

West's Florida Statutes Annotated
Title XXXIX. Commercial Relations (Chapters 668-688) (Refs & Annos)
Chapter 673. Uniform Commercial Code: Negotiable Instruments (Refs & Annos)
Article 3. Negotiable Instruments (Refs & Annos)
Part III. Enforcement of Instruments

West's F.S.A. § 673.3091

673.3091. Enforcement of lost, destroyed, or stolen instrument

Effective: March 29, 2004

[Currentness](#)

(1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) The person seeking to enforce the instrument was entitled to enforce the instrument when loss of possession occurred, or has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(b) The loss of possession was not the result of a transfer by the person or a lawful seizure; and

(c) The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument under subsection (1) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, [s. 673.3081](#) applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Credits

[Laws 1992, c. 92-82, § 2.](#) Amended by [Laws 2004, c. 2004-3, § 1, eff. March 29, 2004.](#)

Editors' Notes

UNIFORM COMMERCIAL CODE COMMENT

Section 3-309 is a modification of former Section 3-804. The rights stated are those of “a person entitled to enforce the instrument” at the time of loss rather than those of an “owner” as in former Section 3-804. Under subsection (b), judgment to enforce the instrument cannot be given unless the court finds that the defendant will be adequately protected against a claim to the instrument by a holder that may appear at some later time. The court is given discretion in determining how adequate protection is to be assured. Former Section 3-804 allowed the court to “require security indemnifying the defendant against

loss.” Under Section 3-309 adequate protection is a flexible concept. For example, there is substantial risk that a holder in due course may make a demand for payment if the instrument was payable to bearer when it was lost or stolen. On the other hand if the instrument was payable to the person who lost the instrument and that person did not indorse the instrument, no other person could be a holder of the instrument. In some cases there is risk of loss only if there is doubt about whether the facts alleged by the person who lost the instrument are true. Thus, the type of adequate protection that is reasonable in the circumstances may depend on the degree of certainty about the facts in the case.

[Notes of Decisions \(98\)](#)

West's F. S. A. § 673.3091, FL ST § 673.3091

Current through the 2019 First Regular Session of the 26th Legislature.

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