



JOSEPH E. SMITH
Clerk of the Circuit Court
St. Lucie County

SELF-SERVICE CENTER

Department: Small Claims

Packet #R1-15: Replevin Complaint

Misappropriated goods-Pawnbroker

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NonRefundable



Joseph E. Smith
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 St. Lucie County, Florida
 County Civil division
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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.

THE PERSONNEL IN THIS SELF-HELP PROGRAM CANNOT TELL YOU WHAT YOUR LEGAL RIGHTS OR REMEDIES ARE, REPRESENT YOU IN COURT OR TELL YOU HOW TO TESTIFY IN COURT.

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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 539.001

539.1 The Florida Pawnbroking Act.—

(1) SHORT TITLE.—This section may be cited as the “Florida Pawnbroking Act.”

(2) DEFINITIONS.—As used in this section, the term:

(a) “Agency” means the Department of Agriculture and Consumer Services.

(b) “Appropriate law enforcement official” means the sheriff of the county in which a pawnshop is located or, in case of a pawnshop located within a municipality, the police chief of the municipality in which the pawnshop is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. Nothing in this subsection limits the power and responsibilities of the sheriff.

(c) “Claimant” means a person who claims that his or her property was misappropriated.

(d) “Conveying customer” means a person who delivers property into the custody of a pawnbroker, either by pawn, sale, consignment, or trade.

(e) “Identification” means a government-issued photographic identification or an electronic image taken from a government-issued photographic identification.

(f) “Misappropriated” means stolen, embezzled, converted, or otherwise wrongfully appropriated against the will of the rightful owner.

(g) “Net worth” means total assets less total liabilities.

(h) “Pawn” means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in this section.

(i) “Pawnbroker” means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn,” “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

(j) “Pawnbroker transaction form” means the instrument on which a pawnbroker records pawns and purchases as provided in subsection (8).

(k) “Pawn service charge” means a charge for investigating the title, storage, and insuring of the security; closing the transaction; making daily reports to appropriate law enforcement officials; expenses and losses; and all other services.

(l) “Pawnshop” means the location at which a pawnbroker conducts business.

(m) "Permitted vendor" means a vendor who furnishes a pawnbroker with an invoice specifying the vendor's name and address, the date of the sale, a description of the items sold, and the sales price, and who has an established place of business, or, in the case of a secondhand dealer as defined in s. [538.03](#), has represented in writing that such dealer has complied with all applicable recordkeeping, reporting, and retention requirements pertaining to goods sold or otherwise delivered to a pawnbroker.

(n) "Person" means an individual, partnership, corporation, joint venture, trust, association, or other legal entity.

(o) "Pledged goods" means tangible personal property that is deposited with, or otherwise delivered into the possession of a pawnbroker in connection with a pawn. "Pledged goods" does not include titles or any other form of written security in tangible property in lieu of actual physical possession, including, but not limited to, choses in action, securities, printed evidence of indebtedness, or certificates of title and other instruments evidencing title to separate items of property, including motor vehicles. For purposes of federal and state bankruptcy laws, a pledgor's interest in his or her pledged goods during the pendency of a pawn is a right of redemption only.

(p) "Pledgor" means an individual who delivers pledged goods into the possession of a pawnbroker in connection with a pawn.

(q) "Purchase" means the transfer and delivery of goods, by a person other than a permitted vendor, to a pawnbroker by acquisition for value, consignment, or trade for other goods.

(r) "Amount financed" is used interchangeably to mean the same as "amount of money advanced" or "principal amount".

(s) "Default date" means that date upon which the pledgor's right of redemption expires and absolute right, title, and interest in and to the pledged goods shall vest in and shall be deemed conveyed to the pawnbroker by operation of law.

(t) "Beneficial owner" means a person who does not have title to property but has rights in the property which are the normal incident of owning the property.

(u) "Operator" means a person who has charge of a corporation or company and has control of its business, or of its branch establishments, divisions, or departments, and who is vested with a certain amount of discretion and independent judgment.

History.—s. 1, ch. 96-242; s. 19, ch. 97-250; s. 1, ch. 97-304; s. 9, ch. 99-307; s. 52, ch. 2000-154; s. 72, ch. 2000-158; s. 10, ch. 2001-214; s. 1, ch. 2006-143; s. 26, ch. 2011-205.

FLORIDA STATUTE 539.001

(15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS HELD BY PAWNBROKERS.--

1. (a) To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated, the claimant must notify the pawnbroker by certified mail, return receipt requested, or in person evidenced by signed receipt, of the claimant's claim to the purchased or pledged goods. The notice must contain a complete and accurate description of the purchased or pledged goods and must be accompanied by a legible copy of the applicable law enforcement agency's report on the misappropriation of such property. If the claimant and the pawnbroker do not resolve the matter within 10 days after the pawnbroker's receipt of the notice, the claimant may petition the court to order the return of the property, naming the pawnbroker as a defendant, and must serve the pawnbroker with a copy of the petition. The pawnbroker shall hold the property described in the petition until the right to possession is resolved by the parties or by a court of competent jurisdiction. The court shall waive any filing fee for the petition to recover the property, and the sheriff shall waive the service fees.

(b) If, after notice and a hearing, the court finds that the property was misappropriated and orders the return of the property to the claimant:

1. The claimant may recover from the pawnbroker the cost of the action, including the claimant's reasonable attorney's fees; and
2. If the conveying customer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the conveying customer to repay the pawnbroker the full amount the conveying customer received from the pawnbroker for the property, plus all applicable pawn service charges. As used in this paragraph, the term "convicted of" includes a plea of nolo contendere to the charges or any agreement in which adjudication is withheld; and
3. The conveying customer shall be responsible to pay all attorney's fees and taxable costs incurred by the pawnbroker in defending a replevin action or any other civil matter wherein it is found that the conveying customer was in violation of this paragraph.

(c) If the court finds that the claimant failed to comply with the requirements in paragraph (a) or otherwise finds against the claimant, the claimant is liable for the defendants' costs, including reasonable attorney's fees.

(d) The sale, pledge, or delivery of tangible personal property to a pawnbroker by any person in this state is considered to be:

1. An agreement by the person who sells, pledges, or delivers the tangible personal property that the person is subject to the jurisdiction of the court in all civil actions and proceedings arising out of the pledge or sale transaction filed by either a resident or nonresident plaintiff;
2. An appointment of the Secretary of State by any nonresident of this state as that person's lawful attorney and agent upon whom may be served all process in suits pertaining to the actions and proceedings arising out of the sale, pledge, or delivery; and
3. An agreement by any nonresident that any process in any suit so served has the same legal force and validity as if personally served in this state.

(16) HOLD ORDERS; ISSUANCE; REQUIRED INFORMATION; PROCEDURES.--

(a) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated, the official may place a written hold order on the property. The written hold order shall impose a holding period not to exceed 90 days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on property.

(b) Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the 10th day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under subsection (15), title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to the provisions of this section.

(c) A hold order must specify:

1. The name and address of the pawnbroker.
2. The name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order.
3. If applicable, the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property.
4. A complete description of the property to be held, including model number and serial number if applicable.
5. The name of the person reporting the property to be misappropriated unless otherwise prohibited by law.
6. The mailing address of the pawnbroker where the property is held.
7. The expiration date of the holding period.

(d) The pawnbroker or the pawnbroker's representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the 90-day holding period.

(e)1. Except as provided in subparagraph 2., a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order.

2. While a hold order is in effect, the pawnbroker must upon request release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney's fees and costs.

HISTORY.-s.1, ch. 96-242; s. 19, ch. 97-250; s. 1, ch. 97-304; s. 9, ch. 99-307; s, 52, ch. 2000-154; s. 72, ch. 2000-158; s. 10, ch. 2001-214.



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INFORMATION FOR FILING A REPLEVIN COMPLAINT TO RECOVER MISAPPROPRIATED GOODS AGAINST A PAWNBROKER

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**, pursuant to Statute you MUST attach the following exhibits as evidence:

- * Copy of the notice you mailed to the pawnbroker claiming ownership of the property (which includes a complete & accurate description of the goods)
- * Certified mail return receipt signed by the pawnbroker exhibiting receipt of the notice you mailed -or- receipt signed by the pawnbroker evidencing receipt of the notice if you hand delivered the notice
- * 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.

Revised 7/18/2013



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INSTRUCTIONS FOR FILING A REPLEVIN AGAINST A PAWNBROKER FOR MISAPPROPRIATED GOODS

STEP 1

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

- **PAPERWORK:**
 - Original Replevin Complaint
 - Copy of written notification to pawnbroker including either certified mail return receipt or signed receipt from pawnbroker (if hand delivered)
 - 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.com

NOTICE OF CLAIM FORM

TO: _____
Pawnbroker's Name

Address

Telephone Number

The undersigned hereby notifies the Florida pawnbroker named above who has possession of the described property that the property has been reported stolen to a law enforcement agency and the undersigned is requesting the property be surrendered to this claimant.

PROPERTY:

If the claimant and the pawnbroker do not resolve the matter within ten days after receipt of this notice, the claimant may petition the court to order the return of the property.

Claimant

Name

Address

Telephone Number

Date

Method of Service:
_____ Hand Delivered

Pawnbroker Signature

Date

_____ Certified Mail Return Receipt Requested

Attachment: Law Enforcement Agency's report

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

Case No:

PLAINTIFF(S),

VS

DEFENDANT(S).

DESIGNATION OF E-MAIL ADDRESS FOR PARTY NOT
REPRESENTED BY AN ATTORNEY

Pursuant to Florida Rules of General Practice and Judicial Administration 2.516, I, _____
_____, designate the below e-mail address(es) for electronic service of all
documents related to this case.

By completing this form, I am authorizing the court, clerk of court, and all parties to send
copies of notices, orders, judgments, motions, pleadings, or other written communications to me
by e-mail or through the Florida Courts E-filing Portal.

I will file a written notice with the clerk of court if my current e-mail address changes.

Designated e-mail address: _____

Secondary designated e-mail address(es) (if any) _____

I certify that a copy hereof has been furnished to the clerk of court for St. Lucie County and
_____ by
(e-mail) (hand delivery) (mail) _____

(signature)

(printed name)

(e-mail address)

(address)

(phone number)



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

VS

PLAINTIFF,

DEFENDANT.

Case No.

STATEMENT OF CLAIM FOR RETURN OF PROPERTY

Plaintiff sues Defendant and says:

1. This is an action for return of stolen or misappropriated property pursuant to Section 539.01, 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 _____. 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 the 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 or the property. No resolution between Plaintiff and Defendant pawnbroker could be reached within 10 days after 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 attorney's fees.

PLAINTIFF (SIGNATURE)

STATE OF FLORIDA
COUNTY OF ST. LUCIE

The foregoing instrument was acknowledged before me this _____ day of _____, 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 _____.

DEPUTY CLERK / NOTARY PUBLIC

539.001 (2)(i)

(i) **“Pawnbroker”** means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn,” “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

538.03(a) & (b)

(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

(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 purchasing, consigning, or trading secondhand goods.