

61-3701. Replevin; procedure; orders; execution; judgment. Upon the commencement of an action, the plaintiff may recover possession of specific personal property before or after judgment.

(a) Claim for possession of property. A plaintiff may seek an order to obtain possession of specific personal property as follows: Petition. The plaintiff shall file a petition stating:

- (1) Plaintiff is the owner or the person lawfully entitled to the possession, the specific property and the factual basis for the claim;
- (2) a description of the property;
- (3) the property is wrongfully detained by the defendant, or is held by an officer under legal process who has refused delivery on demand; and
- (4) the estimated value of the property.

(b) Prejudgment possession of property. A plaintiff may seek an order to obtain immediate possession of specific personal property, before judgment as follows: Petition. The plaintiff shall file a petition signed under penalty of perjury stating:

- (1) Plaintiff is the owner or the person lawfully entitled to the possession, the specific property, and the factual basis for the claim;
- (2) a description of the property;
- (3) the property is wrongfully detained by the defendant, or is held by an officer under legal process who has refused delivery on demand; and
- (4) the estimated value of the property.

(c) Hearing; notice, bond. After filing the petition, the plaintiff may apply to the court for an order for the delivery of the property prior to judgment on the merits of the case.

(1) The application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, state with particularity the grounds therefor and set forth the relief or order sought.

(2) The petition and application shall be served upon the defendant pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto.

(3) 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.

(4) Prior to the issuance of the order for delivery of the property, the plaintiff shall file a bond with the clerk of the court.

(d) Bond; contents, insufficiency.

(1) The bond shall be executed by the plaintiff and one or more sufficient sureties in a sum double the amount of the fair market value of the property, as determined by the judge, or such lesser amount as shall be approved by an order of the judge.

(2) The bond shall be to the effect that the 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 the defendant if it be so adjudged. If the bond shall be found to be sufficient, the judge shall approve the same and note approval thereon.

(3) The defendant may challenge the sufficiency of the bond as provided in subsection (b) of K.S.A. 60-705, and amendments thereto.

(4) The court shall release the bond, if the plaintiff abandons the right to take possession of the property, prior to taking possession of the property.

(e) Replevin; without hearing, notice. Notwithstanding the foregoing provisions of this section, 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, if the judge is satisfied as to the probable validity of the following additional allegations to be contained in plaintiff's 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.

(f) Property in custodia legis. If the property 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 and bond shall be filed in the same proceeding out of which such process issued.

(g) Order for delivery of property. The order for the delivery of the property to the plaintiff shall be delivered to the appropriate officer or person authorized to serve process 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 petition, or as found by the court at the hearing on plaintiff's application pursuant to subsection (c). The order shall command the appropriate officer to take immediate possession of the property and deliver it to the plaintiff and make return of the order on the day named therein.

(h) Execution of order, return. (1) In the execution of the order the officer may break open any building or enclosure in which the property is located, if the officer cannot otherwise obtain possession of the property or entrance to the building on demand.

(2) The appropriate officer shall execute the order by taking possession of the property described therein, and serving a copy on the person charged with the order of delivery in the same manner as for personal or resident service if the person can be found in the county.

(3) The return day of the order of delivery shall be 14 days after it is issued, if the order is executed within the county where the court is situated. In all other cases, the return day shall be 21 days after the order is issued.

(4) The plaintiff shall have the right to attend execution of the order. Upon inspection of the property the plaintiff may abandon their right to prejudgment possession and shall so advise the appropriate officer and the court.

(i) Perishable goods. When property shall be actually seized 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 on such terms and conditions as the judge may direct, by the person having charge of the property, and a return of the proceedings thereon shall be made by the person at a time to be fixed by the judge.

(j) Redelivery, bond. The defendant, after service of a copy of the delivery order, may apply to the court for redelivery of the property. The court shall order return of the property to the defendant when the defendant files a bond with the clerk of the court, in an amount equal to the plaintiff's bond, executed by the defendant with one or more sufficient sureties. The bond shall be to the effect that the defendant will deliver the property to the plaintiff if so adjudged, and will pay all costs and damages that may be adjudged against the defendant. If the bond shall be found to be sufficient, the judge shall approve the same and note 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 a response 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.

(k) Judgment in action. (1) 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.

(2) In addition to other orders, the court may direct an appropriate officer to put the party entitled to possession in possession of the property.

History: L. 2000, ch. 161, § 73; L. 2010, ch. 135, § 215; July 1.