



Tennessee Archives Management Advisory

2007

REPOSSESSING GOVERNMENT RECORDS: TENNESSEE'S REPLEVIN LAW

Recently there has been an increased level of illegal trafficking in county records on Ebay. The sale of any government record is illegal in Tennessee according to the Replevin law, TCA § 39-16-504 (see attached). This law includes all records created by state, county, or municipal government. Violation of this law is a Class A misdemeanor.

We urge you to set up an account on Ebay so that you can regularly monitor the items for sale. Historical records can be found under the "Antiques/Books, Manuscripts/American" category listings, although they can be listed under several other categories, including "Collectibles/Postcards & Paper, Documents." As you gain familiarity with Ebay, you will be able to find targeted items more effectively and efficiently.

If you discover that your county's records are being bought and sold on Ebay, we recommend the following steps:

- (1) Notify your county mayor immediately. He or she will be able to work with the county attorney and county sheriff in pursuing the matter. It is difficult to contact Ebay directly, but they will respond to law enforcement inquiries. The published fax number to reach them is 408-967-9915 and the published email is stopfraud@ebay.com. Ebay does not have a published phone number. Only law enforcement can find out the true identify of the seller, although it is possible for any Ebay subscriber to contact Ebay sellers through email.
- (2) Contact our office at the Tennessee State Library and Archives. Dr. Wayne Moore can be reached at (615) 253-3458 or Gwynn Thayer (615) 253-3469. We can offer advice as to how to handle the problem, but we are unable legally to take direct action. However, we have in the past attended meetings with county officials in order to assist in recovering the documents. We have had success in several Tennessee counties.

Tennessee Replevin Law

The Law:

39-16-504. Destruction of and tampering with governmental records. —

(a) It is unlawful for any person to:

- (1) Knowingly make a false entry in, or false alteration of, a governmental record;
- (2) Make, present, or use any record, document or thing with knowledge of its falsity and with intent that it will be taken as a genuine governmental record; or
- (3) Intentionally and unlawfully destroy, conceal, remove or otherwise impair the verity, legibility or availability of a governmental record.

(b) A violation of this section is a Class A misdemeanor.

(c)(1) Upon notification from any public official having custody of government records, including those created by municipal, county or state government agencies, that records have been unlawfully removed from a government records office, appropriate legal action may be taken by the city attorney, county attorney or attorney general, as the case may be, to obtain a warrant for possession of any public records which have been unlawfully transferred or removed in violation of this section.

(2) Such records shall be returned to the office of origin immediately after safeguards are established to prevent further recurrence of unlawful transfer or removal. [Acts 1989, ch. 591, § 1; 1998, ch. 906, § 1.]

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

39-16-501 – 39-16-507 are referred to in § 40-12-201.

Section to Section References. Sections

This section is referred to in § 5-23-107.

The Explanation:

Possession and sale by private individuals of any government record is prohibited in Tennessee according to Tennessee Code Annotated § 39-16-504. Called the Replevin law, it prohibits the removal of records from governmental agencies in the state. This law includes all records created by state, county, or municipal government. Section (a)(3) states that it is unlawful to, “Intentionally and unlawfully destroy, conceal, remove or otherwise impair the verity, legibility or availability of a government record.” Section (c)(1) and (2) further state that, “Upon notification from any public official having custody of government records, including those created by municipal, county or state government agencies, that records have been unlawfully removed from a government records office, appropriate legal action may be taken by the city attorney, county attorney, or general attorney, as the case may be, to obtain a warrant for possession of any public records which have been unlawfully transferred or removed in violation of this section,” and that “such records shall be returned to the office of origin immediately after safeguards are established to prevent further recurrence of unlawful transfer or removal.” Violating this law is a Class A misdemeanor.