

[CAPTION]

**ALLEGATION OF REASON
FOR OMITTING PARTY**

_____ named in this pleading is not made a party to this action for the following reason(s): [Include reason for not joining party, for example: _____ is not subject to the jurisdiction of this Court.]

Authority

K.S.A. 60-219(c).

Notes on Use

K.S.A. 60-219 provides for joinder of a “contingently necessary” person. If a contingently necessary person must be a party to an action pursuant to K.S.A. 60-219(a) but cannot be joined, the pleading must state why such a person is not joined. K.S.A. 60-219(c). This allegation should be set forth in an initial or responsive pleading, not in a separate document. A paragraph should be added to explain why the contingently necessary person cannot be joined in the proceeding.

The statute defines a person as contingently necessary if (1) complete relief cannot be accorded without joining that person, or (2) that person claims an interest relating to the property or transaction that is the subject of the action and disposition of the action in that person’s absence may (i) impede or impair an ability to protect an interest or (ii) subject those already joined as parties to a risk of incurring double, multiple, or otherwise inconsistent obligations due to that person’s claimed interest. K.S.A. 60-219(a).

When a contingently necessary person cannot be made a party, the court will determine, based upon factors set forth in the statute, whether in equity and good conscience the action can proceed. K.S.A. 60-219(b).

Comments

When one creditor receives surplus proceeds from a foreclosure sale of real estate, another creditor claiming the same proceeds should be joined as a contingently necessary party under K.S.A. 60-219. *Kinsley State Bank v. Waters*, 18 Kan. App. 2d 413, 418, 854 P.2d 311 (1993). In a foreclosure action, a person occupying the property is a “contingently necessary” party under K.S.A. 60-219. *Citizens Bank & Trust v. Brothers Constr. & Mfg., Inc.*, 18 Kan. App. 2d 704, 710, 859 P.2d 394 (1993).

In cases under the Kansas parentage act, all presumed or alleged fathers are to be made a party to any action. If an alleged father is not subject to the jurisdiction of the court, the father shall be given notice of the action in a manner prescribed by the court and given an opportunity to be heard. K.S.A. 38-1117(a). If an alleged father is not made a party, the pleading should explain why the father is not joined as a party. The failure to join a party does not deprive the court of jurisdiction to determine whether a party to the action has a duty to support a child, and, if so, to enter an order for support. K.S.A. 38-1117(b). Following a decision in *State ex rel. Secretary of SRS*

v. Stephens, 13 Kan. App. 2d 715, 717, 782 P.2d 68 (1989), the Legislature amended K.S.A. 38-1117(b) to give the district court jurisdiction to determine whether a party in an action under the Kansas parentage act has a duty to support a child even though that person is not joined as a party. *Florida Dept. of HRS v. Breeden*, 21 Kan. App. 2d , 500, 901 P.2d 1357 (1995) (The trial court had jurisdiction to issue a support order.). *State ex rel. Secretary of SRS v. Mayfield*, 25 Kan. App. 2d 452, 455-56, 966 P.2d 85 (1998) (The trial court had jurisdiction to order reimbursement of SRS, payment of past medical expenses, and payment of cash assistance.).