

It's 10 P.M. Do You Know What Your Repossession Agents Are Doing?

Do you truly know what the repossession agents you've assigned to repossess one or more of your customers' cars are doing? I'm hearing more and more about a very disturbing practice in the repossession services industry that, if true, could get repossession agents (and you, by extension) in trouble with the authorities and possibly sued. I understand that some repossession agents are placing global positioning system trackers on vehicles out for repossession, without the knowledge or consent of the car's owner.

Here's how it typically works: A repossession agent uses license plate recognition technology to locate a vehicle out for repossession, but the tow truck is not immediately available to "pop" the car. So, the repossession agent places a GPS unit on the car so that he/she can track it. Later, the tow truck driver uses the GPS tracker to locate the car and repossesses it.

Let's take a look at how one state law may impact the use of a GPS device. Texas law permits an electronic tracking device to be installed on a vehicle subject to the prior consent of the buyer or lessee of the vehicle. Under the Texas Penal Code, a person commits a Class A misdemeanor by knowingly installing an electronic or mechanical tracking device on a motor vehicle owned or leased by another person. However, a person installing the electronic tracking device is not subject to criminal penalties if the person obtained the effective consent of the owner or lessee of the motor vehicle before the electronic or mechanical tracking device was installed.

If the repossession agent or employee doesn't get the owner's or lessee's consent before the GPS device is installed on the vehicle, then the agent would be at risk of violating the law and being charged with a misdemeanor.

What if the state has an "anti-stalker" statute that provides that the installation of a tracking device on a car without the owner's or driver's consent would be considered the offense of stalking? How'd you like your repo agent to be accused (and possibly found guilty) of stalking?

The repossession company also may be in violation of its agreement with you, the secured party/creditor (e.g., in which it represented and warranted that it will comply with federal and state law when providing its repossession services).

Finally, let me turn to the "dark side" and put my consumer plaintiff's hat on for a minute. If my client had her car repossessed and I learned that the repossession agent placed a GPS device on her car without her knowledge or consent, you can bet I'm suing the repossession company, the repossession agent, and you - the secured party/creditor - for violating my client's privacy by installing the device on her car without her knowledge or permission.

Maybe I decide I want to file my suit as a class action on behalf of all other similarly situated persons for violating their privacy or committing acts or practices that were unfair, deceptive, or violative of public policy. With many state statutes providing statutory damages, attorneys' fees and costs, and the possibility of treble damages, why wouldn't I want to file this action as a class action?

It's 10 p.m. Are you sure that your repossession agents aren't installing GPS devices on targeted cars without the buyers' or lessees' knowledge or consent?

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