

Overview – Filing a Complaint for Writ of Replevin

General Information:

“Replevin” is a process whereby seized goods may be restored to their owner. In a replevin case, the Plaintiff claims a right to **personal property** (as opposed to real property/real estate) which has been wrongfully taken or detained by the defendant and seeks to recover that personal property. If the plaintiff’s desire is to simply obtain money damages in place of the property, and not the property itself, then a small claim or civil complaint are the more appropriate avenues and not a complaint for a writ of replevin.

As the person filing the Complaint you are the plaintiff. The other party is the defendant.

If filing in the Circuit Court, the value of the property sought to be returned must be \$25,000 or less. If the value of the property is greater than \$25,000 then the Complaint must be filed in the Superior Court. If the value of the property is \$25,000 or less, the filer may actually file in either the Circuit Court or the Superior Court.

The Circuit Court has a form for the Complaint for a Writ of Replevin. The Complaint must contain the following information:

- Your allegation that you are the owner of the property claimed or are entitled to the possession thereof. Any documents establishing your ownership or right to possess the property should be attached.
- The manner in which the property is wrongfully detained by the defendant;
- The means by which the defendant came into possession of the property and the cause of such detention;
- A particular description of the property, a statement of its actual value, the location of the property and the name and address of the defendant and any other person in possession of the property;
- Whether or not the property is exempt from execution. For example, the wearing apparel of the debtor, household furniture to the value of \$3,500.00, and tools of the debtor’s occupation to the value of \$5,000.00 are exempt from execution. For a complete list of exempt property, see RSA 511:2.
- The name and address of any known lienholder.

When you file your Complaint for Writ of Replevin, a hearing will be scheduled and the court will issue a notice for service upon the defendant. The hearing will be between 10 and 20 days from the date that the court issues the notice to the defendant. The notice will also contain an order requiring the defendant to “show cause” why the property in question should not be taken from that party and returned to you. The court’s order will also direct how service upon the defendant is to be made. Service may be by certified mail or by the sheriff (personal service). You should read the notice carefully so that you comply with the court-ordered method of service.

The defendant may file affidavits with the court and may appear and present testimony at the first hearing. In addition, the defendant may file a bond with the court to stay, or postpone, delivery of the property to you. If the defendant fails to appear at the hearing a writ of replevin will issue in your favor.

The first hearing is a preliminary hearing. After that hearing the Court will make a preliminary determination about which party is entitled to possession of the property pending a final adjudication. The Court MAY issue a prejudgment writ of replevin as well.

The Court will not issue a writ of replevin in your favor during the case until such time as you post a bond. For more information about the bond process review the slideshow and other information on this page.

If one of the following is true, the Court may issue a writ of replevin on an “ex parte” basis. This means that the Court will issue the writ without prior notice to the defendant. One of the following must be established to get a writ of replevin without notice:

- The defendant gained possession of the property by theft;
- The property consists of one or more negotiable instruments or credit cards;
- The property is perishable, and will perish before any noticed hearing can be had, or is in immediate danger of destruction, serious harm, concealment, or removal from this state, or of sale to an innocent purchaser, and that the holder of such property threatens to destroy, harm, conceal, remove it from the state, or sell it to an innocent purchaser.

If the Court issues a writ of replevin ex parte, the defendant will have the right to request an earlier hearing. If such a request is made, the court will have a hearing more quickly but with not less than 48 hours notice to you.

For Further Information:

If you have questions, please contact the Information Center at 1-855-212-1234.