

1       **Rule 64D. Writ of garnishment.**

2       (a) **Availability.** A writ of garnishment is available to seize property of the defendant  
3 in the possession or under the control of a person other than the defendant. A writ of  
4 garnishment is available after final judgment or after the claim has been filed and prior  
5 to judgment. The maximum portion of disposable earnings of an individual subject to  
6 seizure is the lesser of:

7           (a)(1) 50% of the defendant's disposable earnings for a writ to enforce payment  
8 of a judgment for failure to support dependent children or 25% of the defendant's  
9 disposable earnings for any other judgment; or

10          (a)(2) the amount by which the defendant's disposable earnings for a pay period  
11 exceeds the number of weeks in that pay period multiplied by thirty times the federal  
12 minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the  
13 time the earnings are payable.

14       (b) **Grounds for writ before judgment.** In addition to the grounds required in Rule  
15 64A, the grounds for a writ of garnishment before judgment require all of the following:

16           (b)(1) that the defendant is indebted to the plaintiff;

17           (b)(2) that the action is upon a contract or is against a defendant who is not a  
18 resident of this state or is against a foreign corporation not qualified to do business  
19 in this state;

20           (b)(3) that payment of the claim has not been secured by a lien upon property in  
21 this state;

22           (b)(4) that the garnishee possesses or controls property of the defendant; and

23           (b)(5) that the plaintiff has attached the garnishee fee established by Utah Code  
24 Section 78A-2-216.

25       (c) **Statement.** The application for a post-judgment writ of garnishment shall state:

26           (c)(1) if known, the nature, location, account number and estimated value of the  
27 property and the name, address and phone number of the person holding the  
28 property;

29           (c)(2) whether any of the property consists of earnings;

30           (c)(3) the amount of the judgment and the amount due on the judgment;

31 (c)(4) the name, address and phone number of any person known to the plaintiff  
32 to claim an interest in the property; and

33 (c)(5) that the plaintiff has attached or will serve the garnishee fee established by  
34 Utah Code Section 78A-2-216.

35 (d) **Defendant identification.** The plaintiff shall submit with the affidavit or  
36 application a copy of the judgment information statement described in Utah Code  
37 Section 78B-5-201 or the defendant's name and address and, if known, the last four  
38 digits of the defendant's social security number and driver license number and state of  
39 issuance.

40 (e) **Interrogatories.** The plaintiff shall submit with the affidavit or application  
41 interrogatories to the garnishee inquiring:

42 (e)(1) whether the garnishee is indebted to the defendant and the nature of the  
43 indebtedness;

44 (e)(2) whether the garnishee possesses or controls any property of the defendant  
45 and, if so, the nature, location and estimated value of the property;

46 (e)(3) whether the garnishee knows of any property of the defendant in the  
47 possession or under the control of another, and, if so, the nature, location and  
48 estimated value of the property and the name, address and phone number of the  
49 person with possession or control;

50 (e)(4) whether the garnishee is deducting a liquidated amount in satisfaction of a  
51 claim against the plaintiff or the defendant, a designation as to whom the claim  
52 relates, and the amount deducted;

53 (e)(5) the date and manner of the garnishee's service of papers upon the  
54 defendant and any third persons;

55 (e)(6) the dates on which previously served writs of continuing garnishment were  
56 served; and

57 (e)(7) any other relevant information plaintiff may desire, including the  
58 defendant's position, rate and method of compensation, pay period, and the  
59 computation of the amount of defendant's disposable earnings.

60 (f) **Content of writ; priority.** The writ shall instruct the garnishee to complete the  
61 steps in subsection (g) and instruct the garnishee how to deliver the property. Several  
62 writs may be issued at the same time so long as only one garnishee is named in a writ.  
63 Priority among writs of garnishment is in order of service. A writ of garnishment of  
64 earnings applies to the earnings accruing during the pay period in which the writ is  
65 effective.

66 (g) **Garnishee's responsibilities.** The writ shall direct the garnishee to complete the  
67 following within seven business days of service of the writ upon the garnishee:

68 (g)(1) answer the interrogatories under oath or affirmation;

69 (g)(2) serve the answers on the plaintiff; and

70 (g)(3) serve the writ, answers, notice of exemptions and two copies of the reply  
71 form upon the defendant and any other person shown by the records of the  
72 garnishee to have an interest in the property.

73 The garnishee may amend answers to interrogatories to correct errors or to reflect a  
74 change in circumstances by serving the amended answers in the same manner as the  
75 original answers.

76 (h) **Reply to answers; request for hearing.**

77 (h)(1) The plaintiff or defendant may file and serve upon the garnishee a reply to  
78 the answers, a copy of the garnishee's answers, and a request for a hearing. The  
79 reply shall be filed and served within ~~40~~14 days after service of the answers or  
80 amended answers, but the court may deem the reply timely if filed before notice of  
81 sale of the property or before the property is delivered to the plaintiff. The reply may:

82 (h)(1)(A) challenge the issuance of the writ;

83 (h)(1)(B) challenge the accuracy of the answers;

84 (h)(1)(C) claim the property or a portion of the property is exempt; or

85 (h)(1)(D) claim a set off.

86 (h)(2) The reply is deemed denied, and the court shall conduct an evidentiary  
87 hearing as soon as possible and not to exceed 14 days.

88 (h)(3) If a person served by the garnishee fails to reply, as to that person:

89 (h)(3)(A) the garnishee's answers are deemed correct; and

90 (h)(3)(B) the property is not exempt, except as reflected in the answers.

91 (i) **Delivery of property.** A garnishee shall not deliver property until the property is  
92 due the defendant. Unless otherwise directed in the writ, the garnishee shall retain the  
93 property until ~~20~~21 days after service by the garnishee under subsection (g). If the  
94 garnishee is served with a reply within that time, the garnishee shall retain the property  
95 and comply with the order of the court entered after the hearing on the reply. Otherwise,  
96 the garnishee shall deliver the property as provided in the writ.

97 (j) **Liability of garnishee.**

98 (j)(1) A garnishee who acts in accordance with this rule, the writ or an order of the  
99 court is released from liability, unless answers to interrogatories are successfully  
100 controverted.

101 (j)(2)(A) If the garnishee fails to comply with this rule, the writ or an order of the  
102 court, the court may order the garnishee to appear and show cause why the  
103 garnishee should not be ordered to pay such amounts as are just, including the  
104 value of the property or the balance of the judgment, whichever is less, and  
105 reasonable costs and attorney fees incurred by parties as a result of the garnishee's  
106 failure. If the garnishee shows that the steps taken to secure the property were  
107 reasonable, the court may excuse the garnishee's liability in whole or in part.

108 (j)(2)(B) The creditor must attach to the motion for an order to show cause a  
109 statement that the creditor has in good faith conferred or attempted to confer with  
110 the garnishee in an effort to settle the issue without court action.

111 (j)(3) No person is liable as garnishee by reason of having drawn, accepted,  
112 made or endorsed any negotiable instrument that is not in the possession or control  
113 of the garnishee at the time of service of the writ.

114 (j)(4) Any person indebted to the defendant may pay to the officer the amount of  
115 the debt or so much as is necessary to satisfy the writ, and the officer's receipt  
116 discharges the debtor for the amount paid.

117 (j)(5) A garnishee may deduct from the property any liquidated claim against the  
118 plaintiff or defendant.

119 (k) **Property as security.**

120 (k)(1) If property secures payment of a debt to the garnishee, the property need  
121 not be applied at that time but the writ remains in effect, and the property remains  
122 subject to being applied upon payment of the debt. If property secures payment of a  
123 debt to the garnishee, the plaintiff may obtain an order authorizing the plaintiff to buy  
124 the debt and requiring the garnishee to deliver the property.

125 (k)(2) If property secures an obligation that does not require the personal  
126 performance of the defendant and that can be performed by a third person, the  
127 plaintiff may obtain an order authorizing the plaintiff or a third person to perform the  
128 obligation and requiring the garnishee to deliver the property upon completion of  
129 performance or upon tender of performance that is refused.

130 **(l) Writ of continuing garnishment.**

131 (l)(1) After final judgment, the plaintiff may obtain a writ of continuing garnishment  
132 against any non exempt periodic payment. All provisions of this rule apply to this  
133 subsection, but this subsection governs over a contrary provision.

134 (l)(2) A writ of continuing garnishment applies to payments to the defendant from  
135 the effective date of the writ until the earlier of the following:

136 (l)(2)(A) one year;

137 (l)(2)(B) 120 days after service of a second or subsequent writ of continuing  
138 garnishment;

139 (l)(2)(C) the last periodic payment;

140 (l)(2)(D) the judgment is stayed, vacated or satisfied in full; or

141 (l)(2)(E) the writ is discharged.

142 (l)(3) Within seven days after the end of each payment period, the garnishee  
143 shall with respect to that period:

144 (l)(3)(A) answer the interrogatories under oath or affirmation;

145 (l)(3)(B) serve the answers to the interrogatories on the plaintiff, the defendant  
146 and any other person shown by the records of the garnishee to have an interest  
147 in the property; and

148 (l)(3)(C) deliver the property as provided in the writ.

149           (l)(4) Any person served by the garnishee may reply as in subsection (g), but  
150 whether to grant a hearing is within the judge's discretion.

151           (l)(5) A writ of continuing garnishment issued in favor of the Office of Recovery  
152 Services or the Department of Workforce Services of the state of Utah to recover  
153 overpayments:

154                 (l)(5)(A) is not limited to 120 days;

155                 (l)(5)(B) has priority over other writs of continuing garnishment; and

156                 (l)(5)(C) if served during the term of another writ of continuing garnishment,  
157 tolls that term and preserves all priorities until the expiration of the state's writ.

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