



POST RECOVERY – PERSONAL PROPERTY HANDLING

PERSONAL PROPERTY NOTIFICATION

There is no more critical post recovery procedure than that of properly handling the debtor's personal property. The importance of inventory, storage and return of personal property cannot be over emphasized because there will invariably be a time when a debtor swears there was the "proverbial" \$10,000 diamond ring or the Rolex watch, or cash in the collateral at the time of recovery that is now missing.

It is of critical importance that a "Chain of Custody" be established from the moment and point of recovery of the collateral to the point where the personal property is properly inventoried and stored prior to its return to the debtor or otherwise disposed of. Allowing someone other than the FRS who actually recovered the collateral to inventory the personal property will "Break the Chain of Custody", and expose the FRS, his employer, insurance carrier and the creditor to potential liability.

It should be the responsibility of the recovery agency owner to consult with the legal authority or an attorney in the recovery agency's service areas to determine if there are specific, statutory procedures for handling debtor's personal property. If there are no specific procedures, the following procedure has withstood both state and federal court challenges and should be used.

When personal property of the debtor is inventoried and stored the FRS shall immediately provide office staff with documentation at which time office staff shall adhere to the following procedures for notification to the debtor, releasing the personal property back to the debtor or his/her lawful representative and maintaining personal property records. Due to the critical importance of the proper handling of personal property there should be one office employee appointed by the recovery agency owner to be responsible for this procedure.

1. If prescription drugs are found during the inventorying, the office designee should make every effort to contact the debtor for immediate return of these items. These items should be released to the debtor or their lawful representative separate from any remaining personal property.
2. If firearms, contraband, illegal drugs or items that the FRS suspects may be stolen property are found during inventory, the FRS shall notify office designee and designee shall immediately notify law enforcement.
3. Within five (5) days after the repossession, the appointed employee shall give written notification to the debtor as to the procedure for redeeming personal effects or other property inventoried. In providing the debtor with instructions for redeeming personal effects, these instructions should never contain the physical address where the property is stored. The instructions should provide only the telephone number. Directions to the physical location should be provided to the debtor on the day the debtor is scheduled to redeem the property.

4. If the debtor has not come forward to claim personal effects, at least forty-five (45) days prior to disposing of debtor's personal effects or other personal property, the recovery agency shall, by United States Postal Service "Proof of Mailing" or certified mail, notify the debtor of the intent to dispose of said property. Should the debtor, or his/her lawful designee appear to retrieve the personal property, the personal property shall be surrendered to that individual upon payment of any reasonably incurred expenses for inventory and storage and by that individual signing the Contract For Storage and/or Services (Forms Section 13). By signing the Contract for Storage and/or Services, the debtor or assignee has created a contract with your recovery agency and thus has eliminated the agency as a third party debtor collector as defined in the FDCPA. If the personal property is not claimed within forty-five (45) days of the notice of intent to dispose, local or state law notwithstanding, the personal property may be disposed of at the discretion of the recovery agency owner.

5. It should be noted that the notice which is sent within five (5) days of the repossession does not require any proof of mailing. The proof of mailing procedure refers to the forty-five (45) days prior to disposal of the property. Of course, the proof of mailing notification can be used within the first five (5) days and no further notification is required.

6. The reason for the regular five (5) day mailing is to hopefully, avoid the cost of certified mail or proof of mailing.