

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: November 25, 2015

NUMBER: 4.10 – LEGAL

SUBJECT: PROCEDURES RELATING TO REPOSSESSIONS

RELATED POLICY: 4.10

ORIGINATING DIVISION: TRAINING/VOLUNTEER SERVICES

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 4.10 – FEBRUARY 1, 2013

I. PURPOSE

This Department procedure establishes guidelines regarding incidents involving property repossession.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

- A. Repossessions are private matters, governed by the Uniform Commercial Code (UCC).
- B. Involuntary repossession are legal as long as they are done without a breach of the peace. California statutes allow for repossession without judicial process, so they may occur even without court orders to reposess, so long as they are done peacefully.
- C. Legal repossession may only be accomplished by:
 - 1. Court order to be enforced by the County Sheriff;

2. The legal owner, including the seller or a full-time employee, or a full-time employee of a credit grantor or leasing company; or,
3. A private repossession or a registered employee licensed under Sections 7500 through 7511 of the Business and Professions Code.

D. Registration and Identification

Private repossessioners and their employees are required to carry an identification card issued by the California Bureau of Security and Investigative Services (B&P § 7506.9(d)). Repossessioners must show that card to a law enforcement officer upon demand (B&P § 7508.5(c)).

E. Role of Officers During Repossessions

1. The police role in all repossession matters shall be one of preserving the peace. Police intervention and aid in the repossession may amount to state action.
2. Officers have a duty to determine whether the repossession has the lawful right to repossession. However, even if documentation is presented showing one party has a right to possess, officers shall not advance nor hinder the repossession. Officers may attempt to prevent or settle a confrontation to preserve the peace, but may not take any action to facilitate the repossession.

F. Rights of Repossessioners

1. Repossessions are permitted from places open to the public, including:
 - a. Public streets, public parking lots, or other public places; or,
 - b. Personal property may be repossessed from an open porch or from a private driveway.
2. Repossessions are not permitted from private places without consent.
 - a. Repossessioners may not go beyond a locked gate, and they may not enter a closed garage, or a private residence.
 - b. A repossession who breaks a lock on a garage door is guilty of an unlawful entry, and may be liable for damages for conversion.

3. When Repossession is Complete

- a. Vehicle repossession is complete when the repossession gains entry to the vehicle or when the vehicle is hooked up to a tow truck.

If the possessor consents to the repossession of a vehicle, he or she has the right to remove personal items from the vehicle. Personal items do not include items attached to the vehicle.

- b. Repossession of other personal property, including boats, furniture, appliances, etc., is complete when the repossession has removed the item from the possessor's private property.

4. Objections to Repossession

- a. The person in possession may object to the repossession at any time before the repossession is in possession, and the objection revokes the right to repossession at that time.
- b. If the person in possession of the property is present and objects before the repossession is in possession, the repossession should stop, whether the item is on private property or on the street.
- c. If the possessor is not present, a spouse, a child, or other persons in legitimate possession may represent his or her interest and protest the repossession.
- d. A landlord, employer, or other person on whose property the item in question may be found does not have possessor control sufficient to legally protest a repossession.

IV. DEFINITIONS

- A. Repossession – the process by which creditors can reclaim property from debtors. It is a civil action between private parties.
- B. Repossessor – any person who engages in business or accepts employment to locate or recover personal property registered under the Vehicle Code or other personal property sold under a security agreement.

V. PROCEDURES

The duties of an officer at the scene of a repossession are as follows:

- A. If the person in possession is not present, or if the person in possession is present but does not object and the repossession is not in violation of any criminal law, the repossession is allowed to proceed with the repossession.
- B. If the person in possession is present and objects to the repossession prior to the repossession being in possession, the repossession must leave.
- C. If the person in possession is present and objects to the repossession prior to the repossession being in possession, and the repossession refuses to leave, this may amount to criminal behavior and the repossession may be in violation of one of the following:
 - 1. Section 415(1) of the California Penal Code, Disturbing the Peace. A breach of peace occurs when the repossession uses intimidating language, appears to be giving orders, or continues to repossess after being told to stop prior to being in possession of the property in question.
 - 2. Section 602(o) of the California Penal Code, Refusal to Leave Private Property. A repossession may be charged with trespass when he or she refuses to leave private property after being directed to by the owner, agent, or person in lawful possession of the private property.
 - 3. Section 242 of the California Penal Code, Battery. The person in possession (the debtor or the repossession) has the right to use a reasonable amount of force, short of deadly force, to retain possession of the property. Therefore, the person in possession probably would not be liable for a violation of Section 242 of the California Penal Code. But the person out of possession who commits the same acts may be charged with battery.