

**CHAPTER 651**  
**ATTACHMENT AND EXECUTION**

Part I. Attachment

Section

- 651-1 General provisions
- 651-2 Writ; issued when
- 651-3 Affidavit
- 651-4 Bond; amount and conditions
- 651-5 Additional security
- 651-6 Action on bond
- 651-7 Writ; how issued
- 651-8 Amount levied on
- 651-9 Writ; how executed
- 651-10 Indemnity for police officer
- 651-11 Execution in order of receipt
- 651-12 Examination of defendant; where no property known
- 651-13 Attached property; sale of
- 651-14 Appointment of receiver
- 651-15 Officer's return; how made
- 651-16 Discharge of writ
- 651-17 Discharge by bond of defendant
- 651-18 Discharge of writ when improperly issued
- 651-19 Recording discharge
- 651-20 Judgment satisfied out of attached property
- 651-21 Deficiency

Part II. Execution

- 651-31 Time of issuance
- 651-32 Execution, district court; form
- 651-32.1 Repealed
- 651-33 Bond for expenses on execution
- 651-34 Time within which execution shall be returnable
- 651-35 When property in circuit insufficient
- 651-36 Execution, courts of record; form
- 651-37 Address, signature
- 651-38 Alias writs
- 651-39 Available in all circuits
- 651-40 Stay by judge; effect
- 651-41 Priority in levying
- 651-42 How levy made, inventory
- 651-43 Advertisement for sale
- 651-44 Sale; proceeds; return
- 651-45 Postponement of sale
- 651-46 Deeds, etc.
- 651-47 Levy on and execution sale of investment securities;  
garnishment the proper procedure when the security is

- subject to right of possession of third party
- 651-48 Same, penalty
- 651-49 Only defendant's interest sold
- 651-50 Liability for exceeding powers
- 651-51 Indemnity bond
- 651-52 Indemnity, how collected

### Part III. Exemptions

#### A. Generally

- 651-61 Exemption, how claimed
- 651-62 Indemnity bond if exemption claimed
- 651-63 Liability for selling exempt property
- 651-64 Seizure of exempt property
- 651-65 to 67 Repealed
- 651-68 Proceedings on execution; appraisers; expiration of lien, result
- 651-69 Application form contents
- 651-70 Service of petition and notice of hearing; effects of failure to serve; appointment of appraisers

#### B. Real Property

- 651-91 Definitions
- 651-92 Real property exempt
- 651-93 Effect of separation, divorce, reconciliation
- 651-94 Proceedings where real property can be divided without material injury
- 651-95 Sale where real property cannot be divided; application of proceeds
- 651-96 After sale, money equal to real property exemption protected

#### C. Personal Property

- 651-121 Certain personal property and insurance thereon, exempt
- 651-122 Personal property not exempt
- 651-123 Application of proceeds of sale
- 651-124 Pension money exempt

## Note

As to procedural statutes superseded by the rules of court, see note preceding Title 32.

## Case Notes

Validity of prejudgment replevin provisions authorizing taking of property without affording prior opportunity to be heard. 407 U.S. 67 (1972).

## "PART I. ATTACHMENT

### Rules of Court

See HRCF rule 64; DCRCP rule 64.

**§651-1 General provisions.** *[Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.]* (a) This chapter shall apply to circuit and district courts. A judge of any court of record may make any order at chambers which may by the provisions of this chapter be made by the court in term time. When the proceedings are before a district judge, the judge shall be regarded as the clerk of the court for all purposes contemplated herein. The phrase "police officer", as used in this chapter, means the director of public safety or the director's duly authorized representative, any chief of police or subordinate police officer, or an independent civil process server on the list maintained by the department of public safety pursuant to section 353C-10. Nothing in this chapter shall be construed to permit a district judge to issue a writ of attachment to be served out of the circuit in which the judge's court is situated, or to permit an attachment of real estate, or any interest therein, under a writ issued by a district court judge.

(b) The department of public safety, the State, and the agencies, officers, and employees of the department of public safety or the State shall not be responsible or liable for the actions of any independent civil process servers on the list maintained by the department of public safety pursuant to section 353C-10. The maintenance of the list pursuant to section 353C-10 shall not create a private cause of action against the department of public safety, the State, or the agencies, officers, and employees of the department of public safety or the State.

(c) Nothing in this chapter shall be construed to make an independent civil process server a law enforcement officer,

sheriff, or deputy sheriff, or an employee or agent of the department of public safety or the State. [L 1905, c 84, §1; am L 1907, c 27, §1; RL 1925, §2805; RL 1935, §4190; am L 1939, c 104, §7; am L 1943, c 62, §21 and c 64, §22; RL 1945, §10141; RL 1955, §233-1; am L 1963, c 85, §3; HRS §651-1; am L 1970, c 188, §39; gen ch 1985; am L 1986, c 291, §1; am L 1989, c 123, §4 and c 211, §10; am L 1990, c 281, §§7, 11; am L 2002, c 16, §25; am L 2012, c 142, §9; am L 2013, c 116, §§12, 25(11)]

### Rules of Court

As to powers at chambers, see HRCp rule 77(b).

" **§651-2 Writ; issued when.** The plaintiff, in any action upon a contract, express or implied, at the time of commencing the action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, which is not exempt from execution, attached in the manner hereinafter prescribed, as security for the satisfaction of any judgment that the plaintiff may recover, but no writ of attachment shall be issued:

- (1) Against the State, or any political municipal corporation, or subdivision thereof; or
- (2) In circumstances where garnishment is authorized under chapter 652. [L 1905, c 84, §2; am L 1909, c 60, §1; RL 1925, §2806; RL 1935, §4191; RL 1945, §10142; RL 1955, §233-2; HRS §651-2; am L 1977, c 33, §1; gen ch 1985; am L 2016, c 55, §30]

### Cross References

Exemptions from execution, see part III of this chapter.

### Case Notes

Attachment available only where contract at issue also establishes a debtor-creditor relationship for payment of money. 485 F. Supp. 1015 (1980).

Does not prohibit garnishment against municipal corporations. 23 H. 564, 570 (1916).

Seizure of automobile under writ of attachment. 38 H. 279, 298 (1949).

Cited: 26 H. 342, 346 (1922).

" **§651-3 Affidavit.** The writ of attachment shall be issued by the clerk of the court in which the action is pending. Before any writ of attachment shall issue, the plaintiff, or

someone in the plaintiff's behalf, shall make and file with the clerk an affidavit showing that the defendant is indebted to the plaintiff, specifying the amount of the indebtedness over and above all just credits and offsets, and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant. [L 1905, c 84, §3; am L 1909, c 60, §2; RL 1925, §2807; RL 1935, §4192; RL 1945, §10143; RL 1955, §233-3; HRS §651-3; gen ch 1985]

### Case Notes

Attachment available only where contract at issue also establishes a debtor-creditor relationship for payment of money. 485 F. Supp. 1015 (1980).

Must show on its face that indebtedness specified is over and above all just credits and offsets. 21 H. 167 (1912).

Affidavit need not state that indebtedness is upon contract. 23 H. 702, 703 (1917).

" **§651-4 Bond; amount and conditions.** Before the writ of attachment shall issue, the plaintiff, or someone in the plaintiff's behalf, shall execute and file with the clerk a bond or undertaking with two or more sureties, in a sum at least double the amount for which the plaintiff demands judgment, and in no case less than \$50 in a district court, or \$300 in any other court, conditioned that the plaintiff will prosecute the plaintiff's action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which the defendant may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking as the penalty thereof, should the same be wrongfully, oppressively, or maliciously sued out, and in case the defendant be declared a bankrupt, pay all charges, damages, and expenses incurred by any police officer by reason of the attachment. With the bond or undertaking, there shall also be filed the affidavits of the sureties, as provided in section 78-20. But no such bond shall be required when the plaintiff is the State or any officer or agent of the State or any municipality suing for its use or benefit. Subject to section 651-5, in any case where the amount for which the plaintiff demands judgment is in excess of \$50,000, the court may, upon motion of the plaintiff, enter an order permitting a bond, conditioned as herein provided, in a sum as fixed in the order of less than the amount hereinabove set forth; provided that the bond shall in any event be not less than an amount equal to one and one-half times the value of the property of the defendant proposed to be attached as shown to the satisfaction of the court entering the order. [L 1905, c 84,

§4; am L 1917, c 18, §1 and am imp c 78, §1; RL 1925, §2808; am imp L 1931, c 163, §1; RL 1935, §4193; RL 1945, §10144; am L 1947, c 190, §1; RL 1955, §233-4; HRS §651-4; gen ch 1985]

#### Case Notes

Amount of bond is mandatory. 23 H. 702, 704 (1917).

"Amount for which plaintiff demands judgment" construed. 26 H. 637 (1922).

Sufficiency of affidavit. 30 H. 658 (1928).

" **§651-5 Additional security.** [(a)] The defendant may at any time before judgment move the court for additional security on the part of the plaintiff, and if, on the motion, the court is satisfied that any surety on the plaintiff's bond has removed from the State, or that the surety is not sufficient, the attachment may be vacated and restitution directed of any property taken under it, unless in a reasonable time, to be fixed by the court, further security is given by the plaintiff in such amount and form as shall be approved by the court.

[(b)] In case the defendant obtains judgment the defendant shall be entitled to have taxed against the plaintiff as costs, in addition to such other costs as may be allowed by law, a reasonable attorney's fee of not more than \$50, to be fixed by the court. [L 1905, c 84, §5; am L 1909, c 60, §3; RL 1925, §2809; RL 1935, §4194; RL 1945, §10145; RL 1955, §233-5; HRS §651-5; gen ch 1985]

#### Case Notes

Cited: 22 H. 1, 3 (1914).

" **§651-6 Action on bond.** In an action on the bond a plaintiff may recover, if the plaintiff shows that the attachment was wrongfully sued out, the actual damages sustained and reasonable attorney's fees, to be fixed by the court. If it is shown that the attachment was sued out maliciously, the plaintiff may recover exemplary damages. No action shall be maintained on any bond until after final judgment in the action, unless the same is discontinued or dismissed. [L 1905, c 84, §6; am L 1909, c 60, §4; RL 1925, §2810; RL 1935, §4195; RL 1945, §10146; RL 1955, §233-6; HRS §651-6; gen ch 1985; am L 1986, c 291, §2]

#### Case Notes

Not entitled to recovery on attachment bond where no damage accrued. 1 H. 51 (1851).

Action on bond, when maintainable. 14 H. 463 (1902).

" **§651-7 Writ; how issued.** The writ of attachment shall be issued by the clerk with the approval of the court and directed to any police officer, and shall require the police officer to attach and safely keep so much of the property of the defendant as will be sufficient to satisfy the demand of the plaintiff, with costs and expenses. [L 1905, c 84, §7; RL 1925, §2811; RL 1935, §4196; RL 1945, §10147; RL 1955, §233-7; HRS §651-7; gen ch 1985]

" **§651-8 Amount levied on.** The police officer shall attach a sufficient amount of the property of the defendant if sufficient not exempt from execution can be found, giving that to which the defendant has an unquestionable title a preference over that to which the defendant's title is doubtful. The police officer shall, as nearly as the circumstances of the case will permit, levy upon property twenty per cent greater in value than the amount which the plaintiff in the plaintiff's affidavit claims to be due. When property is seized on attachment, the court may allow to the officer having charge thereof such compensation for the officer's trouble and expenses in keeping the same as is reasonable and just. [L 1905, c 84, §8; RL 1925, §2812; RL 1935, §4197; RL 1945, §10148; RL 1955, §233-8; HRS §651-8; gen ch 1985]

#### Case Notes

Cited: 33 H. 364, 366 (1935).

" **§651-9 Writ; how executed.** The police officer to whom the writ is directed and delivered shall execute the writ without delay as follows:

- (1) Real property or any interest therein shall be attached by recording in the office in which conveyances of the real property attached is recorded, a copy of the writ of attachment, with the officer's certificate endorsed or affixed, that by virtue of the original writ of which such copy is a true copy, the officer has attached the real estate, or all of the interest of the defendant therein, describing the same with convenient certainty as the property of the defendant, naming the defendant, in such writ;
- (2) Personal property, capable of manual delivery, shall be attached by taking the same into custody;

- (3) A security or any share or any interest evidenced thereby shall be attached in the same manner as is provided for the levy of an execution thereon. [L 1905, c 84, §9; RL 1925, §2813; RL 1935, §4198; RL 1945, §10149; RL 1955, §233-9; am L 1966, c 18, §6 and c 33, §7; HRS §651-9; gen ch 1985]

#### Revision Note

Pursuant to §23G-15, in:

- (1) The prefatory language, comma deleted after "delivered"; and  
(2) Paragraph (1), "indorsed" changed to "endorsed".

#### Law Journals and Reviews

Attachment or Levy of a Security Under the Uniform Commercial Code. 4 HBJ, no. 3, at 16 (1966).

#### Case Notes

Marshal had no power to enjoin persons not to pay over money to defendant. 1 H. 44 (1851).

Attachment complete when. 26 H. 342 (1922).

Attachment of motor vehicle registered with the city and county under the motor vehicle law. 38 H. 298 (1949).

Where levy of attachment not performed by police officer, attachment not properly levied and should not have been noted on transfer certificate of title to subject property. 81 H. 270, 916 P.2d 680 (1996).

" **§651-10 Indemnity for police officer.** If the police officer has any reasonable doubt as to the ownership of the property, or as to its liability to be taken on the writ, the police officer may require sufficient security to indemnify the police officer for attaching it. [L 1905, c 84, §10; RL 1925, §2814; RL 1935, §4199; RL 1945, §10150; RL 1955, §233-10; HRS §651-10; gen ch 1985]

" **§651-11 Execution in order of receipt.** When there are several attachments against the same defendant, they shall be executed in the order in which they are received by the police officer. [L 1905, c 84, §11; RL 1925, §2815; RL 1935, §4200; RL 1945, §10151; RL 1955, §233-11; HRS §651-11]



" **§651-12 Examination of defendant; where no property known.** Whenever it appears by the affidavit of the plaintiff or by the return of the attachment that no property is known to the plaintiff or officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, the defendant may be required by the court or judge to attend before it or the judge, and give information on oath respecting the same. [L 1905, c 84, §12; RL 1925, §2816; RL 1935, §4201; RL 1945, §10152; RL 1955, §233-12; HRS §651-12; gen ch 1985]

#### **Case Notes**

Plaintiffs not entitled to information regarding defendant's assets, where no attachment obtained and no return made or affidavit filed. 6 H. App. 118, 711 P.2d 1310 (1985).

" **§651-13 Attached property; sale of.** If any of the property attached is perishable, or in danger of serious and immediate waste or decay, the police officer shall sell the same in the manner in which property is sold on execution. Whenever it is made to appear satisfactorily to the court or judge that the interest of the parties to the action will be subserved by a sale of any attached property, the court or judge may order the property to be sold in the same manner as like property sold under execution. The order shall be made only upon notice to the adverse party or the adverse party's attorney in case such party has been personally served with a summons in the action. [L 1905, c 84, §13; RL 1925, §2817; RL 1935, §4202; RL 1945, §10153; RL 1955, §233-13; HRS §651-13; gen ch 1985]

" **§651-14 Appointment of receiver.** The court before which the action is pending, or the judge thereof, may at any time appoint a receiver whose pay shall be taken out of the fees of the police officer to take possession of property attached under this chapter, and to collect the revenues thereof, manage, and control the same, and pay over the proceeds according to the nature of the property and the exigency of the case. [L 1905, c 84, §14; RL 1925, §2818; RL 1935, §4203; RL 1945, §10154; RL 1955, §233-14; HRS §651-14]

#### **Rules of Court**

See HRCF rule 66.

#### **Case Notes**

Compensation for services of receivers, rests in discretion of court. 8 H. 740 (1892).

Under court authorization, receiver can complete a construction project begun by a corporation before insolvency and the costs will be chargeable to the property specifically benefited. 57 H. 321, 555 P.2d 864 (1976).

" **§651-15 Officer's return; how made.** The police officer shall make out a full inventory of the property attached and return the same with the writ of attachment. The police officer shall return the writ with the summons if issued at the same time; otherwise, within such time after its receipt as is allowed for a return of summons, with certificate of the police officer's proceedings endorsed thereon or attached thereto. [L 1905, c 84, §15; RL 1925, §2819; RL 1935, §4204; RL 1945, §10155; RL 1955, §233-15; HRS §651-15; gen ch 1985]

#### **Revision Note**

"Indorsed" changed to "endorsed" pursuant to §23G-15.

#### **Rules of Court**

See HRCF rule 4(g).

" **§651-16 Discharge of writ.** If the defendant recovers judgment or if the plaintiff is nonsuited or if the action is discontinued or dismissed, all the proceeds of the same and money collected by the police officer, and all the property attached remaining in the police officer's hands, shall be delivered to the defendant, or the defendant's agent, and the order of attachment shall be discharged, and the property released therefrom. [L 1905, c 84, §16; RL 1925, §2820; RL 1935, §4205; RL 1945, §10156; RL 1955, §233-16; HRS §651-16; gen ch 1985]

#### **Case Notes**

Cited in determining validity of mortgage made after attachment. 51 H. 164, 454 P.2d 116 (1969).

" **§651-17 Discharge by bond of defendant.** If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or, after the return thereof, by the clerk, to the effect that the defendant will perform the judgment of the court, the attachment shall be discharged and

restitution made of the property taken or the proceeds thereof. The execution of the bond shall be deemed an appearance of the defendant to the action. The bond shall be part of the record, and if judgment go against the defendant, the same shall be entered against the defendant and the sureties. [L 1905, c 84, §17; RL 1925, §2821; RL 1935, §4206; RL 1945, §10157; RL 1955, §233-17; HRS §651-17; gen ch 1985]

#### Case Notes

Action on bond. 22 H. 540 (1915).

Cited in determining validity of mortgage made after attachment. 51 H. 164, 454 P.2d 116 (1969).

" **§651-18 Discharge of writ when improperly issued.** The defendant may at any time after the defendant has appeared in the action, either before or after the release of the attached property, or before any attachment has been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the writ of attachment be discharged, on the ground that the same was improperly issued. If upon the application, it satisfactorily appears that the writ of attachment was improperly issued, it shall be discharged. [L 1905, c 84, §18; RL 1925, §2822; RL 1935, §4207; RL 1945, §10158; RL 1955, §233-18; HRS §651-18; gen ch 1985]

#### Case Notes

Not sufficient ground for dissolving writ that property levied upon is exempt from seizure under writ. 25 H. 483, 491 (1920).

Order denying motion to vacate writ is not final and not appealable. 51 H. 242, 456 P.2d 222 (1969).

Challenge to issuance of writ of attachment improper collateral attack as challenge to sufficiency of attachment bond not jurisdictional. 81 H. 270, 916 P.2d 680 (1996).

" **§651-19 Recording discharge.** Whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of the order may be recorded in the office in which a copy of the writ has been recorded under section 651-9 and be indexed in like manner. All expenses relating to the attachment shall be paid by the plaintiff. [L 1905, c 84, §19; RL 1925, §2823; RL 1935, §4208; RL 1945, §10159; RL 1955, §233-19; am L 1966, c 33, §8; HRS §651-19]

#### Case Notes

Section not applicable where an order discharging or releasing an attachment upon real property has not been made. 3 H. App. 89, 641 P.2d 989 (1982).

" **§651-20 Judgment satisfied out of attached property.** If judgment is recovered by the plaintiff, the levying officer shall satisfy the same out of the property attached by the levying officer which has not been delivered to the defendant or claimant, as in this chapter provided, or subjected to execution on another judgment recovered before the issuing of the attachment, if it is sufficient for that purpose:

- (1) By applying on the execution issued on the judgment the proceeds of all sales of perishable or other property sold by the levying officer, or so much as shall be necessary to satisfy the judgment; and
- (2) If any balance remains due, the levying officer shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remains in the levying officer's hands. Notice of the sale shall be given and the sale conducted as in other cases of sales on execution. In all cases the personal property shall first be sold. [L 1905, c 84, §20; RL 1925, §2824; RL 1935, §4209; RL 1945, §10160; RL 1955, §233-20; HRS §651-20; gen ch 1985]

#### **Revision Note**

In paragraph (1), "and" added after ending punctuation pursuant to §23G-15.

" **§651-21 Deficiency.** If, after selling all the property attached by the levying officer remaining in the levying officer's hands, and applying the proceeds, deducting the levying officer's fees, to the payment of the judgment, any balance remains due, the levying officer shall proceed to collect the balance as upon an execution in other cases. Whenever the judgment has been paid, the levying officer, upon reasonable demand, shall deliver over to the defendant, the attached property remaining in the levying officer's hands, and any proceeds of the property attached unapplied on the judgment. [L 1905, c 84, §21; RL 1925, §2825; RL 1935, §4210; RL 1945, §10161; RL 1955, §233-21; HRS §651-21; gen ch 1985]

#### **"PART II. EXECUTION**

## Rules of Court

See HRCF rules 64, 69; DCRCF rules 64, 69.

**§651-31 Time of issuance.** Execution and alias executions upon any judgment or decree of a court for the payment of money, may be issued at any time during the life of the judgment or decree. [CC 1859, §1031; am L 1919, c 42, §1; RL 1925, §2436; am L 1929, c 81, §1; RL 1935, §4135; RL 1945, §10162; RL 1955, §233-30; HRS §651-31; am L 1970, c 188, §39]

### Revision Note

The words "of record or a judge thereof, or any judgment of a district magistrate" following "court" have been deleted to give effect to L 1970, c 188.

### Case Notes

Execution on subsisting and valid foreign judgment. 128 F. Supp. 697, 706 (1955).

Issuance of second writ of execution. 18 H. 307 (1907).

" **§651-32 Execution, district court; form.** Every district judge at the request of the party recovering any civil judgment in the judge's court, unless the judgment is duly appealed from, shall issue the judge's execution against the property of the party recovered against, which execution may be in the form established by the usage and practice of the issuing court and may be directed to any police officer of the judicial circuit in which the district court is situated; provided the defendant or any of the defendants is a resident of the circuit. [CC 1859, §1016; RL 1925, §2437; RL 1935, §4136; RL 1945, §10163; RL 1955, §233-31; am L 1963, c 108, §4; HRS §651-32; am L 1970, c 188, §§39, 40; am L 1998, c 36, §2]

### Case Notes

Chose in action not subject to levy and sale upon execution. 26 H. 699 (1923).

Issuance of execution not necessary to perfect judgment lien. 28 H. 395, 397 (1925).

" **§651-32.1 REPEALED.** L 1973, c 86, §1.

" **§651-33 Bond for expenses on execution.** Upon the petition of the sheriff, deputy sheriff, or police officer to whom an

execution has been directed, showing that the levy and sale required by the execution will involve unusual expense to the officer and that the officer may be unable to collect such expense from the proceeds of the sale or from the defendant, the judge of the court issuing the execution may upon a hearing of the petition direct the person beneficially interested in the execution to tender to the officer a cash or surety bond in an amount determined as proper by the judge, conditioned that, if the levying officer is unable to collect the levying officer's reasonable charges and expenses from the proceeds of the property levied upon or from the defendant, the person beneficially interested in the execution will pay the same. The petition shall be heard upon citation and order to show cause duly served upon the interested person. In the event the order is not complied with, such officer may decline to levy upon or sell the property of any person against whose property the execution has been issued. [L 1945, c 132, §1; RL 1955, §233-32; am L 1963, c 85, §3; HRS §651-33; am L 1970, c 188, §39; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

" **§651-34 Time within which execution shall be returnable.** All executions and alias executions issued by or from any court shall be made returnable within sixty days from the date thereof. [CC 1859, §1018; am L 1917, c 16, §1; RL 1925, §2438; RL 1935, §4137; RL 1945, §10164; RL 1955, §233-33; HRS §651-34; am L 1970, c 188, §39]

#### Case Notes

A writ of execution cannot properly be levied after the return day; once the return day of an execution passes, it becomes functus officio and confers no authority on the officer to whom it is directed; correlatively, a levy accomplished after the return day is invalid and a sale based thereon is void. 102 H. 518, 78 P.3d 331 (2003).

" **§651-35 When property in circuit insufficient.** If, upon an execution being issued by a district judge, no property, or not a sufficient amount of property, belonging to the defendant in execution, can be found within the jurisdiction of the judge issuing the execution, and the same is returned unsatisfied, either wholly or in part, the plaintiff in execution may, upon procuring a certified copy of the judgment and execution in the court below, to be docketed in the office of the clerk of the supreme court, sue out a writ of execution from the supreme court, which shall be available against the property of the defendant, wherever situated within the State. [CC 1859, §1029;

RL 1925, §2439; RL 1935, §4138; RL 1945, §10165; RL 1955, §233-34; HRS §651-35; am L 1970, c 188, §§39, 40]

### Case Notes

Must be strictly followed in order to sustain execution and sale of real property thereunder; showing that no personal property could be found, not sufficient. 13 H. 302, 306 (1901).  
See 4 H. 165 (1879); 9 H. 27 (1893).

" **§651-36 Execution, courts of record; form.** The forms of executions to be issued from courts of record shall be the same as have been established by the usage and practice of such courts; but alterations therein may, from time to time, be made or allowed by the supreme court, when necessary to adapt them to changes in the law, or for other sufficient reasons. [CC 1859, §1019; RL 1925, §2440; RL 1935, §4139; RL 1945, §10166; RL 1955, §233-35; HRS §651-36]

" **§651-37 Address, signature.** All writs of execution, whether civil or criminal, issuing from any court of record, shall be addressed to the sheriff, or deputy sheriff, or a police officer of any county, and shall be signed by the clerk of the court, and impressed with the seal thereof. [CC 1859, §1020; RL 1925, §2441; RL 1935, §4140; am L 1939, c 104, §7; am L 1943, c 62, §21 and c 64, §22; RL 1945, §10167; RL 1955, §233-36; am L 1963, c 85, §3; HRS §651-37; am L 1989, c 211, §10; am L 1990, c 281, §11]

" **§651-38 Alias writs.** Any circuit court, out of which an execution has been issued, if such execution has been returned unsatisfied wholly or in part, may issue an alias execution to the same circuit, or an execution leviable in some other circuit, for the satisfaction of the unpaid remainder of the judgment and additional costs, expenses, and commissions, which alias or testatum writ of execution shall be served in like manner as the original. [CC 1859, §1030; RL 1925, §2442; RL 1935, §4141; RL 1945, §10168; RL 1955, §233-37; HRS §651-38]

### Case Notes

Alias execution allowed when original execution issued by mistake for too small an amount. 10 H. 348 (1896).

Alias execution issued after dismissal of appeal may be good even if original bad. 15 H. 486 (1904).

" **§651-39 Available in all circuits.** Any writ of execution or other writ issued for the purpose of carrying into effect any final order, judgment, or decree of any circuit court or circuit judge at chambers shall be available against the property of the person against whom the writ shall issue in whatever circuit the property is situated and the writ shall be as effective for all purposes in each of the circuits as in the circuit where it is issued. [L 1905, c 10, §1; RL 1925, §2443; RL 1935, §4142; RL 1945, §10169; RL 1955, §233-38; HRS §651-39]

#### Case Notes

Aircraft subject to execution, where judgment creditor had no actual knowledge that judgment debtor had sold aircraft, and buyer did not register title. 6 H. App. 25, 709 P.2d 613 (1985).

" **§651-40 Stay by judge; effect.** Any judge of a court of record may, by order at chambers, in any cause in which an execution has been issued, grant a stay thereof in the officer's hands, for equitable reasons, when no appeal or writ of error is granted, upon the defendant giving bond and security for its payment with costs up to the stay. The property levied upon shall not be released from the levy by the stay of execution, and in case at the end of the time accorded the condition of the bond be not complied with, the plaintiff in execution may elect whether to proceed to the sale of the levied property, or to enforce the bond; provided that if the levied property is not sufficient to pay the judgment, with all costs, expenses, and commissions, the stay inclusive, the sureties in the bond shall be answerable for the deficiency. And when justice may require the renewal of any execution, or an extension of the time for making return to any execution, any judge of a court of record shall have power so to order. [CC 1859, §1033; RL 1925, §2444; RL 1935, §4143; RL 1945, §10170; RL 1955, §233-39; HRS §651-40]

#### Rules of Court

As to powers at chambers, see HRCF rule 77(b).

" **§651-41 Priority in levying.** Every officer receiving a writ of execution issued in due form by any court or judge, shall note thereon the day and hour of its receipt, and the officer shall give priority in levying upon property of the defendant in execution, to the writs received by the officer according to the order of time in which they are received. [CC



1859, §1021; RL 1925, §2445; RL 1935, §4144; RL 1945, §10171; RL 1955, §233-40; HRS §651-41; gen ch 1985]

#### Case Notes

Levy makes judgment a lien. 4 H. 165 (1879).

A subsequently served garnishee process had priority over defective execution levied by marshal first. 6 H. 153 (1875).

Execution must be postponed to lien of prior attachment. 6 H. 564 (1885).

Cited: 3 U.S.D.C. Haw. 176, 179 (1907).

" **§651-42 How levy made, inventory.** Every levy by an officer, in pursuance of a writ of execution issued by any court or judge, shall be made by taking the property levied upon into the officer's possession, care, and guardianship, and at the officer's option, by removal of the same to some place of security. The officer shall make an inventory of the property levied upon. [CC 1859, §1022; RL 1925, §2446; RL 1935, §4145; RL 1945, §10172; RL 1955, §233-41; HRS §651-42; gen ch 1985]

#### Case Notes

Marshal read execution to defendant but did not take any property into custody or make an inventory, held no levy. 6 H. 153 (1875).

Judgment cannot be levied upon. 16 H. 106 (1904).

Notice of money award not proper subject for garnishment. 16 H. 106 (1904).

Valid levy on growing crops. 21 H. 745 (1913).

Sale of leasehold interest in pond. 22 H. 665 (1915).

Chose in action not subject to levy and sale upon execution. 26 H. 699 (1923).

" **§651-43 Advertisement for sale.** The officer shall, after levy, advertise for sale the property levied upon, whether real or personal, for thirty days, or for such time as the court shall order, by posting a written or printed notice in three conspicuous places within the district where the property is situated, and if on the island of Oahu, by advertisement thereof at least three times in one or more newspapers published in Honolulu. [CC 1859, §1023; am L 1886, c 58, §1; RL 1925, §2447; RL 1935, §4146; RL 1945, §10173; RL 1955, §233-42; HRS §651-43]

#### Case Notes

Effect of sale upon defective notice. 20 H. 678 (1911).

" **§651-44 Sale; proceeds; return.** The officer shall, on the day and at the place set for the public sale, unless paid the amount of the judgment, interest, and costs, and the officer's fees and disbursements accrued upon the writ, sell the property advertised to the highest bidder. The officer shall deduct from the proceeds of the sale sufficient for the full satisfaction, if possible, of the execution and the officer's costs, expenses, and commissions, and return the writ, satisfied wholly or in part, paying the amount collected thereon to the plaintiff in execution or the plaintiff's attorney. [CC 1859, §1024; RL 1925, §2448; RL 1935, §4147; RL 1945, §10174; RL 1955, §233-43; HRS §651-44; gen ch 1985]

#### Case Notes

Junior encumbrancer may question adequacy of price bid only if adequate bid would have left surplus after satisfying senior encumbrances. 51 H. 164, 454 P.2d 116 (1969).

" **§651-45 Postponement of sale.** If, at the time appointed for the sale, the officer deems it expedient, and for the interest of all persons concerned therein, to postpone the sale, for want of purchasers or for other sufficient cause, the officer may postpone it from time to time, until the sale is completed; giving notice of every such adjournment, by a public declaration thereof, at the time and place previously appointed for the sale. [CC 1859, §1025; am L 1905, c 16, §1; RL 1925, §2449; RL 1935, §4148; RL 1945, §10175; RL 1955, §233-44; HRS §651-45; gen ch 1985]

" **§651-46 Deeds, etc.** The officer shall execute and deliver, to any purchaser at any such sale, such certificate of purchase, or conveyance, as may be necessary. [CC 1859, §1026; RL 1925, §2450; RL 1935, §4149; RL 1945, §10176; RL 1955, §233-45; HRS §651-46]

#### Case Notes

If invalid levy, no title passes to purchaser. 21 H. 745 (1913).

Mortgage made by debtor after attachment being void, conveyance free of such mortgage did not convey a greater interest than the debtor had at time of sale. 51 H. 164, 454 P.2d 116 (1969).

Cited: 16 H. 106, 110 (1904).

" **§651-47 Levy on and execution sale of investment securities; garnishment the proper procedure when the security is subject to right of possession of third party.** (a) A security or any share or other interest evidenced thereby which is outstanding and not in the possession of a third party who has a security interest, lien, or right of retention therein which entitled the third party to possession shall be levied upon under a writ of execution by being actually seized by the officer executing the writ.

At any time after the issuance of the writ, upon application of the judgment creditor or the officer executing the writ and upon due notice to the defendant or other person having possession of the security without being entitled thereto under a security interest, lien, or right of retention, the court or judge may summarily direct the defendant or such other person so having possession of the security to produce the same and deliver it to the officer.

In the case of a levy for execution, the security levied upon shall be advertised for sale and sold in the manner provided in section 651-43. After the sale the levying officer shall deliver to the purchaser the security endorsed or assigned by the levying officer as the agent of the judgment debtor, which delivery and endorsement or assignment shall entitle the purchaser to all the right, title, and interest of the judgment debtor in the security and to registration of the transfer as provided in chapter 490, the Uniform Commercial Code, article 8. This subsection shall apply to any security which is either within the State or which is in the possession of an owner or other person subject to the jurisdiction of this State.

(b) A security or any share or other interest evidenced thereby which is outstanding and in the possession of a person who is entitled to such possession under a security interest or lien or other right of retention therein shall be reached by garnishment as provided in chapter 652. [L 1927, c 269, pt of §1; RL 1935, §4150; am L 1939, c 76, §1; RL 1945, §10177; RL 1955, §233-46; am L 1966, c 18, §7; HRS §651-47; gen ch 1985]

#### **Law Journals and Reviews**

Attachment or Levy of a Security Under the Uniform Commercial Code. 4 HBJ, no. 3, at 16 (1966).

" **§651-48 Same, penalty.** Any owner or holder of any certificate of stock which has been levied upon by virtue of an execution who sells or otherwise voluntarily disposes of the certificate of stock without consent of the judgment creditor, or order of the court, or who, upon demand of the levying

officer, refuses to surrender the certificate of stock, except to assert or maintain the owner's or holder's rights as a pledgee, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. [L 1927, c 269, pt of §1; RL 1935, §4151; RL 1945, §10178; RL 1955, §233-47; HRS §651-48; gen ch 1985]

" **§651-49 Only defendant's interest sold.** No sale by execution shall operate to convey a greater estate or interest in the property sold, than the defendant in execution had at the time of sale; and all such sales of property not belonging to the defendant shall subject the officer to the private action of the purchaser, being afterwards deprived thereof by the real owner. [CC 1859, §1027; RL 1925, §2451; RL 1935, §4152; RL 1945, §10179; RL 1955, §233-48; HRS §651-49]

#### Case Notes

Liability of plaintiff in execution when sheriff sells more than the defendant's share. 2 H. 178 (1859).

Sheriff's deed conveys only interest of judgment debtor at time of sale. 9 H. 27 (1893); 29 H. 364 (1926).

This section is in pari materia with §634-29, and a mortgage made subsequent to attachment is void as against attaching creditor. 51 H. 164, 454 P.2d 116 (1969).

" **§651-50 Liability for exceeding powers.** The officer serving any execution shall act upon the officer's own private accountability, for all excesses of the officer's official powers, and for any departure from the legal import of the writ or mandate in the officer's hands. [CC 1859, §1028; RL 1925, §2452; RL 1935, §4153; RL 1945, §10180; RL 1955, §233-49; HRS §651-50; gen ch 1985]

" **§651-51 Indemnity bond.** The sheriff, deputy sheriff, or police officer may decline to levy upon or sell the alleged property of any person against whose goods and effects an execution or other similar writ may issue, unless the party beneficially interested in the writ shall, upon request, tender to the officer a sufficient bond of indemnity against all costs and expenses which the officer may sustain in consequence of seizure or sale of the property, and the claims of third parties. [L 1888, c 8, §18; am L 1907, c 12, §1; RL 1925, §2453; RL 1935, §4154; RL 1945, §10181; RL 1955, §233-50; am L 1963, c 85, §3; HRS §651-51; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

## Case Notes

Bonds, sureties. 30 H. 658, 663 (1928).

" **§651-52 Indemnity, how collected.** Bonds of indemnity given to an officer, as provided in section 651-51, shall be collectible by the officer receiving the same, upon citation to show cause and proof of the signatures thereto, without the intervention of a jury, and the damages to be assessed thereon shall be the amount recovered against the officer, with interest and costs of suit, and the expenses of the citation and judgment of indemnity, for which execution may be issued against the co-obligors, both jointly and severally, leviabale as in other cases of indebtedness. [CC 1859, §1034; RL 1925, §2454; RL 1935, §4155; RL 1945, §10182; RL 1955, §233-51; HRS §651-52]

### "PART III. EXEMPTIONS

#### A. GENERALLY

##### Note

Sections 651-61 to 651-64 designated as Subpart A by L 1976, c 137, §6.

#### Rules of Court

See HRCPC rules 64, 69; DCRCP rules 64, 69.

**§651-61 Exemption, how claimed.** Where an officer is about to levy an attachment or execution on personal property, some of which is claimed as exempt, the officer shall demand of the defendant in writing that the defendant make selection of such property as is exempt to the defendant and in reference to which the defendant has the right of selection and the defendant shall then and there make the defendant's selection; or, failing so to do, the officer shall make it for the defendant, and any selection so made shall be conclusive on the defendant. [L 1901, c 9, §11; RL 1925, §2455; RL 1935, §4156; RL 1945, §10183; RL 1955, §233-60; HRS §651-61; am L 1978, c 46, §1; gen ch 1985]

## Case Notes

Not necessary for execution or attachment defendant to make claim of exemption for property specifically exempt. 23 H. 584 (1917).

" **§651-62 Indemnity bond if exemption claimed.** If any officer levies or is about to levy an attachment or execution on any property claimed as exempt under subpart C, and a doubt arises as to the liability of the property to be seized or sold, the officer may demand of the plaintiff a bond with sufficient sureties, payable to the officer, in a sufficient penalty, conditioned to indemnify and save harmless the officer against all damages, costs, and expenses which the officer may sustain in consequence of the seizure or sale of the property. If the bond is not given after twenty-four hours' notice in writing from the officer to the plaintiff, the plaintiff's agent, or attorney, if it is required, the officer may refuse to levy, or, having levied, may dismiss the levy. If the required bond is given, the officer shall seize and sell or dispose of the property according to the command of the process in the officer's hands. [L 1901, c 9, §12; RL 1925, §2456; RL 1935, §4157; RL 1945, §10184; RL 1955, §233-61; HRS §651-62; am L 1976, c 136, pt of §4; am L 1978, c 46, §2; gen ch 1985]

" **§651-63 Liability for selling exempt property.** If any officer or other person seizes or sells any property exempt from execution under subpart C, the officer or other person shall be liable to an action at the suit of the owner for all damages and costs sustained thereby, including an attorney's fee to be fixed by the court before which the action is tried, and the fact that the officer or person has demanded and received the indemnifying bond mentioned in section 651-62 shall not exempt the officer or other person from the liability in this section specified. [L 1901, c 9, §13; RL 1925, §2457; RL 1935, §4158; RL 1945, §10185; RL 1955, §233-62; HRS §651-63; am L 1976, c 136, pt of §4; gen ch 1985]

#### Case Notes

Liability of officer seizing property. 23 H. 584, 586 (1917).

" **§651-64 Seizure of exempt property.** [(a)] Any defendant who claims that exempt property has been levied upon or seized may, with or without the giving of bond, apply to the court which issued the process for the release and return of the property. Upon the giving of bond in such sum and with such sureties as may be approved by the court, payable to the plaintiff in the attachment or execution and conditioned to have the property forthcoming to abide the court's determination of whether such property is exempt or for its value, and for the payment of costs, the court may order the property released and returned to the defendant forthwith. In such case the officer

shall deliver the property to the defendant, and return the attachment or execution to the court whence it issued.

[(b)] If it shall be found that the property is liable to attachment or execution, the same not being exempt, the plaintiff shall have judgment against the defendant and the defendant's sureties on the bond for the value of the property and the costs of the proceeding including an attorney's fee, or for such costs and the reinstatement of the levy as of the date it was made, as the court shall order. But if it is found that the property is exempt, the defendant shall recover the defendant's property, damages, and costs including an attorney's fee to be fixed by the court. [L 1901, c 9, §14; RL 1925, §2458; RL 1935, §4159; RL 1945, §10186; RL 1955, §233-63; HRS §651-64; am L 1978, c 46, §3; gen ch 1985]

### Case Notes

See analogy to tax exemption, must be clearly stated in statute. 8 F.2d 845 (1925).

In action of replevin to recover goods seized, plaintiff is bound to show plaintiff is a person protected by statute. 22 H. 136 (1914).

" **§§651-65 to 651-67 REPEALED.** L 1976, c 136, §5.

" **§651-68 Proceedings on execution; appraisers; expiration of lien, result.** When an execution for the enforcement of a judgment is levied upon real or personal property for which an exemption is authorized under subpart B or C, the judgment creditor may at any time within sixty days thereafter apply to the court for the appointment of a person or persons to appraise the value thereof. If such application is not made within sixty days after the levy of such execution the lien of the execution shall cease at the expiration of such period, and no execution based upon the same judgment shall thereafter be levied upon the real or personal property. [L 1976, c 136, pt of §3; am L 1978, c 46, §4]

" **§651-69 Application form contents.** The application shall be made upon a verified petition of the judgment creditor filed with the court showing:

- (1) The fact that an execution has been levied upon the real or personal property within sixty days prior to the filing of the petition;
- (2) A description of the real or personal property and the name of the claimant of an exemption under subpart B or C;

- (3) That the value of the real or personal property, over and above all liens and encumbrances thereon recorded prior to the lien under which sale is to be made, exceeds the amount of the real or personal property exemption, if any; and
- (4) That no previous execution arising out of the same judgment has been levied upon the real or personal property. [L 1976, c 136, pt of §3; am L 1978, c 46, §5]

#### **Revision Note**

Pursuant to §23G-15, in:

- (1) Paragraphs (1) and (2), punctuation changed; and
- (2) Paragraph (3), punctuation changed and "and" added after ending punctuation.

" **§651-70 Service of petition and notice of hearing; effects of failure to serve; appointment of appraisers.** [(a)] Within ninety days from the date of filing the petition, a copy thereof, with the notice of the time and place of hearing, shall be served personally by any person over the age of majority and by certified mail, return receipt requested, upon the claimant or the claimant's attorneys at least ten days before the hearing, then upon affidavit or refusal of such services or inability to locate upon diligent search and inquiry, by publication once in a newspaper of general circulation in the State at least twenty days before the hearing. If the notice is not served, the lien of the execution shall cease at the expiration of the ninety-day period, and no execution based upon the same judgment shall thereafter be levied upon the real or personal property.

[(b)] At the hearing the court may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint one to three disinterested residents of the county in which the property is situated to appraise the value of the real or personal property. [L 1976, c 136, pt of §3; gen ch 1985]

#### **"B. REAL PROPERTY**

**§651-91 Definitions.** As used in this subpart:

"Head of a family" includes within its meaning:

- (1) A man and woman when married, except as provided in section 651-93;



- (2) Every individual who is residing on the real property and who has under that individual's care or maintenance, either:
  - (A) That individual's minor child, or minor grandchild, or the minor child of that individual's deceased wife or husband;
  - (B) A minor brother or sister, or the minor child of a deceased brother or sister;
  - (C) A father, mother, grandfather, or grandmother;
  - (D) The father, mother, grandfather, or grandmother of a deceased husband or wife; or
  - (E) An unmarried brother, sister, or any other of the relatives mentioned in this paragraph who have attained the age of majority; and
- (3) Head of household as defined in section 2(b) of the Internal Revenue Code of 1954, as amended.

"Long-term lease" means a lease for twenty years or more.

"Owner" means an individual who has an interest in real property.

"Person" means any individual under sixty-five years of age other than the head of a family.

"Real property" consists of the dwelling house in which the owner resides and one parcel of land not to exceed one acre, upon which it is situated together with other buildings thereon. This parcel may be in fee simple or any other interest in real property that vests the immediate right of possession, even though the immediate right of possession is not exclusive, and includes land held under long-term lease, ownership rights in a condominium or stock cooperative unit. [L 1976, c 136, pt of §1; am L 1978, c 46, §6; am L 2016, c 55, §31]

" **§651-92 Real property exempt.** (a) Real property shall be exempt from attachment or execution as follows:

- (1) An interest in one parcel of real property in the State of Hawaii, of a fair market value not exceeding \$30,000, owned by the defendant who is either the head of a family or an individual sixty-five years of age or older.
- (2) An interest in one parcel of real property in the State of Hawaii, of a fair market value not exceeding \$20,000, owned by the defendant who is a person.

The fair market value of the interest exempted in paragraph (1) or (2) shall be determined by appraisal and shall be an interest which is over and above all liens and encumbrances on the real property recorded prior to the lien under which attachment or execution is to be made. Not more than one exemption shall be claimed on any one parcel of real property even though more than

one person residing on such real property may otherwise be entitled to an exemption.

Any claim of exemption under this section made before May 27, 1976, shall be deemed to be amended on May 27, 1976, by increasing the exemption to the amount permitted by this section on May 27, 1976, to the extent that such increase does not impair or defeat the right of any creditor who has executed upon the real property prior to May 27, 1976.

(b) No exemption authorized under this section shall apply to process arising from:

- (1) A lien as provided by section 507-42;
- (2) A lien or security interest created by a mortgage, security agreement, or other security instrument;
- (3) A tax lien in the name of the federal or state government;
- (4) An improvement district lien of any county of the State; or
- (5) A lien or encumbrance recorded against the real property prior to the acquisition of interest in and commencement of residence on such real property. [L 1976, c 136, pt of §1; am L 1978, c 46, §7]

#### **Revision Note**

Pursuant to §23G-15, in:

- (1) Subsection (a)(1), commas added after "Hawaii" and "\$30,000";
- (2) Subsection (a)(2), commas added after "Hawaii" and "\$20,000"; and
- (3) Subsection (a), "paragraphs (1)" changed to "paragraph (1)".

#### **Case Notes**

Compared to prior law. 61 H. 590, 607 P.2d 411 (1980).

" **[§651-93] Effect of separation, divorce, reconciliation.** Following the entry of a decree of separate maintenance or an interlocutory decree of divorce, each spouse may claim a separate real property exemption under this part as a person. A subsequent reconciliation of the spouses when evidenced by a dismissal of the divorce action or vacation of the decree of separate maintenance executed by both spouses or their attorneys of record shall cancel a separate claim for a real property exemption and the spouses shall only have one real property exemption. [L 1976, c 136, pt of §1]

" **§651-94 Proceedings where real property can be divided without material injury.** [(a)] If the defendant is entitled to an exemption as provided in section 651-92, and from the appraiser's report, it appears to the judge that the real property claimed can be divided without material injury and subject to applicable state and county land use, zoning, and subdivision laws, the judge shall, by order, direct the appraisers to set off to the defendant so much of the real property, including the residence and outbuildings, as will amount in value to the real property exemption and all liens and encumbrances and the execution may be enforced against the remainder of the real property subject to all liens and encumbrances recorded prior to the lien under which sale is made.

[(b)] If a sale is made, the proceeds thereof shall be applied in the following order of priority: first, to the satisfaction of the execution costs, attorney's and appraiser's fees, and any other fees that may necessarily arise; second, to the satisfaction of the lien under which the sale is made; third, to the discharge of any subsequent liens and encumbrances according to their priority, and the balance, if any, to the defendant. The sale shall operate to extinguish subsequent liens and encumbrances on the remainder sold without forcing prior lienors and encumbrancers to exercise their right of recovery.

[(c)] As used in this section, "material injury" means that the value of the real property left after the set off to the defendant is less than: all liens and encumbrances on the real property recorded prior to lien under which sale is made and an amount equal to estimated execution costs, attorney's and appraiser's fees, and other fees. [L 1976, c 136, pt of §1; am L 1978, c 46, §8; gen ch 1985]

" **§651-95 Sale where real property cannot be divided; application of proceeds.** [(a)] If the defendant is entitled to an exemption as provided in section 651-92, and if, from the appraiser's report, it appears to the court that the real property claimed exceeds in value the amount of the real property exemption, all liens and encumbrances recorded prior to the judgment lien under which sale is to be made and an amount equal to estimated execution costs, attorney's and appraiser's fees, and other fees, and that it cannot be divided under section 651-94, the court shall make an order directing its sale under the execution, subject to all liens and encumbrances recorded prior to the lien under which the sale is to be made.

[(b)] If the sale is made, the proceeds thereof shall be applied in the following order of priority: first, to the

defendant to the amount of the exemption; second, to the satisfaction of the execution costs, attorney's and appraiser's fees, and any other fees that may necessarily arise; third, to the satisfaction of the lien under which the sale is made; fourth, to the discharge of any subsequent liens and encumbrances according to their priority, and fifth, the balance, if any, to the defendant. The sale shall operate to extinguish subsequent liens and encumbrances without forcing prior lienors and encumbrancers to exercise their right of recovery. [L 1976, c 136, pt of §1; am L 1978, c 46, §9; gen ch 1985]

### Case Notes

Mentioned: 61 H. 590, 607 P.2d 411 (1980).

" **§651-96 After sale, money equal to real property exemption protected.** The money paid to the defendant as the defendant's exemption shall be entitled, for the period of six months thereafter, to the same protection against attachment and execution which section 651-92 gives to the real property. If the defendant, within such six-month period, applies such proceeds to the purchase of real property, the date of such acquisition and commencement of residence for the purpose of section 651-92(b)(5), shall be considered to be the date of the acquisition of interest in and commencement of residence on the real property whose sale resulted in such proceeds. [L 1976, c 136, pt of §1; am L 1978, c 46, §10; gen ch 1985]

### "C. PERSONAL PROPERTY

**§651-121 Certain personal property and insurance thereon, exempt.** The following described personal property of an individual up to the value set forth shall be exempt from attachment and execution as follows:

- (1) All necessary household furnishings and appliances, books and wearing apparel, ordinarily and reasonably necessary to, and personally used by a debtor or the debtor's family residing with the debtor; and, in addition thereto, jewelry, watches, and items of personal adornment up to an aggregate cash value not exceeding \$1,000;
- (2) One motor vehicle up to a value of \$2,575 over and above all liens and encumbrances on the motor vehicle; provided that the value of the motor vehicle shall be measured by established wholesale used car prices customarily found in guides used by Hawaii motor

- vehicle dealers; or, if not listed in such guides, fair wholesale market value, with necessary adjustment for condition;
- (3) Any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and nets, one motor vehicle, and other personal property ordinarily and reasonably necessary to and personally owned and used by the debtor in the exercise of the debtor's trade, business, calling, or profession by which the debtor earns the debtor's livelihood;
  - (4) One parcel of land, not exceeding two hundred fifty square feet in size, niche or interment space owned, used, or occupied by any person, or by any person jointly with any other person or persons, in any graveyard, cemetery, or other place for the sole purpose of burying the dead, together with the railing or fencing enclosing the same, and all gravestones, tombstones, monuments, and other appropriate improvements thereon erected;
  - (5) The proceeds of insurance on, and the proceeds of the sale of, the property in this section mentioned, for the period of six months from the date the proceeds are received; and
  - (6) The wages, salaries, commissions, and all other compensation for personal services due to the debtor for services rendered during the thirty-one days before the date of the proceeding. [L 1976, c 136, pt of §2; am L 1978, c 46, §11; gen ch 1985; am L 1999, c 37, §2]

#### **Revision Note**

Pursuant to §23G-15, in:

- (1) Paragraphs (1) to (4), punctuation changed; and
- (2) Paragraph (5), punctuation changed and "and" added after ending punctuation.

" **§651-122 Personal property not exempt.** No exemption for personal property authorized under section 651-121 shall apply to attachment or execution issued upon a judgment recovered for the price of such property, or upon a judgment of foreclosure of a security agreement or other security instrument encumbering personal property or for taxes or fines or any debt due the State. [L 1976, c 136, pt of §2; am L 1978, c 46, §12]

" **§651-123 Application of proceeds of sale.** When the property thus taken is sold, which sale shall be subject to all prior liens and encumbrances, the proceeds of the sale thereof shall be applied in the following order of priority: first, to the defendant to the amount of the exemption, if any; second, to the satisfaction of the execution costs, attorney's and appraiser's fees, and any other fees that may necessarily arise; third, to the satisfaction of the lien under which the sale is made; fourth, to the discharge of any subsequent liens and encumbrances according to their priority; and fifth, the balance, if any, to the defendant. The sale shall operate to extinguish subsequent liens and encumbrances without forcing prior lienors and encumbrancers to their right of recovery. [L 1976, c 136, pt of §2; am L 1978, c 46, §13]

" **§651-124 Pension money exempt.** The right of a debtor to a pension, annuity, retirement or disability allowance, death benefit, any optional benefit, or any other right accrued or accruing under any retirement plan or arrangement described in section 401(a), 401(k), 403(a), 403(b), 408, 408A, 409 (as in effect prior to January 1, 1984), 414(d), or 414(e) of the Internal Revenue Code of 1986, as amended, or any fund created by the plan or arrangement, or any ABLE savings account established pursuant to chapter 256B, shall be exempt from attachment, execution, seizure, the operation of bankruptcy or insolvency laws under title 11 United States Code section 522(b), or under any legal process. However, this section shall not apply to:

- (1) A "qualified domestic relations order" as defined in section 206(d) of the Employee Retirement Income Security Act of 1974, as amended, or in section 414(p) of the Internal Revenue Code of 1986, as amended; and
- (2) Contributions made to a plan or arrangement within the three years before the date a debtor files for bankruptcy, whether voluntary or involuntary, or within three years before the date a civil action is initiated against the debtor, except for contributions to a retirement plan established by state statute if the effect would be to eliminate a state employee's retirement service credit. [L 1986, c 289, §1; am L 2004, c 34, §1; am L 2005, c 152, §2; am L 2015, c 206, §3; am L 2016, c 55, §32]

#### **Case Notes**

Section 206(d)(1) of ERISA erects a general bar to the garnishment of pension benefits from ERISA-covered plans;

insofar as compliance with both section 206(d)(1) of ERISA and the exception to this section is "a physical impossibility", the exception to this section is preempted to the extent that it actually conflicts with ERISA. 90 H. 345, 978 P.2d 783 (1999).