

# Replevin

## 9-349. Replevin -- PUBLIC RECORDS -- IMPROPER OR UNLAWFUL TRANSFER OR REMOVAL.

<http://www.legislature.idaho.gov/idstat/Title9/T9CH3SECT9-349.htm>

(1) Public records of the state and/or territory of Idaho are the property of the citizens of the state in perpetuity and they may not be improperly or unlawfully transferred or removed from their proper custodian. For purposes of this section, the terms "public record" and "record," or plurals thereof, shall have the same meaning as "public record" as provided in section [9-337](#), Idaho Code.

(2) For the purpose of this section, where public records of a county, local district, or independent public body corporate and politic thereof are involved, all references to the state archivist also refer to any responsible public official or records custodian and all references to the attorney general also refer to county prosecutors.

(3) Whenever the state archivist or their designee has reasonable grounds to believe that records belonging to the state, county, local district, or independent public body corporate and politic thereof, are in the possession of a person or entity not authorized by law to possess those records, and such possession was acquired on or after July 1, 2011, he or she may issue a written notice demanding that person or entity to do either of the following within ten (10) calendar days of receiving the notice:

(a) Return the records to the office of origin or the Idaho state archives; or

(b) Respond in writing and declare why the records do not belong to the state or a local agency.

(4) The notice and demand shall identify the records claimed to belong to the state or local agency with reasonable specificity, and shall specify that the state archivist may undertake legal action to recover the records if the person or entity fails to respond in writing within the required time or does not adequately demonstrate that the records do not belong to the state or a local agency.

(5) If a person or entity that receives a written notice and demand from the state archivist pursuant to this chapter fails to deliver the described records, fails to respond to the notice and demand within the required time, or does not adequately demonstrate that the records do not belong to the state or a local agency, the state archivist may ask the attorney general to petition a court of competent jurisdiction for an order requiring the return of the records.

(6) The court may issue any order necessary to protect the records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the records, and may order that the records be surrendered into the custody of the state archivist pending the court's decision on the petition.

(7) After a hearing, and upon a finding that the specified records are in the possession of a person or entity not authorized by law to possess the records, the court shall order the records to be delivered to the state archivist or other official designated by the court.

(8) If the attorney general recovers a record under this section, the court may award attorney's fees and court costs.

(9) Notwithstanding any other provision of this section, any public record that is in the custody of an organization or institution shall not be subject to the provisions of this section provided:

(a) That professional standards recognized by the society of American archivists for the management and preservation of historical records are maintained; and

(b) Such records are accessible to the public in a manner consistent with sections [9-337](#) through [9-352](#), inclusive, Idaho Code.

(10) When a record is returned pursuant to subsection (3)(a) of this section, upon the request of the person, organization or institution that returned the record, the record custodian that receives the record shall issue to that person, organization or institution a copy or digital image of the record which shall be certified as a true copy of the record that was returned to the state or local agency, and dated on the same day the record was returned.