

CHAPTER 810

REPLEVIN

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810.01 Replevin, plaintiff may claim delivery. The plaintiff in a replevin action may, at any time before answer, claim the immediate delivery of the property as provided in this chapter.

History: Sup Ct. Order, 67 W (2d) 758.

Pre-judgment replevin is a denial of due process of law. *Fuentes v. Shevin*, 407 US 67; *Dorsey v. Community Stores Corp.* 346 F Supp. 103.

810.02 Replevin, affidavit, who to make; contents. Where an immediate delivery is claimed the complaint must show or an affidavit must be made by the plaintiff or on his behalf showing:

(1) That the plaintiff is entitled to the possession of the property claimed, particularly describing it;

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

(3) The alleged cause of detention according to his best knowledge, information and belief;

(4) That the same has not been taken for a tax, assessment or fine or seized under an execution or attachment against the property of the plaintiff, or if so seized that it is exempt from such seizure; and,

(5) The value of the property.

History: Sup. Ct. Order, 67 W (2d) 758.

810.03 Requisition to sheriff. The plaintiff may, by an indorsement upon the complaint or the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant and deliver it to the plaintiff.

History: Sup. Ct. Order, 67 W (2d) 758.

Real property remedies law revised 1974 WBB No. 3.

810.04 Bond; duty of sheriff. Upon the receipt of the complaint or affidavit so indorsed with a bond, executed by sufficient sureties, approved by the sheriff, to the effect that they are bound in a sum double the value of the property, as so stated, for the prosecution of the

action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may be recovered against the plaintiff, the sheriff shall take and retain the property if it be in the possession of the defendant or his agent. He shall without delay serve the complaint or affidavit and bond on the defendant if he can be found, or his agent from whose possession the property is taken in the manner a summons is served.

History: Sup Ct Order, 67 W (2d) 758, 777.

810.05 Proceedings if sureties excepted to. The defendant may, within 3 days after the service of the complaint or affidavit and bond, give notice to the sheriff that he excepts to the sureties. If he fails to do so he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify, on notice, as provided by s. 810.08. And the sheriff shall be responsible for the sufficiency of the sureties until the objection is waived or until they shall justify or new sureties shall be substituted and justify.

History: Sup Ct. Order, 67 W (2d) 758, 777.

810.06 Return of property to defendant.

At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon delivering to the sheriff a bond, executed by sufficient sureties, to the effect that they are bound in a sum double the value of the property (as stated in the complaint or affidavit of the plaintiff), for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may be recovered against the defendant. If a return of the property be not so required within 3 days after the taking and the service on the defendant it shall be delivered to the plaintiff, except as provided in s. 810.11. The sheriff shall

promptly notify the plaintiff that the defendant has demanded a return of the property.

History: Sup Ct Order, 67 W (2d) 758, 777

810.07 Justification of sureties. The plaintiff may within 3 days after he is notified by the sheriff that the defendant demands a return of the property notify the sheriff that he excepts to the defendant's sureties, otherwise he waives his right to except. If he excepts, the defendant's sureties shall justify as provided in s. 810.08. Upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify or until justification is waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed he shall deliver the property to the plaintiff.

History: Sup Ct Order, 67 W (2d) 758, 777

810.08 Affidavit and justification of sureties. (1) The sureties, under this chapter, shall append to their bond their affidavits in which each shall swear that he is a resident freeholder and is worth the sum stated in the bond above his liabilities in property in this state not exempt from execution.

(2) The justification of sureties under this chapter shall be before a judge on not less than two nor more than six days' notice. Each surety must swear that he is a resident freeholder in this state and is worth the sum stated in his bond above his liabilities in property in this state not exempt from execution. But if there are more than two sureties on any bond they may be accepted if they shall justify severally in sums which aggregate double the sum named in the bond.

History: Sup Ct Order, 67 W (2d) 758

810.09 Property in building, how taken. If the property or any part thereof be in a building or inclosure the sheriff shall publicly demand its delivery; if it be not delivered he shall enter and take the property.

History: Sup Ct Order, 67 W (2d) 758

810.10 Property, how kept. The sheriff shall keep the property taken in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

History: Sup Ct Order, 67 W (2d) 758

810.11 Claims of third parties; indemnity to officer. If the property taken be claimed by a third person and such claimant shall make affidavit of his title and right to the possession, stating the facts as to such right and title, and

serve the same upon the sheriff he shall not be bound to keep the property or deliver it to the plaintiff unless he shall indemnify the sheriff against such claim by a bond in double the value of the property as stated by the plaintiff executed by two sureties and no such claim to such property shall be valid against the sheriff unless made as aforesaid; and he may retain the property a reasonable time to demand such indemnity.

History: Sup Ct Order, 67 W (2d) 758

810.12 Papers filed. The sheriff shall file the replevin papers with proof of service and his doings therein with the clerk of the court in which the action is pending, within 20 days after taking the property mentioned therein.

History: Sup Ct Order, 67 W (2d) 758

810.13 Verdict. Upon the trial the court or jury shall find: (1) whether the plaintiff is entitled to possession of the property involved; (2) whether the defendant unlawfully took or detained the same; (3) the value thereof; (4) the damages sustained by the successful party from any unlawful taking or unjust detention of the property to the time of the trial. Judgment shall go in accordance with s. 810.14.

History: Sup Ct Order, 67 W (2d) 758, 777

810.14 Judgment in replevin. In any action of replevin judgment for the plaintiff may be for the possession or for the recovery of possession of the property, or the value thereof in case a delivery cannot be had, and of damages for the detention; and when the property shall have been delivered to the defendant, under s. 810.06, judgment may be as aforesaid or absolutely for the value thereof at the plaintiff's option, and damages for the detention. If the property shall have been delivered to the plaintiff under ss. 810.01 to 810.13 and the defendant prevails, judgment for the defendant may be for a return of the property or the value thereof, at his option, and damages for taking and withholding the same.

History: Sup Ct Order, 67 W (2d) 761, 777

810.15 Judgment in replevin against principal and sureties. The judgment in replevin may be entered both against the principal and the sureties on his bond for a return or delivery of the property, as prescribed in ss. 810.01 to 810.13; and where the officer, to whom the execution thereon is directed, cannot find sufficient property of the principal to satisfy the same, he shall satisfy it out of the property of such sureties; and the execution shall so direct.

History: Sup Ct Order, 67 W (2d) 761, 778