



Cars

Auto Loans, Leases, and Repossession

Leasing a Vehicle

When you lease a car, you don't own the vehicle. A leased vehicle must be returned at the end of the term of the lease unless the lease-holder chooses to buy it. One good reason to lease a car is that monthly lease payments are usually smaller than auto loan payments. And, because cars typically depreciate in value, someone who leases is not responsible for any loss in market value. However, there are up-front costs, and these typically include a capitalized cost reduction (like a down payment), registration fees, taxes, and a first month's payment. If you end the lease early, you will also be responsible for any termination charges. When the lease ends, you will usually have the option of returning, purchasing, or re-leasing it. If you return the car, you will probably have to pay some end-of-lease fees, such as a disposition fee and any charges for excess miles and wear-and-tear.

Buying a Vehicle

When you buy a vehicle with an auto loan, up-front payments will typically be similar to those for a lease agreement (minus the capitalized cost reduction). You also have to bear the burden of any loss in value. Loan terms usually last for 4-6 years, so a lease may be a better option for people who want to change cars more frequently.

Auto Loans

If you buy from a car dealership, there will usually be a finance department where you can apply for an auto loan. When evaluating you for a loan, the dealership will typically ask that you provide your name, your Social Security number, date of birth, current and previous addresses and length of stay, current and previous employers and length of employment, occupation, sources of income, total gross monthly income; and financial information on existing credit accounts. The

dealership will also look at your credit report.

If the dealership agrees to enter into a financing contract with you, they will then sell the contract to another bank or finance company.

Repossession

If you fall behind on car payments, the creditor has the right to accelerate the loan, which means that the entire amount becomes due. In New Mexico, the creditor may then repossess the car at any time without your consent. Most repossessions are “self-help repossessions,” which means that they are done privately with no police involvement.

Your Rights in the Event of Repossession

Although the lender can repossess the car at any time, the lender must do so without committing a “breach of peace,” meaning the creditor must be able to take the car without using force or violence. The creditor does not have the right to keep or sell any personal belongings. If the creditor sells your car after it is repossessed, then the creditor must get a reasonable price for it (the creditor can’t sell it for too much below value). This is because the creditor can hold you responsible if there is still a balance on the amount owed after the car is sold. If you think that you are going to default on your auto loan, you should talk to your creditor right away. S/he may be able to offer you an extension or negotiate a different payment plan with you. If your creditor refuses to take late payments, you can do a voluntary repossession by returning the car on your own.

Useful Resources

These websites are government-sponsored sources that provide additional information about auto loans and repossession. There are also books that can be used for free at the UNM School of Law's Library, in the pro se section.

Federal Trade Commission: Facts for Consumers on Vehicle Repossession

<http://www.ftc.gov/bcp/edu/pubs/consumer/autos/aut14.shtm>

Federal Trade Commission: Understanding Vehicle Financing

<http://www.ftc.gov/bcp/edu/pubs/consumer/autos/aut04.shtm>

Federal Reserve Board: Keys to Vehicle Leasing

<http://www.federalreserve.gov/pubs/leasing/>

(Español) Federal Reserve Board: Consejos para arrendar un vehículo

http://www.federalreserve.gov/pubs/leasing/guide_spanish.htm

Car Towing

When can a towing company tow away my vehicle without my consent?

Generally, a towing company is allowed to tow and store your vehicle without your consent only after it gets written authorization from law enforcement or from the owner of the property where the car is parked. A towing company cannot on its own decide to tow and store a vehicle and then charge you fees.

There are some exceptions to this rule: the vehicle has been in an accident, police can't get there for at least three hours, and the damaged vehicle is blocking traffic or is a safety hazard. In that case, the towing company may tow the vehicle to the nearest safe spot without prior written authorization from law enforcement. If law enforcement verbally directs the towing company to remove a vehicle. The towing company must record the name of the officer and his or her agency.

If my car breaks down, how soon do I have to move it to keep it from getting towed?

The answer depends on whether the vehicle is: (1) on or next to a public road; (2) on other public property; or (3) on private property.

On or Next to a Public Road?

If your vehicle breaks down on or next to a public road (or you decide to leave it there for some other reason), police will consider it “abandoned” if you leave it there for more than 24 hours. Then it can be towed.

If the car breaks down in traffic, be sure to move it off the road if it’s safe to do so; otherwise, the police will do it. To keep the vehicle from being towed while you arrange to remove the car, notify the state police or sheriff’s office of the county where you left the car. Be sure to get the name of the person you talk to; you may want to follow up with a short note giving the car’s license and location. Keep a copy!

If your vehicle breaks down on or near a bridge or a causeway, or in a tunnel, the police may have your vehicle towed right away to a garage or other safe place without any waiting period. So if your car breaks down in these places, try to get it moved immediately.

On Other Public Property?

If you leave your vehicle on some other public property (for example, a public building parking lot), the police may have it towed if it has been “abandoned.” In a place like this, a car is “abandoned” if: it is left unattended for more than 30 days, and it has not been reported stolen, and you have not claimed it, and a search of public records does not reveal the owner’s identity. If your car is registered in your name and current address, the police should be able to identify you as the owner so they can notify you to take your car away. In this situation, the towing company must obtain written authorization from law enforcement before it can tow the vehicle.

On Private Property?

If you leave your vehicle on private property (such as a shopping center parking lot), the owners of the property (or their agents, such as a property manager) may have it towed if it has been “abandoned”, defined as left unattended for more than 30 days, has not been reported stolen, you have not claimed it, and a search of public records does not reveal the owner’s identity. The towing company must obtain written authorization from the property owner or an agent of the owner before the towing company can tow the vehicle. Again, if you have properly registered the vehicle in your name with a current address, a police search should identify you as the owner and allow the property owner to notify you to take away your vehicle.

What about when my car has been in an accident? How long will I have to move it before it gets towed?

If you leave the vehicle because it has been wrecked or in an accident rather than just broken down, the police may order it towed right away. No waiting period is needed. The police do not have to wait to impound a car in connection with a criminal case, either.

What will happen to my car if I am arrested?

If you are arrested, a towing company can tow your vehicle right away if it receives written authorization from law enforcement to do so.

What if my car is parked illegally?

A towing company can tow your vehicle if it is parked illegally on either public or private property, but again the towing company must first obtain written authorization from a law enforcement official (if the vehicle is on public property) or the private property owner (if the vehicle is on private property) before towing. No waiting period is needed.

If my vehicle is towed, how do I find out where it has been taken?

At first, you may not even know what happened to your car; could it have been stolen? If the car was on public property, you should check with local police. Even if they don't have a record of what happened specifically, they can probably tell you which towing companies they use to tow cars. And they will take a report if you believe the vehicle was stolen. You may want to file a police report if you feel that the car was lawfully parked where you left it. If it turns out that you are right, you should not have to pay for any costs related to the tow. If the vehicle was on private property, you should check with the property owner to see if he or she had it towed. If you learn the vehicle was towed, you should go to the towing company as soon as possible. The towing company is required to try to notify you it has your car, but the costs of storage add up in the meantime. The sooner you claim the vehicle; the less the final charges will be.

What if I can't find out if my car was towed?

If the police or a property owner wasn't able to tell you whether or where your vehicle was towed, you should hear very soon from the towing company if the vehicle was in fact towed. The towing company has a legal duty to give you this information.

If the police had the vehicle towed, the towing company is required to obtain owner identification from them at the time of the towing. If the company does not get this information from police, it has five days to find out from the motor vehicles department the name of the registered owner and any lienholder of the vehicle (such as a bank or other lender). Once it has that information, it has two days to let the owner and the lienholder know where the car is. If you are the registered owner and your registration information is up to date, you will get this notice. If the vehicle is registered to someone else, the towing company will try to notify that person, so you may not find out right away.

What if the towing company does not properly notify me?

If the towing company does not make the required inquiry with state motor vehicle departments within the 5 day period, or does not notify you by certified mail within 2 days of identifying you as the registered owner, the towing company may not charge any fee for storage of the vehicle or place a lien on the vehicle for payment of storage fees. The duty to give you this kind of notice exists only if you do not know where your car is or who has towed it.

How can I tell if the company tried to notify me?

The law requires towing companies to keep written records of what they did to find out who the

owners of towed vehicles are, the names of anyone who tried to find out, the day and time when they tried to find out, and what the responses were to their attempts to find out.

Towing companies must notify owners by certified mail, return receipt. The mail receipts should document their having sent any required notice. In most cases, they will also have the return card showing that the registered owner received the notice. If a towing company does not have these records, the lack of records is strong evidence that the company did not comply with the notification requirements.

Am I responsible for the towing and storage fees?

Generally, yes. You will be responsible for the reasonable costs associated with the tow, including storage fees, which you must pay to get the vehicle back.

However, you may have a claim to get the towing and/or storage fees eliminated or refunded if the towing was illegal or if towing company did not comply with the notification requirements identified above.

How can I get my vehicle back?

Generally, to get the vehicle back, you will have to pay the towing company the reasonable costs of the towing and reasonable storage fees and provide that you own the vehicle. The company must allow you to pay and show ownership during regular business hours; it can also make special arrangements with you to retrieve the vehicle after hours if it wishes to (and may charge extra for that). If your proof of ownership is in the car at the towing facility, normally you have the right to get the information from the car.

If police ordered the company to hold the vehicle for investigation in a criminal case, the towing company is not allowed to release the vehicle to you unless it has written authorization from the police.

Can I get my things out of the vehicle while it is at the storage facility?

Generally, yes. The towing service must allow the registered owner or the title holder to inspect the vehicle, remove proof of ownership from the vehicle, and remove personal property from the vehicle. (But you cannot take things like the stereo or radio if they have been installed in the car.) The towing service must allow you to remove your things without charge during normal business hours.

However, if police have ordered the towing company to hold the car for investigation, the towing service cannot allow you or the title-holder to inspect the vehicle or remove personal property from it without written authorization from law enforcement.

Does the towing company have to take care of my vehicle?

Yes. The towing company is responsible for the safekeeping of the vehicle and its contents while it has possession of it.

What if I have a loan on the vehicle?

The towing company is required to notify both you and any lender that has a lien on your vehicle that the car has been towed. The agreement you have with your lender may have provisions permitting the lender to get the car from the towing company to protect its claim to the vehicle. The lender may have the right to charge you for those costs, and might even be able to pay off the loan right away or let the lender repossess the car. You should look at your loan papers regarding your lender's rights and your obligations in these circumstances.

What will happen to my car if I can't afford to pay to get it back?

A towing company that has lawfully towed your vehicle has a lien against the vehicle. This means that if you do not pay the reasonable tow and storage fees (which will continue to increase each day the company holds your vehicle), the company may eventually dispose of the vehicle by sale in order to cover the costs you owe.

A towing company can enforce its lien by filing suit in court to have the vehicle sold.

The towing company can also take steps to sell the vehicle without going to court. To do so, the company must hold the vehicle for at least 14 days if it is registered in New Mexico, and at least 40 days if it is registered in another state, while the company identifies the owner or lienholder. The towing company is also required to notify you of the amount of debt by certified mail, and allow you ten additional days in which to pay it. If you do not pay the debt in that ten day period, the company must notify the state police and the county sheriff within five days that you did not claim the car. Then the company may advertise the sale of the vehicle for a minimum of 20 days, and then conduct a public sale to the highest bidder for cash after the 20 days have expired.

Is there anything I can do if I believe the requested charges are incorrect?

You may believe the tow and storage charges are incorrect because, for example, the tow was illegal, the towing company did not comply with the notification requirements, or the charges did not correctly account for the tow or the days of storage.

If you challenge the charges, you should raise this dispute with the tow company right away.

When you do, the company is required to give you this notice:

If you have a dispute with the towing service regarding charges for towing or storage and are not satisfied with the solution offered by the towing service, you may file a complaint with the Consumer Relations Division of the Public Regulation Commission in writing at P.O. Box 1269, Santa Fe, New Mexico, 87504-1269 or by calling the Commission's toll-free number 1-800-947-4722.

You should immediately follow up with these authorities on your dispute.

If you dispute the charges but cannot pay to get the vehicle, or the towing company is trying to sell the vehicle, you should consult an attorney as soon as possible. In some cases, an attorney may be able to go to court to stop the sale or get the vehicle back until a court decides what charge seems appropriate.

If your car has been sold unlawfully – because, for example, it was towed illegally or the towing company did not provide proper notice – you may have a claim against the towing company for damages. Again, you should consult an attorney.

What if the sale of my vehicle brings in more money than I owed to the

towing company?

Sometimes a sale of a towed care can bring in more than the amount owed. If there is extra money after the cost of the tow, storage fees, and the costs involved in selling the car, the balance should go first to a lienholder and then, if any remains, to you.

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<http://www.lawhelpnewmexico.org/node/6/cars>

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