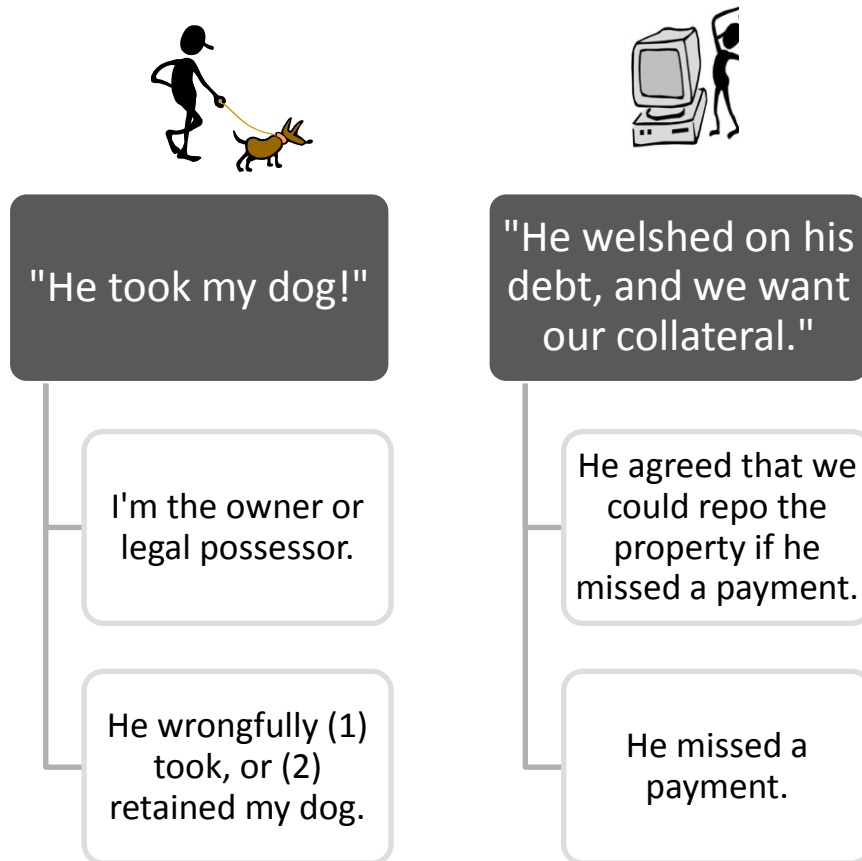


# Actions to Recover Personal Property

Forms: Complaint Form CVM-202 (Complaint to Recover Possession of Personal Property) & Judgment Form CVM-400 (Judgment in Action to Recover Money or Personal Property).



*These are two entirely different lawsuits. Only the remedy is the same.*

## “He Took My Dog” Cases: Actions by a Non-Secured Party

### **Action for Conversion (aka Forced Sale): *π* wants money damages**

#### **Essential elements:**

- Plaintiff is owner (or person entitled to possession)
- Defendant wrongfully took or retained  
NOTE: Wrongful retention requires demand for return, even if due date specified.
- FMV  
Plaintiff's opinion testimony sufficient

### **Action to Recover Possession of Property**

#### **Essential elements:**

- Plaintiff is owner (or person entitled to possession)
- Property was wrongfully taken or retained
- Defendant has possession of property  
If not, plaintiff may amend complaint to seek money damages for conversion.
- Damages necessary to return plaintiff to original position: return of property, compensation for injury to property, and costs associated with loss of use.

## “We Want Our Collateral” Cases: Actions by a Secured Party

***SP is either a lender (L) or a seller of property on credit (S).***

#### **Essential Elements**

- Valid security agreement
- Applicable to property sought to be recovered
- Debtor defaulted in manner triggering right to repossess

#### **Essential Element #1: Valid Security Agreement**

- Authenticated by debtor
- Description of property sufficient to allow identification
- Writing sufficient to indicate intention to create security interest

## Retail Installment Sales Act

A seller in a consumer credit sale is allowed to take a security interest only in:

- The property sold
- Previous purchases not yet paid off
- Personal property to which goods are installed (\$300+)
- MV to which repairs are made (\$100 +)
- Property sold for use in agricultural business

SI taken in property other than that above is void.

FIFO rule applies to allocation of payments to collateral purchased from same seller over time. S has burden of proof on proper allocation.

RISA (GS Ch. 25A)

RISA applies only to sellers.

A federal regulation governs lenders and provides SI in household goods other than *purchase money security interest* is unfair trade practice. *Purchase money security interest* is interest taken in property purchased with money obtained from loan.

- If the agreement involves the extension of *consumer credit*, the document must be dated.

Q: What's a consumer credit transaction?

A: A transaction involving

- A seller who in ordinary course of business regularly extends credit,
- buyer is natural person,
- goods or services are purchased for personal, family, household, or agricultural purposes,
- debt is payable in installments or finance charge imposed,
- amount does not exceed \$75,000.

**Essential Element #2: SA applies to particular property sought to be recovered.**

## **Rights of Secured Party on Buyer's Default**

May repossess without court order if no breach of peace.

Q: What is the effect of breach of peace?

A: It renders repossession wrongful. Consequences of wrongful repossession are that SP may be liable for conversion, civil trespass, or even criminal charges.

Q: What factors should I consider in determining whether repossession caused breach of peace?

- A: Location
- Debtor's express or constructive consent
- Reactions of third parties
- Type of premises entered
- Use of deception by creditor

NOTE: A secured party always has the option of sue for \$ or repossession; not required to repossess.

## **What Happens after Repossession**

### *Sell or Keep?*

Generally, SP has option of sale or keeping goods in full satisfaction of debt.

Debtor must agree to decision not to sell, either by

- signing agreement or
- by failing to object to notice of intent to keep within 20 days

Consumer goods/60% of debt paid: SP must sell property within 90 days.

### *Statutory requirements for sale of repossessed property:*

- Debtor is entitled to notice of sale,  
Notice must be given in commercially reasonable manner (timing, content, and manner sent)

Consumer goods: GS 25-9-614 spells out required contents of notice.

- Debtor has right to redeem property at any point prior to sale.  
Amount owed, expenses, and attorney fees (if SA provides) required for redemption.

Effect of acceleration clause: D must pay full amount of debt to redeem property.

- Sale must be conducted in commercially reasonable manner "in every aspect."  
Whether sale meets CRM standard depends on facts; guiding star is reasonable efforts to obtain best price.

Whether sale is CR may include consideration of time, place, price obtained for goods, amount of publicity, other broad range of factors.

May require S to make reasonable efforts to prepare property for sale.