

CHAPTER 654
SPECIAL PROCEEDINGS FOR IMMEDIATE
POSSESSION OF PERSONAL PROPERTY

Section

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This chapter was completely revised by L 1972, c 90, §1. The sections of the chapter are renumbered as set forth below. The following table shows the current disposition of the chapter.

Disposition Table

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" **[\$654-1] Information required.** (a) An action may be brought to secure the immediate possession of personal property in any court of competent jurisdiction by filing a verified complaint showing:

- (1) That the plaintiff is entitled to the immediate possession of the property claimed;
- (2) A particular description of the property claimed; if the property claimed is a portion of divisible property of uniform kind, quality, or value, that such is the case, and the amount thereof which the plaintiff claims;
- (3) The actual value of the property claimed;
- (4) That the property has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or an attachment against the plaintiff or the plaintiff's property, or if so seized that it is by statute exempt from such seizure;
- (5) That the property is in the possession of a named defendant, and the facts and circumstances relating to the possession thereof by the defendant, according to the plaintiff's best knowledge and belief; and
- (6) The names of all persons other than the defendant in possession of the property, having or claiming or who

might have or claim to have an interest in the property according to the best belief of plaintiff, all of whom shall be joined as defendants in the action.

(b) If the action already has been commenced, an affidavit may be filed at any time before the case is at issue, containing the information required by subsection (a). [L Sp 1949, c 7, pt of §1; RL 1955, §244-20; HRS §654-21; am L 1972, c 90, §1(a); ren HRS §654-1; gen ch 1985]

Revision Note

In subsection (a)(5), "and" added after ending punctuation pursuant to §23G-15.

Rules of Court

Verification, whether required, see HRCP rule 11.

Case Notes

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

" **§654-2 Bond.** [*Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.*] When the plaintiff desires the immediate delivery of the property, the plaintiff shall execute a bond to the defendant in possession of the property, and to all persons having an interest in the property, of such amount and with such sureties as are approved by the court, conditioned that the plaintiff will prosecute the plaintiff's action to judgment without delay, and deliver the property to the defendant in possession or any other person, if such delivery is adjudged, and pay all costs and damages that may be adjudged against the plaintiff. Upon the filing of the verified complaint or affidavit with the bond and a motion for immediate consideration of the matter, the court shall forthwith inquire into the matter, ex parte or otherwise, as in its discretion it determines. If thereupon the court finds that a prima facie claim for relief has been established, it shall issue an order directed to the sheriff, sheriff's deputy, chief of police, an authorized police officer of any county, or an independent civil process server from the department of public safety's list under section 353C-10 to take the property therein described and deliver the same to the plaintiff.

Copies of the verified complaint or affidavit, and, if a bond for immediate seizure has been filed, of the bond, and, if an order for the taking has been issued on an ex parte hearing, of the order, shall forthwith be served upon the defendant in possession and each person having or claiming a possessory interest in the property, in the same manner as is provided for service of summons unless the party to be served has appeared in the action, in which case service may be made in the same manner as is provided for service of papers other than the summons. In a proper case, either before or after issuance of an order for the taking, the required service may be combined with the publication of the summons, in which event the giving of notice of the substance of the proceeding shall be sufficient.

Upon the application of any party, the proceeding shall be advanced and assigned for hearing at the earliest possible date. [L Sp 1949, c 7, pt of §1; RL 1955, §244-21; am L 1963, c 85, §3; HRS §654-22; am L 1972, c 90, §1(b); ren HRS §654-2; gen ch 1985; am L 1989, c 123, §6 and c 211, §10; am L 1990, c 281, §11; am L 2002, c 16, §26; am L 2013, c 116, §§17, 25(16)]

Cross References

Bond, see §78-20.

" **[\$654-3] Execution of the order.** The officer to whom an order has been issued shall forthwith execute the same by taking possession of the property therein described, for which purpose the officer may enter in or upon any enclosure or other property, including any building or other structure, vehicle, vessel, or aircraft, and may, upon denial of entrance and after exhibiting the officer's authority if requested, use necessary force to secure entrance; provided that no property shall be so taken if the court issuing the order is without jurisdiction to execute process at the place at which the property is found. [L Sp 1949, c 7, pt of §1; RL 1955, §244-23; HRS §654-24; am L 1972, c 90, §1(c); ren HRS §654-3; gen ch 1985]

Rules of Court

See HRCF rules 64, 69.

" **[\$654-4] Examination of defendant.** When it appears by the return of the officer to whom the order was issued that the property claimed has been disposed of or concealed so that the order cannot be executed, the court, upon motion and affidavit, may compel the attendance of the defendant or any other person to examine the defendant or other person on oath as to the

situation of the property, and may punish a wilful hindrance to, or obstruction or disobedience of, any order of the court as a contempt. [L Sp 1949, c 7, pt of §1; RL 1955, §244-24; HRS §654-25; am L 1972, c 90, §1(d); ren HRS §654-4; gen ch 1985]

" **§654-5 Delivery.** The officer, having taken possession of the property or any part thereof, shall forthwith deliver the same to the plaintiff, unless before the actual delivery to him, the defendant who had possession, or any person claiming an interest therein and a right to the possession thereof upon making an affidavit of his interest and of his right to the possession stating the grounds thereof, executes a bond to the plaintiff in such amount and with such sureties as are approved by the court, conditioned that he will appear in and defend the action, and deliver the property to the plaintiff, if the plaintiff recovers judgment therefor, in as good condition as it was when the action was commenced, and that he will pay all costs and damages that may be adjudged against him for the taking or detention of the property. Upon the furnishing of the bond the property shall be relinquished to the defendant who had possession, unless the bond is furnished by another person who has, by proper pleadings, presented an affirmative claim to the property and has complied with the provisions of this chapter applicable to a plaintiff, in which case the court shall determine the custody of the property. [L Sp 1949, c 7, pt of §1; RL 1955, §244-25; HRS §654-26; am L 1972, c 90, §1(e); ren HRS §654-5]

Cross References

Bond, see §78-20.

" **§654-6 Return of officer.** The officer shall return the order on or before the return day specified in the order issued to the officer and state fully what the officer has done thereunder. If the officer has taken any property the officer shall describe the same particularly. [L Sp 1949, c 7, pt of §1; RL 1955, §244-26; HRS §654-27; ren HRS §654-6; gen ch 1985]

" **§654-7 Judgment.** The judgment shall determine which party is entitled to the possession of the property and shall designate the party's right therein and if the party has not the possession thereof shall also determine the value of the right of the party. The court may also award judgment for damages resulting from the detention of the property. Any money judgment against any party shall also be against the sureties on

the party's bond. [L Sp 1949, c 7, pt of §1; RL 1955, §244-27; HRS §654-28; ren HRS §654-7; gen ch 1985]

" **[\$654-8] Plaintiff's option.** If the party found to be entitled to the property is not already in possession thereof by delivery under this chapter, or otherwise, the party may, in addition to an execution for damages awarded under section 654-7, at the party's option have an execution for the delivery of the specific property, or for the value thereof. If any portion of the property cannot be obtained on execution the party entitled thereto may take the remainder and apply for and obtain a supplementary judgment for the value of the missing portion together with damages. [L Sp 1949, c 7, pt of §1; RL 1955, §244-28; HRS §654-29; am L 1972, c 90, §1(f); ren HRS §654-8; gen ch 1985]

Rules of Court

See HRCP rules 64, 69, 70.

" **[\$654-8.5 College savings program; exemptions.]** (a) Moneys in an account created pursuant to chapter 256 are exempt from application to the satisfaction of a money judgment as follows:

- (1) One hundred per cent of moneys in an account established in connection with a scholarship program;
- (2) One hundred per cent of moneys in an account where the judgment debtor is the account owner and the designated beneficiary of the account is a minor; and
- (3) An amount not exceeding \$10,000 in an account, or in the aggregate for more than one account, where the judgment debtor is the account owner of the account or accounts.

(b) For the purposes of this section, the terms "account owner" and "designated beneficiary" shall have the meanings ascribed to them in section 256-1. [L 1999, c 81, §3]

" **[\$654-9] Other remedies not affected.** The remedy provided by this chapter shall be in addition to, and shall not be deemed to affect, any other remedy. [L Sp 1949, c 7, pt of §1; RL 1955, §244-29; HRS §654-30; am L 1972, c 90, §1(g); ren HRS §654-9]