

61-3702. Foreclosure of security interest; procedure; orders; execution; judgment. A plaintiff may bring an action to reduce an indebtedness to a money judgment and to foreclose the security interest in specific personal property given to secure such indebtedness. The plaintiff, at any time before judgment is rendered, may obtain immediate possession of the specified property as follows:

(a) Petition. The plaintiff shall file a petition signed under penalty of perjury stating:

- (1) The plaintiff is the secured creditor of the defendant;
- (2) the instrument of indebtedness or the terms thereof;
- (3) the amount of the indebtedness owed;
- (4) the security agreement or the terms thereof;
- (5) a description of the personal property;
- (6) that plaintiff is lawfully entitled to the foreclosure of the specific personal property;
- (7) the estimated value of each item of personal property; and
- (8) the defendant is no longer entitled to possess the property.

(b) Prejudgment possession; hearing, notice, bond. After filing the petition, the plaintiff may apply to the court for an order for the delivery of the property before judgment.

(1) The application to the court for an order of delivery 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 the plaintiff's motion, if the judge is satisfied as to the probable validity of the 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.

(c) 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 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.

(d) 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.

(e) 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.

(f) 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 a hearing may be had on the issue of public interest at the instance of any party.

(g) Possession in third party. When the officer finds the property in possession of a person other than a defendant and deems it advisable to leave such person in possession, the officer 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 officer to take immediate possession of the property. The court may require of such person in possession an undertaking with good and sufficient sureties in such sum as the court deems sufficient. The undertaking shall be to the effect that such person will deliver the property to the officer at the time and place fixed for sale, if such be ordered by the court. The officer shall give such person written notice of the time and place fixed for the sale by delivery in person or by restricted mail.

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

(i) 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 such plaintiff's 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 appropriate officer to sell the property in accordance with K.S.A. 61-3703, and amendments thereto. If the property is not then in the possession of the officer, the order shall also direct the person having possession to deliver such property to the officer. If the property has been delivered to the officer, and the defendant claims a return thereof, judgment shall be for the defendant or a return of the property and damages for the taking and withholding of same.

History: L. 2000, ch. 161, § 74; L. 2010, ch. 135, § 216; July 1.