

CHAPTER 810

REPLEVIN

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810.01 Replevin, plaintiff may claim delivery. The plaintiff in a replevin action may claim the delivery of the property prior to final judgment in the manner provided in this chapter.

History: Sup. Ct. Order, 67 W (2d) 758; Stats. 1975 s. 810.01; 1977 c. 308. Judicial order for possession with opportunity for immediate post-seizure hearing did not deprive debtors of constitutional rights where pre-seizure procedural rights were granted. *Del's Big Saver Foods v. Carpenter Cook, Inc.* 795 F (2d) 1344 (7th Cir. 1986).

810.02 Order directing return of property. An order directing the return of property to the plaintiff at any time before final judgment in a replevin action shall be issued only by a judge or other judicial officer on the affidavit of the plaintiff made after summons is issued. The affidavit or verified complaint shall set forth specific factual allegations to show the following:

- (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 property has not been taken for a tax, assessment or fine or seized under any execution or attachment against the property of the plaintiff, or that if so seized that it is exempt from the seizure;
- (5) The value of the property; and
- (6) The location of the property claimed by the plaintiff with sufficient specific factual allegations for the judge or judicial officer to determine that there is reason to believe that the property is in the location described or in the possession of the defendant or any person acting on behalf of, subject to or in concert with the defendant.

History: Sup. Ct. Order, 67 W (2d) 758; Stats. 1975 s. 810.02; 1977 c. 308.

810.03 Requisition to sheriff. Upon the issuance of an order making a factual determination set forth in s. 810.02 and upon the execution of a bond in an amount approved by the judge or judicial officer and with sufficient sureties approved by the judge or judicial officer, to secure the value of the property, the prosecution of the action, the return of the property to the defendant, if the return thereof be adjudged, and payment to the defendant of such sum as may be recovered against the plaintiff, the sheriff shall then take the property from the defendant or such persons as are acting on behalf of, in concert with or under control of the defendant, and deliver possession of the property to the plaintiff.

History: Sup. Ct. Order, 67 W (2d) 758; Stats. 1975 s. 810.03; 1977 c. 308. Real property remedies law revised. 1974 WBB No. 3.

810.05 Motion to vacate or modify. The defendant may at any time upon notice to the plaintiff move the court or the presiding judge thereof to vacate or modify the order directing delivery of the property for any sufficient cause. A

motion to vacate or modify the order directing delivery of the property may be combined with a motion to increase the plaintiff's security or excepting to the sureties on the plaintiff's bond.

History: Sup. Ct. Order, 67 W (2d) 758, 777; Stats. 1975 s. 810.05; 1977 c. 308.

See note to 810.01, citing *Del's Big Saver Foods v. Carpenter Cook, Inc.* 603 F Supp. 1071 (1985).

810.06 Return of property to defendant. At any time before final judgment the defendant may require the return of the property by executing and delivering to the sheriff a bond, executed by sufficient sureties to the effect that the defendant shall be bound to the sum of the bond for the delivery of the property thereof to the plaintiff, if the delivery be adjudged, and for the payment to the plaintiff of such sum as may be recovered against the defendant.

History: Sup. Ct. Order, 67 W (2d) 758, 777; Stats. 1975 s. 810.06; 1977 c. 308.

810.07 Justification of sureties. The plaintiff may within 3 days after notification by the sheriff that the defendant demands a return of the property except to the defendant's sureties by motion to the judge or judicial officer under s. 810.08 (2), and the judge or judicial officer shall determine the sufficiency of the sureties provided for the bond.

History: Sup. Ct. Order, 67 W (2d) 758, 777; Stats. 1975 s. 810.07; 1977 c. 308.

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; Stats. 1975 s. 810.08.

810.09 Property in building, how taken. If the property or any part thereof is in a building or enclosure the sheriff may demand its delivery. If the property is not delivered the sheriff shall advise the plaintiff of the refusal of the delivery. The plaintiff may then apply to the court for a warrant upon a sufficient showing of probable cause that the property is contained in the building or enclosure and upon delivery of the warrant of the judicial officer to the sheriff the sheriff may then enter and take the property.

History: Sup. Ct. Order, 67 W (2d) 758; Stats. 1975 s. 810.09; 1977 c. 308.

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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; Stats 1975 s. 810.10.

810.11 Claims of third parties; indemnity to officer. If the property taken is claimed by a 3rd person, the 3rd person may make application to the judge or judicial officer under ss. 810.02 and 810.03 for an order directing that the 3rd person be given delivery of the property so claimed. Any person having possession of the property may move the court to vacate or modify the order directing delivery to the 3rd party claimant, or post bond in the same manner provided for the defendant.

History: Sup. Ct. Order, 67 W (2d) 758; Stats 1975 s. 810.11; 1977 c. 308.

810.12 Papers filed. The sheriff shall file a return or any other papers relating to any actions by the sheriff made under this chapter within a reasonable time after service.

History: Sup. Ct. Order, 67 W (2d) 758; Stats 1975 s. 810.12; 1977 c. 308.

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; Stats 1975 s. 810.13.

Although original taking of property was lawful, its subsequent detention may be unlawful. *Capitol Sand & Gravel Co. v. Waffenschmidt*, 71 W (2d) 227, 237 NW (2d) 745.

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, 778; Stats 1975 s. 810.14.

Damages for loss of use of detained property must be based on showing that plaintiff was in position to use property and that property would have been used but for unlawful detainer. *Korb v. Schroedel*, 93 W (2d) 207, 286 NW (2d) 589 (1980).

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; Stats 1975 s. 810.15.