



**2018 Edition**

# Repossessions in Connecticut

A Guide to Resources in the Law Library

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# Introduction

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## A Guide to Resources in the Law Library

- "Repossession statutes are enacted to protect the consumer from well documented repossession abuses and to encourage and promote compliance with the laws governing such actions." [Jacobs v. Healey Ford-Subaru, Inc.](#), 231 Conn. 707, 722 (1995).
- **Retail Installment Sales Financing Act (RISFA):** "General Statutes § 36a-785 sets out the procedure that a holder of a retail installment contract must follow in order to repossess goods after a retail buyer breaches the contract. This section provides, in pertinent part: '(a) Repossession. When the retail buyer is in default in the payment of any sum due under the retail installment contract . . . the holder of the contract may take possession thereof. . . .' General Statutes § 36a-785(a). Subsections (b) and (c) detail the options the holder of a retail installment contract has as to notice to the buyer regarding repossession." [GE Capitol Auto Lease, Inc. v. Blackwell](#), Superior Court, Judicial District of Ansonia-Milford at Milford, No. CV97-0059201S, (Sep. 5, 2001), 2001 Conn. Super LEXIS 2521.
- **Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c shall control." Conn. Gen. Stat. [§ 36a-770](#) (a) (2017).
- **Secured Transaction:** "A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract." Conn. Gen. Stat. [§ 42a-9-109](#) (a)(1) (2017).

# Section 1: What Can Be Repossessed

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to secured transactions under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA). Types of personal property or fixtures that can be repossessed thereunder in Connecticut.

## **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788 (RISFA), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive...shall control." Conn. Gen. Stat. [§ 36a-770](#)(a) (2017).
- **Secured transaction:** "A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract." Conn. Gen. Stats. [§ 42a-9-109](#)(a)(1)(2017).
- **Security interest:** "means an interest in personal property or fixtures which secures payment or performance of an obligation." Conn. Gen. Stat. [§ 42a-1-201](#)(b)(35) (2017).
- **Security agreement:** "means an agreement that creates or provides for a security interest." Conn. Gen. Stat. [§ 42a-9-102](#)(a)(74) (2017).
- **Consumer-goods transaction:** "means a consumer transaction in which:
  - (A) An individual incurs an obligation primarily for personal, family or household purposes; and
  - (B) A security interest in consumer goods secures the obligation." Conn. Gen. Stat. [§ 42a-9-102](#)(a)(24) (2017).
- **Goods:** "means (A) 'consumer goods', as defined in subdivision (23) of subsection (a) of section 42a-9-102 and motor vehicles included under such definition, having an aggregate cash price of fifty thousand dollars or less, and (B) 'equipment', as defined in subdivision (33) of subsection (a) of section 42a-9-102, having an aggregate cash price of sixteen thousand dollars or less, provided such consumer goods or such equipment is included in one retail installment contract or installment loan contract." Conn. Gen. Stat. [§ 36a-770](#)(c)(6) (2017).

## **DEFINITIONS:**

- **Retail installment contract:** "means any security agreement, as defined in subdivision (74) of subsection (a) of section 42a-9-102, made in this state, including one in the form of a mortgage, conditional sale contract or other instrument evidencing an agreement to pay the retail purchase price of goods... in installments over a period of time and pursuant to which a security interest... is retained or taken by the retail seller for the payment of the amount of such retail installment contract. For purposes of this subdivision, 'retail installment contract' does not include a rent-to-own agreement, as defined in section 42-240." Conn. Gen. Stat. [§ 36a-770](#)(c)(12) (2017).
- **Consumer transaction:** "means a transaction in which (i) an individual incurs an obligation primarily for personal, family or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family or household purposes." [§ 42a-9-102](#)(a)(26) (2017).
- **Consumer debtor:** "means a debtor in a consumer transaction." Conn. Gen. Stat. [§ 42a-9-102](#)(a)(22) (2017).
- **Consumer obligor:** "means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes." Conn. Gen. Stat. [§ 42a-9-102](#)(a)(25) (2017).
- **Cosigner:** "A natural person who renders himself or herself liable for the obligation of another person without compensation. The term shall include any person whose signature is requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that is in default. The term shall not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to State law. A person who does not receive goods, services, or money in return for a credit obligation does not receive compensation within the meaning of this definition. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation." **Federal Trade Commission Credit Practices Rule**, [16 C.F.R. § 444.1](#) (2018).
- **Small Loan:** "means any loan of money or extension of credit, or the purchase of, or an advance of money on, a borrower's future income where the following conditions are present: (A) The amount or value is fifteen thousand dollars or less; and (B) the APR is greater than twelve percent....For purposes of this section and sections 36a-556 to 36a-573, inclusive, 'small loan' shall not include: (i) A retail installment contract made in accordance with section 36a-772;...". Conn. Gen. Stat. [36a-555](#)(11) (2017). ([2018](#))

[Supplement](#))

- **Prohibitions re small loans and related activities. Permitted small loan provisions. Open-end small loans. Lead generation activities.** "(a) Except as provided in subsection (c) of section 36a-557, no person licensed or required to be licensed under section 36a-556 shall engage in any of the activities described in subsection (a) of section 36a-556 for any small loan that contains any condition or provision inconsistent with the requirements in subsections (d) to (g), inclusive, of this section." Conn. Gen. Stat. [§ 36a-558](#)(a) (2017). ([2018 Supplement](#))

- **Small Loan Lenders:** "Small loans that are the subject of the activities set forth in subsections (a) and (b) of this section shall not contain ... (10) A security interest, except as provided in subsection (e) of this section;..." Conn. Gen. Stat. [§ 36a-558](#)(d) (2017). ([2018 Supplement](#))

"Small loans as described in subsections (a) and (b) of this section may contain certain provisions: ... (7) Taking a security interest in a motor vehicle in connection with a closed-end small loan made solely for the purchase or refinancing of such motor vehicle, provided the APR of such loan shall not exceed the rates indicated for the respective classifications of motor vehicles as follows: (A) New motor vehicles, fifteen per cent; (B) used motor vehicles of a model designated by the manufacturer by a year not more than two years prior to the year in which the sale is made, seventeen per cent; and (C) used motor vehicles of a model designated by the manufacturer by a year more than two years prior to the year in which the sale is made, nineteen per cent." Conn. Gen. Stat. [§ 36a-558](#)(e) (2017). ([2018 Supplement](#))

- **Household furniture:** "Any agreement for security in household furniture owned and in the possession of an individual and used primarily for housekeeping purposes shall be effective only to the extent that the agreement involves a purchase-money security interest as provided in section 42a-9-103a." Conn. Gen. Stat. [§ 42a-9-206a](#) (2017).

- **Purchase-money security interest:** "In a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation: (A) The payment must be applied so that the secured party retains no purchase money security interest in any property as to which the secured party has recovered payments aggregating the amount of the sale price including any finance charges attributable thereto; and

(B) For the purposes of this subdivision only, in the case of items purchased on different dates, the first item purchased shall be deemed the first paid for and, in the case of items purchased on the same date, the lowest priced item shall be deemed the first paid for.” [Conn. Gen. Stat. § 42a-9-103a\(e\)\(2\)](#) (2017).

**FORMS:**

**STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- General contract requirements (RISFA) [Conn. Gen. Stat. § 36a-771](#) (2017).
- Conn. Gen. Stat. (2017)
  - Chapter 669. Banking Law of Connecticut. Regulated activities
  - Part XI. Retail installment sales financing
    - [§ 36a-770](#). Applicability of Uniform Commercial Code
    - [§ 36a-771](#). General contract requirements
    - [§ 36a-772](#). Maximum finance charge on retail sales of motor vehicles and other goods
    - [§ 36a-773](#). Insurance
    - [§ 36a-774](#). Installment loan contract requirements
    - [§ 36a-775](#). Confession of judgment provision invalid
    - [§ 36a-776](#). Inclusion of other goods in contract void
    - [§ 36a-777](#). Acknowledgment of receipt of notice and statement
    - [§ 36a-778](#). Delinquency and collection charges
    - [§ 36a-779](#). Assignment of contract
    - [§ 36a-780](#). Payments after assignment
    - [§ 36a-781](#). Statement of payments made. Receipts
    - [§ 36a-782](#). Cancellation of contract on payment in full
    - [§ 36a-783](#). Rebate and refund upon prepayment of contract
    - [§ 36a-784](#). Renewals and extensions
    - [§ 36a-785](#). Foreclosure
    - (a) Repossession
- Conn. Gen. Stat. (2017)
  - Title 42a. Uniform Commercial Code
  - Article 1. General provisions
    - [§ 42a-1-203](#). Lease distinguished from security interest
  - Article 9. Secured transactions
    - [§ 42a-9-102](#).
    - [§ 42a-9-103a](#). Purchase-money security interest
    - [§ 42a-9-109](#). Scope
    - [§ 42a-9-201](#). General effectiveness of security agreement
    - [§ 42a-9-202](#). Title to collateral immaterial
    - [§ 42a-9-203](#). Attachment and enforceability of security interest. Proceeds. Supporting Obligations. Formal requisites
    - [§ 42a-9-206a](#). Effectiveness of security agreement in household furniture

## **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Daniel Duffy, [Retail Installment Sales Financing](#), Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2000-R-0687 (July 11, 2000).*

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- *Thorne et. al. v. Mackeyboy Auto, LLC et. al., Superior Court, Judicial District of New Haven at New Haven, No. CV 11-6017210S (Oct. 11, 2013) (2013 WL 5879081) (2013 Conn. Super. LEXIS 2314). "...**Mackeyboy Auto did not provide an executed retail installment sales contract to either of the plaintiffs.**"*
- *GE Capitol Auto Lease, Inc. v. Blackwell, Superior Court, Judicial District of Ansonia-Milford at Milford, No. CV97-0059201S (Sep. 5, 2001) (2001 Conn. Super. LEXIS 2521). "In several cases, judges of the Superior Court have recognized that the issue of whether a transaction is a sale or a lease is a question of fact which must be decided before the court can determine whether RISFA applies to the transaction."*
- *New Haven Water Co. Employees Credit Union v. Burroughs, 6 Conn. Cir. Ct. 709, 710-711, 313 A.2d 82 (1973). "... [I]t is clear that the defendant is not considered a 'retail buyer' for the purposes of § 42-98 [now Conn. Gen. Stat. §36a-785]. Likewise it is clear that the promissory note executed by the defendant and cosigned by Benjamin Della Camera, whose 1968 automobile was put up as collateral, is neither a 'retail installment contract' nor a 'installment loan contract' within the meaning of § 42-98. Rather it appears from the record that the defendant obtained a loan from the plaintiff and offered as collateral the automobile owned by Della Camera. The defendant was not purchasing the automobile, and no security interest was taken in any goods for the purchase of which money was loaned."*
- *Keyes et. al. v. Brown et.al., 155 Conn. 469, 473-474, 232 A.2d 486 (1967). "Obviously, the purpose of the contract requirement provisions set forth in § 42-84 [now Conn. Gen. Stat. § 36a-771] is to protect retail buyers of goods from unknowingly assuming excessive charges by requiring that all charges and terms be fully set forth by the retail seller before the contract is signed by the buyer, and by requiring that the buyer be immediately given a copy of the*



complete and executed contract. The statute states that the **written contract 'shall be completed as to all essential provisions prior to the signing of the contract by the retail buyer. The retail installment contract shall recite the number of installment payments required and the amount and date of each payment.'"**

**WEST KEY NUMBERS:**

- Secured Transactions
  - # 1-80. Nature, Requisites, and Validity
  - # 1-40. Nature and essentials
  - # 41-40. Security agreements
  - # 61-80. Validity

**DIGESTS:**

- [West's Connecticut Digest: Secured Transactions](#)
  - I. Nature, Requisites, and Validity
    - §1-26. Nature and essentials
    - §41-51. Security agreements
    - §61-67. Validity
- [West's ALR Digest: Secured Transactions](#)
  - I. Nature, Requisites, and Validity
    - §1-26. Nature and essentials
    - §41-51. Security agreements
    - §63-64. Validity
- [Dowling's Digest: Secured Transactions](#)
  - 1. Introduction
  - 2. What constitutes
  - 3. Validity and operation

**ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d Secured Transactions](#) (2014).
  - §§ 1-90. Introduction
  - §§ 91-110. Transactions subject to Article 9
  - §§ 111-195. Creation of security interest and Security agreement
  - §§ 196-209. Attachment of security interest
  - §§ 210-215. Assignment of security interest
  - §§ 216-388. Perfection of security interest
  - §§ 389-424. Rights, duties, and liabilities of parties prior to default
- 79 [C.J.S. Secured Transactions](#) (2017).
  - I. In General. §§ 1-6.
  - II. Nature, requisites, and validity
    - A. Security interest (§§ 7-12)
      - §§ 7. Nature of security interest
      - §§ 8. Property and rights subject to security interest
    - B. Purchase-money security interest (§§ 13-14)
    - C. Classification of goods (§§ 15-19)
  - III. Form of transaction; Particular transactions compared and distinguished (§§ 20-26)
  - IV. Enforceability and attachment of security interest; Security agreement (§§ 27-46)

- V. Perfection of security interest; Filing (§§ 47-97)
- VI. Construction and operation (§§ 98-154)
- VII. Rights and liabilities of parties (§§ 155-187)
- VIII. Assignments of, and assignments creating, security interests (§§ 188-201)

- Annotation, *Secured Transactions: What Constitute "Consumer Goods" Under UCC § 9-109(1)*, 77 [ALR3d](#) 1225 (1977).
- J. P. Ludington and A. L. Schwartz, Annotation, *Construction And Effect of UCC Art 9, Dealing With Secured Transactions, Sales Of Accounts, Contract Rights, And Chattel Paper*, 30 [ALR3d](#) 9 (1970).

### **TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- National Consumer Law Center, [Repossessions](#) (9<sup>th</sup> ed., 2017).
  - Chapter 3. Enforceable security interests
    - § 3.1. Valid security interest as precondition to seizure of personal property
    - § 3.2. Elements of a valid security interest
    - § 3.3. Limits on non-purchase money security interests
    - § 3.4. Continued enforceability after security interest created
    - § 3.5. Refinancings and consolidations
    - § 3.6. Future advance and antecedent debt clauses
    - § 3.7. Cross-collateral, pro rata application of payments, and consolidations
    - § 3.8. Automobiles and manufactured homes as collateral
    - § 3.9. Merchant **card issuer's interest in goods** purchased with card
    - § 3.10. Consumer remedies when security interest is invalid
- 12 Robert M. Langer, John T. Morgan, and David L. Belt, [Connecticut Practice Series, Connecticut Unfair Trade Practices, Business Torts and Antitrust](#) (2017-2018 Edition).
  - Chapter 4. CUTPA and Related Business Torts
    - § 4.16. CUTPA and transactions in special statutory contexts
- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).
  - § 11.8. Repossession

### **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 [Yale L.J.](#) 1329 (2010).

Table 1: Lease vs. Security Interest

Lease (Article 2A of the Uniform Commercial Code) vs. Security Interest (Article 9 of the Uniform Commercial Code)
<ul style="list-style-type: none"> <li>• (a) Whether a transaction in the form of a lease creates a lease or a security interest is determined by the facts of each case.</li> <li>• (b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:                             <ul style="list-style-type: none"> <li>(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;</li> <li>(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;</li> <li>(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or</li> <li>(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.</li> </ul> </li> </ul> <p>Conn. Gen. Stats. <a href="#">§ 42a-1-203</a> (2017).</p>
<ul style="list-style-type: none"> <li>• National Consumer Law Center, <a href="#">Repossessions</a> (9<sup>th</sup> ed., 2017).                             <ul style="list-style-type: none"> <li>Chapter 14. Consumer Leases                                     <ul style="list-style-type: none"> <li>§ 14.1. General   <ul style="list-style-type: none"> <li>§ 14.1.2. When is a lease covered by UCC Article 9</li> <li>§ 14.1.3. Applicable law when Article 9 does not apply   <ul style="list-style-type: none"> <li>§ 14.1.3.1. UCC Article 2A</li> <li>§ 14.1.3.2. The Federal Consumer Leasing Act</li> <li>§ 14.1.3.3. State consumer statutes governing leases</li> <li>§ 14.1.3.4. State deceptive practices and debt collection statutes</li> </ul> </li> </ul> </li> <li>§ 14.2. Automobile leases   <ul style="list-style-type: none"> <li>§ 14.2.1. Does Article 9 or Article 2A regulate automobile lease repossessions?</li> </ul> </li> <li>§ 14.3. Rent-to-own transactions</li> </ul> </li> </ul> </li> </ul>

Table 2: Security Interest and Automobiles

Security Interests and Automobiles	
Civil Rights and repossession of automobile	<p><b>"The initial, and here the key question is whether or not the defendant Bank's peaceful repossession of the plaintiff's automobile on August 23, 1972, constitutes 'state action' so as to support a claim under 42 U.S.C. § 1983."</b> <a href="#">Shirley v. State Nat. Bank of Connecticut</a>, 493 F.2d 739, 741 (1974), 1974 U.S. App. LEXIS 10056.</p> <p><b>"We see no other theory of state involvement here which is possibly applicable. We recognize that the problems involved in determining whether 'state action' is present are not susceptible of solution by facile formulae. Our examination of the Supreme Court decisions, as well as those of our own and other circuits, compels the conclusion, however, that none is present here."</b> (745)</p>
Late Payments, past acceptance of	<p><b>"The plaintiff next claims that because Midland repeatedly demanded and accepted late payments it lost the right to repossess the vehicle without first giving the plaintiff written notice that the payment schedule would be strictly enforced and that late payments would no longer be tolerated. The gravamen of the plaintiff's argument is that Midland should not be permitted to invoke a formal provision of the agreement that the plaintiff reasonably believed would not be enforced.</b></p> <p>Subsequent to the trial of the present case, our Supreme Court in <i>Gaynor v. Union Trust Co.</i>, 216 Conn. 458, 468-70, 582 A.2d 190 (1990), held that a creditor's toleration of one or more defaults does not require a creditor to indulge subsequent late payments." <a href="#">Velazquez v. Marine Midland Auto. Fin. Corp.</a>, 24 Conn. App. 455, 460-461, 590 A.2d 116 (1991).</p>
Notice of rights in repossession	<p><b>"The plaintiff next claims that the notice sent by Midland after repossessing her car failed to satisfy the UCC and RISFA. She contends that the postrepossession notice misrepresented her redemption rights and inaccurately stated her accelerated balance. The plaintiff further maintains that Midland failed to send her notice of the sale proceeds as required by RISFA. We reject the plaintiff's arguments."</b> <a href="#">Velazquez v. Marine Midland Auto. Fin. Corp.</a>, 24 Conn. App. 455, 461-462, 590 A.2d 116 (1991).</p>
Personal property in a repossessed automobile	<p><b>"After a review of the loan agreement, the court determined that the plaintiff had not consented to the defendant's possession of the personal property. The court concluded that the defendant was liable for conversion."</b> <a href="#">Clark v. Auto Recovery Bureau Conn., Inc.</a>, 889 F. Supp. 543, 548 (1994), 1994 U.S. Dist. LEXIS 20428.</p>

<p>Strict compliance is mandatory</p>	<p><b>"In consumer transactions, strict compliance with statutory provisions that prescribe the informational content of retail installment contracts is mandatory and is not excused by inadvertence....</b> Although the trial court did not find that the plaintiffs had sustained actual damages, the defendant nonetheless statutorily forfeited its right to recover both its repossession and its storage costs because of the inaccuracy of its notice. The trial court should have reduced the defendant's <b>recovery to reflect this statutory mandate in its entirety."</b> <a href="#">Gaynor v. Union Trust Co.</a>, 216 Conn. 458, 475-476, 582 A.2d 190 (1990)</p>
<p>Personal property - search &amp; seizure</p>	<p>"The defendant seeks to suppress the evidence, including the handgun, obtained during the search of the trunk of his motor vehicle on the grounds that the warrantless search by the police of the defendant's repossessed vehicle violated the Fourth Amendment and article first, section seven of the Connecticut Constitution." ... "The defendant was substantially in arrears on his payments on his car loan. Complete Auto Recovery took possession of the vehicle at the direction of the defendant's creditor and lien holder. It had a policy and practice of conducting a complete search of the vehicle for personal property in order to inventory that property, a policy and practice that are common in the repossession industry. See <i>State v. Lee</i>, 32 Conn.App. 84, 91 (1993). Complete Auto Recovery had complete access to the vehicle; the car was in its possession and Bedore had a key to the car. Bedore also possessed authority and control over the car while it was in his possession. In fact, while he held possession of the car, Bedore's authority and control were greater than the defendant's. For example, Bedore could deny access to the defendant to the car while he held it. The defendant also assumed the risk when he defaulted on his loan that his car would be repossessed and the reposessor would assume control of his vehicle, allowing others to view its contents. Under these circumstances, for purposes of the Fourth Amendment, Bedore had actual authority to consent to a police search of the defendant's repossessed motor vehicle. Since it is undisputed that Bedore voluntarily gave that consent, the defendant's challenge to the search fails." <a href="#">State v. Henderson</a>, 60 Conn. L. Rptr. 181 (2015), 2015 WL 2260736, 2015 Super. Lexis. 836</p>

<p>Third party consent</p>	<p>“The Fourth Amendment generally requires police officers to obtain a warrant before searching or seizing 'persons, houses, <b>papers, and effects.</b>' U.S. Const. amend. IV. A search conducted pursuant to a valid consent, however, is a well-recognized exception to the Fourth Amendment's warrant requirement. <a href="#">Schneckloth v. Bustamonte</a>, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973). See also <a href="#">State v. Cobb</a>, 251 Conn. 285, 314, 743 A.2d 1 (1999). A third party with common authority over property or premises may validly consent to its search. <a href="#">United States v. Matlock</a>, 415 U.S. 164, 170, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974). A warrantless search does not violate the Fourth Amendment <b>when</b> 'permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be <b>inspected.</b>' Id., 171. 'The authority which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements, but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit <b>the common area to be searched.</b>' (Citations omitted.) Id., 171, n.7. See also <a href="#">United States v. Salvucci</a>, 448 U.S. 83, 91, 100 S. Ct. 2547, 65 L. Ed. 2d 619 ('While property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated, property rights are neither the beginning nor <b>the end of this Court's inquiry</b>').</p> <p>...The <b>Second Circuit has held that</b> 'a third party consent to a search will validate the search if two prongs are present: first, the third party had access to the area searched, and, second, either: (a) common authority over the area; or (b) a substantial interest in the area; or <b>(c) permission to gain access.</b>' <a href="#">United States v. Davis</a>, 967 F.2d 84, 87 (2nd Cir. 1992). See also <a href="#">United States v. McGee</a>, 564 F.3d 136, 139-40 (2nd Cir. 2009)...<b>Under the facts of this case, the consent to search the defendant's vehicle given by Bedore, the reposessor of that vehicle, passes muster under both of these standards.</b>" <a href="#">State v. Henderson</a>, 60 Conn. L. Rptr. 181, 182 (2015), 2015 WL 2260736, 2015 Super. Lexis. 836</p>
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## Section 2: Default and Repossession

A Guide to Resources in the Law Library

### **SCOPE:**

- Bibliographic resources relating to default as a precondition of repossession under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

### **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788 (RISFA), inclusive, 42-100b and 42-100c is also subject to the Uniform Commercial Code, is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c shall control." Conn. Gen. Stat. [§ 36a-770\(a\)](#) (2017).
- "In consumer transactions, strict compliance with statutory provisions that prescribe the informational content of retail installment contracts is mandatory and is not excused by inadvertence." [Gaynor v. Union Trust Co.](#), 216 Conn. 458, 475, 582 A.2d 190 (1990).
- **Default:** "The Uniform Commercial Code does not define the word default but, instead, leaves the meaning for the parties to decide in the terms of their security agreement....The security agreement's definition of default therefore governs this case. The Trustee is correct that the definition inscribed in a security agreement should not apply if that definition is unconscionable, was not made in good faith, or is otherwise unreasonable." [In re Bolin & Co., LLC](#), 437 B.R. 731, 754, 72 UCC Rep. Serv. 2d 1096 (2010).
- **Default and repossession:** "When the retail buyer is in default in the payment of any sum due under the retail installment contract or installment loan contract, or in the performance of any other condition that such contract requires the retail buyer to perform, or in the performance of any promise, the breach of which is by such contract expressly made a ground for the retaking of the goods, the holder of the contract may retake possession of such goods, provided the filing of a petition in bankruptcy under 11 USC Chapter 7 by a retail buyer of a motor vehicle, or such retail buyer's status as a debtor in bankruptcy, shall not be considered a default of a retail installment contract or ground for repossession of such motor vehicle." Conn. Gen. Stat. [§ 36a-785\(a\)](#) (2017)
- **Unaccelerated amount due:** "During such [redemption] period the retail buyer, upon payment or tender of the unaccelerated amount due under such contract at the time

of retaking and interest . . . and upon payment of the actual and reasonable expenses of any retaking and storing, may redeem such goods and become entitled to take possession of the same and to continue in the performance of such contract as if no default **had occurred.**" Conn. Gen. Stat. [§ 36a-785](#)(c) (2017).

- **Electronic self-help:** "means the use of electronic means to exercise a secured party's rights pursuant to subsection (a) of this section with respect to the security agreement, and 'electronic' means relating to technology that has electrical, digital, magnetic, or wireless optical **electromagnetic properties or similar capabilities.** 'Electronic self-help' includes the use of electronic means to locate the collateral." Conn. Gen. Stat. [§ 42a-9-609](#)(d)(1) (2017).

"**Electronic self-help** [repossession] is permitted only if the debtor separately agrees to a term of the security agreement authorizing electronic self-help that requires notice of exercise as provided in subdivision (3) of the subsection." Conn. Gen. Stat. [§ 42a-9-609](#)(d)(2) (2017).

#### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)  
[Chapter 246](#). Motor Vehicles ([2018 Supplement](#))  
[§ 14-145](#). Towing or removal of motor vehicle from private property. Use of a wheel-locking device. Regulations. ([2018 Supplement](#))  
(a)(3) A lending institution may repossess any motor vehicle, in accordance with the provisions of section 36a-785, by contracting with a wrecker licensed under section 14-66 or an entity exempt from such licensure, as provided in subsection (f) of section 14-66, to tow or otherwise remove such motor vehicle in accordance with the provisions of this section and sections 14-145a to 14-145c, inclusive. In the case of a repossession, no signage as described in subdivision (1) of this subsection shall be required.
- Conn. Gen. Stat. (2017).  
Chapter 669. Banking Law of Connecticut. Regulated activities  
Part XI. Retail installment sales financing  
[§ 36a-785](#). Foreclosure  
(a). Repossession  
(b). Notice of intention to repossess
- Conn. Gen. Stat. (2017)  
Title 42a. Uniform Commercial Code  
Article 9. Secured Transactions  
Part 6. Default  
[§42a-9-601](#). Rights after default. Judicial enforcement  
[§42a-9-602](#). Waiver and variance of rights and duties



[§42a-9-603](#). Agreement on standards concerning rights and duties

[§42a-9-609](#). Secured party's right to take possession after default. Use of electronic self-help restricted

### **LEGISLATIVE:**

- *Daniel Duffy, [Retail Installment Sales Financing](#)*, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2000-R-0687 (July 11, 2000).

### **CASES:**

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- *Charter Oak Federal Credit Union v. Ladner et. al.*, Superior Court, Judicial District of Middlesex, No. CV10-6003853 (Sept. 19, 2011) (2011 WL 4716322) (2011 Conn. Super. LEXIS 2410). " **The defendants have admitted that ...they executed a Retail Installment Contract,...that as collateral for the Note they granted a security interest in a 1999 Jaguar VPP...The defendants have also admitted that the plaintiff sent to them and they received a Notice of Intention to Repossess,... that the plaintiff repossessed the collateral and that the plaintiff sent and they received the Notice of Plan to Sell Property...The defendants have also admitted that the plaintiff sent and they received a Statement Itemizing Disposition for Proceeds of Resale and Explanation of Deficiency...."**

"**The plaintiff has also submitted evidence that as of the date of repossession the NADA Used Car Guide, Eastern Edition, Average Retail Value for the Jaguar was \$7,025, and the Average Trade-in Value for the Jaguar was \$3,275. The average of the foregoing figures is \$5,150.**"

"**Summary Judgment may enter in favor of the plaintiff...."**

- *Raffone v. Industrial Acceptance Corp.et. al.*, 119 Conn. App. 261, 265-266, 987 A.2d 1059 (2010). "The defense consisted of testimony from the plaintiff and Dolores Caroche, the credit manager for the defendant, as well as four documents admitted without objection as full exhibits. In his testimony, the plaintiff conceded that he had failed to make any payments to the defendant on the refinanced loan. In addition, Caroche testified that the defendant had a relationship with Auto Sales, Inc., the dealership from which the plaintiff purchased the vehicle, providing that the dealership would hold the defendant "harmless and take recourse and assignment back on obligations that go bad." Caroche further testified that the defendant routinely exercised that recourse "with any dealer on a first payment default." Caroche averred that the defendant played no role in repossessing the vehicle. Rather, she explained that the defendant had exercised its right of recourse and assigned its interest in the vehicle to Auto Sales, Inc., which, in turn, paid the defendant the remaining balance on the plaintiff's loan."

**WEST KEY NUMBERS:**

- Secured Transactions  
# 221-243. Default and enforcement  
# 221. Rights and remedies of secured party in general  
# 222. Default of debtor

**DIGESTS:**

- [West's Connecticut Digest](#): *Secured Transactions*  
VII. Default and Enforcement  
§§221-243
- [West's ALR Digest](#): *Secured Transactions*  
VII. Default and enforcement  
§§221-243
- [Dowling's Digest](#): *Secured Transactions*  
4. Rights and remedies of buyer and seller

**ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d](#) *Secured Transactions* (2014).  
§§ 425-641. Default of debtor; Rights, remedies, duties, and liabilities of parties upon default  
§§ 432-439. Rights and remedies of debtor upon default  
§§ 440-594. Rights, remedies, duties, and liabilities of secured creditor and other interested parties upon default
- 79 [C.J.S.](#) *Secured Transactions* (2017).  
IX. Default and enforcement  
A. Default of debtor  
§§ 202-204  
B. Rights, remedies, and duties of secured party  
§§ 205-211  
C. **Enforcement of rights and remedies upon debtor's default, in general**  
§§ 212-216  
D. §§ Possession of collateral by secured party after a default; Disposition of collateral  
§§ 217-251.  
E. Remedies for wrongful enforcement  
§§ 252-258.
- Jay M. Zitter, Annotation, *Secured Transactions: Right Of Secured Party To Take Possession Of Collateral On Default Under UCC § 9-503*, 25 [ALR5th](#) 696 (1994).

**TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- National Consumer Law Center, [Repossessions](#) (9th ed., 2017).  
Chapter 4. Default as precondition to seizure  
§ 4.1. Default and acceleration  
§ 4.2. Limits on default and acceleration  
§ 4.3. **Creditor's waiver of right to declare default**  
§ 4.4. **Relationship of default to consumer's defenses or counterclaims**  
§ 4.5. The right to cure a default

§ 4.6. A special case: Yo-Yo (spot delivery) sales  
§ 4.7. Remedies

- 12 Robert M. Langer, John T. Morgan, and David L. Belt, [Connecticut Practice Series, Connecticut Unfair Trade Practices, Business Torts and Antitrust](#) (2017-2018 Edition).  
Chapter 4. CUTPA and Related Business Torts  
§4.16. CUTPA and transactions in special statutory contexts
- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).  
§ 11.8. Repossession
- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 [Yale L.J.](#) 1329 (2010).

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

## Section 3: Methods of Retaking Goods

A Guide to Resources in the Law Library

- **Self-help Repossession:** "Unless the goods can be retaken without breach of the peace, the goods shall be retaken by legal process, provided nothing contained in this section shall be construed to authorize a violation of the criminal law. In the case of repossession of any motor vehicle without the knowledge of the retail buyer, the local police department shall be notified of such repossession not later than two hours after repossession. In the absence of a local police department or if the local police department cannot be reached for notification, the state police shall be promptly notified of such repossession." Conn. Gen. Stat. [§ 36a-785\(a\)](#) (2017).
- **Notice of intention to repossess:** "Not less than ten days prior to the retaking, the holder of such contract may serve upon the retail buyer, personally or by registered or certified mail, a notice of intention to retake the goods on account of the retail buyer's default."

"... If the notice is so served and the retail buyer does not perform the conditions and provisions required under the contract to cure the default before the day set for retaking, the holder of the contract may retake such goods ... subject to the provisions ... regarding resale, but without any right of redemption." Conn. Gen. Stat. [§ 36a-785\(b\)](#) (2017).
- **Voluntary surrender:** "It is true that a voluntary surrender of a vehicle by a buyer in default may constitute a repossession by the holder of a retail installment contract, See, e.g., *Union Trust Co. v. Hardy*, 400 A.2d 384, 388 (Me. 1979)." *A-1 Auto Service, Inc. v. Horkavy*, Superior Court, Judicial District of New Haven at New Haven, No. CV96-0392187 (May 24, 2001), 2001 WL 686821, 2001 Conn. Super. LEXIS 1482.
- **Constructive repossession:** "This whole case comes down to whether a 'repossession' in fact took place here--that is what determines if previously mentioned statutes apply [Retail Installment Act and Uniform Commercial Code]. The fact finder found that there was a repossession apparently **accepting the plaintiffs' view that for a repossession to occur, the motor vehicle need not come into the actual possession of a credit union or bank but repossession can be established by acts or steps taken to indicate control or dominion over a chattel--i.e. constructive repossession. Such acts or steps are 'facts' and would establish the fact of constructive repossession if they were to be found.**" *Van Wormer v. Charter Oak Federal Credit Union*, Superior Court, No. 114865 (Aug. 25, 2000) (2000 WL 1281530) (2000 Conn. Super. LEXIS 2246) (42 U.C.C. Rep. Serv. 2d (Callaghan) 645).

# Section 3a: Self-Help Repossessions in Connecticut

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to self-help procedures that lenders may follow to repossess goods under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

## **SEE ALSO:**

- [Repossession by Notice of Intent](#)

## **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788 (RISFA), inclusive, 42-100b and 42-100c is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c **shall control.**" **Conn. Gen. Stat. [§ 36a-770](#)** (a) (2017).
- **History:** "Private self-help remedies extend as far back as ancient Greece, where those entitled to seize chattels from a debtor were not prohibited from breaching the peace or physically injuring the debtor in the course of repossession. ... Early Roman law permitted similar self-help remedies, including the right to seize the person of a debtor, without **court action, after a default in payment.** ... Later, the right to repossess goods was recognized in the common law of **England.**" [State v. Indrisano](#), 29 Conn. App. 283, 286, 613 A.2d 1375 (1992).

"Today, the same common law principle is embodied in General Statutes 42a-9-503 [now 42a-9-609], which permits a secured party to forgo the judicial process and resort to self-help repossession, but without breaching the peace. Enticing as this mode of recovery may be to creditors, nonjudicial repossession nevertheless presents 'an element of inherent danger.' [Sanchez v. MBank of El Paso](#), 792 S.W.2d 530, 532 (Tex. App. 1990). Because the reposessor may commit a trespass in attempting to recover goods without the owner's consent and, often, against his will, there is a considerable risk that breach of the peace, assault or other violence may occur. Id. With this brief historical background in mind, we commence our analysis." (286-287).

- "After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing." **Conn. Gen. Stat. [§ 42a-9-610](#)** (a) (2017).

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).  
Chapter 669. Banking Law of Connecticut. Regulated activities  
Part XI. Retail installment sales financing  
[§ 36a-785](#). Foreclosure  
(a). Repossession  
(b). Notice of intention to repossess
- Conn. Gen. Stat. (2017)  
Title 42a. Uniform Commercial Code  
Article 9. Secured Transactions  
[§ 42a-9-609](#). Secured party's right to take possession after default. Use of electronic self-help restricted  
[§ 42a-9-610](#). Disposition of collateral after default  
[§ 42a-9-614](#). Contents and form of notification before disposition of collateral: Consumer-goods transaction
- U.S. Code (2018)  
Title 15. Commerce and Trade  
Chapter 41. Consumer Credit Protection  
Subchapter V. Debt Collection Practices  
[§ 1692f](#). Unfair Practices

## **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- *Daniel Duffy, [Redeeming A Repossessed Motor Vehicle](#)*, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0270 (February 26, 2002).
- *George Coppolo, [Repossession of Motor Vehicles- Trespass](#)*, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2000-R-0079 (January 28, 2000).
- *Daniel Duffy, [Personal Belongings in a Repossessed Motor Vehicle](#)*, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0308 (March 4, 2002).

## **FORMS:**

- *Sample Complaint Alleging Violation of 42 U.S.C. § 1983, Conversion, and Breach of Peace*, Appendix D.4, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).

## **CASES:**

- [State v. Smith](#), 317 Conn. 338, 354-355, 118 A.3d 49 (2015). "As we have explained,...under the plain language of the governing statutes and the common law, a person who takes his own property from another simply has not committed a larceny. Accordingly,...a defendant who used unreasonable force to take his own property (or, indeed, a third person's property) from another person in order to prevent an attempted larceny could not be charged with robbery in the first instance, but could be charged only with an offense involving the use or threatened use of physical

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

force, such as assault or unlawful restraint. Thus, it is apparent that § 53a-21 was intended to provide a justification defense to a charge involving the unlawful use of physical force and has no effect on the lawfulness of a person's conduct in taking his own property from another. ... [W]e reject the state's claim that § 53a-21 somehow bars a defendant from raising the claim that he did not commit a larceny as a defense to a robbery charge. To the extent that [State v. Messier](#), 16 Conn. App. 45 (1988), can be interpreted as indirectly supporting the proposition that a defendant may be convicted of an offense requiring proof of an intent to commit larceny if the defendant was the owner of the property that he was accused of taking from another, it is hereby overruled."

- [Aviles w. Wayside Auto Body, Inc.](#) 49 F. Supp. 3d 216, 84 UCC Rep. Serv. 2d 860 (2014). "The UCC does not define what it means to breach the peace. Connecticut precedent suggests that a reposessor may breach the peace if they repossess a vehicle in the face of oral protest from the owner of the vehicle. See, e.g., *State v. Indrisano*, 29 Conn. App. 283, 613 A.2d 1375, 1380, n. 7 (1992), rev'd on other grounds, 228 Conn. 795, 640 A.2d 986 (1994)...." (p.226)

"Although this court has not found controlling authority from the Second Circuit...many courts from other circuits have held that standing under section 1692f is not limited to 'consumers' and instead extends to 'anyone aggrieved by a debt collector's unfair or unconscionable collection practices. '...This court finds this authority persuasive, as allowing third parties standing under section 1692f serves the aim of eliminating unfair or unconscionable collection practices which may injure third parties. This conclusion is particularly compelling under the facts of this case where the third party was the subject of the conduct which is alleged to have breached the peace." (p.228)

- [Thorne et. al. v. Mackeyboy Auto, LLC et. al.](#), Superior Court, Judicial District of New Haven at New Haven, No. CV11-6017210S (Oct. 11, 2013), 2013 WL 5879081, 2013 Conn. Super. LEXIS 2314. "...Chineal Thorne woke up to find her BMW missing. She did not know her car had been repossessed by the defendants. She called the dealership. She was told they took the car because she was not making 'payments,' and that she would have to pay \$700 to get her car back...Neither she nor her mother signed any agreement regarding weekly payments. Her personal effects... were all in the car."
- [Van Wormer v. Charter Oak Federal Credit Union](#), Superior Court, No. 114865 (Aug. 25, 2000) (2000 WL 1281530) (2000 Conn. Super. LEXIS 2246). "The UCC in § 42a-9-503

[now 42a-9-609] talks about the secured party's right to take possession after default of a condition of the security agreement. Again, the statute says 'in taking possession,' the secured party can proceed without judicial process if this can be done 'without breach of the peace or may proceed by action'."

- [Gaynor v. Union Trust Co.](#), 216 Conn. 458, 467, 582 A.2d 190 (1990). "We therefore construe 42-98 (a) [now 36a-785] as requiring no special contractual language to communicate the consequences of a default in payments, such as occurred in this case, or a nonperformance of a condition. The legislature might logically have deemed it important to require a consumer contract expressly to give warning of the risk of retaking in the event of a failure to perform 'any promise' because consumer buyers might otherwise not have understood that they might lose their collateral even though their payments were current and they had fulfilled all the conditions in their installment contract. That is not this case. We conclude, accordingly, that the defendant had the statutory authority to retake the plaintiffs' car."
- [State v. Messier](#), 16 Conn. App. 455, 462, 549 A.2d 270 (1988). "A defendant in pursuit of the repossession of his property cannot burglarize another's home and assault him with impunity. We conclude, therefore, that a defendant cannot expect to avoid a conviction by employing such a defense [as provided in Gen. Stat. §53a-21]."

**WEST KEY NUMBERS:**

- Secured Transactions  
# 221-243. Default and enforcement

**DIGESTS:**

- [West's Connecticut Digest](#): *Secured Transactions*  
VII. Default and enforcement  
§§ 221-243
- [West's ALR Digest](#)  
VII. Default and enforcement  
§§ 221-243
- [Dowling's Digest](#): *Secured Transactions*  
1. Introduction  
2. What constitutes  
3. Validity and operation  
4. Rights and remedies of buyer and seller

**ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d](#) *Secured Transactions* (2014)  
§ 457. Creditor's right to take possession, generally
- 79 [C.J.S.](#) *Secured Transactions* (2017)  
IX. Default and enforcement



D. Possession of collateral by secured party after default; Disposition of collateral

1. Possession of collateral by secured party after default

§ 221. Taking possession of collateral without judicial process; Prohibition against breach of peace

§ 222. Taking possession of collateral without judicial process; What constitutes breach of peace

- James L. Buchwalter, Annotation, *Cause Of Action For Wrongful Self-Help Repossession of Personal Property*, [COA 2d](#) (2010).
- Jay M. Zitter, Annotation, *Secured Transactions: Right Of Secured Party To Take Possession Of Collateral On Default Under UCC § 9-503*, 25 [ALR5th](#) 696 (1994).
- Gary D. Spivey, Annotation, *Validity, Under State Law, Of Self-Help Repossession Of Goods Pursuant To UCC § 9-503*, 75 [ALR3d](#) 1061 (1977).
- Russell J. Davis, Annotation, *Private Person's Enforcement Of Lien Through Self-Help As Act "Under Color Of State Law" Within Meaning Of 42 USCS § 1983*, 32 [ALR Fed](#) 431 (1977).
- Gary D. Spivey, Annotation, *Validity, Under Federal Constitution And Laws, Of Self-Help Repossession Provision Of § 9-503 Of Uniform Commercial Code*, 29 [ALR Fed](#) 418 (1976).
- National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
  - Chapter 6. Self-Help Repossessions
    - § 6.1. Introduction
    - § 6.2. Representing the client before repossession
    - § 6.3. Bars to repossession
    - § 6.4. Self-help repossession must not breach the peace
    - § 6.5. Other self-help repossession restrictions
    - § 6.6. Electronic repossessions
- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).
  - § 11.8. Repossession
- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 [Yale L.J.](#) 1329 (2010).

### **TREATISES:**

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### **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Ryan McRobert, *Defining "Breach of the Peace" in Self-help Repossessions*, 87 Wash. L. Rev. 569 (2012). (Available on the Law Libraries' HeinOnline database).
- Aaron Loterstein, *Law-enforcement Officers and Self-help Repossession: A State-Action Approach*, 111 [Mich. L. Rev.](#) 1361 (2013).

## Section 3b: Repossession by Notice of Intent

A Guide to Resources in the Law Library

### **SCOPE:**

- Bibliographic resources relating to repossession in Connecticut through the use of a notice of intent to repossess under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

### **SEE ALSO:**

- [Repossession in Connecticut](#)  
(Informational material provided by the 2-1-1 eLibrary)

### **TREATED ELSEWHERE:**

- [Self-Help Repossessions in Connecticut](#)

### **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c shall control." Conn. Gen. Stat. [§ 36a-770](#)(a) (2017).
- **"When the retail buyer is in default** in the payment of any sum due under the retail installment contract or installment loan contract, . . . the breach of which is by such contract expressly made a ground for the retaking of the goods, the holder of the contract may retake possession of such goods, . . . . Unless the goods can be retaken without breach of the peace, the goods shall be retaken by legal process, provided nothing contained in this section shall be construed to authorize a violation of the criminal law." Conn. Gen. Stat. [§ 36a-785](#)(a) (2017).
- **Notice of intention to repossess:** "Not less than ten days prior to the retaking, the holder of such contract may serve upon the retail buyer, personally or by registered or certified mail, a notice of intention to retake the goods on account of the retail buyer's default. The notice shall state that the retail buyer is in default and the period at the end of which such goods will be retaken, and designate (1) the obligations required to be performed in order to cure the default, including the dollar amount of any required payment, and (2) the date by which such obligations must be performed. The notice shall briefly and clearly state the retail buyer's rights under this subsection in the event such goods are retaken. In the case of repossession of any motor vehicle, the notice shall inform the retail buyer that he or she is responsible for removing all of his or her personal property from the motor vehicle prior to the date such repossession can take place. If the notice is so served and the retail buyer does not perform the conditions and

provisions required under the contract to cure the default before the day set for retaking, the holder of the contract may retake such goods and hold such goods subject to the provisions of subsections (d), (e), (f), (g) and (h) of this section regarding resale, but without any right of redemption." Conn. Gen. Stat. [§ 36a-785](#)(b). (2017).

- **Without right of redemption:** "If the notice is so served and the retail buyer does not perform the conditions and provisions required under the contract to cure the default before the day set for retaking, the holder of the contract may retake such goods and hold such goods subject to the provisions of subsections (d), (e), (f), (g) and (h) of this section regarding resale, but without any right of redemption." Conn. Gen. Stat. [§ 36a-785](#)(b). (2017).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)  
[Chapter 246](#). Motor Vehicles  
[§ 14-145](#). Towing or removal of motor vehicle from private property. Use of a wheel-locking device. Regulations. (a)(3)[Repossession by lending institution]
- Conn. Gen. Stat. (2017). Chapter 669. Banking Law of Connecticut. Regulated activities  
Part XI. Retail installment sales financing  
[§ 36a-785](#)(b). Foreclosure. Notice of intention to repossess
- Conn. Gen. Stat. (2017)  
Title 42a. Uniform Commercial Code  
Article 9. Secured Transactions  
[§ 42a-9-609](#). Secured party's right to take possession after default. Use of electronic self-help restricted  
[§ 42a-9-610](#). Disposition of collateral after default  
[§ 42a-9-614](#). Contents and form of notification before disposition of collateral: Consumer-goods transaction

### **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Daniel Duffy, [Redeeming A Repossessed Motor Vehicle](#)*, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0270 (February 26, 2002).
- *Daniel Duffy, [Personal Belongings in a Repossessed Motor Vehicle](#)*, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0308 (March 4, 2002).

### **CASES:**

- *Charter Oak Federal Credit Union v. Ladner et. al.*, Superior Court, Judicial District of Middlesex, No. CV10-6003853 (Sept. 19, 2011), 2011 WL 4716322. "The defendants have also admitted that the plaintiff sent them and they received

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

a Notice of Intention to Repossess, a copy of which is attached to the complaint....”

- Moye v. Credit Acceptance Corp., Superior Court, No. X01-99-0517073 (Nov. 3, 2000), 2000 WL 1820617, 2000 Conn. Super LEXIS 3072. "In Count One, plaintiffs . . . allege both that the post-repossession notice CAC provided to them violated RISFA by stating that the plaintiffs must pay the accelerated debt plus repossession costs and storage charges in order to redeem their vehicles. RISFA, at § 36a-785(b), does not require a pre-repossession notice to the retail buyer but makes provision of such a notice **discretionary with the holder of the contract: 'Not less than ten days prior to the retaking, the holder of such contract, IF HE SO DESIRES, MAY serve upon the retail buyer . . . a notice of intention to retake the goods . . .'** Failure to provide such a notice is therefore not a violation of RISFA. The plaintiffs have alleged the lack of such a notice apparently only as preamble to the allegation of a violation of a requirement that applies where a holder has elected not to provide prior notice of a repossession."
- Cadle Co. v. Prodoti, 45 Conn. Supp. 325, 326, 716 A.2d 965 (1998). On November 8, 1991, the bank wrote to Prodoti informing him that he owed \$661.66 and that it intended to repossess his automobile unless he paid that sum by November 18, 1991. It further informed him that if repossession occurred, the property would be sold at private sale pursuant to General Statutes (Rev. to 1991) § 42-98 (now Conn. Gen. Stat. § 36a-785) and that he would be responsible for any deficiency pursuant to § 42-98(g). Prodoti made no payment, and the bank repossessed the automobile. (The actual repossession date does not appear in the documents submitted by the parties.) The automobile was sold on February 20, 1992, leaving a deficiency balance allegedly owed by Prodoti."

**WEST KEY NUMBERS:**

- Secured Transactions  
# 228. Possession by secured party

**DIGESTS:**

- [West's Connecticut Digest](#): *Secured Transactions*  
VII. Default and enforcement  
228. Possession by secured party
- [West's ALR Digest](#):  
VII. Default and enforcement  
228. Possession by secured party
- [Dowling's Digest](#): *Secured Transactions*  
1. Introduction  
2. What constitutes  
3. Validity and operation  
4. Rights and remedies of buyer and seller

## **ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d](#) *Secured Transactions* (2014).  
§ 457. Creditor's right to take possession, generally
- 79 [C.J.S.](#) *Secured Transactions* (2017).  
§§ 217. Rights of secured party to possession of collateral

## **TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- National Consumer Law Center, [Repossessions](#) (9th ed., 2017).  
Chapter 4. Default as Pre-Condition to Seizure  
§ 4.5. The Right to Cure a Default  
§ 4.5.2. State Statutory Rights to Cure  
§ 4.5.2.2. The Notice Requirement  
§ 4.5.2.3. Electronic Notice of the Right to Cure
- 12 Robert M. Langer, John T. Morgan, and David L. Belt, [Connecticut Practice Series, Unfair Trade Practices, Business Torts and Antitrust](#) (2017-2018 Edition).  
Chapter 4. CUTPA and Related Business Torts  
§4.16. CUTPA and transactions in special statutory contexts
- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).

## **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 [Yale L.J.](#) 1329 (2010).

## Section 4: Redemption

A Guide to Resources in the Law Library

### **SCOPE:**

- Bibliographic resources relating to redemption under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

### **TREATED ELSEWHERE:** **SEE ALSO:**

- [Section 2: Default and Repossession](#)
- [Repossession in Connecticut](#)  
(Informational material provided by the 2-1-1 eLibrary)

### **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c **shall control.**" Conn. Gen. Stat. [§ 36a-770](#)(a) (2017).
- "Provisions of redemption are designed to avoid forfeiture of the amount paid by the conditional vendee and prevent unjust enrichment of the vendor on terms fair to both." [Auto Acceptance Corporation v. Veneziano](#), 2 Conn. Cir. Ct. 708, 713, 205 A.2d 788, cert. den. 152 Conn. 729 (1964).
- **Redemption:** "If the holder of such contract does not give the notice of intention to retake, described in subsection (b), he shall retain such goods for fifteen days after the retaking within the state in which they were located when retaken. During such period the retail buyer, upon payment or tender of the unaccelerated amount due under such contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in such contract as precedent to the retail buyer's continued possession of such goods, or upon performance or tender of performance of any other promise for the breach of which such goods were retaken, and upon payment of the actual and reasonable expenses of any retaking and storing, may redeem such goods and become entitled to take possession of the same and to continue in the performance of such contract as if no default had occurred." Conn. Gen. Stat. [§ 36a-785](#)(c) (2017).
- **Curing the default:** "This period of fifteen days (ten days in New York and New Jersey) is a grace period in which the **buyer may cure his default.**" [Auto Acceptance Corporation v. Veneziano](#), 2 Conn. Cir. Ct. 708, 713, 205 A.2d 788, cert. den. 152 Conn. 729 (1964).

- **Computation:** "In the computation of the fifteen-day retention period, the day of the taking must be excluded and the last day included; the must fully expire before a sale may be had; the buyer has until midnight of the fifteenth day in which to redeem; the statute requires the **seller to retain the goods 'for fifteen days' not 'until the fifteenth day.'**" Ibid., p.713.
- **3 days after retaking:** "The holder of such contract [the retail installment contract or installment loan contract] shall, not later than three days after the date of the retaking, furnish or mail, by registered or certified mail, to the last known address of the buyer a written statement indicating (1) the unaccelerated sum due under such contract and the actual and reasonable expense of any retaking and storing, and (2) in the case of repossession of any motor vehicle, the holder of such contract shall also, not later than three days after the date of the retaking, and without regard to whether notice of intention to retake was given to the buyer, send a written notice (A) that the buyer is responsible for retrieving items of personal property that may have been left in the motor vehicle, other than items that may have been turned over to law enforcement, (B) that such property, if any, will be available for retrieval for at least sixty days after the date on which the motor vehicle was repossessed, unless the holder of the contract specifies, or the terms of the contract specify a date at least sixty days after the repossession after which the buyer may no longer retrieve the property, and (C) the contact and business hours information that the buyer can use to make arrangements for retrieval of the property. If the buyer retrieves some or all of the personal property more than fifteen days after the date on which the motor vehicle was repossessed, the holder of the contract, or an agent thereof maintaining custody of the personal property, may charge the buyer a reasonable storage fee not to exceed twenty-five dollars. Failure to furnish or mail such statement as required by this section, the holder of the contract shall forfeit the right to claim payment for the actual and reasonable expenses of retaking and storage, and also shall be liable for the actual damages suffered because of such **failure.**" Conn. Gen. Stat. [§ 36a-785\(c\)](#) (2017).
- **Perishable goods:** "If such goods are perishable so that retention for fifteen days as herein prescribed would result in their destruction or substantial injury, the provisions of this subsection shall not apply and the holder of the contract may resell the goods immediately upon such retaking." Conn. Gen. Stat. [§ 36a-785\(c\)](#) (2017).

**STATUTES:**

- Conn. Gen. Stat. (2017)  
Chapter 669. Banking Law of Connecticut. Regulated activities



You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Part XI. Retail installment sales financing  
[§ 36a-770](#). Applicability of Uniform Commercial Code.  
Filing and recording. Definitions  
[§ 36a-785](#). Foreclosure  
(a). Repossession  
(c). Redemption  
(d). Compulsory resale  
(e). Proceeds of resale  
(f). Deficiency on resale  
(g). Fair market value  
(h). Election of remedies  
(i). Recovery of part payments  
(j). Waiver of statutory protection  
(k). Loss  
[§ 36a-786](#). Recovery of charges barred by willful violations  
[§ 36a-787](#). Penalty  
[§ 36a-788](#). Enforcement action

- Conn. Gen. Stat. (2017)  
Title 42a. Uniform Commercial Code  
Article 9. Secured Transactions  
[§ 42a-9-609](#). Secured party's right to take possession after default. Use of electronic self-help restricted  
[§ 42a-9-610](#). Disposition of collateral after default  
[§ 42a-9-611](#). Notification before disposition of collateral

### **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Daniel Duffy, [Redeeming A Repossessed Motor Vehicle](#)*, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0270 (February 26, 2002).

### **CASES:**

Once you have identified useful cases, it is important to update them to ensure they are still good law. You can [contact your local law librarian](#) to learn about updating cases.

- [Connecticut Bank & Trust Co. v. Incendy](#), 207 Conn. 15, 23, **540 A.2d 32 (1988)**. "The basic rationales for these holdings are that (a) the mandatory nature of the notice provisions of § 9-504 (3) of the Uniform Commercial Code require that when a creditor *elects* the remedy of repossession and subsequent sale, it is the creditor's obligation to notify the debtor and it is the creditor's burden to establish the reasonableness of such notice, and (b) the notice provisions were specifically adopted for the benefit of the debtor, to protect the debtor's interest in his statutory right to redeem the collateral, thereby helping to ensure

that the best possible price will be obtained for the collateral, that the sale will be conducted in a commercially reasonable manner, and that the debtor will immediately be placed on notice of the possibility of a deficiency for which he may ultimately be held liable.”

**WEST KEY NUMBERS:**

- Secured Transactions  
# 241. Redemption of collateral

**DIGESTS:**

- [West’s Connecticut Digest](#): *Secured Transactions*  
VII. Default and enforcement  
§241. Redemption of collateral
- [Dowling’s Digest](#): *Secured Transactions*  
4. Rights and remedies of buyer and seller

**ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d](#) *Secured Transactions* (2014).  
§§ 434-439. **Debtor’s right to redeem collateral**  
§ 434. Generally  
§ 435. Scope of rights of redemption of collateral  
§ 436. Time for redemption of collateral  
§ 437. Tender of payment  
§ 438. —Excuse of failure to tender payment  
§ 439. **Waiver of debtor’s right to redeem**
- 79 [C.J.S.](#) *Secured Transactions* (2017).  
IX. Default and enforcement  
2. Nonjudicial disposition of collateral by secured party  
D. Effect of disposition and application of proceeds  
§ 251. Redemption of collateral

**TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- National Consumer Law Center, [Repossessions](#) (9th ed., 2017).  
Chapter 4. Default as Precondition to Seizure  
§ 4.2. Limits on default and acceleration  
§ 4.5. The right to cure a default  
§ 4.5.2. State statutory rights to cure  
§ 4.5.2.2. The notice requirement  
§ 4.5.2.3. Electronic Notice of the right to cure  
  
Chapter 9. Disposition of repossessed collateral other than by creditor’s sale: **Reinstatement, redemption, strict foreclosure, sheriff’s sale, and consumer’s sale**  
§ 9.3. Redemption of collateral  
§ 9.3.1. Nature, advantages, and disadvantages of redemption  
§ 9.3.2. Absolute right until disposition  
§ **9.3.3. Debtor’s continued ownership of the collateral during the redemption period**  
§ 9.3.4. Who can redeem  
§ 9.3.5. Notice of right to redeem  
§ 9.3.6. Determination of redemption amount

§ 9.3.7. Tender

§ 9.3.8. Remedies for secured party's violation of redemption rights

§ 9.3.9. Waiver

- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).  
§ 11.19. Right of redemption

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 [Yale L.J.](#) 1329 (2010).

## Section 5: Resale of Goods

A Guide to Resources in the Law Library

### **SCOPE:**

- Bibliographic resources relating to resale of goods and dispossession of collateral under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

### **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788 (RISFA), **inclusive...** is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, **inclusive ...** shall control." Conn. Gen. Stat. [§ 36a-770](#)(a) (2017).
- **Compulsory sale on self-help repossession:** "If the retail buyer does not redeem such goods within fifteen days after the holder of the contract has retaken possession, the holder of the contract shall sell such goods at public or private sale not less than fifteen days and not more than one hundred eighty days after the retaking." Conn. Gen. Stat. [§ 36a-785](#)(d) (2017).
- **Compulsory sale on repossession by legal process:** "When the holder of the contract retakes possession by legal process, and an answer is interposed, the holder of the contract may, at **the holder's** election, hold such retaken goods for a period not to exceed thirty days after the entry of final judgment by a court of competent jurisdiction entitling the holder of the contract to possession of such goods before holding such resale." Conn. Gen. Stat. [§ 36a-785](#)(d) (2017).
- **Notice of sale:** "The holder of the contract shall give the **retail buyer not less than ten days' written notice of the** time and place of any public sale, or the time after which any private sale or other intended disposition is to be made, either personally or by registered mail or by certified mail, return receipt requested, directed to the retail buyer at **such retail buyer's** last-known place of business or residence. The holder of the contract may bid for such goods at any public sale." Conn. Gen. Stat. [§ 36a-785](#)(d) (2017).
- **Proceeds of Resale:** "Proceeds of the resale shall be applied in the following order of priority: (1) First, to the payment of the actual and reasonable expenses of such resale, (2) if, after application pursuant to subdivision (1) of this subsection, there are proceeds remaining, then to the payment of the actual and reasonable expenses of any retaking and storing of said goods, and (3) if, after application pursuant to subdivisions (1) and (2) of this

subsection, there are proceeds remaining, then to the satisfaction of the balance due under the contract. Not later than thirty days after the resale, the holder of the contract shall give the retail buyer a written statement itemizing the disposition of the proceeds. Any sum remaining after the satisfaction of such claims shall be paid to the retail buyer.” Conn. Gen. Stat. [§ 36a-785](#)(e) (2017).

### **FORMS:**

- Contents and form of notification before disposition of collateral: Consumer-goods transaction. Conn. Gen. Stat. [§ 42a-9-614](#) (2017).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)  
Chapter 669. Banking Law of Connecticut. Regulated activities  
Part XI. Retail installment sales financing  
[§ 36a-770](#). Applicability of Uniform Commercial Code.  
Filing and recording. Definitions  
[§ 36a-785](#). Foreclosure  
(d). Compulsory resale  
(e). Proceeds of resale
- Conn. Gen. Stat. (2017)  
Title 42a. Uniform Commercial Code  
Article 9. Secured Transactions  
[§ 42a-9-614](#). Contents and form of notification before disposition of collateral: Consumer-goods transaction  
[§ 42a-9-616](#). Explanation of surplus or deficiency  
[§ 42a-9-620](#) (e), (f), (g), (h). Acceptance of collateral in full or partial satisfaction or obligation. Compulsory disposition of collateral  
[§ 42a-9-625](#). Remedies for secured party’s failure to comply with this article  
[§ 42a-9-626](#). Action in which deficiency or surplus is in issue

### **LEGISLATIVE:**

- *Daniel Duffy, [Redeeming A Repossessed Motor Vehicle](#)*, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0270 (February 26, 2002).

### **FORMS:**

- *Sample Complaint To Enjoin Sale*, Appendix D.3, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).

### **CASES:**

Once you have identified useful cases, it is important to update them to ensure they are still good law. You can [contact your local law librarian](#) to learn about updating cases.

- [Mountain States Adjustment A Division of MS Services, LLC v. Lindeborn](#), Superior Court, Judicial District of Waterbury, No. UWY CV10-6005965S (June 25, 2013) (2013 WL 3615669). “...Pursuant to RISFA [Retail Installment Sales Finance Act], such transactions are also subject to the Uniform Commercial Code, title 42a. See General Statutes § 36a-770(a). General Statutes § 42a-9-610 (b), provides, in relevant part, “[e]very aspect of a disposition of

collateral, including the method, manner, time, place and other **terms, must be commercially reasonable.'**

**Proof of commercial reasonableness 'generally requires** evidence of such things as the amount of advertising done, the number of people contacted, normal commercial practices in disposing of particular collateral, the length of time between the repossession and the sale, whether any deterioration on the collateral has occurred, the number of **bids received, and the price obtained.'** (Internal quotation marks omitted.) *Gaynor v. Union Trust Co. supra*, 216 Conn. 458, at **478, 582 A.2d 190.** ... "The reasonableness of a commercial resale is ordinarily a question of fact." **Id.**

- [Mack Financial Corporation v. Crossley](#), 209 Conn. 163, **166, 550 A.2d 303 (1988)**. "For entirely consumer transactions ... Connecticut case law has assigned a more serious consequence to a failure to give the notification of sale that 42-98 (d) [now 36a-785(d)] makes a procedural requirement. We must bear in mind that we are dealing with consumer legislation, whose interpretation is to be guided by its remedial purpose of protection for retail buyers."
- [Elm Buick Co. v. Moore](#), 150 Conn. 631, 633-634, 192 A.2d **638 (1963)**. "The defendant claims that the quoted provision of 42-98 (d) as to notice required that the written notice actually be received by him and that since it was not, he is not liable for any deficiency judgment."

The disjunctive phrase "or by" in 42-98 (d) clearly expresses a legislative intention that there shall be two separate methods of giving to the retail buyer written notice of a proposed resale of his car after a repossession because of a default in installment payments. The notice may be given personally wherever the buyer is found. It may also be given by registered or certified mail directed to the buyer at his last-known place of business or residence. Thus, the statute, by its express terms, provides that either method may be used at the option of the holder of the installment contract."

**WEST KEY NUMBERS:**

- Secured Transactions  
# 229-238. Disposition of collateral

**DIGESTS:**

- [West's Connecticut Digest](#): *Secured Transactions*  
VII. Default and enforcement  
§§229-238. Disposition of collateral
- [West's ALR Digest](#): *Secured Transactions*  
VII. Default and enforcement  
§§229-237. Disposition of collateral

- [Dowling's Digest](#): *Secured Transactions*  
4. Rights and remedies of buyer and seller

**ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d](#) *Secured Transactions* (2014).  
VII. Default of Debtor; Rights, Remedies, Duties, and Liabilities of Parties upon Default  
§§ 491-568. Right to dispose of collateral; Effect of disposition
- 79 [C.J.S.](#) *Secured Transactions* (2017).  
IX. Default and enforcement  
§§ 225-251. Nonjudicial disposition of collateral by secured party
- Richard C. Tinney, Annotation, *Failure Of Secured Party To Make "Commercially Reasonable" Disposition Of Collateral Under UCC § 9-504(3) As Bar To Deficiency Judgment*, 10 [ALR4th](#) 413 (1981).
- *Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral*, 12 [COA](#) 77 (1987).
  - § 11. Compliance with UCC § 9-504(3). Generally
  - § 12. Notice of disposition of collateral
  - § 13. —Content of notification
  - § 14. —Manner of notification
  - § 15. —Time of notification
  - § 16. —Right to sell without notification
  - § 17. Commercially reasonable disposition
  - § 18. —Method of disposition
  - § 19. —Manner of disposition
  - § 20. —Time of disposition
  - § 21. —Place of disposition
  - § 22. —Terms of disposition
  - § 23. —Other ways of showing commercial reasonableness
  - § 24. Rebutting presumption that deficiency resulted from noncompliance
  - § 25. **Defendant's** waiver of rights
  - § 26. Recovery from party secondarily liable. Generally
- Annotation, *Construction Of Term "Debtor" As Used In UCC § 9-504(3), Requiring Secured Party To Give Notice To Debtor Of Sale Of Collateral Securing Obligation*, 5 [ALR4th](#) 1291 (1981).
- Boyd J. Peterson, Annotation, *Secured Transactions: What Is "Public" Or "Private" Sale Under UCC § 9-504(3)*, 60 [ALR4th](#) 1012 (1988).
- Richard C. Tinney, Annotation, *Sufficiency Of Secured Party's Notification Of Sale Or Other Intended Disposition Of Collateral Under UCC § 9-504(3)*, 11 [ALR4th](#) 241 (1982).

## **TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
  - Chapter 10. Creditor's sale of the collateral**
  - § 10.1. Creditor must sell, lease or otherwise dispose of collateral
  - § 10.2. Commercial reasonableness standard for repossession sales
  - § 10.3. Creditor's duties** toward collateral
  - § 10.4. Notice of sale
  - § 10.5. Timing of sale
  - § 10.6. Determining if a sale is public or private sale
  - § 10.7. Reasonableness of choice of type of repossession sale
  - § 10.8. Requirements for a commercially reasonable sale
  - § 10.9. Sale price and commercial reasonableness
  - § 10.10. Purchase by secured party or insider, or pursuant to recourse agreement; revolving repossession schemes
  - § 10.11. Rights of purchasers at repossession sales
- 12 Robert M. Langer, John T. Morgan, and David L. Belt, [Connecticut Practice Series, Connecticut Unfair Trade Practices, Business Torts and Antitrust](#) (2017-2018 Edition).
  - Chapter 4. CUTPA and Related Business Torts
  - §4.16. CUTPA and transactions in special statutory contexts
- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).
- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 [Yale L.J.](#) 1329 (2010).

## **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).



## Section 6: Action to Recover Deficiency

A Guide to Resources in the Law Library

### **SCOPE:**

- Bibliographic resources relating to resale and an action to recover deficiency under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

### **SEE ALSO:**

- [Repossession in Connecticut](#)  
(Informational material provided by the 2-1-1 eLibrary)

### **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788 (RISFA), **inclusive**... is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, **inclusive** ... shall **control.**" Conn. Gen. Stat. [§ 36a-770](#)(a) (2017).
- "'Since RISFA is a remedial statute, [the court] must construe it liberally in order to implement its consumer protection policies.' [Barco Auto Leasing Corp. v. House](#), 202 Conn. 106, 116, 520 A.2d 162 (1987). 'In consumer transactions, strict compliance with statutory provisions that prescribe the informational content of retail installment contracts is mandatory and is not excused by inadvertence.' [Gaynor v. Union Trust Co.](#), 216 Conn. 458, 475, 582 A.2d 190 (1990)." [Condor Capital Corp v. Faust](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. CV99-0360461 (Aug. 25, 2000), 2000 Ct. Sup. 9808, 2000 WL 1269748.
- **Deficiency on resale:** "Even if the proceeds of the resale are insufficient to defray the actual and reasonable expenses of such resale, and such actual and reasonable expenses of any retaking and storing of such goods and the balance due under the contract, the holder of the contract may not recover the deficiency from the retail buyer or any surety or guarantor for the retail buyer, or from anyone who has succeeded to the obligations of such retail buyer, **except as provided in subsection (g) of this section.**" Conn. Gen. Stats. [§ 36a-785](#)(f) (2017)
- **Fair market value.** "If the goods retaken consist of a **motor vehicle** the aggregate cash price of which was more than four thousand dollars, the prima facie fair market value of such motor vehicle shall be calculated by adding together the average trade-in value for such motor vehicle and the highest-stated retail value for such motor vehicle and dividing the sum of such values by two. Such average trade-in value and highest-stated retail value shall be determined by the values as stated in the National Automobile Dealers Association Used Car Guide, Eastern

Edition, as of the date of repossession. If an average trade-in value is not stated in said guide, the highest-stated trade-in value stated in said guide for the motor vehicle shall be used. If the goods retaken consist of a boat the aggregate cash price of which was more than four thousand dollars, the prima facie fair market value of such boat shall be calculated by adding together the average trade-in value for such boat and the highest-stated retail value for such boat and dividing the sum of such values by two. Such average trade-in value and highest-stated retail value shall be determined by the values as stated in the National Automobile Dealers Association Appraisal Guide for Boats, Eastern Edition, as of the date of repossession. If an average trade-in value is not stated in said guide, the highest-stated trade-in value stated in said guide for the boat shall be used. In the event that the value of such motor vehicle or boat is not stated in such publication, the fair market value at retail minus the reasonable costs of resale shall be determined by the court. The prima facie evidence of fair market value of such motor vehicle or boat so determined may be rebutted only by direct in-court testimony. If such value of the motor vehicle or boat is less than the balance due under the contract, plus the actual and reasonable expenses of the retaking of possession, the holder of the contract may recover from the retail buyer, or from anyone who has succeeded to **such retail buyer's** obligations, as a deficiency, the amount by which such liability exceeds such fair market value, as defined in this subsection. If the actual resale price received by the holder exceeds such fair market value, as defined in this subsection, the actual resale price shall govern." **Gen. Stats. § 36a-785(g)** (2017).

- **Election of remedies:** "After the holder retakes possession as provided in subsection (a) of this section, or if the holder obtains a prejudgment remedy against the goods under chapter 903a, the retail buyer or anyone who has succeeded to such retail buyer's obligations shall not be liable for any balance due, except to the extent permitted by subsection (g) of this section. The holder may seek a monetary judgment on the contract against the retail buyer unless the goods have been repossessed, with or without judicial process. Goods purchased under the contract shall not be executed upon to satisfy such judgment. When such judgment becomes final, the holder's security interest in the goods shall be extinguished. If the contract covers a retail sale of a motor vehicle required to be registered, the holder shall comply with section 14-188." **Gen. Stats. § 36a-785(h)** (2017)

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)  
Chapter 669. Banking Law of Connecticut. Regulated activities  
Part XI. Retail installment sales financing  
[§ 36a-770](#). Applicability of Uniform Commercial Code.  
Filing and recording. Definitions  
[§ 36a-785](#). Foreclosure  
(d). Compulsory resale  
(e). Proceeds of resale  
(f). Deficiency on resale  
(g). Fair market value  
(h). Election of remedies  
(i). Recovery of part payments  
(j). Waiver of statutory protection  
(k). Loss  
[§ 36a-786](#). Recovery of charges barred by willful violations  
[§ 36a-787](#). Penalty  
[§ 36a-788](#). Enforcement action
- Conn. Gen. Stat. (2017)  
Title 42a. Uniform Commercial Code  
Article 9. Secured Transactions  
[§ 42a-9-610](#). Disposition of collateral after default  
[§ 42a-9-616](#). Explanation of surplus or deficiency  
[§ 42a-9-625](#). Remedies for secured party's failure to comply with this article  
[§ 42a-9-626](#). Action in which deficiency or surplus is in issue  
[§ 42a-9-627](#). Determination of whether conduct was commercially reasonable

## **FORMS:**

- *Sample Complaint, Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral*, 12 [COA](#) 77 § 52 (1987).
- *Sample Answer And Counterclaims To Deficiency Action*, Appendix D.1, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
- *Additional Defenses and Counterclaims Based on Sale to Insider*, Appendix D.2, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Sikorsky Financial Credit Union, Inc. v. Butts](#), 315 Conn. 433, 108 A.3d 228 (2015). "In this certified appeal, we consider whether postmaturity interest on a loan continues to accrue after the entry of judgment under General Statutes § 37-1, which provides that, in the absence of any agreement to the contrary, interest shall accrue **'as an addition to the debt' at an annual rate of 8 percent 'from the date of maturity of a debt....'** The trial court and the Appellate Court concluded that it does not, deciding instead that the entry of judgment terminated the accrual of postmaturity interest on the loan, leaving any award of postjudgment interest to the trial court's discretionary powers under General Statutes § 37-3a(a), which allows a **court to award interest 'as damages for the detention of money after it becomes payable.'** We disagree with those courts and conclude that, under § 37-1(b), postmaturity interest continues to accrue on the unpaid balance of a loan even after the entry of judgment. Consequently, we reverse the judgment of the Appellate Court and direct that court to remand the case to the trial court for a recalculation of the interest award."
- [Mountain States Adjustment A Division of MS Services, LLC v. Lindeborn](#), Superior Court, Judicial District of Waterbury, No. UWY CV10-6005965S (June 25, 2013) (2013 WL 3615669). **"The Coachman was sold at an auction ... for \$26,000. BOW received the net sum of \$24,477.59...By deficiency notice,...BOW demanded payment from the defendant in the amount of \$35,906.35."**

**"The defendant contends that the plaintiff has not met its burden to prove the amount of the debt, noting the net amount recovered in January 2009, \$24,477.59, compared with the July 2007 sale price of \$61,426.40."**

**"General Statutes § 42a-9-610(b), provides, in relevant part, '[e]very aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable'."**
- [United Shoreline F.C.U. v. Sanchez, et. al.](#), Superior Court, Judicial District of New Haven, No. CV10-6001828S (April 14, 2011) (2011 WL 1758964). **"Simply put, there is nothing in the plain language of § 36a-785 that denies a deficiency judgment when there has been a voluntary surrender of a motor vehicle. Indeed, 'voluntary surrender of a vehicle by a buyer in default may constitute a repossession by the holder of a retail [installment] contract.'" *A-1 Auto Service, Inc. v. Horkavy*, Superior Court, Judicial District of New Haven, No. CV96-0392187 (May 24, 2001).**

- [Condor Capital Corp v. Faust](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. CV99-0360461 (Aug. 25, 2000) (2000 WL 1269748). "The sole issue before the court is whether the plaintiff complied with the provisions of the Retail Instalment Sales Financing Act (RISFA), General Statutes § 36a-770 et seq., thereby entitling it to recover a deficiency, pursuant to § 36a-785(g).

**WEST KEY NUMBERS:**

- Secured Transactions  
# 240. Deficiency and personal liability

**DIGESTS:**

- [West's Connecticut Digest](#): *Secured Transactions*  
VII. Default and Enforcement  
§240. Deficiency and personal liability  
§241. Redemption of collateral
- [West's ALR Digest](#):  
VII. Default and Enforcement  
§240. Deficiency and personal liability
- [Dowling's Digest](#): *Secured Transactions*  
4. Rights and remedies of buyer and seller

**ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d](#) *Secured Transactions* (2014).  
§§ 559-568. Debtor's liability for deficiency; Deficiency judgment
- 79 [C.J.S.](#) *Secured Transactions* (2017).  
§§ 248-251. Deficiency and personal liability; redemption of collateral
- Richard C. Tinney, Annotation, *Failure Of Secured Party To Make "Commercially Reasonable" Disposition Of Collateral Under UCC § 9-504(3) As Bar To Deficiency Judgment*, 10 [ALR4th](#) 413 (1981).
- *Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral*, 12 [COA](#) 77 (1987).
- Caroline Zane, Annotation, *UCC: Value Of Trade-In Taken On Sale Of Collateral For Purposes Of Computing Surplus Or Deficiency*, 72 [ALR4th](#) 1128 (1989).

**TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- National Consumer Law Center, [Repossessions](#) (9th ed., 2017).  
Chapter 11. Determining the deficiency or surplus  
§ 11.1. General rules regarding deficiency or surplus  
§ 11.2. Deficiency or surplus calculation must be explained to consumer  
§ 11.3. Calculating the deficiency or surplus  
Chapter 12. Defending a deficiency action

§ 12.1. Introduction

**§ 12.2. Creditor's right to a deficiency**

§ 12.3. No deficiency when underlying debt is extinguished

§ 12.4. State anti-deficiency statutes

**§ 12.5. Creditor's action may amount to strict**

foreclosure and preclude a deficiency

§ 12.6. Defective disposition as defense to deficiency action

**§ 12.7. Statute of limitations for creditor's deficiency claim**

§ 12.8. Procedural defenses and state notice requirements

**§ 12.9. Cosigners and other sureties' defenses to deficiency action**

§ 12.10. Raising defenses to FDIC or RTC deficiency actions

- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 [Yale L.J.](#) 1329 (2010).

# Section 7: Defenses to Repossessions

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to defenses of both debtor and creditor in repossessions under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

## **SEE ALSO:**

- [Repossession in Connecticut](#)  
(Informational material provided by the 2-1-1 eLibrary)

## **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788 (RISFA), **inclusive**... is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, **inclusive**,...shall control." Conn. Gen. Stat. [§ 36a-770](#) (a) (2017).
- **Violations:** "The issue before the court is whether the defendant, who has violated General Statutes § 42-98 [now 36a-785] of the Retail Installment Sales Financing Act (RISFA) and General Statutes § 42a-9-504 of the Uniform Commercial Code (UCC), must pay damages under each statute to the injured plaintiff. We conclude that, because the remedies are not explicitly exclusive, there is no conflict between the two provisions. Accordingly, both must be given concurrent effect and cumulative remedies must be awarded." [Jacobs v. Healey Ford-Subaru, Inc.](#), 231 Conn. 707, 708-711, 652 A.2d 496 (1995).
- **Commercially unreasonable disposition of collateral:** "Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms." Conn. Gen. Stat. [§ 42a-9-610\(b\)](#) (2017).
- **Recovery of part payments:** "If the holder of the contract fails to comply with the provisions of subsections (c), (d), (e), (f), (g) and (h) of this section, after retaking the goods, the retail buyer may recover from the holder of the contract **such retail buyer's** actual damages, if any, and in no event less than one-fourth of the sum of all payments **which have been made under the contract.**" Conn. Gen. Stat. [§ 36a-785](#)(i) (2017).
- **No waiver of statutory protection:** "No act or agreement of the retail buyer before or at the time of the making of a retail installment contract or installment loan

contract nor any agreement or statement by the retail buyer in such contract shall constitute a valid waiver of the provisions of subsections (c), (d), (e), (f), (g) (h) and (i) of this section.” **Conn. Gen. Stat. § 36a-785** (j) (2017).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
  - Chapter 669. Banking Law of Connecticut. Regulated activities
  - Part XI. Retail installment sales financing
    - [§ 36a-770](#). Applicability of Uniform Commercial Code.
    - Filing and recording. Definitions
    - [§ 36a-771](#). General contract requirements
    - [§ 36a-774](#). Installment loan contract requirements
    - [§ 36a-775](#). Confession of judgment provision invalid
    - [§ 36a-776](#). Inclusion of other goods in contract void
    - [§ 36a-777](#). Acknowledgment of receipt of notice and statement
    - [§ 36a-778](#). Delinquency and collection charges
    - [§ 36a-779](#). Assignment of contract
    - [§ 36a-780](#). Payments after assignment
    - [§ 36a-781](#). Statement of payments made. Receipts
    - [§ 36a-782](#). Cancellation of contract on payment in full
    - [§ 36a-783](#). Rebate and refund upon prepayment of contract
    - [§ 36a-784](#). Renewals and extensions
    - [§ 36a-785](#). Foreclosure
      - (d). Compulsory resale
      - (e). Proceeds of resale
    - [§ 36a-786](#). Recovery of charges barred by willful violations
    - [§ 36a-787](#). Penalty
    - [§ 36a-788](#). Enforcement action
- Conn. Gen. Stat. (2017)
  - Title 42a. Uniform Commercial Code
  - Article 9. Secured Transactions
    - [§ 42a-9-602](#). Waiver and variance of rights and duties
    - [§ 42a-9-609](#). **Secured party’s right to take possession** after default. Use of electronic self-help restricted
    - [§ 42a-9-610](#). Disposition of collateral after default
    - [§ 42a-9-627](#). Determination of whether conduct was commercially reasonable
- 2 Joel M. Kaye and Wayne D. Efron, Connecticut Practice Series, [Connecticut Civil Practice Forms](#) (4<sup>th</sup> ed. 2004). **Form 304.65 (Complaint) Against secured party, after disposition of collateral.**
- **Sample Complaint to Enjoin Sale.** Appendix D.3, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).

### **FORMS:**



- *Sample Complaint Alleging Violation of 42 U.S.C. § 1983, Conversion, and Breach of Peace*, Appendix D.4, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
- *Sample Automobile Repossession Discovery and Request For Admissions*, Appendix E, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
- *Sample First Set of Interrogatories*, Appendix E.1, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
- *Sample Document Request*, Appendix E.2, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
- *Sample Supplemental Interrogatories for Dealer Only Auto Auction*, Appendix, E.3, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
- *Sample Second Document Request*, Appendix E.4, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
- *Sample Request for Admissions Regarding Vehicle Valuation*, Appendix E.5, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).

#### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- Thorne et. al. v. Mackeyboy Auto, LLC et. al., Superior Court, Judicial District of New Haven at New Haven, No. CV 11-6017210S (Oct. 11, 2013) (2013 WL 5879081) (2013 Conn. Super. LEXIS 2314). **“...the defendants violated RISFA [Retail Installment Sales Financing Act] by: (1) failing to resell the vehicle after retaining the same for fourteen days; and (2) failing to furnish to the buyers, within three days of the re-taking, a written statement for the un-accelerated sum due under such contract (for sale) and the actual and reasonable expense of the re-taking...The court determined that the defendants actually demanded a significantly inflated ‘total balance due’ of \$5,294, ‘plus [a] \$700 repossession fee.’ The court also determined that the \$700 fee itself was unlawfully inflated and that the fee actually incurred was \$350. At trial, the parties stipulated that Mackeyboy Auto did not provide an executed retail installment sales contract to either of the plaintiffs.”**
- [Keyes v. Brown](#), 155 Conn. 469, 473-474, 232 A.2d 486 (1967). **“Obviously, the purpose of the contract requirement provisions set forth in 42-84 [now 36a-771] is to protect retail buyers of goods from unknowingly assuming excessive charges by requiring that all charges and terms be fully set forth by the retail seller before the contract is signed by the buyer, and by requiring that the buyer be immediately given a copy of the complete, executed contract . . . . On the basis of the plain purpose of**

the statute and the language used therein, we construe the contract requirement provisions of this statute to be mandatory.”

“The Appellate Division correctly concluded that a retail buyer is entitled to seek a rescission of a retail installment contract when the retail seller has not complied with the provisions of 42-84 [now 36a-771]. It erred, however, in ordering a rescission **of the present contract.**” *Ibid.* 476.

**WEST KEY NUMBERS:**

- Secured Transactions  
# 242. Wrongful enforcement  
# 242.1. — In general  
# 243. — Damages and amount of recovery

**DIGESTS:**

- [West’s Connecticut Digest](#): *Secured Transactions*  
VII. Default and Enforcement  
§§242-243. Wrongful enforcement
- [West’s ALR Digest](#): *Secured Transactions*  
VII. Default and Enforcement  
§§242. Wrongful enforcement
- [Dowling’s Digest](#): *Secured Transactions*  
4. Rights and remedies of buyer and seller

**ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d](#) *Secured Transactions* (2014).  
§§ 600-641. **Effect of secured party’s failure to comply with code**
- *Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral*, 12 [COA](#) 77 (1987).
  - § 2. Overview of **creditor’s remedies**
  - § 3. Related and alternative actions
  - § 4. —**Debtor’s** action for damages
  - § 27. Defenses. Generally
  - § 28. Wrongful repossession and sale
  - § 29. Lack of notice of disposition of collateral
  - § 30. —Untimely notice
  - § 31. —Incomplete or inaccurate notice
  - § 32. Disposition of collateral not commercially reasonable
  - § 33. —Improperly timed sale
  - § 34. —Inadequate public notice or private solicitation
  - § 35. —Self-dealing or collusive sale
  - § 36. Satisfaction of indebtedness
  - § 37. Other defenses
- Richard C. Tinney, Annotation, *Failure Of Secured Party To Make “Commercially Reasonable” Disposition Of Collateral Under UCC § 9-504(3) As Bar To Deficiency Judgment*, 10

[ALR4th](#) 413 (1981).

- Gary D. Spivey, Annotation, *Uniform Commercial Code: Burden Of Proof As To Commercially Reasonable Disposition Of Collateral*, 59 [ALR3d](#) 369 (1974).
- *Failure To Act In Commercially Reasonable Manner In Resale Of Goods*, 13 [POF2d](#) 411 (1977).
- Richard C. Tinney, Annotation, *Sufficiency Of Secured Party's Notification Of Sale Or Other Intended Disposition Of Collateral Under UCC § 9-504(3)*, 11 [ALR4th](#) 241 (1982).

### **TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
  - Chapter 2. Scope and sources of law
  - § 2.5.3.2. Federal civil rights law
  - Chapter 4. Default as precondition to seizure
  - § 4.7. Remedies
  - Chapter 8. Using bankruptcy to prevent repossessions
  - Chapter 13. Affirmative consumer remedies in repossession cases
    - § 13.2. UCC § 9-625 remedies
      - § 13.2.2. Injunctive relief
      - § 13.2.3. Actual damages
      - § 13.2.4. Statutory damages under UCC § 9-625(c)(2)
      - § 13.2.5. Supplemental \$500 damages for miscellaneous violations
      - § 13.2.6. Class actions, multiple statutory damages, and interrelation with other damage awards
      - § 13.2.7. Barring a deficiency and recovering UCC actual and statutory damages
      - § 13.2.8. Statute of limitations for claims under § 9-625
    - § 13.3. Remedies for violation of UCC's good faith requirement**
    - § 13.4. UDAP, RICO and unconscionability
    - § 13.4.5. Unconscionability
    - § 13.5. Laws regulating repossessions, collections, or credit
      - § 13.5.1. The Federal Fair Debt Collection Practices Act
      - § 13.5.2. State debt collection laws
      - § 13.5.3. Truth in Lending Act
      - § 13.5.4. State consumer credit statutes
      - § 13.5.5. State limits on professional repossessors
      - § 13.5.6. State criminal laws
    - § 13.6. Common law tort, replevin, and contract claims
    - § 13.7. Civil rights violations and constitutional remedies
    - § 13.8. U.S. Bankruptcy Code
    - § 13.9. Consumer remedies based on claims or counterclaims not related to the repossession
    - § 13.10. Creditor defenses

- § 13.10.1. Debtor's consent as defense to wrongful repossession
- § 13.10.2. Debtor's contractual waiver of action for wrongful repossession
- § 13.10.3. Contractual waivers of consumer's right to sue for personal property taken with the collateral
- § 13.10.4. Creditor's liability for the acts of repossessors
- § 13.11. Litigation issues

- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 [Yale L.J.](#) 1329 (2010).

## Section 8: Wrongful Repossession

A Guide to Resources in the Law Library

### **SCOPE:**

- Bibliographic resources relating to wrongful repossessions and remedies under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

### **SEE ALSO:**

- [Repossession in Connecticut](#)  
(Informational material provided by the 2-1-1 eLibrary)

### **DEFINITIONS:**

- **Applicability of Uniform Commercial Code:** "A transaction subject to sections 36a-770 to 36a-788 (RISFA), **inclusive**... is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, **inclusive**, ... shall control." Conn. Gen. Stat. [§ 36a-770](#)(a) (2017).
- **Violations:** "The issue before the court is whether the defendant, who has violated General Statutes § 42-98 [now 36a-785] of the Retail Installment Sales Financing Act (RISFA) and General Statutes § 42a-9-504 [now Conn. Gen. Stat. 42a-9-610, 611, 615, and 618] of the Uniform Commercial Code (UCC), must pay damages under each statute to the injured plaintiff. We conclude that, because the remedies are not explicitly exclusive, there is no conflict between the two provisions. Accordingly, both must be given concurrent effect and cumulative remedies must be awarded." [Jacobs v. Healey Ford-Subaru, Inc.](#), 231 Conn. 707, 708-711, 652 A.2d 496 (1995).
- **Conversion:** "The parties in their briefs agree with the definition of conversion as set forth in *Miller v. Guimaraes*, 78 Conn. App. 760, 778 (2003), which is quoted as follows: 'Generally, conversion is an unauthorized assumption and exercise of the right of ownership over goods belonging to another, to the exclusion of the owner's rights...' " [Rodriguez v. Corona's Auto Parts, Inc.](#), J.D. Hartford, No. HDD CV 09-600463 (Jan. 23, 2014) (2014 WL 783747).
- **Recovery of part payments:** "If the holder of the contract fails to comply with the provisions of (c), (d), (e), (f), (g) and (h) of this section, after retaking the goods, the retail buyer may recover from the holder of the contract such retail buyer's actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract." Conn. Gen. Stat. [§ 36a-785](#)(i) (2017).
- **Recovery of charges barred by willful violations:** A willful violation of any provision of sections 36a-770 to 36a-788, **inclusive**,...shall bar recovery of any finance,

delinquency or collection charge by the owner or holder of the retail installment contract or any interest, delinquency or collection charge by the owner or holder of an installment loan contract involved, provided such owner or holder approved of or had knowledge of such violation and after such approval or knowledge retained the benefits, proceeds, profits or advantages accruing from such violation..." Conn. Gen. Stat. [§ 36a-786](#) (2017).

- **Penalty:** "Any person or any responsible officer, partner, or employee of such person who willfully and deliberately fails to comply with or violates any of the provisions of sections 36a-770 to 36a-788, inclusive, shall, in addition to the penalty prescribed in 36a-786, be fined not less than twenty-five dollars nor more than five hundred dollars for each offense, except that in the case of a violation by a licensed motor vehicle dealer the penalty provided in section 14-64 shall apply." Conn. Gen. Stat. [§ 36a-787](#) (2017).

#### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)  
Chapter 669. Banking Law of Connecticut. Regulated activities  
Part XI. Retail installment sales financing  
[§ 36a-770](#). Applicability of Uniform Commercial Code.  
Filing and recording. Definitions  
[§ 36a-771](#). General contract requirements  
[§ 36a-774](#). Installment loan contract requirements  
[§ 36a-775](#). Confession of judgment provision invalid  
[§ 36a-776](#). Inclusion of other goods in contract void  
[§ 36a-777](#). Acknowledgment of receipt of notice and statement  
[§ 36a-778](#). Delinquency and collection charges  
[§ 36a-779](#). Assignment of contract  
[§ 36a-780](#). Payments after assignment  
[§ 36a-781](#). Statement of payments made. Receipts  
[§ 36a-782](#). Cancellation of contract on payment in full  
[§ 36a-783](#). Rebate and refund upon prepayment of contract  
[§ 36a-784](#). Renewals and extensions  
[§ 36a-785](#). Foreclosure  
(d). Compulsory resale  
(e). Proceeds of resale  
[§ 36a-786](#). Recovery of charges barred by willful violations  
[§ 36a-787](#). Penalty  
[§ 36a-788](#). Enforcement action
- Conn. Gen. Stat. (2017)  
Title 42a. Uniform Commercial Code  
Article 9. Secured Transactions  
[§ 42a-9-602](#). Waiver and variance of rights and duties

[§ 42a-9-609](#). Secured party's right to take possession after default. Use of electronic self-help restricted  
[§ 42a-9-610](#). Disposition of collateral after default  
[§ 42a-9-627](#). Determination of whether conduct was commercially reasonable

### **FORMS:**

- *Sample Complaint Alleging Violation of 42 U.S.C. § 1983, Conversion, and Breach of Peace*, Appendix D.4, National Consumer Law Center, [Repossessions](#) (9th ed., 2017).

### **CONNECTICUT SUPREME COURT RECORDS & BRIEFS:**

- [Sample 1](#): Second revised complaint (plaintiff)  
[Jacobs v. Healey Ford-Subaru, Inc.](#)., 231 Conn. 707 (1995)
- [Sample 2](#): Answer to second revised complaint (defendant)  
[Jacobs v. Healey Ford-Subaru, Inc.](#)., 231 Conn. 707 (1995)
- [Sample 3](#): Answer to counterclaim  
[Jacobs v. Healey Ford-Subaru, Inc.](#)., 231 Conn. 707 (1995)

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Rodriguez v. Corona's Auto Parts, Inc.](#), J.D. Hartford, No. HDD CV 09-600463 (Jan. 23, 2014), 2014 WL 783747. **"...As set forth in *Miller v. Guimaraes*, 78 Conn. App. 760,778 (2003), which is quoted as follows:...' To establish a prima facie case of conversion, the plaintiffs had to establish that (1) [p]roperty belonged to the plaintiffs (2) the defendant deprived the plaintiffs of their [p]roperty for an indefinite period of time (3) the defendant's conduct was unauthorized and (4) the defendant's conduct harmed the plaintiffs.'"**

**"Under *Label Systems Corporation v. Aghamohammadi*, 270 Conn. 291 (2004), punitive damages in a case of conversion are awardable if the evidence shows wanton or willful malicious misconduct...Mr. Corona on behalf of Coronas [Auto Parts, Inc.] was angry at the plaintiff... and knowing that he was going to be in prison for a long period of time, decided that he was going to take possession of the plaintiff's tools. He knew that Snap-On did not own the property, that it still belonged to the plaintiff, and he purposely with wanton and willful malicious misconduct converted the plaintiff's property to the use of his company."**

- [Thorne et. al. v. Mackeyboy Auto, LLC et. al.](#), Superior Court, Judicial District of New Haven at New Haven, No. CV 11-6017210S (Oct. 11, 2013), 2013 WL 5879081, 2013 Conn. Super. LEXIS 2314. **"The plaintiffs seek an award for treble damages pursuant to General Statutes § 52-564, the treble damages statute for conversion under CUTPA...In its decision granting summary judgment in favor of the plaintiffs regarding the claimed RISFA [Retail Installment**

Sales Financing Act] violations, the court described the **defendants' flagrant violations of the consumer statutes in question as 'egregious' and 'serious rather than trivial'.** *Thorne v. Mackeyboy, LLC, supra*, Superior Court, Docket No. CV-11-6017210-S. "In order to award punitive or exemplary damages, evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights . . ." (Internal quotation marks omitted.) [Thorsen v. Durkin Development, LLC, 129 Conn.App. 68, 76-77, 20 A.3d 707 \(2011\)](#). The degree of reprehensibility of the auto dealer is a consideration when determining the reasonableness of a punitive damages award. [BMW of North America, Inc. v. Gore, 517 U.S. 559, 575, 116 S.Ct. 1589, 134 L.Ed.2d 809 \(1996\)](#).

**"If not intentional, the conduct can surely be described as reckless and wanton. There is an imbalance of bargaining power between McNeilly, a sophisticated used car merchant, and the plaintiffs, as buyers."**

- [Jacobs v. Healey Ford-Subaru, Inc.c.](#), 231 Conn. 707, 652 A.2d 496 (1995).
- [Fox v. First Bank](#), 198 Conn. 34, 35-36, 501 A.2d 747 (1985). **"When the plaintiff defaulted in the payment of sums due under the retail installment contract, the defendant, on September 2, 1981, repossessed the car without judicial intervention in accordance with General Statutes 42-98. [fn2][ now Conn. Gen. Stat. §36a-785] On the same day that the car was repossessed, the plaintiff filed this action for wrongful repossession and the trial court, Hadden, J., without a hearing, issued a temporary restraining order to prevent the sale or transfer of the car."**

**WEST KEY NUMBERS:**

- Secured Transactions  
# 242. Wrongful enforcement  
# 242.1. — In general  
# 243. — Damages and amount of recovery

**DIGESTS:**

- [West's Connecticut Digest](#): *Secured Transactions*  
VII. Default and Enforcement  
§§242-243. Wrongful enforcement
- [West's ALR Digest](#):  
VII. Default and Enforcement  
§§242-243. Wrongful enforcement
- [Dowling's Digest](#): *Secured Transactions*  
4. Rights and remedies of buyer and seller

**ENCYCLOPEDIAS:**

- 68A [Am. Jur. 2d](#) *Secured Transactions* (2014).



§§ 600-641. **Effect of secured party's failure to comply with code**

- 79 [C.J.S. Secured Transactions](#) (2017).  
§§ 252-258. Remedies for wrongful enforcement
- Jay M. Zitter, Annotation, *Secured Transactions: Right Of Secured Party To Take Possession Of Collateral On Default Under UCC § 9-503*, 25 [ALR5th](#) 696 (1994).
- Jonathan M. Purver, Annotation, *Punitive Damages For Wrongful Seizure Of Chattel By One Claiming Security Interest*, 35 [ALR3d](#) 1016 (1971).
- James L. Buchwalter, Annotation, *Cause Of Action For Wrongful Self-Help Repossession of Personal Property*, [COA 2d](#) (2010).
- *Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral*, 12 [COA](#) 77 (1987).  
§ 28. Wrongful repossession and sale
- *Liability Of Creditor And Repossession Agent For Wrongful Repossession And Tortious Acts Committed During Repossession*, 42 [POF 3d](#) 355 (1997).
- National Consumer Law Center, [Repossessions](#) (9th ed., 2017).
  - Chapter 2. Scope and sources of law
  - § 2.5.3.2. Federal civil rights law
  - Chapter 4. Default as precondition to seizure
  - § 4.7. Remedies
  - Chapter 8. Using bankruptcy to prevent repossessions
  - Chapter 13. Affirmative consumer remedies in repossession cases
    - § 13.1. Introduction
    - § 13.2. UCC § 9-625 remedies
      - § 13.2.3. Actual damages
      - § 13.2.6. Class actions, multiple statutory damages, and interrelation with other damage awards
      - § 13.2.8. Statute of limitations for claims under § 9-625
    - § 13.3.2 Remedies for violation of the **UCC's good faith** requirement
    - § 13.4. UDAP, RICO and unconscionability
      - § 13.4.5. Unconscionability
    - § 13.5. Laws regulating repossessions, collections, or credit
      - § 13.5.1. The Federal Fair Debt Collection Practices Act
    - § 13.6. Common law tort, replevin and contract claims
    - § 13.7. Civil rights violations and constitutional remedies
    - § 13.8. U.S. Bankruptcy Code

### **TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

§ 13.9. Consumer remedies based on claims or counterclaims not related to the repossession

§ 13.10. Creditor defenses

**§ 13.10.2. Debtor's contractual waiver of** action for wrongful repossession

§ 13.11. Litigation issues

- Edward A. Weiss et al., [Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code](#) (2011).

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*. 119 [Yale L.J.](#) 1329 (2010).

Sample 1: Complaint for Wrongful Repossession

CV 90 0031301 S : Superior Court  
PLAINTIFF (DEBTOR) : Judicial District of Ansonia  
v. : at Milford  
DEFENDANT (CREDITOR) : June 28, 1990

**SECOND REVISED COMPLAINT**

1. On October 17, 1988, the plaintiff bought a used 1937 Ford Tempo from defendant pursuant to a Retail Installment Contract which included a security interest in the vehicle.

2. The cash price was \$10,647.03, the amount financed was \$10,898.90, and the finance charge was \$4196.14.

3. On May 24, 1989, defendant's assignor purported to repossess the vehicle from defendant's premises for nonpayment.

4. The vehicle and contract were returned to defendant pursuant to a recourse or guarantee agreement.

5. Neither defendant nor its assignor complied with § 42a-9-504 or §42-98 C.G.S. in one or more of the following respects;

(a) Neither gave plaintiff advance notice of the proposed repossession which complied with § 42-98(a); or

(b) Neither gave plaintiff proper notice of the right to redeem under § 42-98(b); or

(c) defendant did not give reasonable notice of the proposed sale as required by § 42-98 or 42a-9-504; or

(d) defendant did not give plaintiff notice properly itemizing the disposition of the proceeds as required by § 42-98(e); or

(e) defendant did not credit plaintiff with the statutory fair market value of the vehicle as required by § 42-98(d); or

(f) defendant did not sell the vehicle within 180 days of the repossession as required by §42-98(d) C.G.S.; or

(g) defendant failed to repossess or resell the vehicle in a commercially reasonable method, manner, time, place or terms (§ 42-9-504 C.G.S.).

6. Plaintiff seeks minimum statutory damages of \$6,500, costs and attorneys fees, pursuant to the Uniform Commercial Code, § 42a-9-507 C.G.S, the Retail Installment Sales Financing Act, § 42-98 C.G.S.; and nominal actual and substantial punitive damages and attorneys fees under the Unfair Trade Practices Act, C.G.S. § 42-110a, the Creditors' Collection Practices Act, C.G.S. § 36-243a, and such other relief as is just and equitable.

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BY THE PLAINTIFF

This is to certify that a copy of the foregoing was mailed postage prepaid, to:

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THE PLAINTIFF

Sample 2: Answer to Complaint

CV 90 0031301 S : Superior Court  
PLAINTIFF (DEBTOR) : Judicial District of Ansonia/Milford  
v. : at  
DEFENDANT (CREDITOR) : APRIL 23, 1993

**ANSWER TO SECOND REVISED COMPLAINT**  
**SECOND REVISED COMPLAINT**

1. The defendant, CREDITOR. hereby denies Paragraphs 1, 3 and 6 of the Second Revised Complaint.
2. As to Paragraphs 2, 4 and 5 of the Second Revised the defendant, CREDITOR, has insufficient knowledge to form a belief and therefore leaves to plaintiff to her proof.

**COUNTERCLAIM**

1. On October 17, 1988 the plaintiff bought a used 1987 Ford Tempo from the defendant, and financed the purchase price of \$10,647.03. Ford Motor Credit thereafter had a security interest in said vehicle.
2. Thereafter, the plaintiff defaulted on said payments of said retail installment contract, and said vehicle was repossessed by the Ford Motor Credit Company.
3. Thereafter, Ford Motor Credit Company reassigned said retail installment contract and vehicle to the defendant.
4. The plaintiff, to date, has not paid the balance due on said retail installment contract, to wit: \$1,608.07.

WHEREFORE, the defendant prays that the plaintiff be ordered to pay the sum of \$1,608.07, and reasonable attorney's fees and interest.

THE DEFENDANT

\_\_\_\_\_

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed to all counsel of record on the aforesaid date.

THE DEFENDANT

\_\_\_\_\_

Sample 3: Answer to Counterclaim

CV 90 0031301 S : Superior Court  
PLAINTIFF : Judicial District of Ansonia/Milford  
v. : at  
DEFENDANT : APRIL 23, 1993

**ANSWER TO COUNTERCLAIM**

1. Admitted.
2. Plaintiff admits that the vehicle was repossessed by the Ford Motor Credit Company and denies the balance of the allegation.
3. Admitted.
4. Denied

THE PLAINTIFF

BY

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Name  
ATTORNEY AT LAW  
Address  
Phone Number

This is to certify that a copy of the foregoing was mailed postage prepaid, to:

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## Glossary of Terms

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**Retail Installment Sales Financing Act (RISFA):** "General Statutes § 36a-785 sets out the procedure that a holder of a retail installment contract must follow in order to repossess goods after a retail buyer breaches the contract. This section provides, in pertinent part: '(a) Repossession. When the retail buyer is in default in the payment of any sum due under the retail installment contract . . . the holder of the contract may take possession thereof. . . ." General Statutes § 36a-785 (a)." GE Capitol Auto Lease, Inc. v. Blackwell, Superior Court, Judicial District of Ansonia-Milford at Milford, No. CV97-0059201S, (Sep. 5, 2001), 2001 Conn. Super. LEXIS 2521.

**Uniform Commercial Code (UCC):** A nine-article act promulgated by the National Conference of Commissioners on Uniform State Laws and the American Law Institutes "relating to certain Commercial Transactions in or regarding Personal Property and Contracts and other Documents concerning them, including Sales, Commercial Paper, Bank Deposits and Collections, Letters of Credit, Bulk Transfers, Warehouse Receipts, Bills of Lading, other Documents of Title, Investment Securities, and Secured Transactions . . ." Article 2A applies to leases and Article 9 to Secured Transactions. In Connecticut, the act is codified as Title 42a of the General Statutes of Connecticut. The UCC has been adopted in some way by all fifty states.