September 25, 19

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Automobile Repossessions - Applicability of Collection Agency Licensing Requirements

This will respond to your memorandum dated September 8, 1972 regarding the above matter.

There is no general answer to your question. The answer would in each case depend upon the particular facts and circumstances of the case. However, there are some general principles which may be useful to you in establishing guidelines to be followed in considering such questions.

Broadly speaking, repossession is simply the act of resuming or retaking possession of property when a purchaser defaults in making payments therefor. Greer v. Zurich Ins. Co., 441 S.W.2d 15 (1969). A repossession may be voluntary and with the knowledge and consent of the debtor, or involuntary, without his knowledge or consent. Newbern v. Morris, 349 S.W.2d 662, 233 Ark. 938 (1961); Lisbon Diesel and Supply, Inc. v. Clement, 198 N.E.2d 926 (1963).

There is no question but that a repossession may be part of a greater or overall collection effort, which overall effort may only be conducted in Maine by a collection agency licensed in accordance with 32 M.R.S.A. § 573 (1). On the other hand, a retaking of property does not, in itself, appear to be the kind of conduct which the statutes relating to collection agencies were designed to regulate.

For example, if a repossessor is merely picking up an abandoned automobile, or merely returning a car (with the debtor's consent) from Maine to some out-of-state vendor, such activities would not appear to constitute collection activities. However, where the repossessed automobile is sold by public or private sale by the repossessor (presumably with notice to the debtor in accordance with the requirements of the Uniform Commercial Code) and the repossessor remits the proceeds of such sale to an out-of-state company, such activities would constitute engaging in the business of a collection agency.

In the former situation there need not be any contact between the repossessor and the debtor. In the latter case, however, there would almost necessarily be either oral or written communication between the repossessor and the debtor (giving requisite notice of sale), which communication could be subject to the kind of abuses the collection agency statutes were designed to prevent.

We trust that the foregoing comments will be helpful to you. If you have any further question, please let me know.

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