

Like a Man Possessed

By Reg P. Wydeven
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One of the first times I appeared in court was for a replevin in Brown County. A replevin is a legal action whereby a creditor takes possession of collateral when a debtor defaults. Thankfully, no one showed up to oppose me, so I got a default judgment. I returned to the office triumphant, brandishing my judgment for all to see.

My celebration was short-lived, as my buddy, Steve, our creditors' rights attorney, returned from Winnebago County with 17 judgments. Steve repossessed hundreds of cars each year for our clients and was in court all the time. That is, until the spring of 2006.

In April of 2006, Wisconsin changed its Consumer Act by permitting creditors to perform "self-help" repossession of vehicles after debtor defaults. Under the new rules, creditors are not required to go through court to repossess a vehicle. To recover a car, the creditor must simply provide the debtor with a notice that identifies the debtor, the loan, the vehicle and indicates the creditor has the right to take possession of the vehicle. The creditor must also inform local law enforcement.

The debtor has 15 days to object to the repossession and demand that the creditor proceed in court. However, if the creditor prevails in court, the debtor may be required to pay court costs and attorney fees.

Surprisingly, Wisconsin was the last state in the country to allow self-help. However, we were the first state to outlaw "payment assurance devices" on vehicles that make repossessing them much easier.

"Payment assurance devices" is a nice name for starter interrupters and GPS trackers. Starter interrupters allow creditors to disable vehicles remotely if a debtor defaults in payment. The GPS tracker leads the repossession company right to the vehicle to pick it up and deliver it to the creditor.

More and more car dealerships and lenders are using PADs to protect their collateral, especially for loans made to subprime borrowers, or those with credit scores below 640. According to The New York Times, about 2 million vehicles are equipped with PADs.

Keith Schuch, who operates Service Intelligence, LLC, a local process serving company that also conducts investigations and repossesses collateral for creditors, would love the ability to use PADs. "Although we've repossessed over 325 cars so far this year, PADs would make our job so much easier," Schuch explained. "But until Wisconsin allows them, we'll have to find cars the old fashioned way – through thorough investigations, hard work and a little luck."

Creditors are urging Wisconsin to change its stance. They argue that with the extra protection PADs provide for collateral, consumers that otherwise couldn't qualify to buy cars now could.

Debtors argue that PADs are an invasion of privacy and are dangerous, as some claim their cars were shut off while idling or driving, even on the highway. Wisconsin agreed, and the state's Department of Financial Institutions issued a memo asserting the use of PADs constitutes "an improper repossession."

Thank goodness self-help only applies to vehicles in Wisconsin. Otherwise my dad could come over to my garage and retrieve all of the power tools and lawn equipment I borrowed from him.

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