

Pawnbrokers, return of stolen property

Number: INFORMAL

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Chief Douglas O. Foster
Umatilla Police Department
Post Office Box 2286
Umatilla, Florida 32784

Dear Chief Foster:

Thank you for considering this office as a source of assistance regarding the return of stolen property that has been sold to a pawnbroker. Attorney General Butterworth has asked me to respond to your letter.

You state that you have had difficulty advising victims that they must pay the pawnbrokers for the property or obtain a court order to retrieve the property.

I would note that former section 715.041(2), Florida Statutes 1987, authorized the lawful owner of any stolen property in the possession of a pawnbroker to recover such property by informing any law enforcement agency of the location of such property and providing the agency with proof of ownership of the property, provided a timely report of the theft of the property was made to the proper authorities. The statute permitted a law enforcement officer authorized by the police chief or sheriff in the jurisdiction where the property is found, upon receipt of such proof, to recover the property from the pawnbroker, without expense to the lawful owner thereof, unless the pawnbroker presents evidence of having received proof of ownership of such property by the person who sold it to the pawnbroker or pledged the property as security for a loan. In *Florida Pawnbrokers and Secondhand Dealers Association, Inc. v. City of Fort Lauderdale*,^[1] the court held that the above statute, which authorizes police officers to seize property in possession of pawnbroker upon ex parte application of putative lawful owner who is expressly exempted from reimbursing pawnbroker, violated due process.^[2]

Subsection (14) of section 539.001, Florida Statutes, the "Florida Pawnbroking Act," grants a pawnbroker has a possessory lien on the pledged goods pawned as security for the funds advanced, the pawn service charge owed, and the other charges authorized under this section, but not for other debts due to the pawnbroker. The pawnbroker may be compelled to relinquish possession of the pledged goods only after receipt of the applicable funds advanced plus the accrued service charge and other authorized charges, upon court order, or as otherwise provided by law.

Section 539.001(15), Florida Statutes, provides for claims against purchased goods or pledged goods held by pawnbrokers, stating in part:

"(a) To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated, the claimant must notify the pawnbroker by certified mail,

return receipt requested, or in person evidenced by signed receipt, of the claimant's claim to the purchased or pledged goods. The notice must contain a complete and accurate description of the purchased or pledged goods and must be accompanied by a legible copy of the applicable law enforcement agency's report on the misappropriation of such property. If the claimant and the pawnbroker do not resolve the matter within 10 days after the pawnbroker's receipt of the notice, the claimant may petition the court to order the return of the property, naming the pawnbroker as a defendant, and must serve the pawnbroker with a copy of the petition. The pawnbroker shall hold the property described in the petition until the right to possession is resolved by the parties or by a court of competent jurisdiction. The court shall waive any filing fee for the petition to recover the property, and the sheriff shall waive the service fees.

(b) If, after notice and a hearing, the court finds that the property was misappropriated and orders the return of the property to the claimant:

1. The claimant may recover from the pawnbroker the cost of the action, including the claimant's reasonable attorney's fees; and

2. If the conveying customer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the conveying customer to repay the pawnbroker the full amount the conveying customer received from the pawnbroker for the property, plus all applicable pawn service charges. As used in this paragraph, the term "convicted of" includes a plea of nolo contendere to the charges or any agreement in which adjudication is withheld; and

3. The conveying customer shall be responsible to pay all attorney's fees and taxable costs incurred by the pawnbroker in defending a replevin action or any other civil matter wherein it is found that the conveying customer was in violation of this paragraph.

(c) If the court finds that the claimant failed to comply with the requirements in paragraph (a) or otherwise finds against the claimant, the claimant is liable for the defendants' costs, including reasonable attorney's fees."

In addition, section 539.001(16), Florida Statutes, establishes the procedure to be used when an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated to place a written hold order on the property. The written hold order shall impose a holding period not to exceed 90 days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. While a hold order is in effect, the pawnbroker must, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation.[3] The release of the property to the custody of the appropriate law enforcement official, however, is not considered a waiver or release of the pawnbroker's property rights or interest in the property and upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney's fees and costs.[4]

This office has been advised that the Senate Criminal Justice Committee is studying this issue

through an interim project. A copy of your letter has been forwarded to that committee for its consideration. Should you wish to contact the committee on this matter, you may contact Mr. Abel Gomez, Senate Criminal Justice Committee, 510 Knott Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100.

I trust that the above informal advisory comments may be of assistance to you.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] 699 F. Supp. 888 (S.D. Fla. 1988).

[2] *And see* Op. Att'y Gen. Fla. 73-286 (1973), stating that in the event that a pawnbroker is in lawful possession of property that is determined to have been stolen by a third party and either sold or pledged to the pawnbroker in the ordinary course of business and without the knowledge of the pawnbroker that the property was either stolen or embezzled, then such property could only be lawfully seized through court process.

[3] Section 539.001(16)(e)2., Fla. Stat.

[4] *Id.*