

Article - Commercial Law

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§12–115.

(a) With respect to any loan made at a rate of interest pursuant to § 12–103(a) and (c) of this subtitle or § 12–306 of this title:

(1) A lender may repossess goods securing a loan under an agreement if the borrower is in default in:

- (i) The payment of any sum due under the agreement;
- (ii) The performance of any other condition which the agreement lawfully requires him to perform in order to obtain unencumbered title to the goods; or
- (iii) The performance of any promise the breach of which is expressly made a ground for repossessing the goods; and

(2) The lender may repossess goods 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 he repossesses any goods, a lender may serve a written notice on the borrower of his intention to repossess the goods.

(2) The notice shall:

- (i) State the default and any period at the end of which the goods will be repossessed; and
- (ii) Briefly state the rights of the borrower in case the goods are repossessed.

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

(e) Within 5 days after he repossesses the goods, the lender shall deliver to the 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 borrower to redeem the goods, and the amount payable for them;
- (2) The rights of the borrower as to a resale, and his liability for a

deficiency; and

(3) The exact location where the goods are stored and the address where any payment is to be made or notice delivered.

(f) For 15 days after the lender gives the notice required by subsection (e) of this section, the lender shall retain any repossessed goods.

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

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

(2) Resume the performance of the agreement.

(h) To redeem the goods, the 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 goods were 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 goods.

(i) This section does not apply if the borrower was guilty of fraudulent conduct, intentionally and wrongfully concealed, removed, damaged, or destroyed the goods, or attempted to do so, and the goods were repossessed because of that conduct.

(j) (1) The lender shall sell the repossessed goods at private sale (subject to the provisions of paragraph (2) of this subsection) or at public auction. At least 10 days before the sale, the lender shall notify the borrower in writing sent by certified mail, return receipt requested, sent to the borrower's last known address of the time and place of sale. 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;
- (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 goods 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 goods;
- and
- (iii) The unpaid balance owing under the agreement at the time the goods are repossessed.

(3) The lender shall furnish to the buyer 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 lender shall not be entitled to any deficiency judgment to which he would be entitled under the loan agreement.

(l) If there is no resale of repossessed goods, all obligations of the borrower under the agreement shall be discharged, and the holder may retain the goods as his own property without obligation to account to the buyer.

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