OFFICE OF OPERATIONS

OPERATIONS ORDER NO. 6 **April 6, 2005**

SUBJECT: TOWING AND RELEASE PROCEDURES FOR VEHICLE REPOSSESSIONS

PURPOSE: This Order revises the Department's procedures and responsibilities for the towing and release of repossessed vehicles. This Order supercedes Office of Operations Order No. 6, 1996, *Towing and Releases Procedures for Vehicle Repossessions,* and Office of Operations Notice No. 18, 1997, *California Vehicle Code (CVC) Section 4022, RE: Registration Exemptions Involving Repossessed Vehicles.*

PROCEDURE:

I. DEFINITIONS.

A. Lawful Foreclosure Documents. California Vehicle Code (CVC) Sections 14602.6 (f)(3) and 14602.7 (e)(3), and Business and Professions Code Section 7500.1, define "lawful foreclosure documents" as any written authorization by the legal owner, lienholder, lessor, or lessee to repossess any collateral, including, but not limited to, collateral registered under the CVC that is subject to a security agreement that contains a repossession clause.

B. Security Agreement. Business and Professions Code Section 7500.1, defines a "Security Agreement" as an obligation, pledge, mortgage, chattel mortgage, lease agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt, by furnishing the creditor with a recourse to be used in case of failure in the principle obligation.

C. Affidavit. Black's Law Dictionary, 5th edition, defines an "Affidavit" as a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.

II. VEHICLE REPOSSESSION INVESTIGATIONS: A repossession refers to vehicles subject to registration under the CVC and can include, but is not limited to, cars, trucks, trailers, boats and recreational vehicles. A vehicle repossession occurs when the repossessor gains entry to

the vehicle or when the vehicle becomes connected to a tow truck in a public place or on private property that is open to public access (e.g., carport, open garage, driveway). The repossessor cannot commit a crime (e.g., trespassing) in order to gain entry into a vehicle, or to tow a vehicle. Additionally, the repossessor is not entitled to take possession of the vehicle if it is located on private property not open to public access, or if the registered owner or other person legally entitled to possession of the vehicle claims possession prior to it being connected to a tow truck.

Officer's Responsibility. Officers called to a location for a vehicle repossession investigation shall comply with the following procedures:

* If the repossessor has not gained entry into the vehicle, or the vehicle is not connected to a tow truck, and the registered owner or other person legally entitled to possession of the vehicle is present, the vehicle shall be released to the registered owner or other person legally entitled to possession of the vehicle;

  Note: The existence of a repossession order or other legal documentation does not give a repossessor the right to take the vehicle when another person legally entitled to possess the vehicle is present.

* If the repossessor has gained entry into the vehicle's driver's compartment or the vehicle is connected to a tow truck, the vehicle shall be released to the vehicle repossessor if the vehicle is in a public place or on private property accessible to the public. Officers shall determine the exact location of the vehicle at the time the repossessor gained entry into it;

  Note: Pursuant to Business and Professions Code Section 7502, Department personnel may request to see a vehicle repossession license prior to releasing a vehicle to a repossession agent.

* If the officers observe the vehicle repossessor in the process of committing a crime (e.g., trespass), the vehicle repossessor can be arrested and the vehicle

may be released to the registered owner or other person legally entitled to possession of the vehicle;

Note: If the vehicle repossessor has possession of the vehicle when the officer arrives and a misdemeanor crime not committed in the officer's presence is alleged, the vehicle shall be released to the vehicle repossessor. Officers shall complete the appropriate crime reports in all cases where a crime has been alleged. Additionally, officers shall advise all parties involved in the vehicle repossession that they may seek civil remedies.

* If the vehicle repossessor gained entry into the vehicle illegally (e.g., locked or unlocked garage, fenced or gated rear yard/driveway), the vehicle shall be released to the registered owner or other person legally entitled to possession of the vehicle; and,
* When a vehicle is in the possession of a mechanic or other repairperson and a "mechanic's lien" is claimed, the vehicle shall be released to the vehicle repossessor when valid repossession documents are provided.

III. REPOSSESSIONS OF IMPOUNDED VEHICLES WITH A HOLD. When a vehicle repossessor contacts the Department to repossess an impounded vehicle that has a hold placed against it, the repossessor shall be referred to the Area Detective Division or other responsible entity that placed the hold against the vehicle. If the vehicle has a hold placed against it, but is not under a police department impound (e.g., Department of Transportation), the repossessor shall be referred to the impounding agency for information processing.

Note: Vehicle repossession procedures differ for 30-Day Hold vehicles. Refer to the current 30-Day Hold Procedures outlined in the Department Traffic Coordinator Notice dated May 13, 2002.

Persons repossessing a vehicle that is under a Department authorized impound must pay all impound/administrative fees to the respective Official Police Garage and/or Automated Records Section (ARS) in order to gain a vehicle release.

Exception: According to 22850.5 (b)(4) CVC, the Legal Owner (L/O) is exempt from paying the City's full administrative fee, but is still responsible for paying the standard release fee. However, if the L/O requests a post-storage hearing, the exemption does not apply and the full administrative fee must be paid.

IV. REPOSSESSIONS OF IMPOUNDED VEHICLES WITHOUT A HOLD. If the vehicle is impounded, but is not subject to a Department hold, the vehicle's L/O or their agent(s) shall provide the following documentation to obtain a vehicle release:

* Either lawful foreclosure documents or an affidavit of repossession for the vehicle; and,
* A security agreement or title showing proof of legal ownership for the vehicle.

Note: Photocopies or facsimiles of these documents are acceptable. Department personnel shall not require the L/O or his/her agent to complete the Legal Owner's Release and Indemnification Agreement, Form 15.17 (commonly referred to as the "Hold Harmless" form), prior to releasing the vehicle. A copy of the Department of Motor Vehicle's (DMV), Electric Lien and Title (ELT), also known as a "Paperless Title" record, does not qualify as title showing proof of legal ownership for the vehicle.

If the true legal ownership status is in doubt, Department personnel shall contact the DMV, Sacramento, to ascertain the current ownership status of the vehicle according to their records. The registered owner does not have to be shown documentation showing that payments are delinquent prior to repossessing the vehicle. Department personnel shall not require the presentation of account histories or other evidence of delinquencies prior to releasing a vehicle for repossession.

V. REPOSSESSED VEHICLES OPERATING WITH EXPIRED REGISTRATION. California Vehicle Code Section 4022, exempts L/O's from the registration requirement when transporting a repossessed vehicle from the storage facility to the L/O's place of business or a licensed motor vehicle auction. The L/O and/or his/her agent must have the repossession documents in their immediate possession

while operating a vehicle with expired registration under this exemption. **This exemption applies only when a vehicle is being repossessed.**

VI. **OFFICER IN CHARGE, AREA DETECTIVE DIVISION RESPONSIBILITY.** The Officer in Charge, Area Detective Division, shall:

* Ensure that all personnel are following the vehicle release procedures; and,
* Ensure copies of the vehicle repossession documents are maintained in the detective file.

Questions regarding this Order should be directed to Special Operations Support Division, Traffic Coordination Section, at (213) 473-7788.

GEORGE GASCÓN, Assistant Chief
Director, Office of Operations

Distribution "A"