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Replevin

1. Steps in the Issuance and Implementation of a Writ of Replevin

1.1 A party praying for the recovery of possession of a personal property files with the court at the commencement of the action or before answer in application for a writ of replevin.³⁸⁰

To accompany the application is the affidavit which should state that:

- (1) that the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;
- (2) that the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his knowledge, information, and belief;
- (3) that the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under custodia legis, or if so seized, that it is exempt from such seizure or custody; and
- (4) the actual market value of the property.

2. Notes

- (1) The applicant of a writ of replevin need not be the owner for it is enough if he has a right to possess it.³⁸¹
- (2) Replevin cannot be availed of if the property is in custodia legis as where it is under attachment or was seized under a search warrant³⁸² except:
 - a. when the seizure is illegal;³⁸³ and
 - b. where there is reason to believe that the seizure will not anymore be followed by the filing of the criminal action in court or there are conflicting claims.³⁸⁴
3. The defendant is entitled to the return of the property taken under a writ of replevin if the following requisites are met:
 - (1) S/he posts a redelivery bond and
 - (2) S/he furnishes the plaintiff of a copy of the undertaking within five (5) days from taking and
 - (3) the bond is sufficient and in proper form.³⁸⁵

380 Rules of Court, Rule 60, Sec. 1.

381 Yang v. Valdez, G. R. No. 73317, August 31, 1989, 177 SCRA 141.

382 Pagkalinawan v. Gomez, Nos. L-22585, December 16, 1967, 21 SCRA 1275; Rules of Court, Rule 60, Sec. 2 (c).

383 Bagalihog v. Fernandez, G. R. No. 96356, June 27, 1991, 198 SCRA 614.

384 Chua v. Court of Appeals, G. R. No. 79021, May 17, 1993, 222 SCRA 85.

385 Rules of Court, Rule 60, Secs. 5 and 6.

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