

Repossession Law Advisory

RI Consumer Law Series



September 26, 2010

Col. Darnell Weaver
RI State Police
311 Danielson Pike
Scituate, RI 02857

Dear Superintendent Weaver:

I represent consumers in disputes with auto dealers and lenders. I am familiar with situations where consumers have justifiably stopped making car payments and lenders have still tried to repossess their cars. I am also familiar with repossessions carried out because of paperwork errors. I believe it may be prudent to remind your Troopers not to be drawn into disputes involving consumers and repossession agents. I am not singling out your department—I am sending this to all the chiefs in Rhode Island.

The law gives repo agents limited authority to take a person's car subject to three very important limitations:

- 1) The lender must have already sent the owner a specific letter warning the car might be taken.
- 2) Repo agents may take a car only if they can do so without disturbing the peace.
- 3) Repos agents may not take the car from the car owner's property, whether the property is owned or rented, unless the car owner consents to the agent doing so at the time the agent goes to take it.

While it often makes sense for consumers to cooperate with repo agents, the law generally does not require them to: they do not have to get out of their car so the repo agent can take it; they do not have to move out of the repo agent's way; and they do not have to give their keys to the repo agent.

Tow truck drivers have no right to threaten, assault, restrain or touch anyone - even a person who is trying to get into the car the repo agent is trying to take. Repo agents also have no right to stay on private property after being told to leave and they do not acquire any special rights once a car is 'hooked.'

Police officers should not be assisting repo agents or encouraging consumers to surrender their vehicles. If an officer is called to the scene of a repossession, I believe it is self-evident that the repossession is disturbing the peace and the best course may be to tell the repo agent to unhook the vehicle and move along or face arrest for disturbing the peace or trespassing. Police officers who have been drawn into civil repossession disputes have been held liable for civil rights violations under 28 USC §1983.

Enclosed are two major laws regarding repossessions in Rhode Island: RIGL 6-51-1, *et. seq.*, which is also known as the Repossession Act, and RIGL 6-9-609, which is part of the RI Uniform Commercial Code (UCC). The official comment to the UCC states: "This section does not authorize a secured party who repossesses without judicial process to utilize the assistance of a law-enforcement officer." And, despite what a repo agent may claim, a 'repossession order' from a bank is not judicial process.

This letter contains my reading of the law and I encourage you to consult with your own attorney if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "John T. Longo".

John T. Longo
Attorney at Law