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Saving Your Car¹

By: Trev E. Peterson

A creditor repossesses your car, either by repossessing the car privately or through court sanction proceedings, either a replevin or on an execution sale on a judgment--how do you stop the sale? Can you have the car returned to you? A bankruptcy filing, with only a few exceptions, automatically stops any action by a creditor to sell a debtor's property. The automatic stay is one of the most significant benefits accorded debtors under the Bankruptcy Code. By simply filing the bankruptcy case, the automatic stay goes into effect and the creditor's sale of your car is stopped, pending further proceedings in the bankruptcy case.

Moreover, after the filing of a Chapter 13 bankruptcy case, the secured creditor has an obligation to return the repossessed car to the debtor, provided that the creditor's interest in the car is "adequately protected." That generally means that the debtor must provide proof that the car is insured and that the secured creditor is named on the insurance policy. If this condition is met, the creditor can be held in contempt of the Bankruptcy Court if the car is not returned. In Chapter 7 cases, the creditor will probably file an immediate motion for relief from the automatic stay, so unless the debtor is in a position to redeem the car (pay the full value of the car in cash to the secured party at the time of the filing of the motion to redeem), the filing of the case will simply delay the sale.

A Chapter 13 case, sometimes called a "wage earner" case, requires the debtor to propose a plan to deal with claims against the debtor. Typically, the plan calls for the return of the repossessed car with the debtor to make payments to the Chapter 13 trustee over time—at least 36 months and no more than 60 months--who, in turn, makes payments to the creditors, including the car lender. The debtor also gets the right to "cram down" the claim of the car lender, under certain conditions. Assume, for example, that the debtor purchased the car two years before the filing of the bankruptcy case; owes the secured lender \$12,000 on the day the case is filed and the car is worth \$9,000 on the day the case is filed. Assume further that the debtor purchased the car from a "buy here pay here" dealership where the interest rate on the obligation may run from 16-19 percent.

The debtor has the right to, first, reduce or "cram down" the amount of the debt to the value of the car on the day that the Chapter 13 plan is confirmed (this is usually 2-3 months after

¹ The services or benefits mentioned in this article are with respect to bankruptcy relief under Title 11 of the United States Code. We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.

the filing of the case; for purposes of our example here we will assume that the vehicle did not change value from the date of filing until the date of confirmation). The debtor can also reduce the interest rate on the car debt. In the example above, the debtor could reduce the interest rate from 19 percent to perhaps, 6-8 percent. Thus, under the Chapter 13 plan, the debtor can both reduce the amount of the debt and reduce the interest rate. Upon the completion of payments under the Chapter 13 plan, the creditor's claim against the debtor is discharged (and the lien must be released).

Note, however, that the Bankruptcy Court will generally not permit a Chapter 13 debtor to buy a car at a high interest rate shortly before the filing of the bankruptcy case and then use cram down to reduce the value of the lender's claim and the interest rate. In these cases, the Bankruptcy Court takes the position that the debtor's obligation to propose a plan in good faith is violated if the debtor files the bankruptcy case shortly after buying the car, unless the debtor has some other explanation for the filing of the case too close in time to the purchase of the car. Generally, the older the debt, the better for purposes of the good faith analysis.

If you are threatened with a repossession of your car, or other property, you should contact one of our bankruptcy attorneys (Trev Peterson: tpeterson@knudsenlaw.com or Jeanelle Lust: jlust@knudsenlaw.com) to discuss the possibilities available to you under the Bankruptcy Code. Do not assume that if the creditor has your car that there is nothing you can do to regain possession and use of your car. Do not delay too long, however. Once the secured creditor has sold your car, there is generally nothing that an attorney can do to help you regain possession of the car. If, however, there is a deficiency due, you may qualify for a discharge of that obligation under Chapter 7 or Chapter 13.

For further information, you may contact:

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