

Court Orders

Receivers and Special Remedies

Pursuant to section 85 of the Civil Enforcement Act, the court may grant an order appointing a receiver of the personal property of an enforcement debtor.

If an Agency is appointed as the receiver of the personal property the Agency must agree in writing to act as the receiver (section 87(a)(ii) Civil Enforcement Act). The court may also order that the personal property be delivered to the receiver.

Upon receipt of the court order, check:

- (1) That the order is directed to an Agency
- (2) Comply with the conditions set out in the order

Replevin Order

- * A Replevin Order is granted pursuant to Part 6, Division 8 of the Alberta Rules of Court. A Replevin Order is the document which provides the direction and authority to recover personal property unlawfully taken or detained. Only a Civil Enforcement Agency may enforce a replevin order.

Upon receipt of the Replevin Order check:

- (1) That the order is directed to the Agency
- * (2) That the property to be recovered is specifically described in the order
- (3) To determine whether the Agency should remove and store the property or return the personal property to a certain person or location
- * (4) That the order includes either or both of the following:
 - (a) an order to a civil enforcement agency to make a report on its enforcement or attempted enforcement of the replevin order;
 - (b) the value of the personal property

- * **NOTE:** The replevin order is not effective until an affidavit or evidence that the order requiring security has been complied with has been filed, and the affidavit or evidence has been served on the respondent and the civil enforcement agency.

Letter of Instructions

In addition to the Replevin Order, a letter of instructions should also be received. The letter of instructions could provide additional information such as:

- (1) Any urgency associated with the file
- (2) Any unusual circumstances which might be anticipated
- (3) Where the property is located
- (4) To whom/where to deliver the property
- (5) Form of indemnification as requested by the Agency

Required Documents for Bailiff

In order to execute the Replevin Order, the Bailiff must be provided with the following documents:

- a copy of the letter of instructions
- a copy of the Replevin Order
- Bailiff's Report
- other documents as required.

Bailiff's Report

* This form is the Bailiff's certification of the action he has taken.

Procedure for Carrying Out Replevin Orders

The Bailiff should:

- (1) Carefully read the Replevin Order and any other instructions received from the instructing party or the Civil Enforcement Agency.
- (2) Review the file to see if there are any arrangements that should be made ahead of time which may assist in carrying out the order (e.g. tow truck, moving van, veterinarian etc.).
- (3) Proceed to the location given in the letter of instructions.

For street addresses, a good city/town map may be helpful if you are unfamiliar with the area. For locating property identified by legal land description, you should know how to read the section, township, range and meridian shown on a district map. Ensure that you have access to various district maps.

Arrival At Location

- * (1) Upon arriving at the location, identify yourself to the respondent. If the respondent is not present, advise the person present who you are and why you are there. Every attempt should be made to contact the respondent if his whereabouts are known.
- * (2) Ensure the copy of the Replevin Order is available for inspection by the respondent, if requested.
- * (3) Entry by Force - Pursuant to section 13(2)(c)(iii) of the Civil Enforcement Act, do not enter by force into any residence without a court order. An attached garage is considered part of the residence. (See Circular #1/2010 in "Circulars" section.)

Forced Entry - At any location or premises belonging to the respondent, other than a residential premises, you have the authority to force entry using the services of a locksmith. Where you have to use force to gain entry, you must reasonably secure the premises before leaving.

- * If denied access to the premises belonging to someone other than the respondent, you have no authority to enter without a court order.

Before entering buildings equipped with an alarm system, notify the alarm company or the police providing full particulars on the nature of your call, location and time, etc.

- * (4) Recover the personal property in accordance with the letter of instructions and the Replevin Order. You must physically see and be

- * able to lay your hands on the personal property in order to remove, store and retain possession as directed in the Order.
- (5) When removing a vehicle, the Bailiff should never drive it away. Always have removal done by a licensed and approved towing company.
- * (6) If the respondent or someone representing the respondent is not present at the time of removal of the personal property, advise the local police agency that the property has been removed in the event the property is later reported stolen.
- * (7) Indicate in the comments section of the Bailiff Report, the number, quantity and quality of the property recovered. If all of the property was not recovered, list this property and state the reasons why it could not be recovered.
- * (8) If you are unable to execute the Replevin Order, complete the Bailiff's Report stating the reasons and any useful information about the respondent or the personal property.
- * (9) Complete and sign the Bailiff's Report.
- * (10) Return the completed documents to the Civil Enforcement Agency.
- * (11) The Civil Enforcement Agency must take possession of the recovered personal property and as soon as practicable, serve notice on the applicant. The Civil Enforcement Agency must not give the personal property to the applicant unless the Court orders otherwise. If an order for possession of the personal property is not made within one month of the Civil Enforcement Agency serving notice of taking possession, the civil enforcement agency must return the personal property to the respondent.

Review of Bailiff's Report

Review the completed Bailiff's Report and accompanying documents to determine if replevin was carried out. Also review the Report for any errors, omissions, or irregularities.

Replevin NOT Carried Out

- * If replevin was not carried out, forward a copy of the Bailiff's Report to the instructing party and await further instructions.

Replevin Carried Out

- * If replevin was carried out forward a copy of the Bailiff's Report to the instructing party.

* **Order of Possession of Land (Eviction)**

An Order of Possession orders a person to give up possession of land to another person. The Order must include a statement to the effect that a Civil Enforcement Agency has authority, after service of the Order has been effected, to evict any occupant of the land.

Unless the Court otherwise orders, the Order of Possession must be served by the Civil Enforcement Agency on every person in possession of the land. Once an Affidavit of Service has been filed, the Civil Enforcement Agency has authority to evict those persons served from the land occupied.

NOTE: In the case of "Cinderella Orders" (where orders are stayed while payments are made but which may be enforced if there is a default), Notice of Default must be served on the person in possession prior to enforcement, unless the Court orders otherwise.

Letter of Instructions

* In addition to the Order of Possession, a letter of instructions should also be received. The letter of instructions could provide additional information such as:

- (1) Any urgency associated with the file
- (2) Any unusual circumstances which might be anticipated
- (3) Where the premises are located
- * (4) If removal is required or if the respondent's possessions are to be left on site
- (5) Form of indemnification as requested by the Agency

Required Documents for Bailiff

* To enforce the Order of Possession, the Bailiff must be provided with the following documents:

- a copy of the Order of Possession
- a copy of the letter of instructions
- Bailiff's Report
- other documents as required.

* **Bailiff's Report**

This form is the Bailiff's certification of the action he has taken.

Procedure for Carrying Out the Eviction

The Bailiff should:

- * (1) Carefully read the Order of Possession and any other instructions received from the instructing party or the Civil Enforcement Agency.
- * (2) Review the file to see if there are any arrangements that should be made ahead of time which may assist in carrying out the Order (e.g. tow truck, moving van, Family and Social Services, S.P.C.A. etc.).
- (3) Proceed to the location given in the letter of instructions.

For street addresses, a good city/town map may be helpful if you are unfamiliar with the area. For locating property identified by legal land description, you should know how to read the section, township, range and meridian shown on a district map. Ensure that you have access to various district maps.

Arrival at Location:

- * (1) Upon arrival at the location, identify yourself to the tenants. Explain why you are there. Ensure the Order of Possession is available for inspection by the tenants, if requested. Your Agency will give you instructions on negotiating a timeframe (as soon as is reasonably possible) to allow the tenants to move out. Attend at the end of the timeframe agreed to and follow

- procedure (3) below, if vacant, or
- procedure (4) below, if not vacant.

- (2) If no one is home, assess the situation as to whether it appears the tenants have vacated the premises. If so, follow procedure (3) below.

If it does not appear that the tenants have vacated the premises, post a notice on the residence door stating they must vacate by a specific time (usually give 24 hours). Attend after the time period has elapsed and follow procedure (3) below.

- (3) If the premises appear to be vacant, have a locksmith attend to gain entry to the residence and change the locks, if so instructed.

If personal property remains on the premises, obtain instructions from your Civil Enforcement Agency as to whether it is necessary to remove and store. If you are instructed to remove the property, follow procedure (5) below.

- (4) If the tenants have not vacated, have a locksmith attend to gain entry to the residence and change the locks, if so instructed.

If the tenants refuse to leave, contact your Civil Enforcement Agency for further directions. For example,

- if necessary, have police attend to keep the peace and assist in whatever way they are willing and able, (see Circular #3/98 in section 16 "Circulars"),
- have person entitled attend to take lawful possession,
- have a moving company attend to produce an inventory, remove and store the personal property of the tenants,
- have the S.P.C.A. attend to look after pets,
- contact Social Services to make them aware of the tenant's situation, etc.

- (5) Remove the tenant's property only when instructed by your Civil Enforcement Agency. Make a complete inventory of items removed. For removal and storage, use a licensed and approved moving company.

In these situations, your discretion and judgment is very important. If you encounter violence, assess the situation and if appropriate, withdraw and seek further instructions from your Civil Enforcement Agency.

- * (6) Complete and sign the Bailiff's Report.
- * (7) If you are unable to carry out the Order of Possession, complete the Bailiff's Report stating the reasons and any useful information about the respondent or personal property. Complete and sign the Report.
- (8) Return the completed documents and the keys to the premises, if possession was obtained, to the Civil Enforcement Agency.

* **Disposition of Respondent's Possessions**

Rule 9.27 of the Alberta Rules of Court governs removal, storage and sale of personal property in connection with the enforcement of an Order of Possession.

Where an Agency, in its discretion, chooses to remove and store personal property while carrying out an Order of Possession, the owner of that property may, on the written authorization of the Agency, obtain the property from storage upon payment of all costs, including storage and transportation.

If the Bailiff does not remove the personal property at the time the Order is enforced, then the person who obtained the Order of Possession may deal with the property as set out in Rule 9.28 of the Alberta Rules of Court.

Attachment Order

An Attachment Order is granted pursuant to section 17 of the Civil Enforcement Act, as a form of pre-judgment relief. The Court may direct that the Attachment Order applies to all or specific exigible property of the defendant. This form of an Attachment Order is the direction and authority to conduct the seizure.

Upon receipt of the order, check:

- (1) That the order is directed to an Agency.
- (2) Whether or not the order is an ex parte Attachment Order, as it will expire after 21 days of being granted unless the order is extended by the court.
- (3) That the property is described in the order or that the Bailiff is given the direction to identify in writing exigible property.
- (4) Whether the order authorizes the sale or other disposition of property.

Letter of Instructions

In addition to the Attachment Order, a letter of instructions should also be received. The letter of instructions could provide additional information such as:

- (1) Any urgency associated with the file
- (2) Any unusual circumstances which might be anticipated
- (3) Where the property is located
- (4) Instruction regarding specific property
- (5) Form of indemnification as requested by the Agency

Required Documents for Bailiff

In order to carry out the Attachment Order, the Bailiff must be provided with the following documents:

- a copy of the letter of instructions
- a copy of the Attachment Order
- Notice of Seizure of Personal Property
- Bailee's Undertaking
- Bailiff's Report (the original)
- other documents as required.

Notice of Seizure of Personal Property

This form is used to describe in detail the items seized and to notify all affected parties of the seizure of personal property. Sufficient copies are required to allow service of one notice on each defendant, and return of the original to the Agency. (See example in Writ Seizure section).

The following must be completed by the Agency:

- (1) Agency file number
- (2) Name and address of defendant
- (3) Amount owing as shown on the Attachment Order
- (4) Name and address of plaintiff
- (5) "NO" box completed for Notice of Objection to Seizure of Personal Property applicable to this seizure. Strike out applicable section on the form. There are no provisions for an objection to seizure pursuant to an Attachment Order.
- (6) Agency's name, address, telephone number and fax number.

Bailee's Undertaking

This form is used when the Bailiff leaves the seized personal property with a responsible person who agrees to keep the seized property and is responsible for its safekeeping and delivery to the Civil Enforcement Agency when requested. Sufficient copies are required: one for the bailee, and return of the original to the Agency. (See example in section 6 - Writ Seizure).

The following must be completed by the Agency:

- (1) Agency file number
- (2) Agency's name, address, telephone number and fax number.

The Bailee's Undertaking must be witnessed and is usually witnessed by the Civil Enforcement Bailiff.

If a responsible person is not available to sign the Bailee's Undertaking, the Bailiff should consider removal and storage of the seized property to ensure its safekeeping. If this is the case, the Bailiff may want to contact the Civil Enforcement Agency for further instructions.

There are pros and cons to using a Bailee's Undertaking. A few have been listed for consideration when determining if a Bailee's Undertaking is appropriate.

Pros

Storage costs are generally eliminated.

Cons

There is a risk that the bailee, or other individual, will abscond with the personal property. Although, the option of criminal or civil proceedings exists, the personal property may not be recovered.

Since an Attachment Order is usually granted because a debtor is going to abscond with or dissipate the property, it may not be prudent to leave the property with the debtor on a Bailee's Undertaking.

Excerpts from the Criminal Code*Theft by Bailee of Things Under Seizure*

324. *Every one who is a bailee of anything that is under lawful seizure by a peace officer or public officer in the execution of the duties of his office, and who is obliged by law or agreement to produce and deliver it to that officer or to another person entitled thereto at a certain time and place, or on demand, steals it if he does not produce and deliver it in accordance with his obligation, but he does not steal it if his failure to produce and deliver it is not the result of a wilful act or omission by him.*

Punishment for Theft

334. *Except where otherwise provided by law, every one who commits theft*
(a) *is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or where the value of what is stolen exceeds five thousand dollars, or*

(b) *is guilty*

(i) *of an indictable offence and is liable to imprisonment for a term not exceeding two years, or*

(ii) *of an offence punishable on summary conviction,*

where the value of what is stolen does not exceed five thousand dollars.

Change of Bailee

If circumstances require a change of bailee, the new bailee must have the undertaking responsibilities explained. He must enter into the new Bailee's Undertaking by signing it and having it witnessed by an Agency employee or a Bailiff. Sufficient copies are required: one for the bailee, one for the plaintiff and the original for the Agency. At the discretion of the Agency, the condition of the personal property may be verified.

The following must be completed by the Agency:

- (1) Prepare a new Bailee's Undertaking. Have the undertaking signed by the new bailee and witnessed. Attach the original to the original Notice of Seizure of Personal Property and give the new bailee a copy of the new Bailee's Undertaking with a copy of the Notice of Seizure of Personal Property attached.
- (2) Advise the original bailee in writing of his release from the undertaking.

*** Bailiff's Report**

This form is the Bailiff's certification of the action he has taken.

Other Documents

Other documents that may be required would include relevant court orders,
* Addendum to Notice of Seizure of Personal Property and Seizure Stickers.

The Addendum to the Notice of Seizure of Personal Property may be required by the Bailiff if he runs out of space on the Notice of Seizure of Personal Property. It is suggested that the Bailiff keep a supply of these with him at all times.

Procedure for Enforcing Attachment Order

The Bailiff should:

- (1) Carefully read the Attachment Order and any other instructions received from the instructing party or the Civil Enforcement Agency.
- (2) Review the file to see if there are any arrangements that should be made ahead of time which may assist in executing the order (e.g. tow truck, moving van, veterinarian etc.).
- (3) Proceed to the location given in the letter of instructions.

For street addresses, a good city/town map may be helpful if you are unfamiliar with an area. For locating property identified by legal land description, you should know how to read the section, township, range and meridian shown on a district map. Ensure that you have access to various district maps.

Arrival At Location

- (1) Upon arriving at the location, identify yourself to the defendant. If the defendant is not present, advise the person present who you are and why you are there. Every attempt should be made to contact the defendant if his whereabouts are known.
- (2) Ensure the Attachment Order is available for inspection by the defendant, if requested.
- (3) List the exigible personal property in accordance with the letter of instructions and the Attachment Order. You must physically see and be able to lay your hands on the exigible personal property being listed as directed in the order.

Complete the Notice of Seizure of Personal Property

The Bailiff should:

- (1) Describe the personal property seized on the Notice of Seizure of Personal Property and an Addendum, if necessary. The description should include the quantity, serial number, make, model, year and colour, if applicable, and any other information to help identify the property. (See example in Writ Seizure section).
- (2) Date and sign your name at the bottom before serving or attaching.
- (3) If an addendum is used, indicate so by checking the box Addendum Attached and number the pages 1 of __ , 2 of __ , etc. (See example in section 6 - Writ Seizure)
- (4) Ensure that the following are indicated on the addendums:
 - Civil Enforcement Agency file number, and
 - date and signature.

Complete the Bailiff's Report

The Bailiff's Report should be clear, concise and factual. As this document may be used in court, it is extremely important that the bailiff not speculate or offer opinions. Specific details should be included.

- *
- (1) If seizure is effected, indicate how the Notice of Seizure of Personal Property was served. This is important because if these documents were not served, the Civil Enforcement Agency must serve them on each debtor as soon after effecting seizure as is practicable.
 - (2) If the bailiff is unable to personally serve the Notice of Seizure of Personal Property on the defendant or an adult person at the location where the seizure took place, he should:
 - post the documents in a conspicuous place at the location where the seizure took place, or
 - attach the documents to the seized property, or
 - affix the seizure stickers to the seized property

This meets the seizure requirements, however, it does not meet the service obligation. Ensure that the fact service was not effected is indicated in the Bailiff's Report.

- * (3) If the seized property was removed, indicate
 - where it was removed to,
 - the name and address of the person with whom the personal property was left, and
 - the name and address of the person who signed the Bailee's Undertaking.

Storage Expenses

- * *The bailiff must ensure that he does not incur excessive storage costs in relation to the value of the personal property. Advise the storage company that the Civil Enforcement Agency must receive an invoice for storage at least monthly. Ensure that the storage details, including costs, are referred to in the comments section of the Bailiff's Report.*

- * (4) Complete and sign the Report.
- (5) If the bailiff is unable to effect the seizure, he should complete the report stating the reasons and any useful information about the defendant or the personal property. Complete and sign the Report.
- (6) Return the completed documents to the Civil Enforcement Agency. This should be done promptly as the agency must register the details of the seizure within 3 days after the date of seizure.

Review of Bailiff's Report

- * Review the completed Bailiff's Report and accompanying documents to determine if attachment was effected. Also review the Report for any errors, omissions, or irregularities.

Attachment NOT Effected

- * If attachment was not effected, forward a copy of the Report to the instructing party and await further instructions.

Attachment Effected

- * If attachment was effected and if the Report and applicable documents are in order, forward a copy of the report to the instructing party along with a copy of the Notice of Seizure of Personal Property, and Bailee's Undertaking (if applicable).

Service of Seizure Documents

- * If the Notice of Seizure of Personal Property was not served on the respondent or an adult member of the respondent's household, the Civil Enforcement Act requires that the Agency must serve the documents on the respondent as soon after effecting seizure as is practicable.

Register Attachment

Pursuant to the provisions of the Civil Enforcement Regulation, the Agency must register details of all attached property and pertinent information such as the condition/location of the attached property at Personal Property Registry, within 3 days of the attachment being effected.

Disposition of Property

Follow the directions in the Attachment Order regarding sale or other disposition of the property.

Third Party Claims, Received After Attachment Effected

A third party is someone, other than the debtor or the creditor, who claims to be the owner of the seized property or who has some other interest in the personal property that would without the consent of the third party preclude sale of the seized property. A third party claim must be in writing and contain an address for service for the third party.

Upon the third party serving a claim on the Agency, proceed as follows:

- (1) Serve written notice of the third party's claim on the instructing party and on all other holders of related writs.
- * (2) Diarize the file for 20 days plus 7 days if served by recorded mail.

* **After 20 Days, or 27 Days Where Applicable**

If the Agency has not been served with written notice disputing the third party claim the Agency may release the seizure and return the property to the person from whom the property was seized.

A third party dispute may result in the commencement of interpleader proceedings. This is a complex area of law; you should contact your legal advisor for direction. Depending on arrangements made with the creditor, it may be the creditor's lawyer who commences interpleader proceedings.

If the instructing party disputes the claim, the seizure shall continue, subject to the appropriate fees and conditions imposed by the Agency. If the instructing party does not dispute the claim, but another related writ holder does, that writ holder may instruct the Agency to continue the seizure. On receiving such instructions, the Agency shall continue the seizure if the other person pays the appropriate fees, if any, and meets any other conditions that may be imposed by an Agency on an instructing party, e.g. indemnification.

You must accept a third party claim up to the time proceeds are distributed. Therefore, if a sale has been set up you must cancel it with respect to those items referred to in the third party claim. If the items have been sold the third party may be entitled to the proceeds of the sale. Consult your legal counsel for direction.

Maintenance Orders

The Director of Maintenance Enforcement can register a maintenance order with Personal Property Registry and when registered is deemed to be a Writ of Enforcement.

The Director of Maintenance Enforcement may provide instructions to an Agency to effect seizure to collect the arrears owing under a maintenance order registered at Personal Property Registry.

Refer to section 6 - [Writ Seizures](#) and follow the procedures set out.

Anton Piller (Pillar) Orders

The purpose of this type of order is to protect material, such as documents and property, from possible destruction. The order should specify any and all powers or instructions a civil enforcement agency and civil enforcement bailiff will require.

Upon receipt of the court order and a letter of instructions, check:

- (1) That the order is directed to an Agency
- (2) Comply with the conditions set out in the order.