

# Walter L. Sanders, P.A.

## FLORIDA REPLEVIN LAW

In Florida, when a debtor defaults on a secured loan and refuses to voluntarily surrender the collateral (e.g. automobile, boat, equipment, etc.), a secured creditor has two options to obtain possession of that collateral: (1) **self-help repossession** or (2) **replevin**. The term self-help repossession provides a creditor with the right to retake possession of the collateral without the use of judicial process. In most situations, the secured creditor will hire a Repo Agent to retake possession of the collateral. When self-help repossession is not an option (if the debtor is hiding or secreting the collateral), the secured creditor will need to utilize the court system to obtain a Writ of Replevin.

A Writ of Replevin is an executed Order by the Court that provides the Sheriff with authority to seize and return the collateral to the secured creditor. Florida Replevin Law provides a secured creditor with the option of obtaining a Writ of Replevin with or without notice to the debtor. In most cases a secured creditor will opt to obtain a Writ of Replevin without providing notice to the debtor, as the process is quicker and does not alert the debtor that the Sheriff is coming to seize the collateral. This type of Writ is called a Pre-Judgment Writ of Replevin. In order for a secured creditor to obtain a Pre-Judgment Writ of Replevin, the secured creditor must: (1) verify the Complaint (e.g. sign the Complaint or attach an affidavit to the Complaint confirming the entitlement to the Writ of Replevin); and (2) post a bond for two-times the amount the debtor owes or the value of the collateral (whichever is less). So long as the secured creditor has followed these two requirements, the Court must order the Clerk of Court to issue a Pre-Judgment Writ of Replevin. Once the Writ of

Replevin is issued, it is immediately delivered to the Sheriff for service.

In a situation where the secured creditor elects to provide notice to the debtor, the secured creditor can obtain the Writ of Replevin through an Order to Show Cause Hearing. In this scenario, the debtor will be served with the Complaint and required to appear at an Order to Show Cause Hearing. At the Order to Show Cause Hearing, the debtor will be asked to provide the Court with cause as to why the secured creditor should not be put in immediate possession of the collateral. Although providing notice to the debtor may take more time, some secured creditors will elect this option due to the elimination of the additional costs required when posting a bond.

The law firm of Walter L. Sanders, P.A. has extensive experience with the Florida Replevin Laws, and can assist clients with retaking possession of its collateral throughout the entire state of Florida. For more information on how you may utilize the benefits of a Writ of Replevin, please contact Walter L. Sanders, Esq. directly at (813) 908-4183 ext. 2.

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