

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

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

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

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

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

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

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

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

25 | ~~(a)~~(9) "Property" means the defendant's property of any type not exempt from
26 seizure. Property includes but is not limited to real and personal property, tangible

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

32 **(b) Security.**

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

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

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

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

62 | **(c) Procedures in aid of writs.**

63 | ~~(e)~~**(1) Referee.** The court may appoint a referee to monitor hearings under this
64 | subsection.

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

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

71 | **(d) Issuance of writ; service**

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

79 | ~~(d)~~**(2) Content.** The writ may direct the officer to seize the property, to keep the
80 | property safe, to deliver the property to the plaintiff, to sell the property, or to take

81 other specified actions. If the writ is to enforce a judgment or order for the payment
82 of money, the writ ~~will~~shall specify the amount ordered to be paid and the amount
83 due.

84 ~~(d)(2)~~(A) If the writ is issued ex parte before judgment, the clerk ~~will~~shall attach
85 to the writ plaintiff's affidavit, detailed description of the property, notice of
86 hearing, order authorizing the writ, notice of exemptions, and reply form.

87 ~~(d)(2)~~(B) If the writ is issued before judgment but after a hearing, the clerk shall
88 attach to the writ plaintiff's affidavit and detailed description of the property.

89 ~~(d)(2)~~(C) If the writ is issued after judgment, the clerk ~~will~~shall attach to the writ
90 plaintiff's application, detailed description of the property, the judgment, notice
91 of exemptions, and reply form.

92 ~~(d)~~**(3) Service.**

93 ~~(d)(3)~~(A) **Upon whom; effective date.** The officer ~~must~~shall serve the writ and
94 accompanying papers on the defendant, and, as applicable, the garnishee and
95 any person named by the plaintiff as claiming an interest in the property. The
96 officer may simultaneously serve notice of the date, time, and place of sale. A
97 writ is effective upon service.

98 ~~(d)(3)~~(B) **Limits on writs of garnishment.**

99 ~~(d)(3)(B)~~(i) A writ of garnishment served while a previous writ of
100 garnishment is in effect is effective upon expiration of the previous writ;
101 otherwise, a writ of garnishment is effective upon service.

102 ~~(d)(3)(B)~~(ii) Only one writ of garnishment of earnings may be in effect at one
103 time. One additional writ of garnishment of earnings for a subsequent pay
104 period may be served on the garnishee while an earlier writ of continuing
105 garnishment is in effect.

106 | ~~(d)(3)~~(C) **Return; inventory.** Within 14 days after service, the officer ~~must~~**shall**
107 | return the writ to the court with proof of service. If property has been seized, the
108 | officer shall include an inventory of the property and whether the property is
109 | held by the officer or the officer's designee. If a person refuses to give the officer
110 | an affidavit describing the property, the officer ~~must~~**shall** indicate the fact of
111 | refusal on the return, and the court may require that person to pay the costs of
112 | any proceeding taken for the purpose of obtaining such information.

113 | ~~(d)(3)~~(D) **Service of writ by publication.** The court may order service of a writ
114 | by publication upon a person entitled to notice in circumstances in which service
115 | by publication of a summons and complaint would be appropriate under Rule 4.

116 | ~~(d)(3)(D)~~(i) If service of a writ is by publication, substantially the following
117 | ~~must~~**shall** be published under the caption of the case:

118 | To _____, [Defendant/Garnishee/Claimant]:

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

121 | [Quoting body of writ]

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

126 | ~~(d)(3)(D)~~(ii) The notice ~~must~~**shall** be published in a newspaper of general
127 | circulation in each county in which the property is located at least 14 days
128 | prior to the due date for the reply or at least 14 days prior to the date of any
129 | sale, or as the court orders. The date of publication is the date of service.

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

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

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

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

147 | **(f) Discharge of writ; release of property.**

148 | ~~(f)~~**(1) By defendant.** At any time before notice of sale of the property or before the
149 | property is delivered to the plaintiff, the defendant may file security and a motion to
150 | discharge the writ. The plaintiff may object to the sufficiency of the security or the
151 | sufficiency of the sureties within ~~seven~~**7** days after service of the motion. At any
152 | time before notice of sale of the property or before the property is delivered to the
153 | plaintiff, the defendant may file a motion to discharge the writ on the ground that
154 | the writ was wrongfully obtained. The court ~~will~~**shall** give the plaintiff reasonable
155 | opportunity to correct a defect. The defendant ~~must~~**shall** serve the order to
156 | discharge the writ upon the officer, plaintiff, garnishee, and any third person
157 | claiming an interest in the property.

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

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

163 | ~~(f)~~(4) **Copy ~~filed~~recorded with county recorder.** If an order discharges a writ upon
164 | property seized by ~~filing~~recording with the county recorder, the officer or a party
165 | ~~must~~shall ~~file~~record a certified copy of the order with the county recorder.

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

168 | ~~(f)~~(5)(A) before the writ is served, the officer ~~must~~shall return the writ to the
169 | court;

170 | ~~(f)~~(5)(B) while the property is in the officer's custody, the officer ~~must~~shall return
171 | the property to the defendant; or

172 | ~~(f)~~(5)(C) after the property is sold, the officer ~~must~~shall deliver any remaining
173 | sale proceeds ~~of the sale~~ to the defendant.

174

175 | Effective date: