

# Stop vehicle repossession: Know your consumer right!

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You might be one of many consumers **facing vehicle repossession** due to affordability pressures because of the Covid-19 pandemic, your vehicle finance arrears have substantially increased and as a result you are receiving high volume of threatening calls from debt collectors advising you that they are coming to repossess your vehicle. Perhaps someone might have even paid you a visit already either at home or at work to evaluate the car in preparation for repossession.



Strictly speaking, you are not alone facing this problem, an analysis of vehicle repossession inquiries made on [ConsumerLaw](#) website during lockdown shows that the number of repossession inquiries has almost quadrupled within a year. An increase which shows a sharp spike in the number of consumers at risk of losing their vehicles.

Due to lack of awareness and a lack of information amongst consumers, some have been misled into voluntarily surrendering their vehicles under the false pretense of safe keeping them. In the process, consumers have been persuaded and at times forced with threats to sign voluntary surrender documents. Upon requesting their vehicles at a later stage, they are then surprised with storage and collection fees, legal fees, and other service charges yet they would be under an impression that the vehicle is just out for safe keeping. Most consumers have often mistaken this for vehicle repossession, yet they would have voluntarily surrendered the vehicle at their own will at least according to the legal process.

For you not to be a victim of undue processes, as a consumer you ought to understand the difference between the standard legal vehicle repossession process and a standard voluntary vehicle surrender process as set out in the National Credit Act.

## What is voluntary surrender?

If as a consumer you can no longer afford to pay for a vehicle which you bought on credit or is no longer interested, Section 127 of the National Credit Act postulates that you have a right to voluntarily surrender the vehicle bought under an

instalment sale agreement, secured loan or lease agreement to the credit provider, and the credit provider must sell this vehicle on your behalf to settle the outstanding debt.

It is important to note that: the fact that you are in default means that the use of the section 127 process may have consequences that in some important respects different from the consequences where the process is used by a non-defaulting consumer.

The standard legal procedure for surrendering a vehicle to a credit provider is based on these five steps:

- As a consumer, you must give a written notice to the bank notifying them of your intent to voluntarily surrender the vehicle.
- Once you voluntarily surrender the vehicle, the bank is required to assess the vehicle and give you a valuation notice within ten (10) business days. A valuation notice gives you an estimate of the value of your surrendered vehicle. Whilst you might have surrendered the vehicle, if you are not satisfied with the estimated value of the vehicle, you reserve a legal right to withdraw the notice of surrender provided you are in good standing with the creditor.
- Should you not withdraw a notice to voluntarily surrender the vehicle, then your credit provider will proceed and sell the vehicle at the best possible price at a public auction. After selling the vehicle, a creditor is obliged at law to provide you with a letter setting out the:
  - a) Total outstanding debt on the vehicle which you owe immediately before the sale.
  - b) Total amount received from the sale of the vehicle.
  - c) Amount left from the sale after deducting permissible fees and other charges.
  - d) Total outstanding debt payable as per your current repayment statement.
- If the net amount from the sale of the vehicle is insufficient to fully settle the outstanding debt, then as a consumer you remain liable for the shortfall and a creditor may enforce its right through a court of law to recover this shortfall.
- If the remaining amount from the sale is sufficiently enough to settle the outstanding amount and leaving a credit balance, then you will be entitled to receiving the amount remaining after sale.

If you have a dispute because you are not satisfied with the price at which your vehicle was sold, then the recourse after attempting to settle the dispute directly with the credit provider would be for you to lodge a dispute directly with the [National Consumer Tribunal](#) in terms of section 128 of the National Credit Act, for the sale to be evaluated.

## How is a vehicle repossessed?

The legal process against your vehicle involves the following steps:

- **Telephone calls and emails** – Your credit provider through its collections or recoveries department will inform you of your default as well as remedies available for you to bring your vehicle installments up to date. In the event of failing to bring your payment up to date, the creditor will proceed to issue you with what is known as a section 129 or Letter of Demand.
- **Section 129 notice** – This is the first step in the process towards repossessing your vehicle. Section 129 of the National Credit Act, mandates creditors to furnish a consumer with a notice reflecting non-payment as well as a list of possible solutions that are at your disposal so as to assist in you bringing your vehicle installment before enforcing the credit agreement in a court of law. The notion is to give you as a consumer an opportunity to pay all your arrears without burdening yourself, for instance you may apply for [Debt Counselling](#) with leading companies such as DebtMap instead of spending huge sums of money in legal costs defending legal proceedings against yourself by a creditor.
- **Summons** – This is the commencement of the actual legal process before the court, usually at High Court, where the bank uses its attorneys to cancel the agreement and claim the vehicle. Summons are delivered by a Sheriff of Court at an address which you registered with your creditor regardless of whether you still stay there or not, this means it is your responsibility as a consumer to update the bank in the event of a change in residential address.

- **Judgement** – This is the actual judgement entered against yourself for failing to defend a claim that has been brought by your credit provider in a court of law. The judgement paves way for cancellation of the credit agreement which you entered into with the bank and eventually repossession of the vehicle. At this stage, your creditor will not only demand the missed payments but rather the full contractual balance, legal fees, and any other charges.
- **Warrant for delivery of motor vehicle** – this is a notice given directly to the sheriff by a court to repossess (collect) your vehicle after which the sheriff should then notify the court of what they would have done.

## How to avoid vehicle repossession?

When you receive any of the legal documents from section 129 to a warrant of delivery:

- In some cases where you see that you are going to miss an installment due to retrenchment, ask the creditor if there is any linked credit life insurance on the vehicle. Most consumers are not aware that they have this policy as part of their monthly installment.
- Ideally contact the financial institution to arrange on how to pay your arrears and bring the vehicle installment up to date.
- If a creditor refuses to arrange, it is best you contact a Debt Counsellor such as [DebtMap](#) for them to make an amicable, legal, and binding arrangement on your behalf. Alternatively, you may contact [NCR](#), or the [Banking Ombudsman](#).
- If all other remedies available fail, then the last possible solution would be to contact a Consumer Attorney who will intervene and alleviate your situation.

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