

# RULE 99. REPLEVIN

## **Rule**

99.01	Action in Replevin
99.02	Service of Process
99.03	Affidavit to Obtain Immediate Possession of Property
99.04	Order of Delivery
99.05	Prejudgment Seizure – Notice Required
99.06	Delivery Bond – Form of – Effect of Filing.
99.07	Redelivery Bond – Form of
99.08	Redelivery Bond – Effect of Filing
99.09	Hearing on Right to Possession – When – Time For
99.10	Qualifications of Sureties
99.11	Insufficient Bond - Procedure
99.12	Party and Sureties, If Any – Findings and Judgment
99.13	Election of Prevailing Party – When and How Made
99.14	Court to Allow Charges for Taking and Delivering Property
99.15	Execution for Delivery – How Issued and Governed

### **99.01 Action in Replevin**

A person claiming the right to possession of personal property may bring an action in replevin for possession of the property.

(Adopted April 4, 1977, effective December 1, 1977).

### **99.02 Service of Process**

In replevin actions service of process may be made as provided by Rule 54.

(Adopted April 4, 1977, effective December 1, 1977).

### **99.03 Affidavit to Obtain Immediate Possession of Property**

When a party requests immediate possession of personal property an affidavit shall be filed stating:

- (a) The description of the property;
- (b) Facts showing the party is entitled to the possession of the property;
- (c) The actual value of the property;
- (d) The property has not been seized under any legal process;
- (e) The party is in danger of losing the property unless immediate possession is obtained or the property is otherwise secured.

(Adopted April 4, 1977, effective December 1, 1977).

#### **99.04 Order of Delivery**

If the court finds that the facts stated in the affidavit show that the party has the right to immediate possession an order shall be issued directing the sheriff to take possession of the property and deliver it to the party upon compliance with **Rule 99.06**.

(Adopted April 4, 1977, effective December 1, 1977).

#### **99.05 Prejudgment Seizure – Notice Required**

When a prejudgment seizure of property is made, a written notice shall be served on the defendant advising the defendant of the right to file a delivery bond and of the right to request a hearing to determine the plaintiff's right to possession of the property.

(Adopted April 4, 1977, effective December 1, 1977. Amended September 28, 1993, effective January 1, 1994).

#### **99.06 Delivery Bond – Form of – Effect of Filing**

The plaintiff shall file a sufficient bond, approved by the court, executed by the plaintiff as principal and one or more sufficient sureties to the effect that they are bound to the defendant in double the value of the property for the prosecution of the action with effect and without delay. For the return of the property to the defendant, if return therefor be adjudged and, in default of such delivery for the payment of all damages for injuries to the property thereafter, for the payment of all damages for the taking and detention thereof, and for all costs.

(Adopted April 4, 1977, effective December 1, 1977).

#### **99.07 Redelivery Bond – Form of**

The defendant may file, either before or after delivery of the property to the plaintiff, a sufficient redelivery bond, approved by the court, executed by the defendant as principal and one or more sufficient sureties to the effect that they are bound to the plaintiff in double the value of the property for the delivery of the property to the plaintiff, if such delivery is adjudged, and in default of such delivery for the payment of the value of the property, for the payment of all damages for injury to the property thereafter, for the payment of all damages for the taking and detention thereof, and for all costs.

(Adopted April 4, 1977, effective December 1, 1977).

#### **99.08 Redelivery Bond – Effect of Filing**

If a redelivery bond is filed before delivery of the property to the plaintiff the defendant may retain the property. If a redelivery bond is filed after the property has been taken from the defendant an order shall be issued directing the sheriff to take possession of the property and deliver it to the defendant.

(Adopted April 4, 1977, effective December 1, 1977).

**99.09           Hearing on Right to Possession – When – Time For**

As an alternative to filing a redelivery bond, the defendant may file a written request for a hearing to determine the plaintiff's right to possession of the property pending trial on the merits. The hearing shall be held within ten days after filing of the request.

(Adopted April 4, 1977, effective December 1, 1977).

**99.10           Qualifications of Sureties**

Each surety on such bonds must be either a corporation licensed to do a surety business in Missouri or an owner of property within the state which the court finds to be sufficient surety for the amount for which the bond is given.

(Adopted April 4, 1977, effective December 1, 1977).

**99.11           Insufficient Bond – Procedure**

If the court finds that a delivery or redelivery bond is not sufficient it may order a party to furnish a new bond. Upon failure to furnish a new bond within the time fixed by the court, the court shall order that the property be returned to the party from whose possession it had been taken.

(Adopted April 4, 1977, effective December 1, 1977).

**99.12           Party and Sureties, If Any – Findings and Judgment**

When the court or jury finds that a party not in possession of the property is entitled to possession of the property, the value of the property shall be determined and damages for the taking, detention or injury may be assessed. The judgment shall be against the party and the party's sureties for the return of the property or the value of the property, at the election of the party entitled to possession, and for damages assessed for the taking, detention or injury.

(Adopted April 4, 1977, effective December 1, 1977. Amended September 28, 1993, effective January 1, 1994).

**99.13           Election of Prevailing Party – When and How Made**

The prevailing party shall not be required to make an election between the return of the property or the payment of the value thereof assessed by the court or jury until the property is in the possession of the sheriff and notice thereof is given by the sheriff to the prevailing party. Service of the notice may be made as provided in Rule 43.01. The prevailing party shall have ten days after the service of the notice to make an election to receive the value of the property assessed by the court or jury. The election must be in writing and shall be filed with the clerk of the court.

(Adopted April 4, 1977, effective December 1, 1977).

**99.14 Court to Allow Charges for Taking and Delivering Property**

The court shall tax as costs the reasonable expenses and charges incurred by the sheriff or other officer incident to the taking and delivery of the property.

(Adopted April 4, 1977, effective December 1, 1977).

**99.15 Execution for Delivery – How Issued and Governed**

An execution sufficiently describing the property may issue to the sheriff of the county in which the property is located directing him to deliver the property to the party entitled thereto.

(Adopted April 4, 1977, effective December 1, 1977)

**Rule 99.04 – Form 1.            Order of Delivery**

[Caption]

Whereas the plaintiff in the above-entitled action in replevin has filed the affidavit provided for in **Rule 99.03**, a copy of which is attached hereto, and the court has found the facts stated in the affidavit show the plaintiff has the right to immediate possession of the personal property described Therein, and

Whereas the plaintiff has filed a sufficient delivery bond in compliance with **Rule 99.06**

It is hereby ordered that the sheriff take possession of the said property and deliver it to the plaintiff.

Dated \_\_\_\_\_

Judge \_\_\_\_\_

**Rule 99.05 – Form 1.            Prejudgment Seizure Notice**

[Caption]

To: \_\_\_\_\_, defendant in the above-entitled cause.

An order of seizure and delivery of property in your possession has been made by the circuit court or \_\_\_\_\_ county, ordering the sheriff to take \_\_\_\_\_ [*described the property*] and deliver the same to \_\_\_\_\_.

Please be advised that you have a right to file a redelivery bond either before or after delivery of the property to the plaintiff. If you file a redelivery bond before delivery of the property to the plaintiff, you may retain the property. If you file it after the property has been taken from you, an order will be issued advising the sheriff to take possession of the property and deliver it to you. The redelivery bond must be approved by the court and be in the form prescribed by **Rule 99.07**

Please be further advised that you have the right to request a hearing to determine the plaintiff’s right to possession of the property.

Dated; \_\_\_\_\_

[Signature and address]

**Rule 99.03 – Form 1.            Affidavit to Obtain Immediate Possession of Property.**

\_\_\_\_\_, Plaintiff in the above-entitled cause, being duly sworn on his oath says:

1.     He is entitled to the immediate possession of the following described personal property.
2.     He is entitled to the immediate possession of said property because \_\_\_\_\_ [*state facts showing the plaintiff is entitled to the possession of the property*]
3.     Said personal property is of the actual value of \_\_\_\_\_ dollars.
4.     Said property has not been seized under any legal process.
5.     He is in danger of losing the property unless immediate possession of the property is obtained by him, or the property is otherwise secured.

Dated: \_\_\_\_\_

[Signature and Address]

**Rule 99.03 – Form 1.            Replevin Bond**

Know all men by these presents that we A.B., as principal, and E.F. as surety, are held and firmly bound unto C.D. in the sum of \_\_\_\_\_ dollars [*double the value of the property as stated in the affidavit*], to the payment which, well and truly to be made, we bind ourselves, our heirs and legal representatives, firmly by these presents.

The condition of the above obligation is such that, whereas, in an action pending in the circuit court of \_\_\_\_\_ county, Missouri, between A.B., plaintiff, and C.D., defendant, said circuit court has ordered the sheriff [*or, coroner*] if said county to take from the defendant, C.D. and deliver to the said plaintiff, A.B. the following-described property. [*here describe the property as in the affidavit*].

Now, therefore, if the said plaintiff shall prosecute his action with effect and without delay, shall return the property above described to the defendant if return thereof be adjudged, and in default thereof shall pay the assessed value of such property, as well as all damages for the taking and detention thereof, and all costs which may accrue in the action, then the above bond to be void, otherwise to remain in full force.

In witness whereof we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Approved:

L.M., Sheriff

A.B.  
E.F.