

Rule 64. Writs in general.

Effective: 5/1/2024

(a) Definitions. As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 69B, and 69C:

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

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

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

(4) "Disposable earnings" means that part of earnings for a pay period remaining after the deduction of all amounts required by law to be withheld.

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

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

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

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

(9) "Property" means the defendant's property of any type not exempt from seizure. Property includes but is not limited to real and personal property, tangible and intangible property, the right to property whether due or to become due, and an obligation of a third person to perform for the defendant.

(10) "Serve" with respect to parties means any method of service authorized by Rule 5 and with respect to non-parties means any manner of service authorized by Rule 4.

(b) Security.

(1) Amount. When security is required of a party, the party ~~must~~shall provide security in the sum and form the court deems adequate. For security by the plaintiff, the amount should be sufficient to reimburse other parties for damages, costs, and attorney fees incurred as a result of a writ wrongfully obtained. For security by the defendant, the amount should be equivalent to the amount of the claim or judgment or the value of the defendant's interest in the property. In fixing the amount, the court may consider any relevant factors. The court may relieve a party from the necessity of providing security if it appears that none of the parties will incur damages, costs, or attorney fees as a result of a writ wrongfully obtained or if there exists some other substantial reason for dispensing with security. The amount of security does not establish or limit the amount of damages, costs, or attorney fees recoverable if the writ is wrongfully obtained.

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

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

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

(c) Procedures in aid of writs.

(1) **Referee.** The court may appoint a referee to monitor hearings under this subsection.

(2) **Hearing; witnesses; discovery.** The court may conduct hearings as necessary to identify property and to apply the property toward the satisfaction of the judgment or order. Witnesses may be subpoenaed to appear, testify, and produce records. The court may permit discovery.

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

(d) Issuance of writ; service

(1) **Clerk to issue writs.** The court clerk will issue writs. A court in which a transcript or abstract of a judgment or order has been filed has the same authority to issue a writ as the court that entered the judgment or order. If the writ directs the seizure of real property, the court clerk will issue the writ to the sheriff of the county in which the real property is located. If the writ directs the seizure of personal property, the court clerk may issue the writ to an officer of any county.

(2) **Content.** The writ may direct the officer to seize the property, to keep the property safe, to deliver the property to the plaintiff, to sell the property, to establish periodic payments with the defendant in lieu of seizing and selling the defendant's property,

80 to communicate with the defendant regarding the payment of the writ, or to take other
81 specified actions. If the writ is to enforce a judgment or order for the payment of
82 money, the writ will specify the amount ordered to be paid and the amount due.

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

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

88 (C) If the writ is issued after judgment, the clerk will attach to the writ plaintiff's
89 application, detailed description of the property, the judgment, notice of
90 exemptions, and reply form.

91 **(3) Service.**

92 **(A) Upon whom; effective date.** The officer must serve the writ and
93 accompanying papers on the defendant, and, as applicable, the garnishee and any
94 person named by the plaintiff as claiming an interest in the property. The officer
95 may simultaneously serve notice of the date, time, and place of sale. A writ is
96 effective upon service.

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

98 (i) A writ of garnishment served while a previous writ of garnishment is in
99 effect is effective upon expiration of the previous writ; otherwise, a writ of
100 garnishment is effective upon service.

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

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

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

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

To _____, [Defendant/Garnishee/Claimant]:

A writ of _____ has been issued in the above-captioned case commanding the officer of _____ County as follows:

[Quoting body of writ]

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

(ii) The notice must be published in a newspaper of general circulation in each county in which the property is located at least 14 days prior to the due date for the reply or at least 14 days prior to the date of any sale, or as the court orders. The date of publication is the date of service.

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

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

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

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

(f) Discharge of writ; release of property.

(1) By defendant. At any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file security and a motion to discharge the writ. The plaintiff may object to the sufficiency of the security or the sufficiency of the sureties within seven days after service of the motion. At any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file a motion to discharge the writ on the ground that the writ was wrongfully obtained. The court will give the plaintiff reasonable opportunity to correct a defect. The defendant must serve the order to discharge the writ upon the officer, plaintiff, garnishee, and any third person claiming an interest in the property.

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

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

(4) **Copy recorded with county recorder.** If an order discharges a writ upon property seized by recording with the county recorder, the officer or a party must record a certified copy of the order with the county recorder.

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

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

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

(C) after the property is sold, the officer must deliver any remaining sale proceeds to the defendant.