

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

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

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

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

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

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

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

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

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

25 (9) "Property" means the defendant's property of any type not exempt from seizure.  
26 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 (10) "Serve" with respect to parties means any method of service authorized by  
30 Rule 5, unless otherwise specified in this rule, and with respect to non-parties means  
31 any manner of service authorized by Rule 4.

32 **(b) Security.**

33 **(1) Amount.** When security is required of a party, the party shall provide security in  
34 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  
38 the defendant's interest in the property. In fixing the amount, the court may consider  
39 any relevant factor. The court may relieve a party from the necessity of providing  
40 security if it appears that none of the parties will incur damages, costs or attorney  
41 fees as a result of a writ wrongfully obtained or if there exists some other substantial  
42 reason for dispensing with security. The amount of security does not establish or  
43 limit the amount of damages, costs or attorney fees recoverable if the writ is  
44 wrongfully obtained.

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

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

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

61       **(c) Procedures in aid of writs.**

62       **(1) Referee**~~Court clerk.~~ In accordance with Rule 4-403 of the Utah Code of Judicial  
63       Administration, the court may appoint permit a court clerk a referee to monitor  
64       hearings under this ~~subsection~~paragraph.

65       **(2) Hearing; witnesses; discovery.** The court may conduct hearings as necessary to  
66       identify property and to apply the property toward the satisfaction of the judgment  
67       or order. Witnesses may be subpoenaed to appear, testify, and produce records. The  
68       notice of hearing must be served under Rule 4. The court may permit discovery.

69       **(3) Restraint.** The court may forbid any person from transferring, disposing or  
70       interfering with the property.

71       **(4) Enforcement.** A request for sanctions for failure to appear or cooperate in  
72       proceedings under this rule may be raised only by motion under Rule 7A and may  
73       not be heard by a court clerk. All sanctions and remedies for contempt may be  
74       considered on such motion, and a bench warrant may issue for failure to appear at  
75       the motion hearing.

76       **(d) Issuance of writ; service**

77       **(1) Clerk to issue writs.** The clerk of the court shall issue writs. A court in which a  
78       transcript or abstract of a judgment or order has been filed has the same authority to  
79       issue a writ as the court that entered the judgment or order. If the writ directs the

80 seizure of real property, the clerk of the court shall issue the writ to the sheriff of the  
81 county in which the real property is located. If the writ directs the seizure of  
82 personal property, the clerk of the court may issue the writ to an officer of any  
83 county.

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

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

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

93 (C) If the writ is issued after judgment, the clerk shall attach to the writ plaintiff's  
94 application, detailed description of the property, the judgment, notice of  
95 exemptions and reply form.

96 **(3) Service.**

97 **(A) Upon whom; effective date.** The officer shall serve the writ and  
98 accompanying papers on the defendant, and, as applicable, the garnishee and  
99 any person named by the plaintiff as claiming an interest in the property. The  
100 officer may simultaneously serve notice of the date, time and place of sale. A writ  
101 is effective upon service.

102 **(B) Limits on writs of garnishment.**

103 (i) A writ of garnishment served while a previous writ of garnishment is in  
104 effect is effective upon expiration of the previous writ; otherwise, a writ of  
105 garnishment is effective upon service.

106 (ii) Only one writ of garnishment of earnings may be in effect at one time.  
107 One additional writ of garnishment of earnings for a subsequent pay period  
108 may be served on the garnishee while an earlier writ of continuing  
109 garnishment is in effect.

110 **(C) Return; inventory.** Within 14 days after service, the officer shall return the  
111 writ to the court with proof of service. If property has been seized, the officer  
112 shall include an inventory of the property and whether the property is held by  
113 the officer or the officer's designee. If a person refuses to give the officer an  
114 affidavit describing the property, the officer shall indicate the fact of refusal on  
115 the return, and the court may require that person to pay the costs of any  
116 proceeding taken for the purpose of obtaining such information.

117 **(D) Service of writ by publication.** The court may order service of a writ by  
118 publication upon a person entitled to notice in circumstances in which service by  
119 publication of a summons and complaint would be appropriate under Rule [4](#).

120 (i) If service of a writ is by publication, substantially the following shall be  
121 published under the caption of the case:

122 To \_\_\_\_\_, [Defendant/Garnishee/Claimant]:

123 A writ of \_\_\_\_\_ has been issued in the above-captioned case  
124 commanding the officer of \_\_\_\_\_ County as follows:

125 [Quoting body of writ]

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

130 (ii) The notice shall be published in a newspaper of general circulation in each  
131 county in which the property is located at least 14 days prior to the due date

132 for the reply or at least 14 days prior to the date of any sale, or as the court  
133 orders. The date of publication is the date of service.

134 **(e) Claim to property by third person.**

135 **(1) Claimant's rights.** Any person claiming an interest in the property has the same  
136 rights and obligations as the defendant with respect to the writ and with respect to  
137 providing and objecting to security. Any claimant named by the plaintiff and served  
138 with the writ and accompanying papers shall exercise those rights and obligations  
139 within the same time allowed the defendant. Any claimant not named by the  
140 plaintiff and not served with the writ and accompanying papers may exercise those  
141 rights and obligations at any time before the property is sold or delivered to the  
142 plaintiff.

143 **(2) Join claimant as defendant.** The court may order any named claimant joined as a  
144 defendant in interpleader. The plaintiff shall serve the order on the claimant. The  
145 claimant is thereafter a defendant to the action and shall answer within 14 days,  
146 setting forth any claim or defense. The court may enter judgment for or against the  
147 claimant to the limit of the claimant's interest in the property.

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

151 **(f) Discharge of writ; release of property.**

152 (1) By defendant. At any time before notice of sale of the property or before the  
153 property is delivered to the plaintiff, the defendant may file security and a motion to  
154 discharge the writ. The plaintiff may object to the sufficiency of the security or the  
155 sufficiency of the sureties within 7 days after service of the motion. At any time  
156 before notice of sale of the property or before the property is delivered to the  
157 plaintiff, the defendant may file a motion to discharge the writ on the ground that  
158 the writ was wrongfully obtained. The court shall give the plaintiff reasonable

159 opportunity to correct a defect. The defendant shall serve the order to discharge the  
160 writ upon the officer, plaintiff, garnishee and any third person claiming an interest  
161 in the property.

162 **(2) By plaintiff.** The plaintiff may discharge the writ by filing a release and serving it  
163 upon the officer, defendant, garnishee and any third person claiming an interest in  
164 the property.

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

167 **(4) Copy filed with county recorder.** If an order discharges a writ upon property  
168 seized by filing with the county recorder, the officer or a party shall file a certified  
169 copy of the order with the county recorder.

170 **(5) Service on officer; disposition of property.** If the order discharging the writ is  
171 served on the officer:

172 (A) before the writ is served, the officer shall return the writ to the court;

173 (B) while the property is in the officer's custody, the officer shall return the  
174 property to the defendant; or

175 (C) after the property is sold, the officer shall deliver any remaining proceeds of  
176 the sale to the defendant.

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