

2012 Kansas Statutes

60-1006. Foreclosure of security interest; procedure; orders; execution; judgment. A secured party may bring an action in the district court to reduce an indebtedness to a money judgment and to foreclose the security interest in specific personal property given to secure such indebtedness. The secured party, at any time before judgment is rendered, may cause the specified security to be taken into the possession of the appropriate officer to await further order of the court under the following procedure:

(a) *Affidavit or petition.* The plaintiff shall file an affidavit, unless the plaintiff's petition shall have been verified, which in either event shall show: (1) The instrument of indebtedness or the terms thereof; (2) the amount of the indebtedness owed; (3) the security agreement or the terms thereof; (4) a description of the personal property; (5) that plaintiff is lawfully entitled to the foreclosure of the specific personal property; (6) the estimated value of the personal property to the best of plaintiff's knowledge and belief, and when several articles are claimed, the estimated value of each article shall be so stated; and (7) that the personal property is wrongfully detained by the defendant.

(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 plaintiff 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 as provided in subsection (c).

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 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 estimated 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 in favor of the defendant and 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 plaintiff is given possession of the property the plaintiff will return it to the defendant if it be so adjudged. If the bond shall be found to be sufficient, the judge of the district court shall approve the same and note approval thereon. The defendant may challenge the sufficiency of the bond in the manner provided in subsection (b) of K.S.A. 60-705, and amendments thereto.

(c) *Order.* The order 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 estimated 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 to keep it until further order of the court, subject to the provisions of subsections (e), (f) and (g), and to make return of the order on the day named therein.

(d) *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 to the building on demand.

(2) *Execution.* Such officer shall execute the order by taking possession of the property described therein, and by serving a copy on the person charged with the unlawful detainer. Should the officer be unable to serve the defendant in accordance with the provisions of K.S.A. 60-304, and amendments thereto, but can take possession of the personal property described in the order, the action may proceed to foreclose the security interest once service is made pursuant to K.S.A. 60-307, and amendments thereto.

(3) *Perishable goods.* When there is actually seized property which is likely to perish or to materially depreciate in value or threatens to decline speedily in value before the probable termination of the suit, or the keeping of which would be attended with unreasonable loss or expense, the court may order the same to be sold by the sheriff on such terms and conditions as the judge may direct, and a return of the proceedings thereon shall be made by the sheriff at a time to be fixed by the judge.

(4) *Return.* The time for return of the order of delivery shall be as prescribed by subsection (d) of K.S.A. 60-312, and amendments thereto.

(e) *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 in favor of the plaintiff and shall be to the effect that the defendant will deliver the property to the sheriff 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 does not file a redelivery bond as provided above, then the sheriff shall deliver the property to the custody of the plaintiff, unless the plaintiff directs that the officer retain possession of the property and deposits sufficient security, as determined by the court, to pay the cost of storing such property.

(f) *Possession in third party.* When the sheriff finds the property in possession of a person other than a defendant and deems it advisable to leave such person in possession, the sheriff shall declare to the person in possession that such person shall hold such property in such person's possession, subject to the further order of the court, and shall summon such person as a garnishee by serving upon such person a copy of the order which directs

the sheriff to take immediate possession of the property. The sheriff may require of such person in possession an undertaking with good and sufficient sureties in such sum as the sheriff deems sufficient. The undertaking shall be to the effect that such person will deliver the property to the sheriff at the time and place fixed for sale, if such be ordered by the court. The sheriff shall give such person written notice of the time and place fixed for the sale by delivery in person or by restricted mail.

(g) *Property claimed by third person.* If the sheriff, by virtue of the order, shall take possession of, or be requested by the plaintiff to take possession of, personal property claimed by any person other than a defendant, the sheriff, before proceeding, may require the plaintiff to give the sheriff an undertaking with good and sufficient sureties to pay all costs and damages that the sheriff may sustain by reason of the execution of such order.

(h) *Judgment.* Judgment for the plaintiff shall be for a money judgment and foreclosure of the security interest, and the plaintiff may proceed to foreclose the security interest in accordance with the terms of the security agreement covering the property, as governed by the provisions of the uniform commercial code, unless the court otherwise directs. If the court directs the plaintiff to proceed to enforce the judgment other than pursuant to the security agreement, and if the judgment is not satisfied within 14 days thereafter, then the clerk shall issue an order of special execution directed to the sheriff to sell the property in accordance with K.S.A. 60-1007, and amendments thereto. If the property is not then in the possession of the sheriff, the order also shall direct the person having possession to deliver such property to the sheriff. If the property has been delivered to the sheriff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property and damages for the taking and withholding of same.

History: L. 1973, ch. 236, § 1; L. 1992, ch. 314, § 11; L. 2010, ch. 135, § 169; July 1.