

1 **Rule 64. Writs in general.**

2 (a) Definitions. As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 69B and 69C:

3 (a)(1) "Claim" means a claim, counterclaim, cross claim, third party claim or any
4 other claim.

5 (a)(2) "Defendant" means the party against whom a claim is filed or against whom
6 judgment has been entered.

7 (a)(3) "Deliver" means actual delivery or to make the property available for pick up
8 and give to the person entitled to delivery written notice of availability.

9 (a)(4) "Disposable earnings" means that part of earnings for a pay period remaining
10 after the deduction of all amounts required by law to be withheld.

11 (a)(5) "Earnings" means compensation, however denominated, paid or payable to an
12 individual for personal services, including periodic payments pursuant to a pension or
13 retirement program. Earnings accrue on the last day of the period in which they were
14 earned.

15 (a)(6) "Notice of exemptions" means a form that advises the defendant or a third
16 person that certain property is or may be exempt from seizure under state or federal
17 law. The notice shall list examples of exempt property and indicate that other
18 exemptions may be available. The notice shall instruct the defendant of the deadline for
19 filing a reply and request for hearing.

20 (a)(7) "Officer" means any person designated by the court to whom the writ is
21 issued, including a sheriff, constable, deputy thereof or any person appointed by the
22 officer to hold the property.

23 (a)(8) "Plaintiff" means the party filing a claim or in whose favor judgment has been
24 entered.

25 (a)(9) "Property" means the defendant's property of any type not exempt from
26 seizure. Property includes but is not limited to real and personal property, tangible and
27 intangible property, the right to property whether due or to become due, and an
28 obligation of a third person to perform for the defendant.

29 (a)(10) "Serve" with respect to parties means any method of service authorized by
30 Rule 5 and with respect to non-parties means any manner of service authorized by Rule
31 4.

32 (b) Security.

33 (b)(1) Amount. When security is required of a party, the party shall provide security
34 in the sum and form the court deems adequate. For security by the plaintiff the amount
35 should be sufficient to reimburse other parties for damages, costs and attorney fees
36 incurred as a result of a writ wrongfully obtained. For security by the defendant, the
37 amount should be equivalent to the amount of the claim or judgment or the value of the
38 defendant's interest in the property. In fixing the amount, the court may consider any
39 relevant factor. The court may relieve a party from the necessity of providing security if it
40 appears that none of the parties will incur damages, costs or attorney fees as a result of
41 a writ wrongfully obtained or if there exists some other substantial reason for dispensing
42 with security. The amount of security does not establish or limit the amount of damages,
43 costs or attorney fees recoverable if the writ is wrongfully obtained.

44 (b)(2) Jurisdiction over surety. A surety submits to the jurisdiction of the court and
45 irrevocably appoints the clerk of the court as agent upon whom papers affecting the
46 surety's liability may be served. The surety shall file with the clerk of the court the
47 address to which the clerk may mail papers. The surety's liability may be enforced on
48 motion without the necessity of an independent action. If the opposing party recovers
49 judgment or if the writ is wrongfully obtained, the surety will pay the judgment, damages,
50 costs and attorney fees not to exceed the sum specified in the contract. The surety is
51 responsible for return of property ordered returned.

52 (b)(3) Objection. The court may issue additional writs upon the original security
53 subject to the objection of the opposing party. The opposing party may object to the
54 sufficiency of the security or the sufficiency of the sureties within five days after service
55 of the writ. The burden to show the sufficiency of the security and the sufficiency of the
56 sureties is on the proponent of the security.

57 (b)(4) Security of governmental entity. No security is required of the United States,
58 the State of Utah, or an officer, agency, or subdivision of either, nor when prohibited by
59 law.

60 (c) Procedures in aid of writs.

61 (c)(1) Referee. The court may appoint a referee to monitor hearings under this
62 subsection.

63 (c)(2) Hearing; witnesses; discovery. The court may conduct hearings as necessary
64 to identify property and to apply the property toward the satisfaction of the judgment or
65 order. Witnesses may be subpoenaed to appear, testify and produce records. The court
66 may permit discovery.

67 (c)(3) Restraint. The court may forbid any person from transferring, disposing or
68 interfering with the property.

69 (d) Issuance of writ; service

70 (d)(1) Clerk to issue writs. The clerk of the court shall issue writs. A court in which a
71 transcript or abstract of a judgment or order has been filed has the same authority to
72 issue a writ as the court that entered the judgment or order. If the writ directs the seizure
73 of real property, the clerk of the court shall issue the writ to the sheriff of the county in
74 which the real property is located. If the writ directs the seizure of personal property, the
75 clerk of the court may issue the writ to an officer of any county.

76 (d)(2) Content. The writ may direct the officer to seize the property, to keep the
77 property safe, to deliver the property to the plaintiff, to sell the property, or to take other
78 specified actions. If the writ is to enforce a judgment or order for the payment of money,
79 the writ shall specify the amount ordered to be paid and the amount due.

80 (d)(2)(A) If the writ is issued ex parte before judgment, the clerk shall attach to the
81 writ plaintiff's affidavit, detailed description of the property, notice of hearing, order
82 authorizing the writ, notice of exemptions and reply form.

83 (d)(2)(B) If the writ is issued before judgment but after a hearing, the clerk shall
84 attach to the writ plaintiff's affidavit and detailed description of the property.

85 (d)(2)(C) If the writ is issued after judgment, the clerk shall attach to the writ plaintiff's
86 application, detailed description of the property, the judgment, notice of exemptions and
87 reply form.

88 (d)(3) Service.

89 (d)(3)(A) Upon whom; effective date. The officer shall serve the writ and
90 accompanying papers on the defendant, and, as applicable, the garnishee and any
91 person named by the plaintiff as claiming an interest in the property. The officer may
92 simultaneously serve notice of the date, time and place of sale. A writ is effective upon
93 service.

94 (d)(3)(B) Limits on writs of garnishment.

95 (d)(3)(B)(i) A writ of garnishment served while a previous writ of garnishment is in
96 effect is effective upon expiration of the previous writ; otherwise, a writ of garnishment is
97 effective upon service.

98 (d)(3)(B)(ii) Only one writ of garnishment of earnings may be in effect at one time.
99 One additional writ of garnishment of earnings for a subsequent pay period may be
100 served on the garnishee while an earlier writ of continuing garnishment is in effect.

101 (d)(3)(C) Return; inventory. Within 10 days after service, the officer shall return the
102 writ to the court with proof of service. If property has been seized, the officer shall
103 include an inventory of the property and whether the property is held by the officer or
104 the officer's designee. If a person refuses to give the officer an affidavit describing the
105 property, the officer shall indicate the fact of refusal on the return, and the court may
106 require that person to pay the costs of any proceeding taken for the purpose of
107 obtaining such information.

108 (d)(3)(D) Service of writ by publication. The court may order service of a writ by
109 publication upon a person entitled to notice in circumstances in which service by
110 publication of a summons and complaint would be appropriate under Rule 4.

111 (d)(3)(D)(i) If service of a writ is by publication, substantially the following shall be
112 published under the caption of the case:

113 To _____, [Defendant/Garnishee/Claimant]:

114 A writ of _____ has been issued in the above-captioned case commanding
115 the officer of _____ County as follows:

116 [Quoting body of writ]

117 Your rights may be adversely affected by these proceedings. Property in which you
118 have an interest may be seized to pay a judgment or order. You have the right to claim
119 property exempt from seizure under statutes of the United States or this state, including
120 Utah Code, ~~Title 78, Chapter 23~~ [Title 78B, Chapter 5, Part 5](#).

121 (d)(3)(D)(ii) The notice shall be published in a newspaper of general circulation in
122 each county in which the property is located at least 10 days prior to the due date for
123 the reply or at least 10 days prior to the date of any sale, or as the court orders. The
124 date of publication is the date of service.

125 (e) Claim to property by third person.

126 (e)(1) Claimant's rights. Any person claiming an interest in the property has the
127 same rights and obligations as the defendant with respect to the writ and with respect to
128 providing and objecting to security. Any claimant named by the plaintiff and served with
129 the writ and accompanying papers shall exercise those rights and obligations within the
130 same time allowed the defendant. Any claimant not named by the plaintiff and not
131 served with the writ and accompanying papers may exercise those rights and
132 obligations at any time before the property is sold or delivered to the plaintiff.

133 (e)(2) Join claimant as defendant. The court may order any named claimant joined
134 as a defendant in interpleader. The plaintiff shall serve the order on the claimant. The
135 claimant is thereafter a defendant to the action and shall answer within 10 days, setting
136 forth any claim or defense. The court may enter judgment for or against the claimant to
137 the limit of the claimant's interest in the property.

138 (e)(3) Plaintiff's security. If the plaintiff requests that an officer seize or sell property
139 claimed by a person other than the defendant, the officer may request that the court
140 require the plaintiff to file security.

141 (f) Discharge of writ; release of property.

142 (f)(1) By defendant. At any time before notice of sale of the property or before the
143 property is delivered to the plaintiff, the defendant may file security and a motion to
144 discharge the writ. The plaintiff may object to the sufficiency of the security or the
145 sufficiency of the sureties within five days after service of the motion. At any time before
146 notice of sale of the property or before the property is delivered to the plaintiff, the
147 defendant may file a motion to discharge the writ on the ground that the writ was
148 wrongfully obtained. The court shall give the plaintiff reasonable opportunity to correct a
149 defect. The defendant shall serve the order to discharge the writ upon the officer,
150 plaintiff, garnishee and any third person claiming an interest in the property.

151 (f)(2) By plaintiff. The plaintiff may discharge the writ by filing a release and serving it
152 upon the officer, defendant, garnishee and any third person claiming an interest in the
153 property.

154 (f)(3) Disposition of property. If the writ is discharged, the court shall order any
155 remaining property and proceeds of sales delivered to the defendant.

156 (f)(4) Copy filed with county recorder. If an order discharges a writ upon property
157 seized by filing with the county recorder, the officer or a party shall file a certified copy of
158 the order with the county recorder.

159 (f)(5) Service on officer; disposition of property. If the order discharging the writ is
160 served on the officer:

161 (f)(5)(A) before the writ is served, the officer shall return the writ to the court;

162 (f)(5)(B) while the property is in the officer's custody, the officer shall return the
163 property to the defendant; or

164 (f)(5)(C) after the property is sold, the officer shall deliver any remaining proceeds of
165 the sale to the defendant.

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