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Mythbusters

Does the repossession industry really thrive on a bad economy?

For the repossession industry, 2010 has been somewhat of a roller coaster ride. The most common assumption, or “myth”, in the repossession industry is that our business must be booming right now because of the sluggish economy. While the economy has certainly had an effect on an increased volume of business during what would be typically labeled as a “slow season”, it really goes back to supply and demand in the world of a reposessor. The credit crisis of recent years forced many of the high volume lenders entirely out of the sub-prime auto lending market. Vehicle leasing also became a direct casualty of the credit crunch. New & used car loans along with leases on quality vehicles came to a turtles pace and the borrower behind the wheel now represents little to no risk of default to the lender. Yes, the economy plays a roll in the number of defaults and domestic situations factor directly into that equation. However, history proves that our repossession volume really comes down to simple math: *Less Loans + Less Cars + Less Default = Less Repossessions.*



Is a repossession agent the same as a “guy with a tow truck”?

When asked to summarize the duties of a “tow truck” owner/operator the key words that come to mind are “Tow Away Zone” and “Roadside Assistance”. Visions of flat tires and impound lots compete with those of early model hook and sling trucks. Generally, a tow truck driver is called to the scene, so to speak, to remove a vehicle that has been abandoned or disabled. These generalizations of the towing profession are just that, a generalization, and are not intended to disrespect the industry what-so-ever. The “myth” that owning a tow truck and having a drivers license qualifies anyone to *get started* in the business of repossessing collateral from unwilling, elusive and, often times, irrational defaulted debtors is our main focus. If asked to illustrate even your simplest involuntary repossession, would there be any similarity to the description of a tow truck drivers daily operation? Insurance (lots and lots of it), worker’s compensation, bonding and certifications (or applicable state licensing)all of equal importance, would be best used to describe how to *get started*. Couple that with high tech slide in damage free “sneaker” recovery trucks, flat beds, secured storage lots and an electronic recovery database system and one may have a better argument to break into the repossessing arena. Although required; (and absolutely necessary) expensive equipment, cutting edge technology and millions in insurance are not enough. The single most important attribute to any successful repossession agencies is the repossession agent. A “guy with a tow truck” will never be a comparable substitute for the professional and experienced repossession agent.

Resale: What Is A “Commercially Reasonable Manner”

You, the lender, had a *reasonable* expectation loan payments would be made by your borrower.

You, the lender, gave your borrower *reasonable* opportunity for payment arrangements.

You, the lender, made a *reasonable* decision to secure the vehicle for non payment.

What are your options after repossession? You have hired an agent who has successfully repossessed collateral on your behalf. A condition report and pictures have been generated and sent to you for a general assessment of your vehicles overall condition and damages, if any. Your debtor has either conceded they can no longer afford the payments on the vehicle or payoff -in full- is not an option. Assuming you have met any right to cure or redemption requirements, the repossessed vehicle is now yours to dispose of in a “commercially reasonable manner”. Just as the self help repossession is open to interpretation in certain areas that pertain to breach of peace, a “commercially reasonable manner” lends itself to a broad definition. Conduct an internet search on the term “commercially reasonable manner” and good luck finding a clear understanding. The Uniform Commercial Code (U.C.C., Section 9-504) stops short of an actual definition of *reasonable* but does emphasize “every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable”. The statute goes on to state unless the collateral in question “threatens to decline speedily in value or is a type customarily sold in a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale”. In short, what is or *is not* considered commercially reasonable about some aspect of the sale - method, manner, time, place or terms - is an issue to be considered case by case. There is no magical formula a creditor can use to ensure a sale cannot be challenged by the debtor. The repossessing creditor, with knowledge of the condition of the collateral, the local and/or national market for such goods, and expenses involved in a public sale versus a private sale, should be best armed to defend its method of liquidation later.



Public or Private Sale

The necessity of hiring an experienced and professional repossession agency to recover your collateral is equally as important as a post repossession plan to liquidate your assets in the most efficient and equitable means available. Hiring a professional to reduce or eliminate risk of collateral damage and protect the value of your assets shouldn't be limited to the repossession process. We know the definition (or lack

thereof) of a “reasonably commercial manner” when we are considering resale of a repossessed vehicle. Do you sell your debtors repossessed collateral in a private transaction on behalf of your financial institution or leave it to a venue that markets to the public masses? When determining where your assets are best placed for resale handling, refer to the *method, manner, time, place and terms* of the sale. Have you recognized cosmetic or mechanical defects and addressed those issues? Have you presented the vehicle as “curb appealing” as possible? Have you advertised the vehicle to the largest possible audience? Moreover, have you protected your interests in the case of a lawsuit or claims concerning the collection of a deficiency balance? A thorough assessment of all the conditions surrounding the remarketing of your assets should be made to determine what is in the best interest of all parties involved.

An “Invitation” to a Public Auction

For the lender to be best positioned to collect the deficiency balance on a repossessed vehicle, and depending on which state a vehicle is repossessed in, a lien holder may be required to remarket their assets at a public auction. A notice of sale date, time and place along with sufficient legal advertising should be a standard part of the post documentation provided from the auction to the lien holder in the event a deficiency balance is disputed. Auction services including right to cure letters, repo title services and legal advertising are offered by any well equipped auction facility. Vehicle transportation services, secure indoor and outdoor storage, mechanical repair facilities and vehicle reconditioning top off the list of auction service “must haves”. The vehicle is secured, prepped for sale and sufficiently advertised for a public sale...not all public auctions are the same. For the sake of this article we have only researched the auctions located in the state of Ohio. Each auction, understandably, has their own set of bidder rules and we expected to find variations in those policies. However, some rules could suggest to the *public* that they really aren't that welcome to a *public* sale.

Examples taken directly from bidder rules posted online (as of 11/22/10) include:

**\$125 annual membership card is required in order to receive a bidder badge.
Membership card replacements are \$125. No Guests Allowed. Manheim/Grove City**

Registration fee is \$200, every six months. Manheim/Cincinnati

**\$300 cash deposit for each vehicle you intend to purchase.
Only registered buyers permitted in the arena or on the lot. Manheim/Cincinnati**

\$400 cash deposit required prior to bidding. Adesa/Cleveland

After the balance in full is paid the title is released to the buyer and must be taken to the BMV to transfer into the buyers name. No vehicle will be released from the premises until the vehicle is titled into the buyers name. *This particular set of rules also goes on to say that the auction is not responsible for vehicles left on the premises. Adesa/Cleveland

\$600 cash deposit required to bid on any vehicle (after paying a \$50 annual registration fee and producing the receipt at each sale). No guests permitted. Individuals not purchasing a car are required to leave the premises after picking up their deposit *within 10 minutes* after the end of the sale or the \$600 deposit is forfeited. Adesa/Cincinnati

Of course, a responsible auction would want to secure the best position possible to collect on a vehicle that is sold on the block. But It could appear, to some (after reading these examples of demands and restrictions aka Bidder Rules) that the public is almost discouraged from participating in a public sale arena. At the very least, one could surmise that the public draw to the sale would be weak at best. Further consideration would lead us to believe that a weak crowd would, in turn, produce weak sales results.

Skipco Auto Auction conducts a weekly public auction.

A complete set of our bidder rules are available at www.skipco.com

A Letter From The President

2010 has been an interesting year for our industry and the financial marketplace. Contrary to most beliefs, repossessions are not at a “crazy” level of volume. For us, it has been steady, but not what one would call “crazy busy”. Several factors contribute to this...(1) Lenders have tightened up on credit quality and (2) less cars have been sold producing less need for repossessions.

My personal forecast is that we will stay steady with some increase in volume. The reason being, with interest rates so low credit unions and banks must start looking for ways to bring in more income. Platinum borrowers generate low interest loans which provide little return, alternatively, lower credit scores will bring a better return on loans. This in turn will bring more defaults and more repo's. I've seen it time after time, but it is necessary.

We are making several changes here, at Skipco and Source One Adjusters, to assist our clients in reducing losses. Our Toledo, Ohio office expansion opens in December and will greatly improve our service area in northwestern Ohio. We have increased our skiptracing staff and added more agents to better recover on assignments placed with Source One.

Skipco Auto Auction has been very strong in 2010 and we foresee an equally strong 2011. With less trade-ins and less used cars on the market we produce higher sales results. Of course, adding to that, our public buyers produce a higher return then what the dealer base does.

All of us working together will bring success in 2011.

Best wishes from all of us at Skipco Auto Auction and Source One Adjusters.

Robert “Skip” Blowers

Skip Blowers is the founding President of Source One Adjusters & Skipco Auto Auction; Established 1978. He also serves on the Board of Directors at Community One Credit Union.

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