



Lawsuits asserting improper post-repossession notices and procedures have increased nationwide. There have been no such lawsuits involving a Louisiana credit union. Although the risk remains low in Louisiana, the increased litigation triggers an opportunity for Credit Union staff to review procedures and forms for self-help repossessions.

Overview

The Uniform Commercial Code ("UCC"), as adopted in Louisiana, dictates specific time-frames and forms when a motor vehicle is repossessed (or voluntarily surrendered) and subsequently sold. Statutorily mandated notices are required both before and after the sale of the vehicle. A defective form or violation of the time frames creates statutory damages that can be enforced in a class action.

Notice of Plan to Sell

UCC requires specific notices depending upon the type of sale. Distinguishing between a *private sale* from a *public sale* is sometimes difficult. Any sale other than an auction open to the public is a *private sale*. A dealer auction at which only licensed dealers may attend is a *private sale*.

The appropriate solution utilizes language providing the borrower with information sufficient for either *private sale* or *public sale*. The Credit Union should pay close attention to the type of sale and use the appropriate UCC notice form.

Timing of the Notice of Plan to Sell

The UCC requires that the Credit Union mail the Notice of Plan to Sell to all borrowers at least twenty-one (21) days in advance of the sale date.

Notice of Deficiency or Surplus

The debtor is entitled to an accounting of the surplus or deficiency within fourteen (14) days after s/he requests the accounting. Failure to timely provide the accounting creates statutory damages. To avoid problems, the Notice of Deficiency or Surplus should always be sent within 14 days after the repossession sale.

The UCC also dictates specific information be listed in the accounting. Failing to include required information, or listing the information in an incorrect order, creates legal liability.

Recommendation

Class actions filed for UCC violations create both financial and reputation risks. All your current forms should be checked against legal requirements. Verify the timeliness of notices and the validity of your designation of the sale (public or private).