

CITY OF BARSTOW

CALIFORNIA

POLICIES and PROCEDURES MANUAL:

POLICE

Subject: REPOSSESSION POLICY

INTRODUCTION

To outline Department policy regarding the repossession of personal property, including automobiles, by the legal owner or his agent in cases where Police Officers are called to the scene, the Barstow Police Department has established the following policy.

DEFINITION

Repossession is a civil action in which a creditor attempts to regain the property sold or on which money has been lent (including automobiles) from the debtor who is alleged to be in default of a conditional sales contract.

Legal repossessions may only be accomplished by:

1. The legal owner. This includes the seller or his full-time employee or a full-time employee of a bank or finance company; or
2. A private reposessor licensed under Section 7500-7590 of the Business and Professions Code and having in his possession an identification card issued by the Department of Consumer Affairs pursuant thereto.

GENERAL

The role of Police Officers in all repossessions matters should generally be one of non-involvement. Officers should keep the peace, enforce any violations of criminal law, and avoid taking sides with either party.

The officer has a duty to determine whether the reposessor has the lawful right to repossess by requiring the reposessor to furnish proof that he is the legal owner, is employed by the legal owner, or is employed by a repossession agency.

RIGHTS OF THE REPOSSESSOR WHEN NOT IN POSSESSION OF A COURT ORDER

1. The reposessor may generally repossess without a court order if he can do so peacefully. He may repossess from a public street, public parking lot or other public place. He may repossess furniture from an open porch or an automobile from a private driveway. He may not, however, enter an enclosure, locked gate, closed garage, or residence in order to repossess property without permission. If he does so, he may be guilty of a criminal trespass.

Reference:

Effective Date

Revision No.

Section

March 01, 1988

Page 1 of 3

327

CITY OF BARSTOW

CALIFORNIA

POLICIES and PROCEDURES MANUAL:

POLICE

Subject: REPOSSESSION POLICY - continued

2. IF THE PERSON IN POSSESSION OF THE PROPERTY (EXAMPLE - REGISTERED OWNER OF AN AUTOMOBILE) IS PRESENT AND OBJECTS TO THE REPOSSESSION, THE REPOSSESSOR LOSES ANY LEGAL RIGHT, AND MUST DESIST IN HIS EFFORTS, WHETHER THE VEHICLE IS ON PRIVATE PROPERTY OR ON THE STREET.
3. The debtor may object to the reposessor's actions at any time before the repossession is complete, and his protest revokes the right to repossess. In his absence, his wife, children, or other persons in legitimate possession may represent his interests and protest a repossession. However, a landlord, employer or other person on whose property the vehicle may be found, does not have possessory control sufficient to legally protect a repossession. If the debtor consents to the repossession or the reposessor has a court order, the debtor has the right to retain any other personal property, such as clothes, tools and other items from the vehicle.

DUTIES OF THE OFFICER WHEN REPOSSESSOR IS NOT IN POSSESSION OF A COURT ORDER

1. If the person in possession is not present, or does not object and the reposessor is not in violation of any trespass or other criminal law, the reposessor must be allowed to proceed with the repossession.
2. If the person in possession is present and objects to the repossession, the reposessor must leave and may not proceed with the repossession. If the reposessor refuses to leave, he may be in violation of one of the following Penal Code sections:
 - a. 415 PC (Disturbing the Peace)-A breach of peace occurs when the reposessor does not depart after the debtor protests his attempt at self-help repossession. A breach of peace has also been found when the reposessor used intimidating language, appeared to be giving orders, or continued to repossess after being told to stop.
 - b. 602n PC (Refusal to Leave Private Property)-A reposessor may be charged with this section when he refuses to leave private property after being directed to leave by the land owner and the Police Officer.

References:

Effective Date

Revision No.

March 01, 1988

CITY OF BARSTOW

CALIFORNIA

POLICIES and PROCEDURES MANUAL:

POLICE

Subject: REPOSSESSION POLICY - continued

- c. 242 PC (Battery)-The person in possession has the right to use a reasonable amount of force, short of deadly force, to retain his possessions. Therefore, he would probably not be liable for 243 PC. The reposessor, on the other hand, has no legal right to the property. If he uses any physical force, he may be criminally liable for 242 PC.

PROCEDURE WHEN THE REPOSSESSOR IS IN POSSESSION OF A COURT ORDER

A repossession court order is a civil court order. Police Officers in repossession cases will not enforce these court orders, nor will they help the reposessor enforce them. A reposessor may go on to private property when acting under a court order. However, if the reposessor cannot accomplish his purpose peacefully, the officer should advise the reposessor to obtain the help of the County Marshal.

Reference:

Effective Date

Revision No.

Section

March 01, 1988

Page 3 of 3

327