§ 7102. Seizure of chattel on behalf of plaintiff. (a) Seizure of chattel. When the plaintiff delivers to a sheriff an order of seizure, the papers on which the order was granted, the undertaking and a summons and complaint bearing the index number and the date of filing with the clerk of the court, in the action to recover the chattel, he shall seize the chattel in accordance with the provisions of the order and without delay.

(b) Service. The sheriff shall serve upon the person from whose possession the chattel is seized a copy of the order of seizure, the papers on which the order was granted, and the undertaking delivered to him by the plaintiff. Unless the order of seizure provides otherwise, the papers delivered to him by the plaintiff, shall be personally served by the sheriff on each defendant not in default in the same manner as a summons or as provided in section 314; if a defendant has appeared he shall be served in the manner provided for service of papers generally.

(c) Affidavit. The application for an order of seizure shall be supported by an affidavit which shall clearly identify the chattel to be seized and shall state:

1. that the plaintiff is entitled to possession by virtue of facts set forth;

2. that the chattel is wrongfully held by the defendant named;

3. whether an action to recover the chattel has been commenced, the defendants served, whether they are in default, and, if they have appeared, where papers may be served upon them;

4. the value of each chattel or class of chattels claimed, or the aggregate value of all chattels claimed;

5. if the plaintiff seeks the inclusion in the order of seizure of a provision authorizing the sheriff to break open, enter and search for the chattel, the place where the chattel is located and facts sufficient to establish probable cause to believe that the chattel is located at that place;

6. that no defense to the claim is known to the plaintiff; and

7. if the plaintiff seeks an order of seizure without notice, facts sufficient to establish that unless such order is granted without notice, it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

(d) Order of seizure. 1. Upon presentation of the affidavit and undertaking and upon finding that it is probable the plaintiff will succeed on the merits and the facts are as stated in the affidavit, the court may grant an order directing the sheriff of any county where the chattel is found to seize the chattel described in the affidavit and including, if the court so directs, a provision that, if the chattel is not delivered to the sheriff, he may break open, enter and search for the chattel in the place specified in the affidavit. The plaintiff shall have the burden of establishing the grounds for the order.

2. Upon a motion for an order of seizure, the court, without notice to the defendant, may grant a temporary restraining order that the chattel shall not be removed from the state if it is a vehicle, aircraft or vessel or, otherwise, from its location, transferred, sold, pledged, assigned or otherwise disposed of or permitted to become subject to a security interest or lien until further order of the court. Unless the court otherwise directs, the restraining order does not prohibit a disposition of the chattel to the plaintiff. Disobedience of the order may be punished as a contempt of court.

3. An order as provided in paragraph one of this subdivision may be granted without notice only if, in addition to the other prerequisites for the granting of the order, the court finds that unless such order is granted without notice it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

4. An order of seizure granted without notice shall provide that the plaintiff shall move for an order confirming the order of seizure on

such notice to the defendant and sheriff and within such period, not to exceed five days after seizure, as the court shall direct. Unless the motion is made within such period, the order of seizure shall have no further effect and shall be vacated on motion and any chattel seized thereunder shall be returned forthwith to the defendant. Upon the motion to confirm, the plaintiff shall have the burden of establishing the grounds for confirmation.

(e) Undertaking. The undertaking shall be executed by sufficient surety, acceptable to the court. The condition of the undertaking shall be that the surety is bound in a specified amount, not less than twice the value of the chattel stated in the plaintiff's affidavit, for the return of the chattel to any person to whom possession is awarded by the judgment, and for payment of any sum awarded by the judgment against the person giving the undertaking. A person claiming only a lien on or security interest in the chattel may except to the plaintiff's surety.

(f) Disposition of chattel by sheriff. Unless the court orders otherwise, the sheriff shall retain custody of a chattel for a period of ten days after seizure where seizure is pursuant to an order granted on notice, and until served with an order of confirmation where seizure is pursuant to an order granted without notice. At the expiration of such period, the sheriff shall deliver the chattel to the plaintiff if there has not been served upon him a notice of exception to plaintiff's surety, a notice of motion for an impounding or returning order, or the necessary papers to reclaim the chattel. Upon failure of the surety on plaintiff's undertaking to justify, the sheriff shall deliver possession of the chattel to the person from whom it was seized.