CHAPTER 565

CLAIM; POSSESSION OF PERSONAL PROPERTY

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565.01 MS 1978 [Repealed, 1979 c 18 s 12]

565.02 MS 1978 [Repealed, 1979 c 18 s 12]

565.03 MS 1978 [Repealed, 1979 c 18 s 12]

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565.05 MS 1978 [Repealed, 1979 c 18 s 12]

565.06 MS 1978 [Repealed, 1979 c 18 s 12]

565.07 MS 1978 [Repealed, 1979 c 18 s 12]

565.08 MS 1978 [Repealed, 1979 c 18 s 12]

565.09 MS 1978 [Repealed, 1979 c 18 s 12]

565.10 MS 1978 [Repealed, 1979 c 18 s 12]

565.11 MS 1978 [Repealed, 1979 c 18 s 12]

565.21 POSSESSION OF PERSONAL PROPERTY.

In an action to recover possession of personal property, the claimant may obtain possession of the property prior to final judgment in the manner prescribed in Laws 1979, chapter 18.

History: *1979 c 18 s 1*

565.22 DEFINITIONS.

Subdivision 1. **Generally.** For the purposes of Laws 1979, chapter 18, the terms in this section have the meanings given them.

Subd. 2. **Claimant.** "Claimant" means a party asserting, in a pleading before a court, a claim for the recovery of possession of personal property, whether the claim is asserted in a complaint, counterclaim or reply.

Subd. 3. **Respondent.** "Respondent" means a person against whom a claimant asserts a claim and who has, or is alleged to have, possession of the personal property which the claimant seeks to recover.

History: *1979 c 18 s 2*

565.23 RECOVERY OF POSSESSION AFTER NOTICE AND HEARING.

Subdivision 1. **Motion.** A claimant seeking to recover possession of property after service of a summons and complaint but prior to final judgment shall proceed by motion. The motion shall be accompanied by an affidavit which states:

(a) the particular property sought to be recovered by the claimant;

(b) the facts giving rise to claimant's right to possession, referring to the documents, if any, evidencing the claimant's right to possession and the underlying obligation supporting the right;

(c) the facts showing that respondent is wrongfully detaining the property;

(d) if the property being claimed is security for an obligation, the date and the amount of the original obligation, the amount which has been paid by respondent and the amount now owing to claimant;

(e) if the claimant asserts that the respondent is wrongfully detaining the property by reason of a breach of contractual duty other than the failure to pay money, the claimant shall state the specific contractual provision and the facts relating thereto; and

(f) a good faith approximation of the current market value of each item of property being claimed. Where the property is inventory, accounts receivable or other property where separate valuation is not practicable, claimant may provide a good faith approximation of the current market value of each category of property.

Subd. 2. **Service upon respondent.** The claimant's motion to recover possession of property together with claimant's affidavit and a notice of hearing shall be served upon respondent in the manner prescribed for service of a summons in a civil action in district court. If the respondent has already appeared in the action, the motion shall be served in the manner prescribed for service of pleadings subsequent to the summons. The date of hearing shall be fixed in accordance with rule 6 of the Minnesota Rules of Civil Procedure, unless a different date is fixed by order of the court.

The notice of hearing served upon the respondent shall be signed by the claimant or the attorney for the claimant and shall provide, at a minimum, the following information in substantially the following language:

"NOTICE OF HEARING

TO: [the respondent]

A hearing will be held on the ..... day of ....., ..., at ..... o'clock, ..M., [place] to determine whether the sheriff shall remove from your possession and deliver to [claimant] (hereinafter "claimant") the following property:

[list property]

You have a right to appear at this hearing on your own behalf or with an attorney. You will have the opportunity to present defenses to the claimant's claims and to state reasons why the property described above should not be taken.

If the court determines that the claimant has a right to have possession of the property while this lawsuit is pending, you may nevertheless keep the property until the lawsuit is decided if you file with the court a surety bond in the amount of $.....

[In amount computed pursuant to section 565.25]. This amount is [1-1/4 times the claimant's estimate of the value of the property] [1-1/2 times the claimant's claim against you]. If you believe the [value of the property] [amount of the claim] is overstated, you may ask the court to lower it.

If you do not appear at the hearing, the court has authority to issue an order directing that the above described property be immediately taken from your possession."

Subd. 3. **Seizure order.** After a hearing, the court shall order seizure of the property from respondent and delivery to claimant if claimant has demonstrated the probability of success on the merits entitling claimant to possession of the property and upon compliance with the bonding requirements set forth in section 565.25, subdivision 1, unless the court makes the following findings:

(a) respondent has shown a defense to the merits of claimant's claim, the defense is a fair basis for litigation and the defense would, if established at hearing on the merits, entitle respondent to retain possession of the property;

(b) the interests of respondent cannot be adequately protected by the bond filed by claimant pursuant to section 565.25, subdivision 1, if the property is delivered to the claimant prior to final decision on the merits; and

(c) the harm suffered by the respondent would be substantially greater than the harm which would be suffered by the claimant if the property were not delivered to the claimant prior to final decision on the merits.

Subd. 4. **Protection of claimant rights.** If the court makes the findings prescribed by subdivision 3 and orders that respondent may retain possession pending final decision on the merits, the court shall enter a further order protecting the rights of the claimant to the extent possible. The order may require that respondent make partial payment of the debt which may be due and that the payment shall be made either directly to claimant or into an escrow, that respondent post a bond in an amount set by the court, that respondent make the property available for inspection from time to time, that respondent be restrained from certain activities, including, but not limited to, selling, disposing or otherwise encumbering the property, or any other provision the court may deem just and appropriate.

Subd. 5. **Bond.** An order requiring seizure of property may be stayed up to three days to allow the respondent time to post a bond pursuant to section 565.25, subdivision 2.

History: *1979 c 18 s 3; 1998 c 254 art 1 s 107*

565.24 RECOVERY OF POSSESSION PRIOR TO NOTICE AND HEARING.

Subdivision 1. **Motion.** A claimant seeking to recover possession of property prior to notice and hearing as provided in section 565.23 shall proceed by motion seeking such relief. The motion shall be accompanied by an affidavit setting forth:

(1) the information required by section 565.23, subdivision 1;

(2) the facts establishing grounds for a prehearing seizure, as specified in subdivision 2.

Subd. 2. **Seizure of property prior to hearing.** The court may order seizure of the property from the respondent prior to a hearing only if it makes specific findings, based upon competent evidence in the form of affidavit or oral testimony, that:

(1) a good faith effort has been made to inform respondent of the motion for a prehearing seizure or that so informing respondent would endanger the ability of the claimant to recover the property;

(2) claimant has demonstrated the probability of success on the merits entitling the claimant to possession of the property; and

(3)(i) respondent is about to remove the property in question from the state with the intent to hinder, delay or defraud the claimant;

(ii) respondent is about to conceal, damage or dispose of the property with intent to hinder, delay or defraud the claimant; or

(iii) due to other circumstances, which must be specified in the court's order, the claimant will suffer irreparable harm if possession of the property is not obtained prior to a hearing; and

(4) claimant's interest in the property cannot be protected, pending a hearing pursuant to section 565.23 by an appropriate order of the court other than directing seizure.

Subd. 3. **Order of protection.** If the court makes the findings required by subdivision 2, clauses (1), (2), and (3), but does not direct seizure, it may issue an appropriate order protecting the claimant's interest in the property pending a hearing pursuant to section 565.23.

Subd. 4. **Hearing date.** If the court issues an order pursuant to subdivisions 2 or 3, the order shall establish a date for a hearing at which respondent may be heard and which shall be conducted at the earliest practicable time and shall take precedence over all matters except older matters of the same character.

Subd. 5. **Hearing.** The hearing held pursuant to subdivision 4 shall be conducted in accordance with the criteria established in section 565.23, subdivisions 3, 4 and 5. In addition, if the court finds that the motion for a prehearing seizure was made in bad faith the court may, in its discretion, award respondent the actual damages incurred by reason of seizure of the property.

Subd. 6. **Service of copy of order.** The respondent shall be served with a copy of the order issued pursuant to this section together with a copy of all pleadings and supporting documents and a notice of hearing. Service shall be in the manner prescribed for personal service of a summons or the court in its discretion may prescribe alternative methods of service calculated to provide actual notice to respondent.

The notice of hearing served upon the respondent shall be signed by claimant or the attorney for claimant and shall provide, at a minimum, the following information in substantially the following language:

"NOTICE OF HEARING

Court action has been taken which affects the following property:

[list property]

[Claimant] (hereinafter "claimant") has claimed that claimant is entitled to this property and that claimant's interest in this property would have been harmed unless this court took immediate action.

You have a right to challenge claimant's claims at a hearing before a judge. This hearing has been scheduled for the ..... day of ....., ..., at ..... o'clock ..M., at [place] .....

After this hearing the judge will decide, what should be done with the property pending a final decision on claimant's claim."

History: *1979 c 18 s 4; 1998 c 254 art 1 s 107*

565.25 BONDING REQUIREMENTS.

Subdivision 1. **Order of seizure of property.** An order for seizure of property from the respondent shall provide that the seizure shall be contingent upon claimant's filing of a bond approved by the court conditioned for the return of the property to the respondent, if a return be adjudged, and for the payment to the respondent of any sum adjudged against the claimant. The bond shall be in an amount which is 1-1/2 times the fair market value of the property seized.

Subd. 2. **Bond.** (a) Except as otherwise provided in paragraph (b) and section 565.251, the respondent may retain or regain possession of the property by filing of a bond approved by the court conditioned that the property shall be delivered to the claimant, if delivery be adjudged, and for the payment to the claimant of any sum adjudged against the respondent. The bond shall be in an amount 1-1/4 times the fair market value of the property or 1-1/2 times the amount of the claimant's claim, whichever is less. An order for seizure may specify a time limitation within which the bond must be filed. For the purpose of protecting or preserving the property pending final hearing on the merits, the court may in extraordinary circumstances, which shall be specified in its order, provide that the respondent may not retain or regain possession of the property upon rebonding, or may limit or condition the right to retain or regain the property upon rebonding. The costs of regaining possession of the property from the sheriff or the claimant shall be borne by respondent except as set forth in paragraph (b).

(b) If at a hearing following seizure of property pursuant to section 565.24 claimant fails to establish a right to continued possession, the court shall order the property returned to respondent, the costs to be borne by claimant. The court may order claimant's bond to continue in an amount sufficient to offset damages claimed by respondent by reason of the seizure.

Subd. 3. **Fair market value.** The current fair market value of the property shall initially be presumed as stated in the affidavit submitted pursuant to section 565.23, subdivision 1. If the court determines the current fair market value of the property is different, it shall adjust the required amount of the bonds.

Subd. 4. **Deposit with court.** In lieu of filing a bond, either claimant or respondent may satisfy bonding requirements by depositing with the court cash, a cashier's check, or a certified check.

History: *1979 c 18 s 5; 1985 c 306 s 8*

565.251 POSSESSION BY RESPONDENT WITHOUT BOND; STAY OF PROCEEDING.

The court may allow the respondent to retain or regain possession of the property without filing a bond and may stay the action by the claimant for a reasonable period of time not to exceed six months if the following conditions are met:

(1) the respondent is unable to make the required payments due to unforeseen economic circumstances beyond the respondent's control;

(2) the respondent is dependent on the use of the property to earn a living;

(3) the respondent insures the property for its fair market value;

(4) the respondent makes periodic payments to the claimant representing the depreciation in market value of the property while the respondent retains possession, in an amount and during the times determined by the court; and

(5) the respondent makes periodic payments to the claimant representing the value of the use of the property or the cost to the claimant of the lost opportunity to use the property, in an amount and during the times determined by the court.

History: *1985 c 306 s 9*

565.26 ORDER FOR SEIZURE OF PROPERTY.

Subdivision 1. **Seizure order requirements.** An order for seizure of property shall:

(1) identify the property to be seized;

(2) direct the sheriff to seize the property; and

(3) specify that the claimant is authorized, immediately or after a specified reasonable period of time, to sell or otherwise dispose of the property pending final hearing on the merits unless the court makes a specific finding that the interests of respondent cannot be adequately protected by the bond.

Subd. 2. **Order entry.** An order for seizure of property may:

(1) describe the place or places which may be entered by force by the sheriff subject to the limitations of clause (3);

(2) require that the respondent, the respondent's agents or employees deliver the property to claimant or disclose its location, and, if delivery is not made or the location is not disclosed, that respondent must appear in court at a specified time and place to give testimony as to the location of the property and to show cause why an order should not be entered finding respondent in contempt of court for failure to deliver the property or to disclose its location; and

(3) provide that if the property, or any of it is concealed in a building or elsewhere, and a public demand made by the sheriff for its delivery is refused or there is no response, the sheriff shall cause the building or enclosure to be broken open and shall take the property therefrom. The sheriff may not enter the residence of a person other than respondent unless the order specifies, identifying with particularity the residence or residences which may be entered, on the basis of a finding by the court that probable cause exists to believe that the property is at this residence.

History: *1979 c 18 s 6; 1986 c 444*

565.27 SUFFICIENCY OF SURETY.

A person asserting a claim to property seized by order of the court may by motion challenge the sufficiency of the surety for the bond filed with the court. If the court finds the surety insufficient, it may grant a reasonable time for the filing of another bond.

History: *1979 c 18 s 7*

565.28 FEES TO SHERIFF.

Upon taking property pursuant to an order of the court, the sheriff shall keep it in a secure place and shall deliver it to the party entitled thereto as soon as reasonably possible upon receiving lawful fees and expenses for taking and keeping the property.

The sheriff shall promptly return, without cost, any property taken which is not specified in the court's order.

History: *1979 c 18 s 8; 1986 c 444*

565.29 ADVANCEMENT ON CALENDAR.

A motion for advancement on the calendar or for a date certain for final hearing on the merits may be presented at any time and may be combined with any other motion and the court may advance the case or set a date certain as the ends of justice require.

History: *1979 c 18 s 9*