

## **IC 32-35-2**

### **Chapter 2. Replevin**

#### **IC 32-35-2-1**

##### **Grounds for action**

Sec. 1. If any personal goods, including tangible personal property constituting or representing choses in action, are:

- (1) wrongfully taken or unlawfully detained from the owner or person claiming possession of the property; or
- (2) taken on execution or attachment and claimed by any person other than the defendant;

the owner or claimant may bring an action for the possession of the property.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-2**

##### **Claim for immediate delivery**

Sec. 2. A plaintiff may, at the time of issuing the summons, or at any time before final judgment, claim the immediate delivery of property described in section 1 of this chapter.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-3**

##### **Filing affidavit**

Sec. 3. If a plaintiff claims delivery under section 2 of this chapter, the plaintiff or someone representing the plaintiff shall file an affidavit.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-4**

##### **Contents of affidavit**

Sec. 4. An affidavit filed under section 3 of this chapter must:

- (1) show that the plaintiff is:
  - (A) the owner of the property; or
  - (B) lawfully entitled to the possession of the property;
- (2) show that:
  - (A) the property was not:
    - (i) taken for a tax, assessment, or fine under a statute; or
    - (ii) seized under an execution or attachment against the property of the plaintiff; or
  - (B) if the property was seized under an execution or attachment, the property was exempt by statute from seizure;
- (3) show that the property:
  - (A) has been wrongfully taken and is unlawfully detained by the defendant; or
  - (B) is unlawfully detained;
- (4) include a particular description of the property;
- (5) state the estimated value of the property; and
- (6) identify the county in which the property is believed to be detained.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-5**

##### **Issuance of show cause order**

Sec. 5. If a plaintiff files an affidavit under section 3 of this chapter, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear for the purpose of controverting plaintiff's affidavit or to otherwise show cause why:

- (1) a prejudgment order for possession should not issue; and
- (2) the property should not be delivered to plaintiff.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-6**

##### **Date, time, and place for hearing**

Sec. 6. (a) An order issued under section 5 of this chapter must set forth the date, time, and place for the hearing and direct the time within which service shall be made upon the defendant.

(b) The hearing shall be scheduled not sooner than five (5) days, Sundays and holidays excluded, after the date of service.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-7**

##### **Notice to defendant**

Sec. 7. An order to show cause issued under section 5 of this chapter must inform the defendant that:

- (1) the defendant may:
  - (A) file affidavits on the defendant's behalf with the court;
  - (B) appear and present testimony on the defendant's behalf at the time of the hearing; and
  - (C) file with the court a written undertaking to stay the delivery of the property in accordance with this article; and
- (2) if the defendant fails to appear, plaintiff may be granted a judgment of possession.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-8**

##### **Order for possession after examining pleadings and evidence**

Sec. 8. The court may issue an order for possession under this chapter after examining the complaint, affidavits, and other evidence or testimony that the court may require.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-9**

##### **Order for possession before hearing; grounds**

Sec. 9. The court may issue an order for possession under this chapter before the hearing if probable cause appears that any of the following subdivisions apply:

- (1) The defendant gained possession of the property by theft or criminal conversion.
- (2) The property consists of one (1) or more negotiable

instruments or credit cards.

(3) By reason of specific, competent evidence shown by testimony within the personal knowledge of an affiant or witness, the property is:

(A) perishable, and will perish before any noticed hearing can be had;

(B) in immediate danger of destruction, serious harm, concealment, removal from Indiana, or sale to an innocent purchaser; or

(C) held by a person who threatens to destroy, harm, or conceal the property, remove the property from Indiana, or sell the property to an innocent purchaser.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-10**

#### **Order for possession without notice; grounds**

Sec. 10. Before the court may issue an order for possession without notice under section 12 of this chapter, the plaintiff or the plaintiff's attorney must file an affidavit or certificate showing:

(1) the efforts, if any, that have been made to give notice; and

(2) the reasons why notice of the application for the order cannot be given.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-11**

#### **Application to shorten time for show cause hearing**

Sec. 11. (a) If an order of possession was issued before a hearing under this chapter (or IC 34-1-9.1-4 or IC 34-21-4-4 before their repeal), the defendant or other person from whom possession of the property was taken may apply to the court for an order shortening the time for hearing on the order to show cause.

(b) The court may, upon an application made under subsection (a):

(1) shorten the time until the hearing; and

(2) direct that the matter shall be heard on not less than forty-eight (48) hours notice to the plaintiff.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-12**

#### **Sheriff or other executing officer to hold property**

Sec. 12. An order of possession issued under this chapter without notice shall direct the sheriff or other executing officer to hold the property until further order of the court.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-13**

#### **Issuance of preliminary order and temporary restraining order**

Sec. 13. Under any of the circumstances set forth in this chapter, or instead of the immediate issuance of an order of possession under this chapter, the judge may, in addition to issuing a preliminary order, issue a temporary restraining order directed to the defendant

prohibiting certain acts with respect to the property if the issuance of the order appears to be necessary for the preservation of the rights of the parties and the status of the property.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-14**

##### **Hearing on preliminary order**

Sec. 14. Upon the hearing on the preliminary order under this chapter, the court shall:

- (1) consider the showing made by the parties appearing; and
- (2) make a preliminary determination which party, with reasonable probability, is entitled to possession, use, and disposition of the property, pending final adjudication of the claims of the parties.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-15**

##### **Prejudgment order of possession**

Sec. 15. If the court determines, in an action under this chapter, that a prejudgment order of possession in the plaintiff's favor should issue, the court shall issue the order.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-16**

##### **Appointment of receiver**

Sec. 16. If the property claimed by the plaintiff in an action under this chapter has a peculiar value that cannot be compensated by damages, the court may, instead of issuing an order of possession, appoint a receiver to take possession of and hold the property until further order of the court.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-17**

##### **Failure of defendant to appear**

Sec. 17. If the defendant in an action under this chapter fails to appear, the court may enter its final judgment with respect to possession as in other cases where there is a default for a failure to appear.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-18**

##### **Order of possession; contents**

Sec. 18. An order of possession issued under this chapter must:

- (1) be directed to the sheriff or other officer charged with the execution of the order within whose jurisdiction the property is believed to be located;
- (2) describe the property to be seized; and
- (3) direct the executing officer to:
  - (A) seize the property if it is found;
  - (B) take the property into custody; and

- (C) deliver the property to the plaintiff, unless:
- (i) the order was issued without notice; or
  - (ii) the defendant files a written undertaking in accordance with section 7(1)(C) of this chapter within a time fixed by the court.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-19**

#### **Final judgment; contents**

Sec. 19. If the order issued in an action under this chapter is a final judgment:

- (1) the court does not need to fix a time for the defendant to file a written undertaking;
- (2) the order must direct immediate delivery to the plaintiff;
- (3) a copy of any written undertaking filed by the plaintiff must be attached to the order; and
- (4) the order must inform the defendant that the defendant has the right to:
  - (A) except to the surety upon the undertaking; or
  - (B) file a written undertaking for the redelivery of the property as provided in section 7(1)(C) of this chapter.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-20**

#### **Final judgment to supersede all preceding orders**

Sec. 20. Any:

- (1) order for possession;
- (2) temporary restraining order;
- (3) prejudgment order for possession; or
- (4) other preliminary transfer of possession;

issued under this article (or IC 34-1-9.1 or IC 34-21 before their repeal) is superseded by the final judgment rendered in an action under this chapter.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-21**

#### **Plaintiff's bond required**

Sec. 21. (a) Except as provided in subsection (c), the court may not issue an order of possession, with or without notice, in the plaintiff's favor in an action under this chapter until the plaintiff has filed with the court a written undertaking:

- (1) in an amount fixed by the court; and
- (2) executed by a surety to be approved by the court;

to the effect that the plaintiff and the surety are bound to the defendant for the value of the property, as determined by the court, along with other damages the defendant may suffer if the property has been wrongfully taken from the defendant.

(b) The amount of the bond may not be less than the value of the property.

(c) If the defendant has failed to appear and final judgment is

entered, no written undertaking is required.  
*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-22**

#### **Return of property to defendant; bond**

Sec. 22. (a) In an action under this chapter, the defendant:

- (1) at any time before the hearing on the preliminary order; or
- (2) if final judgment has not been entered, within the time fixed in the order of possession;

may require the return of the property upon filing with the court a written undertaking executed by a surety to be approved by the court.

(b) The written undertaking must provide that the defendant is bound:

- (1) as to the value of the property, as determined by the court, for the delivery of the property to the plaintiff, if delivery is ultimately ordered; and
- (2) for the payment to plaintiff of the sum that may be recovered against the defendant in the action for the defendant's wrongful detention of the property.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-23**

#### **Service of notice by defendant of filing of bond**

Sec. 23. At the time of filing an undertaking under section 22 of this chapter, the defendant must:

- (1) serve upon the executing officer and the plaintiff or the plaintiff's attorney a notice of filing of the undertaking; and
- (2) file proof of service of the notice referred to in subdivision (1) with the court.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-24**

#### **Effect of defendant's bond on show cause proceedings**

Sec. 24. If the defendant files an undertaking under section 22 of this chapter before the hearing of the order to show cause, proceedings under the order to show cause terminate, unless exception is taken to the surety.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-25**

#### **Redelivery of property to defendant from executing officer**

Sec. 25. If the property is in the custody of the executing officer at the time the defendant files an undertaking under section 22 of this chapter, the property shall be redelivered to the defendant not later than five (5) days after the date of service of notice of the filing of the undertaking upon the plaintiff or the plaintiff's attorney.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-26**

#### **Action in replevin against officer; procedure**

Sec. 26. (a) If:

(1) any officer, by virtue of any writ of attachment or execution lawfully issued to the officer, attaches or levies upon any personal property as the property of the attachment or execution defendant; and

(2) any other person, firm, limited liability company, or corporation brings an action in replevin against the officer for the possession of any part of the property attached or levied upon;

as soon as process is served upon the officer, the officer may notify the attachment or execution plaintiff, if a resident of the officer's county, and if not a resident of the officer's county, then the attorney of the plaintiff, in writing, of the replevin suit, giving a general description of the property claimed by the replevin plaintiff in the suit, and may demand of the attachment or execution plaintiff a bond to indemnify the officer against any loss for attorney's fees incurred in the defense of the replevin suit and payment of any judgment for damages and costs.

(b) Upon failure of the attachment or execution plaintiff to execute the bond to the officer within five (5) days after the time of service of the notice described in subsection (a) with good and sufficient surety, the officer may deliver up any part of the property sued for in the replevin suit to the replevin plaintiff.

(c) If the bond demanded under subsection (a) is not given and the officer delivers the property to the replevin plaintiff, the attachment or execution plaintiff is estopped from maintaining any action whatever against the officer for the value of the property delivered up or for damages for failing to make any defense in the replevin suit. However, if the action in replevin is pending in the circuit court, the bond shall be approved by the clerk of the circuit court.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-27**

#### **Delivery to defendant in open court**

Sec. 27. If the defendant or the defendant's attorney is in open court at the time the order of possession is issued under this chapter, a copy of the order shall be delivered promptly to the defendant and the delivery shall be noted in the order book.

*As added by P.L.2-2002, SEC.20.*

### **IC 32-35-2-28**

#### **Service by sheriff or other executing officer**

Sec. 28. If the defendant and the defendant's attorney are not present in open court when the order of possession is issued under this chapter, sufficient copies of the order shall be delivered to the sheriff or other executing officer. The executing officer shall, without delay, serve upon the defendant a copy of the order of possession:

(1) by delivering the order of possession to:

(A) the defendant personally; or

(B) the defendant's agent from whose possession the property

- is taken;
- (2) if the defendant or the defendant's agent cannot be found, by leaving it at the usual place of abode of either with some person of suitable age and discretion; or
  - (3) if neither the defendant nor the defendant's agent has any known usual place of abode, by mailing it to the defendant's last known address.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-29**

##### **Taking immediate custody of property; exception for vehicle or boat used as defendant's dwelling**

Sec. 29. (a) Upon serving on the defendant a copy of the order of possession under section 28 of this chapter, the executing officer, except as provided in subsection (b), shall immediately take the property into custody if the property is in the possession or control of the defendant or the defendant's agent.

(b) If the property is a housetrailer, recreational vehicle, motor or mobile home, or boat and is being used as the principal dwelling of a defendant, at the expiration of forty-eight (48) hours after the order of possession is served, the officer shall immediately remove the property's occupants and take the property into custody.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-30**

##### **Taking possession of building or enclosure**

Sec. 30. If the property or any part of the property that is subject to an order of possession issued under this chapter is:

- (1) in a building or enclosure; and
- (2) not voluntarily delivered;

the executing officer shall cause the building or enclosure to be broken open in a manner the officer reasonably believes will cause the least damage to the building or enclosure and take possession of the property.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-31**

##### **Safekeeping and delivery of property; expenses**

Sec. 31. An executing officer who has taken property subject to an order of possession issued under this chapter shall:

- (1) keep it in a secure place; and
- (2) deliver it to the party entitled to the property upon receiving actual, reasonable, and necessary expenses for keeping the property.

*As added by P.L.2-2002, SEC.20.*

#### **IC 32-35-2-32**

##### **Order of possession; endorsement and return to court**

Sec. 32. After taking property subject to an order of possession issued under this chapter, an executing officer shall:



(1) note the executing officer's proceedings in writing upon the order of possession; and  
(2) return the order of possession to the court in which the action is pending;  
within five (5) days after taking the property mentioned in the order.  
*As added by P.L.2-2002, SEC.20.*

**IC 32-35-2-33**

**Judgment for plaintiff; contents**

Sec. 33. In an action to recover the possession of personal property, judgment for the plaintiff may be for:

- (1) the delivery of the property, or the value of the property in case delivery is not possible; and
- (2) damages for the detention of the property.

*As added by P.L.2-2002, SEC.20.*

**IC 32-35-2-34**

**Judgment for defendant; contents**

Sec. 34. In an action to recover the possession of personal property, if the property has been delivered to the plaintiff and the defendant claims a return of the property, judgment for the defendant may be for:

- (1) the return of the property, or its value, in case return is not possible; and
- (2) damages for the taking and withholding of the property.

*As added by P.L.2-2002, SEC.20.*

**IC 32-35-2-35**

**Assessment of value of property and damages**

Sec. 35. In actions for the recovery of specific personal property, the jury must assess:

- (1) the value of the property; and
- (2) the damages for the taking or detention of the property;

when the jury's verdict results in a judgment for the recovery or return of the property.

*As added by P.L.2-2002, SEC.20.*