



MICHELLE R. MILLER
Clerk of the Circuit Court & Comptroller
ST. LUCIE COUNTY, FLORIDA

SELF-SERVICE CENTER

Department: Small Claims

Packet #R2-15: Replevin Complaint

Misappropriated goods-Secondhand Dealer

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NonRefundable



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 COUNTY CIVIL DIVISION
 250 N.W. COUNTRY CLUB DRIVE
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NOTICE OF LIMITATION OF SERVICES PROVIDED

THE PERSONNEL IN THIS SELF-HELP PROGRAM ARE NOT ACTING AS YOUR LAWYER OR PROVIDING LEGAL ADVICE TO YOU.

SELF-HELP PERSONNEL ARE NOT ACTING ON BEHALF OF THE COURT OR ANY JUDGE. THE PRESIDING JUDGE IN YOUR CASE MAY REQUIRE AMENDMENT OF A FORM OR SUBSTITUTION OF A DIFFERENT FORM. THE JUDGE IS NOT REQUIRED TO GRANT THE RELIEF REQUESTED IN A FORM.

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IN ALL CASES, IT IS BEST TO CONSULT WITH YOUR OWN ATTORNEY.

ACKNOWLEDGMENT

*PLEASE COMPLETE THE FOLLOWING PARAGRAPH.
 FILE THE SIGNED DOCUMENT WITH THE CLERK OF COURT.*

_____ I CAN READ ENGLISH

_____ I CANNOT READ ENGLISH, THIS NOTICE WAS READ TO ME BY

[NAME] _____ IN [LANGUAGE] _____

I _____ {name} do acknowledge that I have read this Notice of Limitation of Services Provided. I have received an explanation of the Notice of Limitation of Services Provided and I understand the limitation of the services provided. I understand that it is in my best interest to secure an attorney to represent my interest in this case. I understand that this form must be signed and filed with the Clerk before the Self-Help program may provide services to me.

Date _____

 Signature

Case No: _____

 Signature

FLORIDA STATUTE 538.08

538.03 Definitions; applicability.—

(1) As used in this part, the term:

(a) “Secondhand dealer” means any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods.

(b) “Precious metals dealer” means a secondhand dealer who normally or regularly engages in the business of buying used precious metals for resale. The term does not include those persons involved in the bulk sale of precious metals from one secondhand or precious metals dealer to another.

(c) “Secondhand store” means the place or premises at which a secondhand dealer is registered to conduct business as a secondhand dealer or conducts business.

(d) “Consignment shop” means a shop engaging in the business of accepting for sale, on consignment, secondhand goods which, having once been used or transferred from the manufacturer to the dealer, are then received into the possession of a third party.

(e) “Acquire” means to obtain by purchase, consignment, or trade.

(f) “Secondhand goods” means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. Such secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number. For purposes of this paragraph, “secondhand sports equipment” does not include golf clubs.

(g) “Transaction” means any purchase, consignment, or trade of secondhand goods by a secondhand dealer.

(h) “Precious metals” means any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.

(i) “Department” means the Department of Revenue.

(2) This chapter does not apply to:

(a) Any secondhand goods transaction involving an organization or entity registered with the state as a nonprofit, religious, or charitable organization or any school-sponsored association or organization other than a secondary metals recycler subject to the provisions of part II.

(b) A law enforcement officer acting in an official capacity.

(c) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondhand dealer.

(d) Any public official acting under judicial process or authority who has presented proof of such status to the secondhand dealer.

(e) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondhand dealer.

(f) Any garage sale operator who holds garage sales less than 10 weekends per year.

(g) Any person at antique, coin, or collectible shows or sales.

(h) Any person who sells household personal property as an agent for the property owner or their representative pursuant to a written agreement at that person's residence.

(i) The purchase, consignment, or trade of secondhand goods from one secondhand dealer to another secondhand dealer when the selling secondhand dealer has complied with the requirements of this chapter.

(j) Any person accepting a secondhand good as a trade-in for a similar item of greater value.

(k) Any person purchasing, consigning, or trading secondhand goods at a flea market regardless of whether at a temporary or permanent business location at the flea market.

(l) Any auction business as defined in s. [468.382\(1\)](#).

(m) Any business that is registered with the Department of Revenue for sales tax purposes as an antique dealer pursuant to chapter 212 and that purchases secondhand goods from the property owner or her or his representative at the property owner's residence pursuant to a written agreement that states the name, address, and telephone number of the property owner and the type of property purchased.

(n) A business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an Internet website, and that maintains a shop, store, or other business premises for this purpose, if all of the following apply:

1. The secondhand goods must be available on the website for viewing by the public at no charge;
2. The records of the sale, purchase, consignment, or trade must be maintained for at least 2 years;
3. The records of the sale, purchase, consignment, or trade, and the description of the secondhand goods as listed on the website, must contain the serial number of each item, if any;
4. The secondhand goods listed on the website must be searchable based upon the state or zip code;
5. The business must provide the appropriate law enforcement agency with the name or names under which it conducts business on the website;
6. The business must allow the appropriate law enforcement agency to inspect its business premises at any time during normal business hours;
7. Any payment by the business resulting from such a sale, purchase, consignment, or trade must be made to the person or entity with whom the business contracted to offer the goods and must be made by check or via a money services business licensed under part II of chapter 560; and
8. a. At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business must verify that any item having a serial number is not stolen property by entering the serial number of the item into the Department of Law Enforcement's stolen article database located at the Florida Crime Information Center's public access system website. The business shall record the date and time of such verification on the contract covering the goods. If such verification reveals that an item is stolen property, the business shall immediately remove the item from any website on which it is being offered and notify the appropriate law enforcement agency; or

b. The business must provide the appropriate law enforcement agency with an electronic copy of the name, address, phone number, driver's license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods, including make, model, serial number, and any other unique identifying marks, numbers, names, or letters that may be on an item, in a format agreed upon by the business and the appropriate law enforcement agency. This information must be provided to the appropriate law enforcement agency within 24 hours after entering into the contract unless other arrangements are made between the business and the law enforcement agency.

(o) Any person offering his or her own personal property for sale, purchase, consignment, or trade via an Internet website, or a person or entity offering the personal property of others for sale, purchase, consignment, or trade via an Internet website, when that person or entity does not have, and is not required to have, a local occupational or business license for this purpose.

(p) A business whose primary business is the sale, rental, or trade of motion picture videos or video games, if the business:

1. Requires the sellers of secondhand goods to have a current account with the business;
2. Has on file in a readily accessible format the name, current residential address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;
3. Purchases secondhand goods from the property owner or his or her representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states that the seller is the lawful owner of the property;
4. Retains such purchase agreements for not less than 1 year; and
5. Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or another authorized user of the seller's account with that business.

(q) A motor vehicle dealer as defined in s. [320.27](#).

(3) This part does not apply to secondary metals recyclers regulated under part II, except for s. [538.11](#), which applies to both secondhand dealers and secondary metals recyclers.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 1, ch. 90-318; s. 4, ch. 91-429; s. 202, ch. 92-303; s. 1, ch. 93-97; s. 1, ch. 95-287; s. 745, ch. 97-103; s. 1, ch. 98-30; ss. 17, 21, ch. 2000-138; s. 1, ch. 2006-201; s. 51, ch. 2008-177; s. 1, ch. 2009-158; s. 1, ch. 2009-162.

FLORIDA STATUTE 538.08

538.08 Stolen goods; petition for return.—

(1) If the secondhand dealer contests the identification or ownership of the property, the person alleging ownership of the property may, provided that a timely report of the theft of the goods was made to the proper authorities, bring an action for replevin in the county or circuit court by petition in substantially the following form:

Plaintiff A. B. sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in County, Florida.
2. The description of the property is: (list property) . To the best of plaintiff's knowledge, information, and belief, the value of the property is \$.
3. Plaintiff is entitled to the possession of the property under a security agreement dated , (year) , a copy of which is attached.
4. To plaintiff's best knowledge, information, and belief, the property is located at .
5. The property is wrongfully detained by defendant. Defendant came into possession of the property by (describe method of possession) . To plaintiff's best knowledge, information, and belief, defendant detains the property because (give reasons) .
6. The property has not been taken under an execution or attachment against plaintiff's property.

(2) The filing fees shall be waived by the clerk of the court, and the service fees shall be waived by the sheriff. The court shall award the prevailing party attorney's fees and costs. In addition, when the filing party prevails in the replevin action, the court shall order payment of filing fees to the clerk and service fees to the sheriff.

(3) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. Upon the receipt of a petition for a writ by a secondhand dealer, the dealer shall hold the property at issue until the court determines the respective interests of the parties.

(4) In addition to the civil petition for return remedy, the state may file a motion as part of a pending criminal case related to the property. The criminal court has jurisdiction to determine ownership, to order return or other disposition of the property, and to order any appropriate restitution to any person. Such order shall be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 4, ch. 93-97; s. 24, ch. 99-6.

FLORIDA STATUTE 538.06

538.06 Holding period.—

(1) A secondhand dealer shall not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any secondhand goods within 15 calendar days of the date of acquisition of the goods. Such holding periods are not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(2) A secondhand dealer must maintain actual physical possession of all secondhand goods throughout a transaction. It is unlawful for a secondhand dealer to accept title or any other form of security in secondhand goods in lieu of actual physical possession. A secondhand dealer who accepts title or any other form of security in secondhand goods in lieu of actual physical possession commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(3) Upon probable cause that goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may place a 90-day written hold order on the goods. However, the hold may be extended beyond 90 days by a court of competent jurisdiction upon a finding of probable cause that the property is stolen and further holding is necessary for the purposes of trial or to safeguard such property. The dealer shall assume all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

(4) While a hold order is in effect, the secondhand dealer must, upon request, release the property subject to the hold order to the custody of a law enforcement officer with jurisdiction for use in a criminal investigation. The release of the property to the custody of the law enforcement officer is not considered a waiver or release of the secondhand dealer's rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the secondhand dealer unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the person from whom the secondhand dealer acquired the property to pay restitution to the secondhand dealer in the amount that the secondhand dealer paid for the property together with reasonable attorney's fees and costs.

(5) All dealers in secondhand property regulated by this chapter shall maintain transaction records for 3 years.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 90-318; s. 4, ch. 91-429; s. 3, ch. 93-97; s. 2, ch. 95-287; s. 21, ch. 2000-138; s. 4, ch. 2006-201.



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**INFORMATION FOR FILING A REPLEVIN COMPLAINT
TO RECOVER MISAPPROPRIATED GOODS AGAINST A SECOND HAND DEALER**

Any person whose property is wrongfully detained by a pawnbroker after such property was pawned unlawfully by a third party may file a replevin complaint to recover possession of the property.

JURISDICTION - A replevin complaint must be filed in the Court which holds jurisdiction based upon the value of the property sought to be replevied. When property consists of several articles, the property may not be divided to give jurisdiction to the Small Claims Court.

VENUE - A replevin complaint to recover misappropriated property from a pawnbroker should be filed in the county where the pawnbroker is located.

COMPLAINT - The replevin complaint form should be typed or legibly printed. After completing the form, attach the supporting documentation required in Florida Statute 539.001 (copy of letter to pawnbroker from plaintiff, signed receipt from pawnbroker evidencing receipt of the letter, copy of the applicable law enforcement agency' report) and file it with the Clerk of Court.

FILING FEES - All Court filing fees and sheriff's fees are waived pursuant to F.S. 539.001, 15(a).



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**REFERENCE GUIDE TO COMPLETING REPLEVIN COMPLAINT
AGAINST A PAWNBROKER FOR MISAPPROPRIATED GOODS**

• **REPLEVIN COMPLAINT**

- * Include your name, address and a telephone number where the Clerk's Office can contact you at
- * Make sure you have the complete and correct name of the defendant
- * Include a complete and accurate description of the property sought to be replevined

COMPANY

If you are suing a company, you need the full name of the owner and company (owner d/b/a company). Include the address where the owner may be served.

CORPORATION

If you are suing a corporation, include the full legal name of the corporation and list the registered agent's name and address for service. Corporate information is available through the Secretary of State, Division of Corporations, Tallahassee, Florida 800-755-5111. Or you may research the information via internet at www.sunbiz.org.

- Go to www.sunbiz.org
- Under "Our Site Index" click on Corporations, Trademarks and Limited Partnerships
- Click on the Name List
- Enter the corporations full legal name
- Click submit
- Scroll down to retrieve the registered agent's name and service address
- If no registered agent's name is listed, proceed to use an officer or director of the corporation
- If no corporation name is listed, it is your responsibility to decide how to pursue the lawsuit

• **ATTACHMENTS AND SUPPORTING DOCUMENTATION:**

- * Copy of the applicable law enforcement agency's report

You may file your complaint at either of the Small Claims/County Civil locations. Your hearing will be held at the South County Annex and all files are stored at this location.



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INSTRUCTIONS FOR FILING A REPLEVIN AGAINST A SECOND HAND DEALER FOR MISAPPROPRIATED GOODS

STEP 1

The following paperwork and fees are required to process your Replevin case:

- **PAPERWORK:**
 - Original Replevin Complaint
 - Copy of the applicable law enforcement agency's report
 - One (1) copy of all documents for **each** defendant
 - One (1) copy of all documents for your records

- **FILING & SERVICE FEES:**

Pursuant to Florida Statute 539.001, the Court shall waive any filing fee for the petition and the sheriff shall waive the service fees

STEP TWO

File the documents with the Clerk of Courts County Civil Division. You may file your complaint at either of the following locations:

South County Courthouse Annex (Main Office)
250 N.W. Country Club Drive, Room 115
Port St Lucie, Florida 34986

Small Claims Department
201 South Indian River Drive
Fort Pierce, Florida 34950

All court files are located and all hearings are held at the South County Annex.

STEP THREE

Once the Clerk's Office has processed your complaint, a hearing date will be scheduled and an Order to Show Cause will be prepared for issuance by the Judge assigned to your case. Once the Order to Show Cause is entered, a copy will be furnished to you by mail. The Clerk will forward your Replevin Complaint and Order to Show Cause to the sheriff's department for service on the Defendant.

SETTLEMENT:

If you and the defendant resolve the case prior to the hearing date, you may file a Voluntary Dismissal which is available on the Clerk of Court's website at www.stlucieclerk.gov

In the County Court of the Nineteenth Judicial Circuit,
in and for St. Lucie County, Florida

**STATEMENT OF CLAIM
RETURN OF PROPERTY FROM PAWNBROKER
FORM 7.335**

Case No: _____

The Plaintiff:

{*SUES*}

The Defendant:

Telephone No:

Telephone No:

Plaintiff, _____, sues

defendant/pawnbroker, _____, and says /
alleges:

1. This is an action for the return of stolen or misappropriated property pursuant to section 539.001, Florida Statutes.

2. Plaintiff is the owner of the following described property:

3. The above-described property was stolen or otherwise misappropriated from plaintiff on or about the _____ day of _____, 20____. A copy of the law enforcement report outlining the theft/misappropriation is attached hereto and incorporated into this statement of claim.

4. The above-described property is currently in the possession of defendant and is located at a pawnshop as defined in section 539.001, Florida Statutes, the address of which is _____

5. Plaintiff has complied with the procedural requirements of section 539.001, Florida Statutes. Specifically, plaintiff notified the pawnbroker of plaintiff's claim to the property:

_____ by certified mail, return receipt requested, OR

_____ in person evidenced by a signed receipt.

The notice contains a complete and accurate description of the purchased or pledged goods and was accompanied by a legible copy of the aforementioned police report regarding the theft or misappropriation of the property. No resolution between plaintiff and defendant pawnbroker could be reached within 10 days after the delivery of the notice.

WHEREFORE, the plaintiff demands judgment for the return of the property. Plaintiff further asks this court to award plaintiff the costs of this action, including reasonable attorneys' fees.

Plaintiff (signature)

Name

Address

City, State, Zip code

Day telephone number

State of Florida
County of _____

The foregoing instrument was acknowledged before me on _____ (date), by _____, who is personally known to me or has produced _____ as identification and who did/did not take an oath.

Witness my hand and official seal, on _____.

Notary Public
State of Florida