

1 Rule 64A. Prejudgment writs in general.

2 (a) Availability. A writ of replevin, attachment or garnishment is available after the claim has
3 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 stating
6 facts showing the grounds for relief and other information required by these rules. If the plaintiff
7 cannot by due diligence determine the facts necessary to support the affidavit, the plaintiff shall
8 explain in the affidavit the steps taken to determine the facts and why the facts could not be
9 determined. The affidavit supporting the motion shall state facts in simple, concise and direct
10 terms that are not conclusory.

11 (c) Grounds for prejudgment writ. Grounds for a prejudgment writ include, in addition to the
12 grounds for the specific writ, at least one of the following:

13 (c)(1) that the defendant is avoiding service of process; or

14 (c)(2) that the defendant has assigned, disposed of or concealed, or is about to assign, dispose
15 of or conceal, the property with intent to defraud creditors; or

16 (c)(3) that the defendant has left or is about to leave the state with intent to defraud creditors;

17 or

18 (c)(4) that the defendant has fraudulently incurred the obligation that is the subject of the
19 action; or

20 (c)(5) that the property will materially decline in value; or

21 (c)(6) that the plaintiff has an ownership or special interest in the property; or

22 (c)(7) probable cause of losing the remedy unless the court issues the writ;

23 and all of the following:

24 (c)(8) that the property is not earnings and not exempt from execution; and

25 (c)(9) that the writ is not sought to hinder, delay or defraud a creditor of the defendant; and

26 (c)(10) that the threatened injury to the plaintiff outweighs the damage the writ may cause the
27 defendant; and

28 (c)(11) a substantial likelihood that the plaintiff will prevail on the merits of the underlying
29 claim.

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

32 (d)(1) if known, the nature, location, account number and estimated value of the property and
33 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 plaintiff
36 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 in the
38 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 will pay to the garnishee the fee established by Utah Code Section 78-
41 7-44.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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