

TITLE 8
PROVISIONAL REMEDIES IN CIVIL ACTIONS

CHAPTER 3
CLAIM AND DELIVERY OF PERSONAL PROPERTY

8-301. DELIVERY OF PERSONAL PROPERTY MAY BE CLAIMED. The plaintiff in an action to recover the possession of personal property may, at the time of issuance of summons, or at any time before trial, claim the delivery of such property to him as provided in this chapter.

[I.C., sec. 8-301, as added by 1973, ch. 118, sec. 2, p. 219.]

8-302. AFFIDAVIT OF CLAIM -- SHOW CAUSE ORDER -- WRIT OF POSSESSION. (1) Where a delivery is claimed, the plaintiff, by verified complaint or by an affidavit made by plaintiff or by someone on his behalf, filed with the court, shall show:

(a) That the plaintiff is the owner of the property claimed or is entitled to the possession thereof, and the source of such title or right; and if plaintiff's interest in such property is based upon a written instrument, a copy thereof shall be attached;

(b) That the property is wrongfully detained by the defendant, the means by which the defendant came into possession thereof, and the cause of such detention according to his best knowledge, information and belief;

(c) A particular description of the property, a statement of its actual value, and a statement to his best knowledge, information, and belief concerning the location of the property and of the residence and business address, if any, of the defendant;

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

(2) The court shall, without delay, examine the complaint and affidavit, and if it is satisfied that they meet the requirements of subsection (1) of this section, it shall issue an order directed to the defendant to show cause why the property should not be taken from the defendant and delivered to the plaintiff. Such order shall fix the date and time for the hearing thereof, which shall be no sooner than five (5) days from the issuance thereof, and shall direct the time within which service thereof shall be made upon the defendant. Such order shall inform the defendant that he may file affidavits on his behalf with the court and may appear and present testimony on his behalf at the time of such hearing, or that he may, at or prior to such hearing, file with the court a written undertaking to stay the delivery of the property, in accordance with the provisions of section [8-306](#), Idaho Code, and that, if he fails to appear, plaintiff will apply to the court for a writ of possession without further notice to defendant. If the writ of possession has issued prior to the hearing, the defendant may apply to the court to have the hearing set at an earlier date. Such order shall fix the manner in which service thereof, together with copies of the complaint and affidavit, shall be made, which shall be by personal service, or in such manner as the judge may determine to be reasonably calculated to afford notice thereof to the defendant under the circumstances appearing from the

complaint and affidavit. The plaintiff shall cause proof of service to be filed with the court prior to the hearing.

(3) Upon examination of the complaint and affidavit and such other evidence or testimony as the judge may, thereupon, require, a writ of possession may be issued prior to hearing, if probable cause appears that any of the following exist:

(a) The defendant gained possession of the property by larceny, as defined by any section of [chapter 46, title 18](#), Idaho Code;

(b) The property consists of one (1) or more negotiable instruments or credit cards;

(c) By reason of specific facts shown, the property is perishable, and will perish before any noticed hearing can be had, or is in immediate danger of destruction, serious harm, concealment, or removal from this state, or of sale to an innocent purchaser, and that the holder of such property threatens to destroy, harm, conceal, remove it from the state, or sell it to an innocent purchaser.

Where a writ of possession has been issued prior to hearing under the provisions of this section, the defendant or other person from whom possession of such property has been taken may apply to the court for an order shortening the time for hearing on the order to show cause, and the court may, upon such application, shorten the time for such hearing, and direct that the matter shall be heard on not less than forty-eight (48) hours' notice to the plaintiff.

(4) Under any of the circumstances described in subsection (1) of this section, or in lieu of the immediate issuance of a writ of possession under any of the circumstances described in subsection (3) of this section, the judge may, in addition to the issuance of an order to show cause, issue such temporary restraining orders, directed to the defendant, prohibiting such acts with respect to the property, as may appear to be necessary for the preservation of rights of the parties and the status of the property.

(5) Upon the hearing on the order to show cause, the court shall consider the showing made by the parties appearing, and shall make a preliminary determination which party, with reasonable probability, is entitled to possession, use, and disposition of the property, pending final adjudication of the claims of the parties. If the court determines that the action is one in which a prejudgment writ of possession should issue, it shall direct the issuance of such writ.

[I.C., sec. 8-302, as added by 1973, ch. 118, sec. 2, p. 219.]

8-303. PLAINTIFF'S UNDERTAKING. A writ of possession shall not issue until plaintiff has filed with the court a written undertaking executed by two (2) or more sufficient sureties, to the effect that they are bound to the defendant in double the value of the property, as determined by the court, for the return of the property to the defendant, if return thereof be ordered, and for the payment to him of any sum as may from any cause be recovered against the plaintiff.

[I.C., sec. 8-303, as added by 1973, ch. 118, sec. 2, p. 219.]

8-304. CONTENTS OF WRIT. (1) The writ of possession shall be directed to the sheriff within whose jurisdiction the property is located. It shall describe the specific property to be seized, and shall specify the location or locations where, as determined by the court from all the evidence, there is

probable cause to believe the property or some part thereof will be found. It shall direct the sheriff to seize the same if it is found in the possession of the defendant or his agent and to retain it in his custody. There shall be attached to such writ a copy of the written undertaking filed by the plaintiff, and such writ shall inform the defendant that he has the right to except to the sureties upon such undertaking or to file a written undertaking for the redelivery of such property, as provided in section [8-306](#), Idaho Code.

(2) Upon probable cause shown by further affidavit made by the plaintiff or someone on his behalf, filed with the court, additional writs of possession may be issued by the court, without further notice, to direct any sheriff within whose jurisdiction the property may be located to search for the property at another location or locations and to seize the same, if found.

[I.C., sec. 8-304, as added by 1973, ch. 118, sec. 2, p. 219.]

8-305. SEIZURE BY SHERIFF -- SERVICE OF WRIT. The sheriff shall forthwith take the property, if it be in the possession of the defendant or his agent, and retain it in his custody, either by removing the property to a place of safekeeping or, upon good cause shown, by installing a keeper.

If the property or any part thereof is in a building or inclosure, the sheriff shall demand its delivery, announcing his identity, purpose, and the authority under which he acts. If it is not voluntarily delivered, he shall cause the building or inclosure to be broken open in such manner as he reasonably believes will cause the least damage to the building or inclosure, and take the property into his possession. He may call upon the power of the county to aid and protect him.

The sheriff shall, without delay, serve upon the defendant a copy of the writ of possession and written undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or, if neither have any known place of abode, by mailing them to their last known address.

[I.C., sec. 8-305, as added by 1973, ch. 118, sec. 2, p. 219.]

8-306. DEFENDANT'S UNDERTAKING -- RETURN OF PROPERTY. At any time prior to the hearing of the order to show cause, or before the delivery of the property to the plaintiff, the defendant may require the return thereof upon filing with the court a written undertaking executed by two (2) or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the verified complaint or affidavit of the plaintiff or as determined by the court, for the delivery thereof to the plaintiff, if such delivery be ordered, and for the payment to him of such sum as may for any cause be recovered against the defendant. At the time of filing such undertaking, the defendant shall serve upon the plaintiff or his attorney and the sheriff, if such property shall then be in the custody of the sheriff, a notice of filing of such undertaking, to which a copy of such undertaking shall be attached, and shall cause proof of service thereof to be filed with the court. If such undertaking be filed prior to hearing of the order to show cause, proceedings thereunder shall terminate, unless exception is taken to such sureties. If, at the time of filing of such undertaking, the property shall be in the custody of the sheriff, such property shall be redelivered

to the defendant five (5) days after service of notice of filing such undertaking upon the plaintiff or his attorney, unless exception is taken to such sureties.

[I.C., sec. 8-306, as added by 1973, ch. 118, sec. 2, p. 219.]

8-307. QUALIFICATIONS OF SURETIES -- PROTESTS. The qualification of sureties under any written undertaking referred to in this chapter shall be such as are prescribed by this code, in respect to bail upon an order of civil arrest. Either party may, within two (2) days after service of an undertaking or notice of filing an undertaking under the provisions of this chapter, give written notice to the court, the other party and the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When a party excepts, the other party's sureties shall justify on notice within not less than two (2) nor more than five (5) days, in like manner as upon bail in civil arrest. If the property be in the custody of the sheriff, he shall retain custody thereof until the justification is completed or waived or fails. If the sureties fail to justify, the sheriff shall proceed as if no such undertaking had been filed. If the sureties justify or the exception is waived, he shall deliver the property to the party filing such undertaking.

[I.C., sec. 8-307, as added by 1973, ch. 118, sec. 2, p. 219.]

8-308. DUTIES OF SHERIFF. When the sheriff has taken property as provided in this chapter, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his fees for taking and his necessary expenses for keeping the same, after expiration of five (5) days after service upon the defendant of a copy of the written undertaking as provided in section [8-305](#), Idaho Code, unless defendant shall file an undertaking for redelivery as provided in section [8-306](#), Idaho Code, and expiration of the time for exception to the sureties upon any undertaking, unless the court shall by order stay such delivery.

[I.C., sec. 8-308, as added by 1973, ch. 118, sec. 2, p. 219.]

8-309. THIRD PARTY CLAIMS. In cases where the property taken is claimed by any person other than the defendant or his agent, the rules and proceedings applicable in cases of third party claims after levy under execution shall apply.

[I.C., sec. 8-309, as added by 1973, ch. 118, sec. 2, p. 219.]

8-310. RETURN OF WRIT. The sheriff shall return the writ of possession, with his proceedings thereon, to the court in which the action is pending, within twenty (20) days after taking the property mentioned therein.

[I.C., sec. 8-310, as added by 1973, ch. 118, sec. 2, p. 219.]

8-311. ORDERS TO PROTECT POSSESSION. After the property has been delivered to a party or the value thereof secured by an undertaking as provided in this chapter, the court shall, by appropriate order, protect that party in the possession of such property until the final determination of the action.

[I.C., sec. 8-311, as added by 1973, ch. 118, sec. 2, p. 219.]

8-312. EARLY SETTINGS. In all proceedings brought to recover the possession of personal property, all courts in which such actions are pending, shall, upon request of any party thereto, give such actions precedence over all other civil actions, except actions to which special precedence is otherwise given by law, in the matter of setting the same for hearing or trial, and in hearing or trial thereof, to the end that all such actions shall be quickly heard and determined.

[I.C., sec. 8-312, as added by 1973, ch. 118, sec. 2, p. 219.]

CHAPTER 4
INJUNCTIONS -- [REPEALED]