

## **RECOVERY OF STOLEN RENTAL MERCHANDISE UNDER THE ILLINOIS CRIMINAL CODE**

The perils of a rent-to-own business include customers who take merchandise but fail to pay. As with other businesses, Rental Dealers have the option of pursuing payment in small claims court or through a collection agency. In addition, however, Rental Dealers may press criminal charges against customers who keep merchandise without paying.

### **Illinois Criminal Code - Offense of Retail Theft**

In 1990, the Illinois Criminal Code was amended to provide criminal penalties for those who rent items, stop making payments, and then fail to return the rented items. Under the original provision, the renter was guilty of the crime of retail theft if he broke his contract and then failed to return the item within 30 days after the Rental Dealer made a written demand, hi 1996, the statute was amended to shorten the notice process. Now, a renter is guilty of retail theft if he fails to either pay or return the item within 10 days after a written request.

The penalties for retail theft vary depending on the value of the property and the prior criminal record of the defendant. Retail theft of property worth less than \$150 is a Class A misdemeanor (up to one year in prison). If the renter has a previous theft conviction of any kind, including retail theft, burglary, or robbery, he is guilty of a Class 4 felony (1 to 3 years in prison). Retail theft of property worth more than \$150 is a Class 3 felony (2 to 5 years in prison), regardless of the prior record of the defendant.

### **Written Demand - a Prerequisite to Criminal Prosecution**

The first step toward criminal prosecution is a written demand from the Rental Dealer to the renter. Although the renter may have the property and refuse to pay for it, no crime has been committed until the Rental Dealer makes a written demand and the renter fails to respond. Here is a sample demand letter:

Dear Renter:

We have reason to believe that you are exerting unauthorized control over the personal property rented to you by [Rental Dealer]. We also believe that you intend to permanently deprive [Rental Dealer] of that property. Such conduct may be prosecuted as the offense of Retail Theft, which constitutes a Class A Misdemeanor or a Class 3 or Class 4 felony, depending on the value of the property and your prior criminal record.

We demand that you comply with your rental agreement within the next 10 days by returning the rented property or paying for the property as specified in your agreement. If you do not comply with the agreement within 10 days, we will seek to

have you prosecuted for Retail Theft under the Illinois Criminal Code.

If the renter fails to respond to the written demand within 10 days, then the Rental Dealer may press charges against the renter for Retail Theft.

#### Pressing Charges

Once the renter violates his or her contract, the Rental Dealer makes a written demand, and the renter fails to comply within 10 days, the next step is to press charges. To take this step, a Rental Dealer should contact the office of the County State's Attorney and inquire about the local procedure for "pressing charges." Typically, the state's attorney will provide forms for the Rental Dealer to fill out with facts showing that the renter committed retail theft. Once you have filled out the form, the prosecution is in the hands of the State's Attorney who will decide whether to prosecute. There is no guarantee that pressing charges will result in a prosecution. However, State's Attorneys are both public servants and elected officials and therefore should act on your request.

#### Return of Rented Items

If you know the location of the rented merchandise at the time you press charges, you should ask the State's Attorney's Office to get a search warrant. With a search warrant, local police can search the renter's house or any other location where you have reason to believe you will find the rented merchandise.

#### Checklist For Prosecution For Retail Theft of Rented Merchandise

1. Renter violates the rental agreement by failing to return the property and failing to pay for the property
2. The Rental Dealer sends written demand:
  - a. by registered mail;
  - b. to the address stated in the agreement;
  - c. to the last known address, if different than the one stated in the agreement;
  - d. demands payment or return of the item within 10 days; and
  - e. advises that criminal prosecution may result for failure to comply within 10 days.
3. If the renter does not comply within 10 days, then the Rental Dealer seeks criminal prosecution:
  - a. calculate 10 day period from date of receipt if renter signs and returns registered mail green card;

- b. Allow 15 days from date of mailing if renter fails to pick up the registered mail.
4. Contact the County State's Attorneys Office For instructions on pressing criminal charges;
5. Request that the State's Attorney seeks a search warrant and attempts to seize the property.

#### Protection of Rental Merchandise

Stolen rental property may end up in a pawn shop. The Pawnbroker Regulation Act provides rules for pawn shops to follow in accepting property. A pawnbroker may not accept property from anyone under the age of 18. A pawnbroker may not accept property from anyone who appears to be intoxicated or anyone known to have been convicted of theft. When it is determined that stolen property has been pawned, the property shall be returned to the owner of the property without any payment to the pawnbroker.

The real obstacle in recovering items from a pawn shop seems to be learning where the property has been pawned. Therefore, all Rental Dealers should place permanent identification on their rented items in order to tip off pawnbrokers that the items may still be owned by the Rental Dealer. Rental Dealers also may want to advise their local pawnbrokers that they are putting identification plates on all their rented merchandise so that each pawnbroker can look for the identification and also look for items that have had the identification forcibly removed or altered.