

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
12 addition to the grounds for the specific writ, all of the requirements listed in subsections
13 (c)(1) through (c)(3) and at least one of the requirements listed in subsections (c)(4)
14 through (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
24 defraud creditors; or

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

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

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

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

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

41 (d)(6) that the plaintiff has attached the garnishee fee established by Utah Code
42 Section 78A-2-216.

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

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

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

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

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

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

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

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

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

59 (i) **Ex parte writ before judgment.** If the plaintiff seeks a prejudgment writ prior to a
60 hearing, the plaintiff shall file an affidavit stating facts showing irreparable injury to the
61 plaintiff before the defendant can be heard or other reason notice should not be given. If
62 a writ is issued without notice to the defendant and opportunity to be heard, the court
63 shall set a hearing for the earliest reasonable time, and the writ and the order
64 authorizing the writ shall:

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

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

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

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

70 (i)(5) expire ~~40~~14 days after issuance unless the court establishes an earlier
71 expiration date, the defendant consents that the order and writ be extended or the
72 court extends the order and writ after hearing;

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