time the property was repossessed.

(3) The credit grantor shall furnish to the consumer borrower a written statement which shows the distribution of the proceeds.

(4) If the provisions of this section, including the requirement of furnishing a notice following repossession, are not followed, the credit grantor shall not be entitled to any deficiency judgment to which he would be entitled under the loan agreement.

(l) (1) (i) In this subsection, "consumer goods" means tangible personal property used or bought for use primarily for personal, family, or household purposes that is:

1. Movable at the time a security interest attaches; or

2. A fixture.

(ii) "Consumer goods" does not include money, documents, instruments, accounts, chattel paper, or general intangibles.

(2) This subsection applies to tangible personal property securing a loan that:

(i) Has been repossessed by the credit grantor; or

(ii) Is in actual or constructive possession of the credit grantor where the perfection of the security interest in the property depends on the possession of the property.

(3) In the case of a purchase money security interest in consumer goods, if a consumer borrower has paid 60 percent of the cash price or 60 percent of the loan in the case of another security interest in consumer goods and, after default, has not signed a statement renouncing or modifying the consumer borrower's rights under this subsection, a credit grantor who has repossessed the consumer goods must take reasonable action within 90 days after the repossession to commence disposal of them in the manner provided under subsection (j) of this section.

(4) (i) In any other case involving tangible personal property securing a loan, a credit grantor may, after default, propose to retain the property in full satisfaction of the obligations of the borrower under the loan.

(ii) If, as authorized by subparagraph (i) of this paragraph, a credit grantor proposes to retain property in full satisfaction of the obligations of the borrower under the loan, the credit grantor shall send written notice of the proposal to:

1. The consumer borrower; and

2. Except in the case of consumer goods, any other person who has a security interest in the property and who:

A. Has duly filed a financing statement indexed in the name of the consumer borrower in this State; or

B. Is known by the credit grantor to have a security interest in the property.

(iii) 1. If the consumer borrower or other person entitled to receive notification objects in writing within 30 days from the sending of the notification, the credit grantor must take reasonable action to dispose of the property in the manner provided under subsection (j) of this section.

2. In the absence of written objection, the credit grantor may retain the property in full satisfaction of the outstanding unpaid indebtedness under the loan.

(5) If despite complying with the requirements of this section there is no sale of tangible personal property securing a loan under subsection (j) of this section:

(i) The credit grantor may retain the property without obligation to account to the borrower; and

(ii) If the property is retained, all obligations of the borrower under the loan shall be discharged.

[Previous][Next]