

2012 Kansas Statutes

60-1005. Replevin; procedure; orders; execution; judgment. The plaintiff, in an action to recover possession of specific personal property, may at any time before the judgment is rendered claim immediate possession thereof under the following procedure:

(a) *Affidavit.* The plaintiff shall file an affidavit, unless the plaintiff's petition has been verified, which in either event shall show:

- (1) That the plaintiff is the owner of the property claimed, sufficiently describing it, or is lawfully entitled to the possession thereof,
- (2) that it is wrongfully detained by the defendant, or if it is held by an officer under legal process, that demand for the same has been made and refused, and
- (3) the estimated value thereof.

(b) *Hearing, notice; bond.* Except as otherwise provided herein, after filing the affidavit or verified petition, the plaintiff shall apply to the court for an order for the delivery of the property to the plaintiffs in the manner prescribed by subsection (b) of K.S.A. 60-207, and amendments thereto, and the motion made thereunder shall be served upon the defendant pursuant to K.S.A. 60-205, and amendments thereto. After a hearing and presentation of evidence on plaintiff's motion, and if the judge is satisfied as to the probable validity of plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an order for the delivery of the property to the plaintiff.

Notwithstanding the foregoing provisions of this subsection, the judge may enter or cause to be entered the order for delivery of property after an ex parte hearing and without notice to and the opportunity for a hearing by the defendant, only if the judge is satisfied as to the probable validity of the following allegations to be contained in plaintiff's affidavit or verified petition:

- (1) Possession of the property by the plaintiff is directly necessary to secure an important governmental or general public interest; and
- (2) there is a special need for very prompt action due to the immediate danger that the defendant will destroy or conceal the property.

In lieu of the foregoing procedure providing for the issuance of an order for the delivery of the property, the plaintiff may apply to the court for a restraining order directed to the defendant, imposing such conditions and restrictions as the court deems necessary to protect the property during the pendency of the action and to protect the court's jurisdiction over such property. Such restraining order may be issued without the requirement that the plaintiff file a bond as required for issuing an order for the delivery of the property.

Prior to the issuance of the order for delivery of the property, the plaintiff shall file with the clerk of the court in which the action is brought a bond in not less than double the amount of the value of the property as stated in the affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion, with one or more sufficient sureties. It shall be to the effect that plaintiff shall duly prosecute the action, and pay all costs and damages that may be awarded against the plaintiff, and that if the plaintiff is given possession of the property, the plaintiff will return it to defendant if it be so adjudged. If the bond is found to be sufficient, the judge of the district court shall approve the bond and note the judge's approval thereon. The defendant may challenge the sufficiency of the bond as provided in subsection (b) of K.S.A. 60-705, and amendments thereto.

(c) *Property in custodia legis.* If the property the possession of which is sought is in the custody of an officer under any legal process it shall nevertheless be subject to replevin under this section, but if the same is in the custody of any officer under any process issued out of a judicial proceeding, the petition or affidavit and bond shall be filed in the same proceeding out of which such process issued.

(d) *Order for delivery of property.* The order for the delivery of the property to the plaintiff shall be delivered to the sheriff of any county in the state in which the property is located. The order shall state the names of the parties, the description of the property and the value as set out in plaintiff's affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion pursuant to subsection (b). It shall command the sheriff to take immediate possession of the property and deliver it to plaintiff at the expiration of 24 hours unless there is compliance with the requirements of subsection (f) and make return of the order on the day named therein. If the sheriff is a party defendant, then the order shall be served upon the sheriff by the clerk of the court.

(e) *Return and execution of order.* (1) *Obtaining possession.* In the execution of the order the sheriff may break open any building or enclosure in which the property is located, if the sheriff cannot otherwise obtain possession of the property or entrance.

(2) *Execution.* The sheriff shall execute the order by taking possession of the property described therein, and serving a copy on the person charged with the unlawful detainer in the same manner as for personal service if the person can be found in the county.

(3) *Return.* The return day of the order of delivery shall be 21 days after it is issued.

(f) *Redelivery bond.* The defendant, within 24 hours after service of a copy of the order, may deliver to the sheriff a bond to be approved by the sheriff, in not less than double the amount of the value of the property as stated in the order, with one or more sufficient sureties, and the sheriff shall return the property to the defendant. The bond shall be to the effect that the defendant will deliver the property to the plaintiff if it be so adjudged, and will pay all costs and damages that may be adjudged against the defendant. The sheriff shall file the bond with the clerk after noting approval thereon. If the defendant is a public officer, board or government agency, such officer, board or agency, in lieu of giving a redelivery bond, may retain possession of the property seized by filing with the clerk within the time required for giving the redelivery bond a writing certifying that the public health, safety or welfare would be jeopardized or impaired if the plaintiff acquired possession of the property prior to final judgment, in which case hearing may be had on the issue of public interest at the instance of any party.

(g) *Judgment in action.* In an action to recover the possession of personal property, judgment for the plaintiff may be for possession or for the recovery of possession, or the value thereof in case a delivery cannot be had, and for damages for the detention. If the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

History: L. 1963, ch. 303, 60-1005; L. 1973, ch. 235, § 1; L. 1992, ch. 314, § 10; L. 2010, ch. 135, § 168; July 1.