



KENTUCKY REPLEVINS

A Step-by-Step Guide

A Credit Union-specific manual on how to process replevins in Kentucky from start to finish.

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What is a replevin?

A replevin is simply an action to obtain a court order granting the Plaintiff possession of personal property being wrongfully withheld by another. In our practice, the most common scenario is a secured creditor on a defaulted vehicle loan whose collateral is being withheld by the borrower. However, a replevin can also be brought against a tenant, a landowner, a mechanic's garage or anyone else wrongfully detaining your collateral. Note: if the vehicle can be picked up without a breach of the peace, and no one is preventing you from picking it up, go get it. You do not need a court order. But if you run into any resistance at all, including verbal objections from the Member, a replevin action is the best practice.

Step 1: Referral Received.

The minimum information we need is:

- a) The retail installment contract;
- b) The Title Lien Statement;
- c) The payoff;
- d) The amount of the arrearage and the month the account is due for;

- e) A copy of any Notice of Default letter you have sent; if you have not sent a Notice of Default letter, we can do it for you;
- f) Borrowers' social security number;
- g) Current persons in possession of the collateral if different from the Members.
- h) The name in which the suit should be filed.
- i) Value of the collateral.

Upon receipt of this information, we will commence file set up on our practice management system, CaseAware.

Step 2: Set Up File. This involves completing a checklist of due diligence items, including:

- a) Checking to see if we already have a file on this borrower
- b) Checking to make sure all necessary documents are in the referral
- c) Associating the documents and entering the account information on CaseAware (note that we do not maintain a paper file –we are completely paperless- everything is stored digitally on our server);
- d) Running a Department of Defense Military search (need social security number or date of birth to do this)

- e) Run PACER to determine if Member is now or has ever been involved in a bankruptcy case.
- f) Run a zip code search to make sure we have the correct county;
- g) Run a skip trace online on everyone who signed the contract to determine their probable current address.

Step 3: Identify the defendants.

We begin by identifying the correct parties to name. If your Members are in possession of the collateral, we just name them. If there is someone else in possession and we know his or her name, we name that person as a party from whom we are seeking possession. If we do not know the name of the person in possession, we sue “Unknown Persons in Possession”. If a landlord is keeping you from taking possession of the property, we can name the landlord as a party also.

Step 4: Identify the Plaintiff.

Generally this is not an issue with a credit union, since they enforce their own contracts. But if you acquired the contract from another financial institution, we will need an assignment from that institution.

Step 5: Prepare and file the Complaint.

The complaint is prepared by a staff member, who brings it to an attorney for review and signature. After editing by the attorney, the complaint is filed using Kentucky's e filing system. Any filing fees or service costs are advanced by the firm. The clerk accepts the case for filing on the system, issues the summonses, and delivers those summonses to the appropriate person for service.

Step 6: Service of Process

Before the case can proceed, all defendants must be served with a summons notifying them of the lawsuit. There are basically 3 methods of serving a replevin summons in Kentucky:

- a) Certified mail: the clerk causes certified mail containing the summons and complaint to be sent to the defendant, return receipt requested. To prove service has occurred, we must have the green card back from the defendant in the court record and we MUST verify that the defendant is the one who signed for it.
- b) Sheriff service: the clerk delivers the summons and complaint to the Sheriff, who then attempts to locate and deliver the summons to the defendant.

The Sheriff is then required to file proof of service in the court record. We must make sure that the Sheriff delivered the summons to the right person. With appalling regularity, we find that the Sheriff delivered the summons to the spouse, the child, or whoever answered the door. Service is no good unless personally delivered to the defendant. You don't want to wait until you go to court to find out the Sheriff served the wrong person!

- c) Often the defendant won't pick up their certified mail and will successfully hide from the Sheriff (who may not be trying very hard anyway). When certified mail and/or Sheriff service are unsuccessful, Kentucky's rules provide for a warning order. To start this process, we ask the court to appoint a local attorney to try to notify the defendant of the lawsuit. The appointed attorney sends a letter to the defendant's address. Some warning order attorneys do a lot more to find the defendant, such as putting an ad in the paper, but the letter is all that is minimally required. 30 days after the court appoints the warning order attorney, the defendant is considered served, regardless of whether he received actual notice or

not. The defendant then has 20 days to answer the suit, making a total of 50 days between the time the court appoints the warning order attorney and the time we can proceed to the next step. However, we cannot proceed with the case until the warning order files a report describing what he has done to try to notify the defendant. We are constantly having to hound warning order attorneys to get them to file their reports. Note: if you use a warning order attorney, the court can only give you possession of the property, not a money judgment.

We generally use both certified mail and Sheriff service simultaneously. It's a little more expensive, but produces better results.

Step 7: Asking the Court for an Order granting you possession.

After the defendants have been served and their 20 days to answer has expired, you need to determine the best way to proceed to get an enforceable court order giving you possession of your collateral. There are two ways to go: 1) the slow, but easy and cheap way; or 2) the faster (sometimes), but more difficult, expensive, and risky way.

a) The slower, easier and cheaper way – Default Judgment

If the defendants have not answered, our next step is to file a motion for default judgment. Each court handles these motions differently. In many counties, no hearing is required: you simply file your motion and wait until the Judge signs it. In other counties, a hearing is required. Some larger courts have motion hearings every week or every two weeks. Some of the smaller rural counties only have court once a month. That is why I refer to this process as “slower”.

b) The faster, riskier, harder and more expensive way – Writ of Possession.

Kentucky statutes provide a writ of possession process to give you back your collateral before judgment is entered. Essentially, the process is as follows:

- 1) Send a demand letter and writ motion by certified mail;
- 2) If no hearing is requested on your motion in 7 days, send the Clerk a proposed writ of possession, bond, and filing and service fees. If a hearing is requested, the court will set it for a hearing date.

- 3) The Clerk (or the Judge if a hearing was requested) can then enter the writ and deliver it to the Sheriff for service.
- 4) Once the writ is served, the Sheriff can accompany you to the home to secure and take possession of the home.

I only recommend this process if the defendant is contesting the case, or we cannot get him served, or if the client is in a super hurry. The reasons I do not normally use the writ process as a first resort are:

- 1) You are required to post a bond for twice the value of the home. We have our own sources for obtaining bonds if our clients do not have their own vendor for issuing bonds. These bonds can be expensive, as the premium is calculated on the value of the home.
- 2) Clerks do not understand that the defendant does not get a hearing unless he asks for one. Too often, the clerk will schedule the writ motion for a hearing date even though the statute does not require one.
- 3) The statute requires the Sheriff to guard the mobile home for two days before giving you possession. No one actually does this, but it is what the statute requires.

- 4) The writ must be served before it is enforceable. A judgment does not.
- 5) Pre-judgment procedures such as a writ of possession must be followed to the letter, or the client is exposed to liability. Taking away someone's vehicle without going in front of a Judge is serious business and can have awful consequences if done wrong.

Step 8. Enforcing the Judgment or Writ.

In the case of a writ, we must get it served before you can enforce it. Once this happens, we will send you a copy and notify you to contact the Sheriff. You or your agent can schedule a date and time on which the Sheriff can accompany the agent to the home to keep the peace while the agent takes possession. A judgment, on the other hand, does not necessarily have to be served before taking possession, but it is a good idea as a matter of policy. Sheriffs are reluctant to enforce repossession judgments without giving the Member prior notice and time to surrender.

Step 9. What if the borrower catches up payments after the writ or judgment is entered?

There is no requirement that you immediately enforce your judgment and it stays good for 15 years. So if you want to allow the borrowers to keep the vehicle and make payments, you can. If, later on, the borrowers stop paying again, you can enforce the judgment or writ by filing a Motion for Transfer and Delivery of Possession. Once the Order is entered, it has the effect of “refreshing” your judgment so that you can then contact the Sheriff to make arrangements to take possession, as in Step 8.