

425.121 Exception to sureties -- Effect of failure to justify.

- (1) The defendant may except to the plaintiff's sureties not later than 10 days after levy of the writ of possession by filing with the court in which the action was brought a notice of exception to sureties and mailing a copy of the notice to the levying officer and to the plaintiff. The notice of exception filed with the court shall contain a certification that copies have been mailed to the levying officer and to the plaintiff.
- (2) The plaintiff may except to the defendant's sureties not later than 10 days after the defendant's bond is filed by filing with the court in which the action was brought a notice of exception to sureties and mailing a copy of the notice to the levying officer and to the defendant at the address set out in his bond. The notice of exception filed with the court shall contain a certification that copies have been mailed to the levying officer.
- (3) If the plaintiff or the defendant does not except to the sureties of the other as provided in this section he waives all objection to them.
- (4) When excepted to, the sureties shall justify that they are sufficient before a judicial officer of the court in which the action was brought at a time specified by the excepting party and in compliance with the rules of procedure.
- (5) If the plaintiff's sureties, or others in their place, fail to justify at the time and place appointed or do not qualify, the judicial officer shall vacate the temporary restraining order or preliminary injunction, if any, and the writ of possession and, if levy has occurred, order the levying officer to return the property to the defendant. If the plaintiff's sureties do qualify the judicial officer shall order the levying officer to deliver the property to the plaintiff.
- (6) If the defendant's sureties or others in their place fail to justify at the time and place appointed or do not qualify, the judicial officer shall order the levying officer to deliver the property to the plaintiff, or if the plaintiff has previously been given possession of the property he shall retain such possession. If the defendant's sureties do qualify, the judicial officer shall order the levying officer or the plaintiff to deliver the property to the defendant.

History: Created 1976 Ky. Acts ch. 91, sec. 24.