

**NORTH'S  
CALIFORNIA REPOSSESSIONS  
LAW AND PROCEDURES GUIDE  
Second Edition**

Table of Contents

<i>Table of Contents</i> .....	<i>i</i>
<i>About the Author</i> .....	<i>iv</i>
<i>Preface and Acknowledgements</i> .....	<i>v</i>
<b>PART 1: SCOPE AND INTENDED USE</b> .....	<b>1</b>
A. General Purpose .....	1
B. California Law Only .....	1
1. In General .....	1
2. Effect of Contractual "Choice of Law" Clauses .....	2
C. Matters Beyond the Scope of Coverage .....	3
D. Use in Legal Proceedings .....	4
E. Revision Dates .....	4
<b>PART 2: OVERVIEW OF REPOSSESSION ANALYSIS</b> .....	<b>6</b>
<b>PART 3: THE UNIFORM COMMERCIAL CODE AND THE REES-LEVERING MVSFA</b> .....	<b>7</b>
A. The Uniform Commercial Code .....	7
B. The Rees-Levering Motor Vehicle Sales and Finance Act .....	8
1. Indirect Loans .....	8
2. Credit Union Financed Repossession Sales .....	9
3. Seller-Assisted Direct Loans .....	10
4. Credit Union Car Sales and Other "Lender-Assisted" Sales .....	14
5. Direct Loans With no "Seller" Involvement .....	15
C. Dealing With Differences Between UCC and Rees-Levering .....	15
1. Mandatory Compliance With Both Laws .....	16
2. Voluntary Compliance With Rees-Levering .....	17
D. Summary .....	19
<b>PART 4: PRE-REPOSSESSION CONSIDERATIONS</b> .....	<b>21</b>
A. Validity of Security Interest .....	21
1. In General .....	21
2. Cross-Collateral Clauses .....	21
B. Perfection of the Security Interest .....	24
C. Default .....	25
1. Payment Default .....	25
2. Insurance Default .....	26
3. <i>Ipsa Facto</i> Clause Default .....	27

D.	Cosigner Warning Rule . . . . .	29
1.	General Rule . . . . .	29
2.	Specific Comments . . . . .	29
E.	Laws Prohibiting Repossession . . . . .	30
1.	Bankruptcy “Automatic Stay” . . . . .	30
2.	Disability Insurance Stay . . . . .	32
<b>PART 5: REPOSSESSING THE MOTOR VEHICLE . . . . .</b>		<b>33</b>
A.	Methods of Repossession . . . . .	33
1.	Self Help Repossession . . . . .	33
2.	Surrender . . . . .	33
3.	Court-Assisted Repossession . . . . .	34
B.	Limitations Imposed by the UCC (No Breach of the Peace) . . . . .	35
C.	Limitations Imposed by the Fair Debt Collection Practices Acts . . . . .	35
1.	California Fair Debt Collection Practices Act . . . . .	35
2.	Federal Fair Debt Collection Practices Act . . . . .	36
D.	Limitations of the Collateral Recovery Act . . . . .	36
1.	Voluntary Repossessions . . . . .	36
2.	Mistake Regarding License Status of Repossession Agent . . . . .	37
E.	Liability of the Credit Union for Acts of the Repossession Agent . . . . .	37
<b>PART 6: BORROWER’S POST-REPOSSESSION RIGHT TO RECOVER MOTOR VEHICLE . . . . .</b>		<b>39</b>
A.	Right to Redeem . . . . .	39
1.	What Is “Redemption”? . . . . .	39
2.	How Long Does the Borrower Have to Redeem? . . . . .	39
B.	Right to Reinstate . . . . .	40
1.	What Is “Reinstatement”? . . . . .	40
2.	Does the Borrower Have the Right to Reinstate? . . . . .	40
3.	How Long Does the Borrower Have to Reinstate? . . . . .	42
C.	Right to Recover Collateral Upon the Filing of Bankruptcy . . . . .	42
<b>PART 7: CHOOSING AND CLASSIFYING A METHOD OF SALE . . . . .</b>		<b>44</b>
A.	Commercially Reasonable Sales . . . . .	44
1.	In General . . . . .	44
2.	Potential Problem Sales . . . . .	46
3.	Improving Your Credit Union’s Sale Results and Lowering Risk . . . . .	47

B.	Classifying Statutory Retail Public, General Public, and Private Sales . . . . .	49
1.	Why the Sale Must Be Accurately Classified First . . . . .	49
2.	Determining Whether a Sale is “Statutory Retail Public,” “General Public” or “Private” . . . . .	50
C.	Liability of the Credit Union for Direct Sales . . . . .	55
1.	Requirements for “As Is” Sale . . . . .	55
2.	Express Warranties . . . . .	56
3.	Non-Disclosure of Known Hidden Defects . . . . .	56
4.	Disclaimer of Warranties of Title and Possession . . . . .	56
D.	Deadline for Selling the Vehicle . . . . .	57
1.	When the “Prompt Sale” Rule Applies . . . . .	57
2.	Deadline for Selling When the Prompt Sale Rule Applies . . . . .	58
3.	Waiver of the Prompt Sale Rule . . . . .	58
	<b>PART 8: PROVIDING NOTIFICATION OF THE SALE . . . . .</b>	<b>59</b>
A.	General Rules Regarding Compliance with Notification Laws . . . . .	59
B.	Publication of Notice in the Newspaper . . . . .	60
C.	Preparation of the “Notice of Sale” . . . . .	60
1.	Naming the Notice . . . . .	60
2.	Format of the Notice of Intention to Sell; Using the NOOPSP . . . . .	61
3.	How Soon <u>After Repossession</u> Must the Notice of Sale Be Sent? . . . . .	64
4.	How Long <u>Before Sale</u> Must the Notice of Sale Be Sent? . . . . .	65
5.	Advising the Borrower of the Date, Time and Place of Sale . . . . .	66
6.	Delaying the Sale Upon Request of the Borrower . . . . .	70
7.	Advising the Borrower of the Place the Vehicle May Be Recovered . . . . .	72
8.	Advising the Borrower of Redemption (Payoff) Rights . . . . .	72
9.	Advising the Borrower of Reinstatement (Cure) Rights . . . . .	77
10.	Advising the Borrower of Deficiency Balance Liability (No Bankruptcy) . . . . .	82
11.	Advising the Borrower of Deficiency Balance Liability (Bankruptcy Cases) . . . . .	83
12.	Providing a Foreign Language Translation . . . . .	87
D.	Serving the Notice of Sale . . . . .	90
1.	Who Must Be Served? . . . . .	90
2.	What Address Must Be Used for Service of the Notice of Sale? . . . . .	90
3.	How Should the Notice of Sale Be Served? . . . . .	90
E.	Changing the Date, Place or Method of Sale After Giving Notice . . . . .	91
1.	Changing the Date of Sale . . . . .	91
2.	Changing the Place of Sale . . . . .	92
3.	Changing the Method of Sale . . . . .	92
	<b>PART 9: APPLICATION OF AND ACCOUNTING FOR SALE PROCEEDS . . . . .</b>	<b>93</b>
A.	Application of Sale Proceeds . . . . .	93
1.	Recoverable Expenses . . . . .	93
2.	“Reasonable” and “Necessary” Limitations on Expenses . . . . .	93

B.	Accounting for Sale Proceeds .....	94
1.	When Written Explanation (Accounting) is Required .....	94
2.	Minimum Contents of Written Explanation (Accounting) .....	95
<b>PART 10:</b>	<b>FREQUENTLY ASKED QUESTIONS .....</b>	<b>97</b>
<b>PART 11:</b>	<b>AUDITORS' QUESTIONS .....</b>	<b>102</b>
<b>PART 12:</b>	<b>GLOSSARY .....</b>	<b>112</b>
<b>PART 13:</b>	<b>FORMS AND INSTRUCTIONS .....</b>	<b>117</b>
A.	Notice of Our Plan to Sell Property .....	117
B.	Addendum 1: Pending and Discharged Bankruptcy .....	122
C.	Addendum 2: Rees-Levering Contracts .....	123
D.	Addendum 3: Contracts NOT Governed by Rees-Levering .....	130
E.	Cover Letter for Cases NOT Governed by Rees-Levering .....	131
F.	Notice After Sale of Collateral .....	133