

## Remedies for Possession of Property

## CHAPTER 565

## CLAIM AND DELIVERY

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 565.11 [Repealed, 1979 c 18 s 12]

**565.21 POSSESSION OF PERSONAL PROPERTY.**

In an action to recover possession of personal property, the claimant may obtain possession of the property prior to final judgment in the manner prescribed in Laws 1979, chapter 18.

*History: 1979 c 18 s 1*

**565.22 DEFINITIONS.**

Subdivision 1. For the purposes of Laws 1979, chapter 18 the terms in this section have the meanings given them.

Subd. 2. "Claimant" means a party asserting, in a pleading before a court, a claim for the recovery of possession of personal property, whether the claim is asserted in a complaint, counterclaim or reply.

Subd. 3. "Respondent" means a person against whom a claimant asserts a claim and who has, or is alleged to have, possession of the personal property which the claimant seeks to recover.

*History: 1979 c 18 s 2*

**565.23 RECOVERY OF POSSESSION AFTER NOTICE AND HEARING.**

Subdivision 1. A claimant seeking to recover possession of property after service of a summons and complaint but prior to final judgment shall proceed by motion. The motion shall be accompanied by an affidavit which states:

- (a) The particular property sought to be recovered by the claimant;
- (b) The facts giving rise to claimant's right to possession, referring to the documents, if any, evidencing the claimant's right to possession and the underlying obligation supporting the right;
- (c) The facts showing that respondent is wrongfully detaining the property;

ducted at the earliest practicable time and shall take precedence over all matters except older matters of the same character.

Subd. 5. The hearing held pursuant to subdivision 4 shall be conducted in accordance with the criteria established in section 565.23, subdivisions 3, 4 and 5. In addition, if the court finds that the motion for a prehearing seizure was made in bad faith the court may, in its discretion, award respondent the actual damages incurred by reason of seizure of the property.

Subd. 6. The respondent shall be served with a copy of the order issued pursuant to this section together with a copy of all pleadings and supporting documents and a notice of hearing. Service shall be in the manner prescribed for personal service of a summons or the court in its discretion may prescribe alternative methods of service calculated to provide actual notice to respondent.

The notice of hearing served upon the respondent shall be signed by claimant or the attorney for claimant and shall provide, at a minimum, the following information in substantially the following language:

“NOTICE OF HEARING

Court action has been taken which affects the following property:

[list property]

[Claimant] (hereinafter “claimant”) has claimed that claimant is entitled to this property and that claimant’s interest in this property would have been harmed unless this court took immediate action.

You have a right to challenge claimant’s claims at a hearing before a judge. This hearing has been scheduled for the ..... day of ....., 19.., at ..... o’clock ..M., at [place].....

After this hearing the judge will decide, what should be done with the property pending a final decision on claimant’s claim.”

**History:** 1979 c 18 s 4

**565.25 BONDING REQUIREMENTS.**

Subdivision 1. An order for seizure of property from the respondent shall provide that the seizure shall be contingent upon claimant’s filing of a bond approved by the court conditioned for the return of the property to the respondent, if a return be adjudged, and for the payment to the respondent of any sum adjudged against the claimant. The bond shall be in an amount which is 1-1/2 times the fair market value of the property seized.

Subd. 2. (a) Except as otherwise provided in clause (b) and section 565.251, the respondent may retain or regain possession of the property by filing of a bond approved by the court conditioned that the property shall be delivered to the claimant, if delivery be adjudged, and for the payment to the claimant of any sum adjudged against the respondent. The bond shall be in an amount 1-1/4 times the fair market value of the property or 1-1/2 times the amount of the claimant’s claim, whichever is less. An order for seizure may specify a time limitation within which the bond must be filed. For the purpose of protecting or preserving the property pending final hearing on the merits, the court may in extraordinary circumstances, which shall be specified in its order, provide that the respondent may not retain or regain possession of the property upon rebonding, or may limit or condition the right to retain or regain the property upon rebonding. The costs of regaining possession of the property from the sheriff or the claimant shall be borne by respondent except as set forth in clause (b).

(b) If at a hearing following seizure of property pursuant to section 565.24 claim-

ant fails to establish a right to continued possession, the court shall order the property returned to respondent, the costs to be borne by claimant. The court may order claimant's bond to continue in an amount sufficient to offset damages claimed by respondent by reason of the seizure.

Subd. 3. The current fair market value of the property shall initially be presumed as stated in the affidavit submitted pursuant to section 565.23, subdivision 1. If the court determines the current fair market value of the property is different, it shall adjust the required amount of the bonds.

Subd. 4. In lieu of filing a bond, either claimant or respondent may satisfy bonding requirements by depositing with the court cash, a cashier's check, or a certified check.

**History:** 1979 c 18 s 5; 1985 c 306 s 8

### **565.251 POSSESSION BY RESPONDENT WITHOUT BOND; STAY OF PROCEEDING.**

The court may allow the respondent to retain or regain possession of the property without filing a bond and may stay the action by the claimant for a reasonable period of time not to exceed six months if the following conditions are met:

(1) the respondent is unable to make the required payments due to unforeseen economic circumstances beyond the respondent's control;

(2) the respondent is dependent on the use of the property to earn a living;

(3) the respondent insures the property for its fair market value;

(4) the respondent makes periodic payments to the claimant representing the depreciation in market value of the property while the respondent retains possession, in an amount and during the times determined by the court; and

(5) the respondent makes periodic payments to the claimant representing the value of the use of the property or the cost to the claimant of the lost opportunity to use the property, in an amount and during the times determined by the court.

**History:** 1985 c 306 s 9

### **565.26 ORDER FOR SEIZURE OF PROPERTY.**

Subdivision 1. An order for seizure of property shall:

(a) Identify the property to be seized;

(b) Direct the sheriff to seize the property; and

(c) Specify that the claimant is authorized, immediately or after a specified reasonable period of time, to sell or otherwise dispose of the property pending final hearing on the merits unless the court makes a specific finding that the interests of respondent cannot be adequately protected by the bond.

Subd. 2. An order for seizure of property may:

(a) Describe the place or places which may be entered by force by the sheriff subject to the limitations of clause (c);

(b) Require that the respondent, the respondent's agents or employees deliver the property to claimant or disclose its location, and, if delivery is not made or the location is not disclosed, that respondent must appear in court at a specified time and place to give testimony as to the location of the property and to show cause why an order should not be entered finding respondent in contempt of court for failure to deliver the property or to disclose its location; and

(c) Provide that if the property, or any of it is concealed in a building or elsewhere, and a public demand made by the sheriff for its delivery is refused or there is no response, the sheriff shall cause the building or enclosure to be broken open and shall take the property therefrom. The sheriff may not enter the residence of a person other than respondent unless the order specifies, identifying with particularity the residence or residences which may be entered, on the basis of a finding by the court that probable cause exists to believe that the property is at this residence.

**History:** 1979 c 18 s 6; 1986 c 444

**565.27 SUFFICIENCY OF SURETY.**

A person asserting a claim to property seized by order of the court may by motion challenge the sufficiency of the surety for the bond filed with the court. If the court finds the surety insufficient, it may grant a reasonable time for the filing of another bond.

**History:** 1979 c 18 s 7

**565.28 FEES TO SHERIFF.**

Upon taking property pursuant to an order of the court, the sheriff shall keep it in a secure place and shall deliver it to the party entitled thereto as soon as reasonably possible upon receiving lawful fees and expenses for taking and keeping the property.

The sheriff shall promptly return, without cost, any property taken which is not specified in the court's order.

**History:** 1979 c 18 s 8; 1986 c 444

**565.29 ADVANCEMENT ON CALENDAR.**

A motion for advancement on the calendar or for a date certain for final hearing on the merits may be presented at any time and may be combined with any other motion and the court may advance the case or set a date certain as the ends of justice require.

**History:** 1979 c 18 s 9