

**Chapter 7.64 RCW
REPLEVIN**

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RCW 7.64.010 Plaintiff may claim and obtain immediate delivery.

The plaintiff in an action to recover the possession of personal property may claim and obtain the immediate delivery of such property, after a hearing, as provided in this chapter.

The remedies provided under this chapter are in addition to any other remedy available to the plaintiff, including a secured creditor's right of self-help repossession. [1990 c 227 § 1; 1979 ex.s. c 132 § 1; Code 1881 § 142; 1877 p 30 § 142; 1869 p 35 § 140; 1854 p 150 § 100; RRS § 707.]

RCW 7.64.020 Application for delivery—Order to show cause—Petition—Hearing.

(1) At the time of filing the complaint or any time thereafter, the plaintiff may apply to the judge or court commissioner to issue an order directing the defendant to appear and show cause why an order putting the plaintiff in immediate possession of the personal property should not be issued.

(2) In support of the application, the plaintiff, or someone on the plaintiff's behalf, shall make an affidavit, or a declaration as permitted under chapter 5.50 RCW, showing:

(a) That the plaintiff is the owner of the property or is lawfully entitled to the possession of the property by virtue of a special property interest, including a security interest, specifically describing the property and interest;

(b) That the property is wrongfully detained by defendant;

(c) That the property has not been taken for a tax, assessment, or fine pursuant to a statute and has not been seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by law exempt from such seizure; and

(d) The approximate value of the property.

(3) The order to show cause shall state the date, time, and place of the hearing and contain a notice to the defendant that failure to promptly turn over possession of the property to the plaintiff or the sheriff, if an order awarding possession is issued under RCW 7.64.035(1), may subject the defendant to being held in contempt of court.

(4) A certified copy of the order to show cause, with a copy of the plaintiff's affidavit or declaration attached, shall be served upon the defendant no later than five days before the hearing date. [2019 c 232 § 7; 2004 c 74 § 1; 1990 c 227 § 2; 1979 ex.s. c 132 § 2; Code 1881 § 143; 1877 p 30 § 143; 1869 p 35 § 141; 1854 p 150 § 101; RRS § 708.]

RCW 7.64.035 Order awarding possession of property to plaintiff—Bond by plaintiff—Final judgment. (1) At the hearing on the order to show cause, the judge or court commissioner may issue an order awarding possession of the property to the plaintiff and directing the sheriff to put the plaintiff in possession of the property:

(a) (i) If the plaintiff establishes the right to obtain possession of the property pending final disposition, or (ii) if the defendant, after being served with the order to show cause, fails to appear at the hearing; and

(b) If the plaintiff executes to the defendant and files in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute the action without delay and that if the order is wrongfully sued out, the plaintiff will pay all costs that may be adjudged to the defendant and all damages, court costs, reasonable attorneys' fees, and costs of recovery that the defendant may incur by reason of the order having been issued. However, the court may waive the bond if the plaintiff has properly served the defendant in accordance with RCW 7.64.020(4) and the defendant either fails to attend the hearing on the order to show cause or appears at the hearing on the order to show cause but does not object to entry of the order awarding possession. If the court waives the bond, the court shall establish the amount of bond that would have been required and that amount shall be considered the amount filed by the plaintiff for the purpose of determining the value of the redelivery bond under RCW 7.64.050(3).

(2) An order awarding possession shall: (a) State that a show cause hearing was held; (b) describe the property and its location; (c) direct the sheriff to take possession of the property and put the plaintiff in possession as provided in this chapter; (d) contain a notice to the defendant that failure to turn over possession of the property to the sheriff may subject the defendant to being held in contempt of court upon application to the court by the plaintiff without further notice; (e) if deemed necessary, direct the sheriff to break and enter a building or enclosure to obtain possession of the property if it is concealed in the building or enclosure; and (f) be signed by the judge or commissioner.

(3) If at the time of the hearing more than twenty days have elapsed since service of the summons and complaint and the defendant does not raise an issue of fact prior to or at the hearing that requires a trial on the issue of possession or damages, the judge or court commissioner may also, in addition to entering an order awarding possession, enter a final judgment awarding plaintiff possession of the property or its value if possession cannot be obtained, damages, court costs, reasonable attorneys' fees, and costs of recovery.

(4) When any of the property is located in a county other than the county in which the action was commenced, the sheriff directed to take possession of the property by the order awarding possession, or

the sheriff of the county where the property is found, may execute the order awarding possession and take possession of the property in any county of the state where the property is found. For the purpose of following the property, duplicate orders awarding possession may be issued, if necessary, and served as the original. [2004 c 74 § 2; 1990 c 227 § 3; 1979 ex.s. c 132 § 5.]

RCW 7.64.045 Plaintiff's duties upon issuance of order awarding possession of property. After issuance of the order awarding possession, the plaintiff shall deliver a copy of the bond, unless waived by the court under RCW 7.64.035(1)(b), and a certified copy of the order awarding possession to the sheriff of the county where the property is located and shall provide the sheriff with all available information as to the location and identity of the defendant and the property claimed. If the property is returned to the plaintiff by the defendant or if the plaintiff otherwise obtains possession of the property, the plaintiff shall notify the sheriff of this fact as soon as possible. [2004 c 74 § 3; 1990 c 227 § 4; 1979 ex.s. c 132 § 6.]

RCW 7.64.047 Sheriff to take possession of property. (1) After receiving an order awarding possession, the sheriff shall take possession of the property. If the property or any part of it is concealed in a building or enclosure, the sheriff shall publicly demand delivery of the property. If the property is not delivered and if the order awarding possession so directs, the sheriff shall cause the building or enclosure to be broken open and take possession of the property.

(2) At the time of taking possession of the property, the sheriff shall serve copies of the bond and the order awarding possession on the defendant or, if someone other than the defendant is in possession of the property, shall serve the copies on that person. If the copies of the bond and the order are not served on the defendant at the time of taking possession, the sheriff shall, within a reasonable time after taking possession, give notice to the defendant either by serving copies of the bond and order on the defendant in the same manner as a summons in a civil action or by causing the copies to be mailed to the defendant by both regular mail and certified mail, return receipt requested.

(3) As soon as possible after taking possession of the property and after receiving lawful fees for taking possession and necessary expenses for keeping the property, the sheriff shall release the property to the plaintiff, unless before the release the defendant has, as provided in RCW 7.64.050, given a redelivery bond to the sheriff or filed a redelivery bond with the court and notified the sheriff of that fact. [1990 c 227 § 5.]

RCW 7.64.050 Redelivery bond. (1) At the hearing on the order to show cause or at any time before the sheriff takes possession of the property, the defendant may post a redelivery bond and retain possession of the property pending final judgment in the action for possession. At any time after the sheriff takes possession and before release of the property to the plaintiff as provided in RCW 7.64.047, the defendant may require the sheriff to return the property by posting a redelivery bond.

(2) A redelivery bond may be given to the sheriff or filed with the court. If the bond is filed with the court after a certified copy of the order awarding possession has been issued to the sheriff, the defendant shall give notice of the filing to the sheriff.

(3) The redelivery bond shall be executed by one or more sufficient sureties to the effect that they are bound in an amount equal to the value of the bond filed by the plaintiff, conditioned that the defendant will deliver the property to the plaintiff if judgment is entered for the plaintiff in the action for possession and will pay any sum recovered by the plaintiff in that action.

(4) The defendant's sureties, upon a notice to the plaintiff or the plaintiff's attorney, of not less than two, nor more than six days, shall justify as provided by law; upon such justification, the sheriff shall release the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, the sheriff shall release the property to the plaintiff. [1990 c 227 § 6; 1979 ex.s. c 132 § 3; Code 1881 § 146; 1877 p 31 § 146; 1869 p 36 § 144; 1854 p 151 § 104; RRS § 711.]

RCW 7.64.070 Qualification and justification of sureties. The qualification of sureties and their justification shall be as prescribed by law. [1957 c 51 § 17; Code 1881 § 148; 1877 p 31 § 148; 1869 p 37 § 146; 1854 p 151 § 106; RRS § 713.]

Corporate surety—Insurance: Chapter 48.28 RCW.

RCW 7.64.100 Claim by third party. If the property taken by the sheriff is claimed by any person other than the defendant or the defendant's agent, the claimant may assert the claim by intervening in the plaintiff's action for possession. [1990 c 227 § 7; 1979 ex.s. c 132 § 4; Code 1881 § 151; 1877 p 32 § 151; 1869 p 37 § 149; 1854 p 151 § 109; RRS § 716.]

RCW 7.64.110 Return of proceedings by sheriff. The sheriff shall file a return of proceedings with the clerk of the court in which the action is pending within twenty days after taking possession of the property. [1990 c 227 § 8; 1891 c 34 § 1; Code 1881 § 152; 1877 p 32 § 152; 1869 p 38 § 150; 1854 p 152 § 110; RRS § 717.]

RCW 7.64.115 Execution of final judgment. To the extent the final judgment entered at a show cause hearing or at any other time is not satisfied by proceedings under an order awarding possession issued at the show cause hearing, the judgment shall be executed in the same manner as any other judgment. [1990 c 227 § 9.]