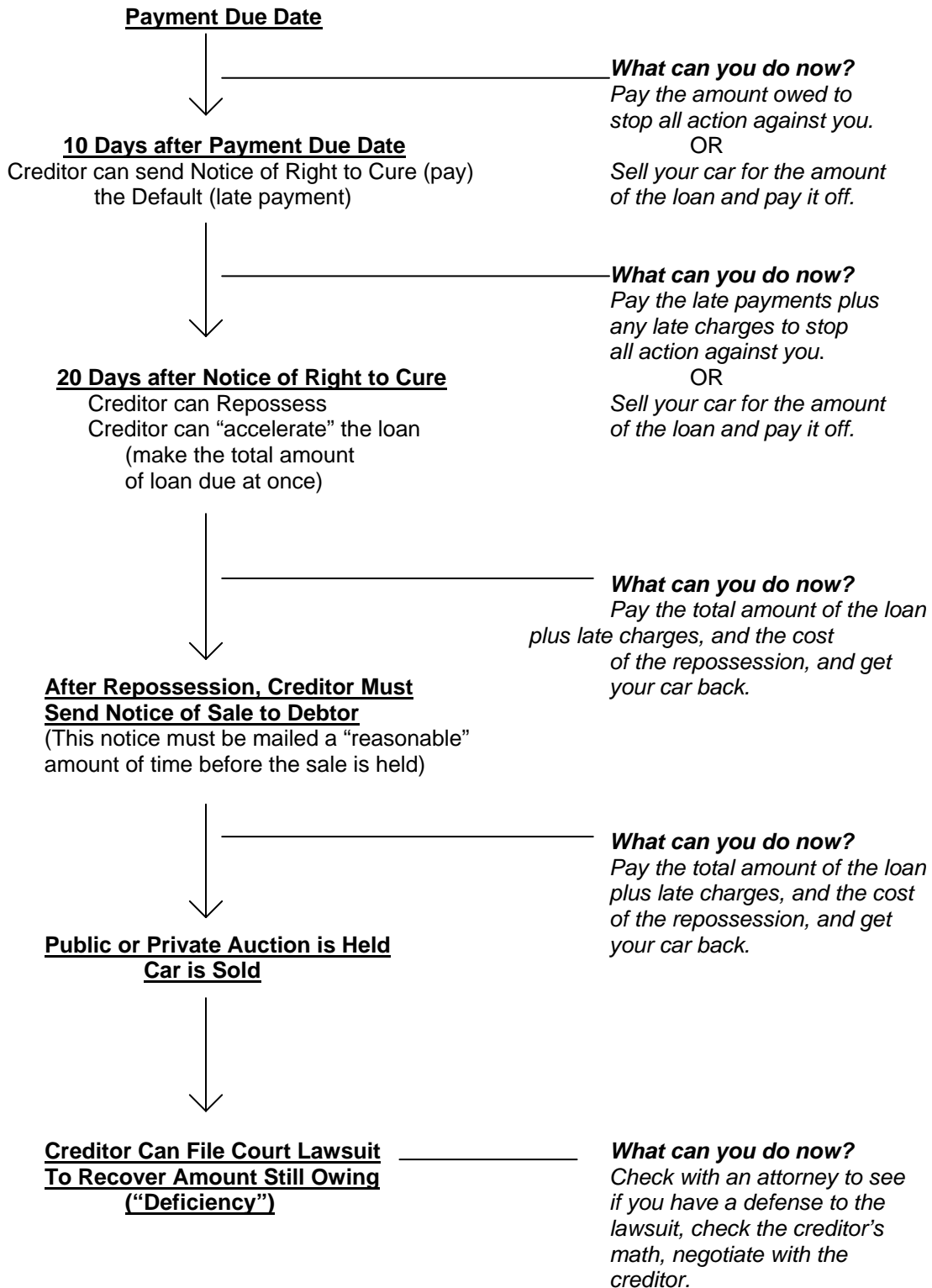


## REPOSSESSION TIME LINE



**NOTE:** If you're late again within 12 months of the first late payment, the creditor doesn't have to send you another notice (unless the vehicle is a mobile home). If the purchase price of the car was less than \$3000, the creditor can EITHER repossess or file a lawsuit, not both. See handout for more information.

## REPOSSESSION

The following handout provides general legal information on Colorado law regarding vehicle repossessions. It is intended as general information only, and not as specific legal advice. As in any legal matter, you should consult an attorney whenever possible.

1. I can't make the payments on my car or mobile home. What can I do?
  - Negotiate with your creditor. Try to work out an agreement to make up the late payments. If you do work out an agreement, be sure to **PUT IT IN WRITING** and **KEEP A COPY**. If that is not a possibility, send a "thank you" letter that states the terms you agreed to. Copy and date the letter before you send it.
  - Sell the car or mobile home yourself. Remember that the creditor will only release its lien against your vehicle if they receive full payment, so you must be able to sell the vehicle for the full amount or make up the difference yourself.
  - If your vehicle is in danger of being repossessed, be sure to remove all your personal items from it. It's also a good idea not to store the loan papers or documentation of any repair problems in your vehicle!
  - Keep a record of your payments (cancelled checks, money order receipts, etc.) in case you disagree with your creditor about the amount of late payments they are claiming that you owe.
  
2. My car was hit in an accident. Do I still have to pay the loan?
  - Yes, you are still responsible for the loan. If you don't pay, the creditor can file a lawsuit to collect the amount of the loan (plus costs and possibly attorney fees) from you.
  - You should check with your car insurance company to see if your insurance coverage will take care of the loan—and follow through to make sure payment is made.
  
3. My car is defective. I don't think I should have to pay for it.
  - If you bought a new vehicle, you should check your warranty to see what you can do.
  - If you bought a used vehicle, you should check your sale papers. Most used cars and mobile homes are sold "as is", meaning that the seller doesn't guarantee the condition of the car or mobile home.
  - If your sale agreement or warranty doesn't offer you any options, you may have to pay the loan, unless you can prove intentional fraud or a material flaw prior to the sale. You might want to pay for the "lemon check" at [www.kbb.com](http://www.kbb.com).
  
4. When can a creditor repossess my vehicle?
  - Before repossessing your vehicle, the creditor must send you a "Notice of Right to Cure the Default" (pay the late payment). This notice can be sent **TEN DAYS** after you miss a payment. (Your loan papers will tell you when your payments are due.)
  - If you don't pay the late payment (plus any late charges) within **TWENTY DAYS** after getting the "Notice of Right to Cure the Default", the creditor can repossess without any other warning.
  - The creditor can also "accelerate" the loan (make the full amount of the loan due at once), if you haven't paid within the twenty day period after receiving the Notice of Right to Cure the Default. You can pay off the loan (plus late charges) or refinance in order to avoid having the creditor repossess the vehicle.
  - If you make your payment and stop the repossession action, but are late with another payment within 12 months of the first notice regarding late payment, the creditor can repossess your car without any notice to you. (If your vehicle is a mobile home, the creditor can repossess without notice only after you are late in your payment a third time within twelve months.)
  - Creditors can also repossess if you fail to keep insurance on your vehicle, or if you don't have a valid driver's license.
  
5. My creditor says I can return the vehicle if I can't pay for it. Is voluntary repossession a good idea?
  - Unless you get an agreement **IN WRITING**—signed by your creditor—releasing you from any financial responsibility for the vehicle, you are still liable for the balance of your loan, and your creditor can file a lawsuit against you to obtain the balance of the loan after sale of the car as described below.
  - Your creditor can sue you up to **SIX YEARS** after the repossession of the car.

6. How much do I owe my creditor?  
These are general guidelines. Check your loan agreement, or check with your creditor, for your specific information.
- Within 10 days of the payment due date: the amount of the missed payment.
  - Within 20 days after mailing of the Notice of Right to Cure the Default: the amount of the missed payment, plus any late charges the creditor may impose according to your loan agreement.
  - After your vehicle is repossessed: you will probably owe the full amount of your loan, plus late charges, plus the cost of the repossession, and possibly attorney's fees.
  - After you receive the Notice of Sale: the full amount of your loan, plus late charges, plus the cost of the repossession, possibly attorney's fees, possibly costs of preparing for the sale.
  - After your vehicle is sold: The creditor should subtract the payment received for your vehicle at the sale. You will owe the difference between the amount due + late charges + repo costs + sale costs + possible attorney's fees, and the payment received at the sale. This remaining balance is called a "deficiency".
  - If the original purchase price of your vehicle was \$3000 or less, the creditor can choose to either repossess the vehicle or accelerate the loan and sue for the balance owed. However, if the creditor chooses to repossess a vehicle when the original purchase price was \$3000 or less, the creditor cannot sue for any deficiency.
7. Can a creditor repossess my vehicle while it's parked in my garage?
- Creditors cannot "breach the peace" when repossessing your vehicle. This means they can't come into your home or garage—locked or unlocked—without your permission, they can't break open a lock to get into your property, and they can't make threats or use physical force.
  - Remember that you can't "breach the peace" either—do not threaten or assault someone who's trying to repossess your vehicle, or you may face criminal charges.
8. If my vehicle is missing, how do I find out if it's been repossessed?
- Contact your local police or sheriff department or the creditor.
  - Creditors who repossess your vehicle must notify local law enforcement.
9. What can the creditor do with my vehicle after it's repossessed?
- The creditor can keep the vehicle as payment for the loan.
  - The creditor can sell the vehicle, at either a public or private auction.
10. Will I receive a notice of the sale?
- The creditor must send you a notice of disposition, which should list:
    - the names of the creditor and the debtor(s);
    - a description of the vehicle;
    - the intended method of sale;
    - the day, date, time and place of the auction (if it's a public auction); or
    - the date after which the property will be sold in a private auction;
    - that you have a right to a statement telling you how much it would cost for you to redeem your vehicle before the auction, and a telephone number and address where you can obtain that information, and any other information available; and
    - a description of your potential liability for a deficiency.
  - The creditor must send this notice a "reasonable" amount of time before the sale. (The day before the sale is not "reasonable", but a week before may be considered reasonable.)
11. What happens if my vehicle is sold for less than what I owe?
- Remember, you now owe not just the amount of the loan, but also the costs of the repossession, the costs of the sale, and possibly attorney's fees.
  - If the car's selling price at the auction is less than what you owe, the balance is called a "deficiency". The creditor can collect the deficiency from you by filing a lawsuit.
12. What happens if the creditor files a lawsuit to collect the deficiency?
- If the original purchase price of the vehicle was \$3000 or less, and the creditor repossessed the vehicle, the creditor cannot collect any deficiency.
  - If the creditor can sue you to collect the deficiency, you will be served with court papers (called a Summons and Complaint) telling you when and where to answer the complaint in court. You should

check with an attorney to determine if you have any defenses to the lawsuit. Possible defenses include:

- The creditor has incorrectly added up what you owe, or has included amounts you already paid or don't owe.
- The car's purchase price was \$3000 or less.
- The creditor failed to provide you with a Notice of Right to Cure the Default before repossessing your vehicle or accelerating the loan.
- The creditor failed to provide you with a Notice of Disposition before selling your vehicle.
- The original loan agreement did not give the creditor a security interest in your vehicle.

13. I co-signed a vehicle loan for someone else, and now their vehicle is being repossessed. Can the creditor sue me?

- Yes. A co-signer is just as responsible for the payment of the loan.
- If you co-sign a loan for someone, be sure to get copies of the loan agreement for your records.
- Never co-sign a loan for someone if you're not sure that they can make the payments!

14. Can the creditor decide not to repossess my vehicle, and just sue me for the balance of the loan?

- Yes.

15. If the creditor sues me and gets a judgment saying I owe money, what can the creditor do to collect from me?

- Garnish wages, or other income, or bank accounts. Some income may be exempt from garnishment (the creditor cannot take it), like Social Security checks. If you get a notice that your income is being garnished, you should check with an attorney to see if your income is exempt from garnishment. If it is, you can file an Objection to Garnishment with the court.
- Attach property. Once a creditor has a judgment in court, the creditor can attach certain property to satisfy the judgment. You should check with an attorney to find out if you have property that can be attached.

16. I've been sued for the deficiency, and I also have a lot of other debts. Help!

- You may want to file bankruptcy. You should check with an attorney who is familiar with bankruptcy law to find out if your debts are dischargeable in bankruptcy, and if bankruptcy is a good solution for you.
- You may also want to find a consumer credit counseling agency in your area. These agencies will look at your income and debts and advise you if a payment plan can be worked out for you. Sometimes these agencies are able to negotiate with your creditors to work out lower payment amounts so that you can pay your debts without bankruptcy.

Remember, at any time during this process, you can try to negotiate with your creditor. You may want to check with an attorney before you negotiate, to find out what your rights are and what you are risking if you don't settle your case. If you are able to negotiate an agreement with your creditor, be sure to put it in writing and have both parties sign it, and keep a copy for your records.

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