

1 **Rule 64A. Prejudgment writs in general.**

2 (a) Availability. A writ of replevin, attachment or garnishment is available after the
3 claim has been filed and before judgment only upon written order of the court.

4 (b) Motion; affidavit. To obtain a writ of replevin, attachment or garnishment before
5 judgment, plaintiff shall file a motion, security as ordered by the court and an affidavit
6 stating facts showing the grounds for relief and other information required by these
7 rules. If the plaintiff cannot by due diligence determine the facts necessary to support
8 the affidavit, the plaintiff shall explain in the affidavit the steps taken to determine the
9 facts and why the facts could not be determined. The affidavit supporting the motion
10 shall state facts in simple, concise and direct terms that are not conclusory.

11 (c) Grounds for prejudgment writ. Grounds for a prejudgment writ include, in addition
12 to the grounds for the specific writ, all of the requirements listed in subsections (c)(1)
13 through (c)(3) and at least one of the requirements listed in subsections (c)(4) through
14 (c)(10):

15 (c)(1) that the property is not earnings and not exempt from execution; and

16 (c)(2) that the writ is not sought to hinder, delay or defraud a creditor of the
17 defendant; and

18 (c)(3) a substantial likelihood that the plaintiff will prevail on the merits of the
19 underlying claim; and

20 (c)(4) that the defendant is avoiding service of process; or

21 (c)(5) that the defendant has assigned, disposed of or concealed, or is about to
22 assign, dispose of or conceal, the property with intent to defraud creditors; or

23 (c)(6) that the defendant has left or is about to leave the state with intent to defraud
24 creditors; or

25 (c)(7) that the defendant has fraudulently incurred the obligation that is the subject of
26 the action; or

27 (c)(8) that the property will materially decline in value; or

28 (c)(9) that the plaintiff has an ownership or special interest in the property; or

29 (c)(10) probable cause of losing the remedy unless the court issues the writ.

30 (d) Statement. The affidavit supporting the motion shall state facts sufficient to show
31 the following information:

32 (d)(1) if known, the nature, location, account number and estimated value of the
33 property and the name, address and phone number of the person holding the property;

34 (d)(2) that the property has not been taken for a tax, assessment or fine;

35 (d)(3) that the property has not been seized under a writ against the property of the
36 plaintiff or that it is exempt from seizure;

37 (d)(4) the name and address of any person known to the plaintiff to claim an interest
38 in the property; and, if the motion is for a writ of garnishment,

39 (d)(5) the name and address of the garnishee; and

40 (d)(6) that the plaintiff has attached the garnishee fee established by Utah Code
41 Section ~~78-7-44~~ [78A-2-216](#).

42 (e) Notice, hearing. The court may order that a writ of replevin, attachment or
43 garnishment be issued before judgment after notice to the defendant and opportunity to
44 be heard.

45 (f) Method of service. The affidavit for the prejudgment writ shall be served on the
46 defendant and any person named by the plaintiff as claiming an interest in the property.
47 The affidavit shall be served in a manner directed by the court that is reasonably
48 calculated to expeditiously give actual notice of the hearing.

49 (g) Reply. The defendant may file a reply to the affidavit for a prejudgment writ at
50 least 24 hours before the hearing. The reply may:

51 (g)(1) challenge the issuance of the writ;

52 (g)(2) object to the sufficiency of the security or the sufficiency of the sureties;

53 (g)(3) request return of the property;

54 (g)(4) claim the property is exempt; or

55 (g)(5) claim a set off.

56 (h) Burden of proof. The burden is on the plaintiff to prove the facts necessary to
57 support the writ.

58 (i) Ex parte writ before judgment. If the plaintiff seeks a prejudgment writ prior to a
59 hearing, the plaintiff shall file an affidavit stating facts showing irreparable injury to the
60 plaintiff before the defendant can be heard or other reason notice should not be given. If
61 a writ is issued without notice to the defendant and opportunity to be heard, the court

62 shall set a hearing for the earliest reasonable time, and the writ and the order
63 authorizing the writ shall:

64 (i)(1) state the grounds for issuance without notice;

65 (i)(2) designate the date and time of issuance and the date and time of expiration;

66 (i)(3) designate the date, time and place of the hearing;

67 (i)(4) forthwith be filed in the clerk's office and entered of record;

68 (i)(5) expire 10 days after issuance unless the court establishes an earlier expiration
69 date, the defendant consents that the order and writ be extended or the court extends
70 the order and writ after hearing;

71 (i)(6) be served on the defendant and any person named by the plaintiff as claiming
72 an interest in the property in a manner directed by the court that is reasonably
73 calculated to expeditiously give actual notice of the hearing.

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