

60-309. Relief from default judgment entered on service by publication. (a) *Procedure.* A party against which a judgment has been entered on service by publication in a newspaper, may, at any time within two years after its entry, move for relief from the judgment and to be allowed to defend. Before such relief may be granted, the movant must serve the motion on the adverse party, file a full answer to the petition, pay all costs if the court requires them to be paid and satisfy the court by affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, that the movant had no actual notice of the action in time to appear. The adverse party may present counter-affidavits or counter-declarations.

(b) *Sale for value after three months.* If no motion is made under subsection (a) within three months after the date the judgment was entered, a sale of property made to a purchaser for value in reliance on the judgment is not affected by a later-filed motion.

(c) *Judicial sales.* If property is sold on order of sale under the judgment from which relief is sought, the sale is not affected by a motion under subsection (a). Unless the court finds from affidavits, declarations pursuant to K.S.A. 53-601, and amendments thereto, or other evidence that actual notice was given before judgment to the parties served only by publication, the court must impound the proceeds of the sale and not distribute them until: (1) Three months have elapsed after the date the judgment was entered; or (2) a motion under subsection (a), if brought within the three-month period, is disposed of and the right to the impounded proceeds determined.

(d) *Bond in lieu of impounding proceeds.* In lieu of impounding the proceeds of sale as provided in subsection (c), any party having an interest under the judgment may give a bond, to be approved by the court, for the payment of an amount not exceeding the amount of the proceeds of sale to other persons found to be entitled to the proceeds.

History: L. 1963, ch. 303, 60-309; L. 2010, ch. 135, § 154; July 1.