

REPLEVIN; PROCEDURE; ORDERS; EXECUTION; JUDGMENT

K.S.A. 60-1005.

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.

Self-Represented Litigant Certification Form

By signing this form, I certify that, to the best of my knowledge, information, and belief, and based on my reasonable review of the document's contents, the attached filing complies with the certification requirements in the Temporary Rule for Filing in a District Court by a Self-Represented Litigant as follows:

- (a) I have signed the attached filing and provided my name, address, email address (if available), telephone number, and fax number (if available); and
- (b) The attached filing contains no personally identifiable information (PII) or meets an exception in the Temporary Rule for Filing in a District Court by a Self-Represented Litigant because the filing (check box that applies):

contains no PII (if this box is checked, do not check any other boxes); or

requests that this document be sealed under the Temporary Rule for Filing in a District Court by a Self-Represented Litigant for the following reason (check box that applies):

a pre-existing order was entered by the court on that seals this document;

this document asks the court to issue an order that seals the following document: [include general description of document contents without including PII.] _____;

or

this document asks the court to seal the following document already filed in the case: [describe the document already on file so that the clerk can identify it without using PII]

_____.

Date: _____

Signature: _____

Name of Party: _____

CIVIL COVER SHEET

The civil cover sheet neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Clerk of the District Court for the purposes of initiating the civil docket sheet. **This information will not be available to the public and this document will be stored in a separate location from the case file and then destroyed within a reasonable time.** A new case **will not be accepted** without a cover sheet attached. (THIS FORM MUST BE TYPED OR PRINTED LEGIBLY). This form can be found at www.kscourts.org.

<u>NATURE OF SUIT</u> (Mark only one - If the case involves more than one of the following categories, indicate the category having the highest dollar value.)			
<u>CIVIL</u>		If a CH. 61: \$ _____ (Judgment Demand Amount)	
TORT WARRANT <input type="checkbox"/> Asbestos Product Liability <input type="checkbox"/> Automobile Tort <input type="checkbox"/> Intentional Tort <input type="checkbox"/> Legal Malpractice <input type="checkbox"/> Medical Malpractice <input type="checkbox"/> Other Professional Malpractice <input type="checkbox"/> Premises Liability <input type="checkbox"/> Slander/Libel/Defamation <input type="checkbox"/> Tobacco Product Liability <input type="checkbox"/> Toxic/Other Product Liability <input type="checkbox"/> Other Tort	CONTRACT <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Employment Dispute – Discrimination <input type="checkbox"/> Employment Dispute - Other <input type="checkbox"/> Fraud <input type="checkbox"/> Landlord/Tenant - Unlawful Detainer <input type="checkbox"/> Landlord/Tenant Dispute – Other <input type="checkbox"/> Seller Plaintiff (debt collection) <input type="checkbox"/> Other Contract CIVIL APPEALS <input type="checkbox"/> Administrative Agency <input type="checkbox"/> Other Civil Appeal	REAL PROPERTY <input type="checkbox"/> STATE TAX <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Mortgage Foreclosure <input type="checkbox"/> Other Real Property MISCELLANEOUS <input type="checkbox"/> 60-1507 <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Other Writs <input type="checkbox"/> OTHER CIVIL <input type="checkbox"/> SMALL CLAIMS	
<u>DOMESTIC</u>			
<input type="checkbox"/> MARRIAGE DISSOLUTION/DIVORCE <input type="checkbox"/> PROTECTION FROM ABUSE <input type="checkbox"/> PROTECTION FROM STALKING <input type="checkbox"/> UIFSA <input type="checkbox"/> OTHER DOMESTIC RELATIONS <input type="checkbox"/> NON-DIVORCE SUPPORT, CUSTODY OR VISITATION <input type="checkbox"/> PATERNITY			
<u>PROBATE/ESTATE</u>			
GUARDIAN/CONSERVATOR <input type="checkbox"/> DETERMINATION OF DESCENT <input type="checkbox"/> ELDER ABUSE <input type="checkbox"/> ADOPTION <input type="checkbox"/> Conservatorship/Trusteeship <input type="checkbox"/> SEXUALLY VIOLENT PREDATOR <input type="checkbox"/> OTHER PROBATE/ESTATE <input type="checkbox"/> Guardianship - Adult <input type="checkbox"/> Guardianship - Minor <input type="checkbox"/> DECEDENT ESTATE CARE AND TREATMENT <input type="checkbox"/> Guardian/Conservator - Adult <input type="checkbox"/> Guardian/Conservator – Minor			

JURY DEMAND YES (Check yes only if jury demand is included in petition or as a separate pleading)
 NO

SUMMONS ATTACHED: YES
 NO

SERVICE BY: PROCESS SERVER/ATTORNEY
 SHERIFF IN STATE _____ (County)
 SHERIFF OUT OF STATE _____ (State)

SHERIFF'S PROCESS FEE ATTACHED YES
 NO

PLAINTIFF/SUBJECT INFORMATION
(ATTACH ADDITIONAL SHEET, IF NECESSARY)

NAME: _____

ADDRESS: _____

PHONE: _____ SEX: _____

CELL PHONE: _____

E-MAIL: _____

SSN: _____ DOB: _____

DL OR STATE ID NO: _____
State and Number

ALIAS NAMES USED: _____

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DEFENDANT/OTHER PARTY INFORMATION
(ATTACH ADDITIONAL SHEET, IF NECESSARY)

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CELL PHONE: _____

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SSN: _____ DOB: _____

DL OR STATE ID NO: _____
State and Number

ALIAS NAMES USED: _____

IN THE 29TH JUDICIAL DISTRICT
DISTRICT COURT WYANDOTTE COUNTY, KANSAS
LIMITED ACTIONS DEPARTMENT

Petitioner

Case No. _____

and

Pursuant to Chapter 61 of Kansas Statutes Annotated

Respondent

REPLEVIN AFFIDAVIT (prejudgment replevin)

_____, being duly sworn, says that he she is the plaintiff (or an agent for the corporate plaintiff) in the above-entitled action; that the plaintiff is the owner of the property claimed and described below, or is lawfully entitled to the possession thereof; that said property 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 that the property claimed by the plaintiff, together with the value of the article stated as nearly as practicable, is described as follows, to wit:

Description of Property Value of Each Article

_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____

all of the aggregate value of \$ _____

Pursuant to K.S.A. 53-601, as amended, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on _____, 20____.

Signature

IN THE 29TH JUDICIAL DISTRICT
DISTRICT COURT WYANDOTTE COUNTY, KANSAS
LIMITED ACTIONS DEPARTMENT

Petitioner

Case No. _____

and

Pursuant to Chapter 61 of Kansas Statutes Annotated

Respondent

ORDER FOR DELIVERY OF PROPERTY

To the Sheriff:

WHEREAS, the above-named plaintiff has commenced an action in this court against the above-named defendant for the recovery of certain personal property and has filed the plaintiff's affidavit and bond, as required by law, to obtain an order for the immediate delivery of such personal property; You are therefore commanded to take immediate possession of the following described personal property and deliver it to such plaintiff unless you receive a redelivery bond from the defendant. The property is described and valued as follows:

_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____

all of the aggregate value of \$ _____

You shall also serve a copy of this order on the defendant in the same manner as the service of summons and make your return within ____ days hereof.

Dated _____

Judge