**Section 1010.160 Repossession of Vehicles by Lienholders and Creditors**

a) Pursuant to Section 3-114 of the Illinois Vehicle Code [625 ILCS 5/3-114], the Secretary of State established these procedures to be followed by a lienholder to allow the lienholder to obtain a certificate of title for a repossessed vehicle for which the lienholder does not have an assignment of title by the owner.

b) Procedures

1) The lienholder (creditor) shall forward the following forms to the owner (debtor) of the vehicle at his/her/its last known address. The lienholder shall deliver or mail these forms.

A) "Notice of Redemption", which shall include:

i) the name of the owner of record and, in bold type at or near the top of the notice, a statement that the owner's vehicle was repossessed on a specified date for failure to make payments on the loan (or other reason);

ii) a description of the vehicle subject to the lien sufficient to identify it, i.e., year, make, model, and vehicle identification number;

iii) the right of the owner to redeem the vehicle;

iv) the lienholder's intent to sell or otherwise dispose of the vehicle after the expiration of 21 days from the date of mailing or delivery of the notice; and

v) the name, address, and telephone number of the lienholder from whom information may be obtained concerning the amount due to redeem the vehicle and from whom the vehicle may be redeemed under Section 9-506 of the Uniform Commercial Code.

B) "Affidavit of Defense to the Creditor" (required only for the repossession of a vehicle used primarily for personal, family, or household purposes) that shall include:

i) the name of the lienholder, the name of the owner, and vehicle identification information, i.e., year, make, model, and vehicle identification number;

ii) space for the owner to state the defense claimed by the owner;

iii) an acknowledgement by the owner that the owner may be liable to the lienholder for fees, charges, and costs incurred by the lienholder in establishing the insufficiency or invalidity of the owner's defense; and

iv) notification that the "Affidavit of Defense to the Creditor" must be received by the lienholder no later than 21 days after the date of mailing or delivery of the "Notice of Redemption" in order to stop the transfer of title.

2) The debtor shall be allowed 21 days from the date of mailing of the "Notice of Redemption" to make restitution or to arrange a private settlement with the lienholder.

3) If the creditor obtains any "Affidavit of Defense to the Creditor," the creditor must apply to a court of competent jurisdiction to have the matter resolved. The Office of the Secretary of State shall not determine the merits of any debtor's "Affidavit of Defense to the Creditor."

4) If within 21 days from the date of the mailing of the "Notice of Redemption" the debtor neither submitted an "Affidavit of Defense to the Creditor" nor made restitution or any other agreement with the creditor, the creditor may apply for an Illinois Certificate of Title or assign the title to a third party purchaser to apply for title. The creditor or purchaser must submit the following documents:

A) An "Affidavit of Repossession" providing the following information:

i) that the vehicle was repossessed, and a description of the vehicle sufficient to identify it, i.e., year, make, model, and vehicle identification number;

ii) whether the vehicle has been damaged in excess of 33⅓% of its fair market value (if the vehicle has been damaged in excess of 33⅓%of fair market value, the lienholder shall apply for a salvage or junking certificate);

iii) that the owner and any other lienholder on record were given notice, the owner of record was given the "Affidavit of Defense to Creditor" (required only for repossession of a vehicle used primarily for personal, family, or household purposes), and no response was received within 21 days after mailing or delivery;

iv) that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement; and

v) the purchaser's name and address.

The "Affidavit of Repossession" shall be submitted on a form prescribed by the Secretary of State, and can be obtained from any Secretary of State facility or by writing to the Vehicle Services Department, Howlett Building, Springfield IL 62756.

B) The outstanding Illinois Certificate of Title properly assigned to the purchaser. If the outstanding Illinois Certificate of Title is lost or otherwise not in the possession of the creditor, the creditor must apply for title in the creditor's own name, and attest on the "Affidavit of Repossession" that no third party is involved in the transaction and must also provide a copy of the contract establishing the debt between the creditor and debtor that specifically references the repossessed vehicle and is signed by the debtor.

C) An application for a Certificate of Title or a Certificate of Salvage. The application shall name the creditor or purchaser as the vehicle's new owner.

D) The applicant must submit the required title fee and applicable registration fees if the creditor or purchaser intends to operate the vehicle. Applicants who do not intend to operate the vehicle upon the public highways need not apply for registration at the time of acquisition. (See 92 Ill. Adm. Code 1010.510.)

E) Proof of payment of vehicle use tax, i.e., ST-556 or RUT-25.

c) Miscellaneous

1) If the repossessed vehicle, on the date of repossession, is not damaged in excess of 33⅓% of its fair market value, the lienholder or purchaser shall apply for a certificate of title. If the repossessed vehicle, on the date of repossession, is damaged in excess of 33 1/3% of its fair market value, the lienholder shall apply for a salvage certificate.

2) Role of the Office of the Secretary of State, Department of Vehicle Services

A) The Secretary shall not consider any ex parte allegations or assertions regarding the validity or invalidity of the creditor's claim to the vehicle or the debtor's asserted defenses to the repossession action.

B) If any "Affidavit of Defense to the Creditor" is received by the creditor, the creditor must apply to a court of competent jurisdiction to have the matter resolved and to have the court state which party is entitled to possession of the vehicle.

C) If the debtor has any complaint about the manner of notice or sends the "Affidavit of Defense to the Creditor" after the creditor has applied for a title, the debtor must apply to a court of competent jurisdiction to order the Secretary not to issue title to the creditor or to the creditor's assignee. If a new certificate of title has already been issued, the matter must be resolved by a court of competent jurisdiction.

3) "Date of mailing" means the date shown on the postmark.

(Source: Amended at 22 Ill. Reg. 22059, effective January 1, 1999)