

Restrictions on Deficiency Judgment Where Chattel Mortgagee Repossesses Property Without Order of Court

It is possible for the parties to a chattel mortgage to provide therein that upon breach of any of the conditions of the mortgage, the mortgagee shall have the right to possession of the chattel. The Ohio courts have upheld the validity of a provision giving the mortgagee the right to take possession whenever he deems himself in danger of losing his debt or any part thereof.¹ However, Ohio General Code, Section 8566 has, for many years, prohibited repossession by a mortgagee of household goods, wearing apparel or mechanic's tools.

Futhermore, the Ohio courts have upheld the validity of a provision giving the mortgagee the power to sell the chattel at public or private sale, without notice to the mortgagor.² Again, an exception has been made by Ohio General Code, Section 8566, forbidding foreclosure of the designated types of chattels except in a court of record.

Even after the extra-judicial sale, the mortgagee could enforce the personal liability on the note, subject only to the duty to account to the mortgagor for the proceeds of the sale of the chattel.

A substantial degree of protection has been afforded to the mortgagor by the enactment of Ohio General Code, Section 8565-3. The new law does not prohibit repossession or extra-judicial sales, but merely requires the mortgagee to give notice of the sale to the mortgagor, and specifies the contents and manner of the notice. A sale without the required notice precludes the mortgagee from enforcing the personal liability of the mortgagor for any deficiency.

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¹ Barrett v. Hart, 42 Ohio St. 41 (1884).

² Clark v. Studebaker Corp., 35 Ohio App. 54, 171 N. E. 602 (1929).