

File Stamp Date _____
Case Number _____

Prepared by:
Filer's name, SC#
Filer's address
Filer's phone number
[Filer's fax phone number]
[Filer's e-mail address]
Attorney for Plaintiff

In The District Court of _____ County, Kansas

Plaintiff's name Plaintiff

vs.

Case No. _____

Defendant's name Defendant
Defendant's address

Pursuant to Chapter 60 of
Kansas Statutes Annotated

ATTACHMENT ORDER

THE STATE OF KANSAS TO THE SHERIFF OF _____ COUNTY, IN THE STATE OF
KANSAS:

You are commanded to attach all real and personal property of the above named defendant in the above named county or so much thereof as will satisfy said plaintiff's claim in the sum of \$_____, and the further sum of \$_____ as the probable court costs of the above entitled action; and you will return this writ to the undersigned on or before the _____ day of _____, _____.

If the real or personal property sought to be attached by you is in the hands of some person other than the defendant, you shall serve a copy of this order on such third party and declare to such party that you attach the same and that such third party is made a garnishee in accordance with the following directions to such third party:

"If the officer serving this order of attachment upon you declares to you that the officer attaches any funds or property in your hands, you are hereby made a garnishee in the above entitled matter.

"You are hereby ordered as a garnishee to file with the clerk of the above named court, within twenty (20) days after service of this order upon you, your answer under oath stating whether you are at the time of the service of this order upon you, and also whether at any time thereafter but before you file your answer, indebted to the defendant, or have in your possession or control any property belonging to the defendant, and

stating the amount of any such indebtedness and description of any such property. You are hereby further ordered to withhold the payment of any such indebtedness, or the delivery away from yourself of any such property, until further order of the court.

"Failure to file your answer as aforesaid shall entitle the plaintiff to judgment against you for the full amount of the claim and costs."

Signature, Judge

Dated: _____

RETURN ON ATTACHMENT ORDER

(MANNER OF EXECUTION)

On _____, _____, at ___ o'clock, ___ M., I received this attachment order and executed the same as follows:

(1) Property Found and Attached. On _____, _____, I went to _____ where personal property of _____, defendant, was found and there declared that, by virtue of said order of attachment and at the suit of the plaintiff, I attached the personal property of said defendant. On _____, _____, together with _____ and _____, two disinterested appraisers who are residents of this county, I made a true inventory and appraisal of the personal property attached, which inventory and appraisal is returned herewith.

(2) Property in Possession of Officer. The property listed in the inventory and appraisal is now in my possession, subject to the further order of the court.

(3) Bond received. On _____, _____, I received from _____, defendant (or person in possession), with _____ and _____ as sureties thereon, a bond in the amount of \$ _____, double the amount of the plaintiff's claim (or double the appraisal of the property) and thereafter the property attached was returned to (or left in possession of) _____. Said bond has been by me determined to be sufficient and is herewith filed with the court.

(4) Third Party Declared Garnishee. On _____, _____, I went to _____ where funds, credits or other personal property of _____, defendant, was found in the hands of _____, to whom I declared that I attached any funds or property of the defendant in his or her hands, made him or her a garnishee and ordered him or her to file an answer as garnishee in this action. I also served a copy of said attachment order on such third party.

(5) Property Not Found. I attempted to execute this attachment order, but was unable to locate any personal property of _____, defendant, within this county.

(The officer should delete or omit those portions not applicable to the manner of executing the order.)

(MANNER OF SERVICE ON DEFENDANTS)

I hereby certify that I served a copy of the attachment order on the defendant _____ at the time and in the manner following, to wit: _____.

I was unable to locate the following defendant _____ within this county.

Signature, Sheriff or Process Server

Dated: _____

Authority

K.S.A. 60-706.

Notes on Use

In certain circumstances, property of a defendant may be attached prior to obtaining a final judgment upon which general execution may issue. *Compare* K.S.A. 60-701 and 60-703 *with* 60-2401. The specific grounds for attachment are set forth in K.S.A. 60-701. An order of attachment must be issued by a district court judge and must be supported by an affidavit stating one or more of the statutory grounds for attachment. K.S.A. 60-703. Bond is required except in actions on behalf of the state or a county. K.S.A. 60-703. The order must be served by the sheriff or other officer authorized by law to serve such process. K.S.A. 60-703; *see also* K.S.A. 60-303(d)(3) and comment below. The order of attachment is in addition to other process, not a substitute for it, but is served in the same manner as an ordinary summons. K.S.A. 60-706(b)(1).

The officer is required to go to the place where the defendant's property is located and declare that the officer is attaching the property by virtue of the order. K.S.A. 60-706(b)(1).

As the form reflects, different types of property are attached in different ways. When attaching personal property, the officer and two disinterested appraisers who are residents of the county are required to make an inventory and appraisal, which must be signed by the officer and the appraisers and returned with the order. Compensation of the appraisers and the officer is fixed by the Court and assessed as court costs. K.S.A. 60-706(b)(2). If the property to be attached is tangible personal property, the officer is required to take possession of it, if that can reasonably be done. K.S.A. 60-706(b)(3). If the tangible property is in the possession of a person other than the defendant, the officer attaches it by declaring to the person that the property is attached and summoning the person as garnishee by serving a copy of the order of attachment upon them. K.S.A. 60-706(b)(3). Real property is attached by leaving a copy of the order with the occupant of the property, or if there is no occupant, by leaving it in a conspicuous place on the property. K.S.A. 60-706(b)(4). If the officer serves an occupant, the return must include that person's name. K.S.A. 60-706(b)(4). In the case of credits, attachment is made by declaring to the debtor that the officer is attaching all debts due from debtor to the defendant, or so much as necessary to satisfy the debt and interest or damages and costs, and summoning the debtor as garnishee by serving a copy of the order of attachment upon them. K.S.A. 60-706(b)(5).

Comment

The law has been clarified regarding who can serve an order of attachment. *See Steele v. City of Wichita*, 254 Kan. 801, 869 P.2d 653 (1994). K.S.A. 2004 Supp. 60-303(d)(3) provides in part as follows:

“Service , levy, and execution of all process under this subsection, including, but not limited to, writs of execution, orders of attachment, replevin orders, orders for delivery, writs of restitution and writs of assistance, shall be made by a sheriff within the sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law before the supreme court of Kansas or by some person appointed as a process server by a judge or clerk of the district court All persons authorized under this subsection to serve, levy and execute process shall be considered an “officer” as used in K.S.A. 60-706 and 60-2401 and amendments thereto.”

The defendant may regain possession of attached property at any time before final judgment or sale of the property under court order, by posting a sufficient surety bond. K.S.A. 60-707. The sufficiency of attachment proceedings may be challenged by filing a motion to dissolve the attachment. K.S.A. 60-712.