

Remedies for Possession of Property

CHAPTER 565

CLAIM AND DELIVERY

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565.01 POSSESSION OF PERSONAL PROPERTY, HOW CLAIMED. The plaintiff, in an action to recover the possession of personal property, at the time of issuing the summons or at any time before answer may claim the immediate delivery of such property in the manner following.

[*RL s 4204*] (9331)

565.02 AFFIDAVIT. An affidavit shall be made by the plaintiff or some person in his behalf, showing:

(1) The particular property claimed, and that plaintiff is the owner thereof, or is lawfully entitled to its possession by virtue of a special property therein, the facts respecting which shall be set forth;

(2) That the property is wrongfully detained by the defendant;

(3) That the same was not taken for a tax, assessment, or fine, nor seized under an execution or attachment against plaintiff's property, or, if so seized, that it is by statute exempt from such seizure; and

(4) The actual value of the property.

[*RL s 4205*] (9332)

565.03 BOND AND SURETIES. A bond to defendant shall be executed by or in behalf of the plaintiff, with surety approved by the sheriff, in a penal sum at least double the value of the property, conditioned for the return of such property to the defendant, if a return thereof be adjudged, and for the payment to him of such sum as for any cause may be adjudged in his favor.

[*RL s 4206*] (9333)

565.04 REQUISITION TO SHERIFF; SERVICE AND RETURN. The plaintiff or his attorney, by an endorsement on the affidavit, may require the sheriff to take the property from the defendant and deliver it to the plaintiff; and upon receipt of the affidavit, endorsement, and bond the sheriff shall forthwith take the property, if in the possession of the defendant or his agent, and retain it in his custody until delivered as hereinafter provided. The affidavit, endorsement, and bond shall be served by the sheriff, without delay, upon the defendant, or upon his agent having the property in charge, as a summons is required to be served; and the originals, with the return of the officer thereon, shall be filed with the clerk within 20 days after the taking.

[*RL s 4207*] (9334)

565.05 EXCEPTION TO SURETIES; REBONDING. Within three days after such service the defendant may give notice to the sheriff that he excepts to the sufficiency of the sureties. If he does not except, he, or some person on his behalf, may give bond to the plaintiff, with surety to be approved by the sheriff, in the same sum as that of the plaintiff, conditioned that the property shall be delivered to the plaintiff, if delivery be adjudged, and for the payment to him of such sum as may be adjudged against the defendant; and thereupon, by written demand to the sheriff, he may require the return to him of the property taken. If he does not so except or demand a return, the property shall be delivered to the plaintiff. Within three days after the ap-

proval of the defendant's bond the plaintiff may in like manner except to the sureties thereon.

[*RL s 4208*] (9335)

565.06 JUSTIFICATION OF SURETIES. Within two days after exception taken to the sureties of either party, he shall serve upon the other not less than two, nor more than six, days notice of their justification. If any surety fails to justify at the time appointed, another may be substituted within such time, not exceeding three days, as the judge or officer may appoint; but there shall be only one adjournment, and in case of substitution a new bond shall be executed by all the parties to be bound.

[*RL s 4209*] (9336)

565.07 DELIVERY OF PROPERTY; WAIVER OF JUSTIFICATION. Upon justification of plaintiff's sureties, the sheriff shall deliver the property to him, except as otherwise prescribed, when claim is made by a third person, and upon like justification of defendant's sureties the property shall be delivered to the defendant. When the sureties fail to justify, or when justification is waived as herein provided, the sheriff shall forthwith deliver the property to the person entitled thereto. The sheriff shall retain the property until the justification is completed or waived, and he shall be liable for the sufficiency of the sureties during such time. Justification of sureties may be waived in writing by either party either before or after notice.

[*RL s 4210*] (9337)

565.08 PROCEEDINGS WHEN PROPERTY IS CONCEALED. If the property, or any of it, be concealed or enclosed in a building or elsewhere, and a public demand made by the sheriff for its delivery be refused, he shall cause the building or enclosure to be broken open and take the property therefrom; and, if necessary to that end, he may call the power of the county to his aid. When it shall be made to appear, by the return of the sheriff or by affidavit, that any of the property sought to be recovered has been concealed, or cannot with reasonable diligence be found, the court may require the defendant, and such other persons as it shall deem proper, to attend and be examined touching the disposition thereof, and may enforce its orders in the premises as in other cases.

[*RL s 4211*] (9338)

565.09 PROPERTY, HOW KEPT, AND WHEN DELIVERED BY SHERIFF. When the sheriff has taken property as herein provided, he shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving his lawful fees for taking, and necessary expenses for keeping, the same.

[*RL s 4212*] (9339)

565.10 CLAIM OF PROPERTY BY THIRD PERSON. If any property levied upon or taken by a sheriff by virtue of an execution, writ of attachment, or other process, or in an action of replevin, is claimed by any person other than the defendant or his agent, and such person, his agent or attorney, shall make and serve on the sheriff an affidavit of his title or right to the possession of such property, stating its value and the ground of such title or right, the sheriff may release such levy or taking unless the plaintiff, on demand, shall indemnify him against such claim by a sufficient bond in a penal sum of at least double the value alleged in such affidavit. No claim by any person, other than the defendant or his agent, shall be valid against the sheriff unless so made, and he may retain the property for a reasonable time after such claim to obtain such indemnity.

[*RL s 4213*] (9340)

565.11 PLAINTIFF AND SURETIES FIRST LIABLE IN ACTION FOR TAKING. If the person claiming under section 565.10 shall begin an action against the sheriff for the taking of such property, the plaintiff in such process or action and the sureties on the indemnity bond so given shall be impleaded in the action with the sheriff, on his motion; and, if judgment be rendered against him and his codefendants in such action, execution thereon shall issue forthwith, and the property of such codefendants shall be exhausted before that of the sheriff shall be subject to sale.

[*RL s 4214*] (9341)