

LAW OFFICES OF:
ROY A. PRAVER
ATTORNEY AT LAW

1701 S. Washington Avenue
Titusville, FL 32780

Phone: (321) 383-3445
Fax: (321) 268-9564
E-Mail: RPRAVER@PRAVERLAW.NET
Web: WWW.PRAVERLAW.NET

Am I Going to Lose My Car?

(The short answer is: “Usually no.”)

I have found over my years representing clients in Bankruptcy cases that many people have more of an emotional attachment to their vehicles than any other item of personal property, sometimes even more than their home. I’ve seen many people over the years become outraged at the thought that they could possibly lose their paid off vehicle or have to pay additional money to keep it if they file a bankruptcy case. Bankruptcy provides several options that allow you to retain your vehicle, even if you are behind in your payments.

1. Stop Repossession

Filing bankruptcy will immediately stop any repossession. Upon filing your bankruptcy case the bankruptcy court issues an order called the automatic stay. This immediately stops all collection efforts against you and your property and will stop the bank from repossessing your vehicle.

2. Chapter 7 Bankruptcy Options

If you file for chapter 7 bankruptcy you will need to work with the bank to get your car payments caught up and start making the regular monthly payment as they come due. If you can’t make the monthly payment or get caught up on the missed payments and cannot redeem the vehicle you will eventually have to surrender the vehicle. If there is a lien on the vehicle you cannot discharge the debt, not make payments and keep the vehicle.

In a chapter 7 bankruptcy you can redeem your vehicle. This means that the bankruptcy court will permit you to pay the bank what the car is worth, not what you owe (assuming you owe more than it is worth). For instance, if you have a vehicle that you owe \$20,000 on, but it is only worth \$11,000, then you can pay the \$11,000 and get the title to the vehicle. The remaining balance will be discharged through your bankruptcy case. The catch to redemption is that you must pay the full amount immediately. In the above example, you would be required to pay the full \$11,000. Most people in (or not in) bankruptcy do not have that kind of cash lying around. Because of this you will either need to get a loan from a family member or you can even get financing from another bank to pay off the amount owed. This is called a “redemption loan”. and I can give you contact information for companies that offer this form of financing at high interest rates. To qualify for this loan you must be in a Chapter 7 bankruptcy. Even with the higher interest rates, the redemption loan may still work to your benefit.

Finally, if you decide not to keep the car, in a Chapter 7 bankruptcy you can surrender the car back to the bank and have no future liability on it.

If own your car without a lien, and the value of the vehicle exceeds your available exemptions, most Chapter 7 Trustees will let you buy back that excess value and most will accept payments over a period of up to 12 months. So, if your vehicle is worth \$7,000.00, and you have \$2,000.00 of available exemptions, you will have to pay the Chapter 7 Trustee \$5,000.00 to buy back the non-exempt value of the vehicle. Over a period of 12 months this would be \$416.66 per month. Or, you can take out a loan through a redemption company which will allow you to stretch out the payments over a longer term (but at high interest rates). In this scenario, instead of buying the excess value back, you can also decide to let the Trustee have the car. The vehicle will be sold and you will be paid the value of your exemptions from the proceeds of the sale. In the example used in this paragraph you would receive back \$2,000.00 from the sale.

3. Chapter 13 Bankruptcy Options

In a Chapter 13 bankruptcy there are several tools to help you keep your car. First, a Chapter 13 bankruptcy case involves presenting a plan to your creditors as to how you will pay them back. If you are behind on your car payments, you can propose a plan that will get these payments caught up over the next three to five years.

And, if you bought your car more than 910 days before your bankruptcy filing, you will only be required to pay back what your car is worth, not what you owe. This is called a “cram-down” in a Chapter 13 bankruptcy.

If you own your car without a lien, and the value of the vehicle exceeds your available exemptions, in a Chapter 13 case you do not have to pay the Trustee that excess value, like you do in a Chapter 7 case. You can keep the car, but, your Chapter 13 plan will have to provide that your unsecured creditors end up getting paid an amount at least equal to the value of that non-exempt value. So, if your vehicle is worth \$7,000.00, and you have \$2,000.00 of available exemptions, your Chapter 13 plan will have to pay at least \$5,000.00 to unsecured creditors over the 3 to 5 year term of the plan.