

## Provisional Remedies: Florida

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A Q&A guide to the various provisional remedies available in Florida state courts. This Q&A addresses the legal standards in Florida for obtaining provisional remedies, the application procedures for each remedy, and limitations imposed on each remedy. Answers to questions can be compared across a number of jurisdictions (see Provisional Remedies: State Q&A Tool).

Due to the ongoing COVID-19 outbreak, many court rules and procedures may be suspended or modified on a state-wide or court-by-court basis. For additional information and updates, see the [Practice Note, Impact of COVID-19 on Florida Practice: Overview](#).

### Overview of State Provisional Remedies

#### 1. List each provisional remedy available in your jurisdiction and the statutory authority (if any) for each.

Florida law provides for six provisional remedies:

- Temporary injunction (Fla. R. Civ. P. 1.610).
- Prejudgment Attachment (§§ 76.01 to 76.32, Fla. Stat.).
- Prejudgment Replevin (§§ 78.01 and 78.068(1), Fla. Stat.).
- Prejudgment Garnishment (§§ 77.01 to 77.28, Fla. Stat.).
- Receivership (§§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620).
- Sequestration (§ 68.03, Fla. Stat.).

Provisional remedies in Florida are usually requested by the plaintiff but they are available to a defendant on a counterclaim, cross claim, or third-party impleader complaint.

#### 2. For each remedy listed in Question 1, describe:

- The nature of each remedy.
- Whether the remedy is limited to certain categories of actions or only available under certain conditions.

### Temporary Injunction: Fla. R. Civ. P. 1.610

In Florida, a temporary injunction is a remedy by which a court orders a litigant to perform or refrain from performing a particular act before the entry of final judgment. The primary purpose of entering a temporary injunction is to preserve the status quo pending the final outcome of an action (*Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 924 (Fla. 2017)).

Florida Rule of Civil Procedure 1.610 no longer contains references to both preliminary injunctions and temporary restraining orders. The rule refers **only** to temporary injunctions. However, the practitioner should note that courts use the terms preliminary and temporary injunctions interchangeably with no substantial difference between them. (See *Williams v. Victim Justice, P.C.*, 198 So. 3d 822, 826 n.4 (Fla. 2d DCA 2016); *In re Amendments to Rules of Civil Procedure*, 458 So. 2d 245, 256 (Fla. 1984).)

Temporary injunctions are generally limited to actions where the moving party:

- Is likely to suffer irreparable harm absent entry of the injunction.
- Lacks an adequate remedy at law.

(*Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258-64 (Fla. 2017); *JonJuan Salon, Inc. v. Acosta*, 922 So. 2d 1081, 1084 (Fla. 4th DCA 2006).)

A temporary injunction is generally not available in actions for money damages (*Sammie Invs., LLC v.*



*Strategica Capital Assocs., Inc.*, 247 So. 3d 596, 600 (Fla. 3d DCA 2018)).

Florida courts have found appropriate conditions for issuing a temporary injunction:

- Where the defendant's conduct threatens to destroy the plaintiff's interest in the subject matter of the lawsuit, for example, where the defendant is transferring, removing, or destroying property that is the subject matter of the plaintiff's lawsuit (*Vanderpool Props. v. Hess & Slager*, 130 So. 457, 458 (Fla. 1930)).
- In actions seeking a permanent injunction (see, for example, *Fla. State Soc'y of Homeopathic Physicians v. Fla. Dep't of Prof'l Reg.*, 487 So. 2d 374, 376 (Fla. 5th DCA 1986)).

Temporary injunctions are only available where an underlying action or special proceeding has been properly started. A temporary injunction cannot be sought on its own. For more on temporary injunctions generally, see [Practice Note, Temporary Injunctions: Initial Considerations \(FL\)](#).

### Prejudgment Attachment: §§ 76.01 to 76.32, Fla. Stat.

The purpose of an attachment proceeding is to hold the debtor's property in legal custody until a judgment can be obtained. In certain types of Florida lawsuits, a plaintiff may seek a writ of attachment before obtaining a final judgment against the defendant. The sheriff generally seizes and retains the property. The writ creates a lien on real or personal property when the sheriff levies the writ. Once the creditor obtains a judgment, the property is then available for execution. (§ 76.14, Fla. Stat.; *VMI Entm't, LLC v. Westwood Plaza, LLC*, 152 So. 3d 617, 618 (Fla. 1st DCA 2014)). The writ of attachment is subject to the property's preexisting liens (§ 76.14, Fla. Stat.).

Attachment is only available in conjunction with a pending action at common law or if statutorily provided for any of the following:

- Money due (§76.09, Fla. Stat.).
- Money not yet due (§ 76.10, Fla. Stat.).
- Foreclosure (§ 76.11, Fla. Stat.).

A creditor may bring a motion for attachment to recover under a debt that is:

- **Actually due** if a debtor:
  - is about to fraudulently dispose of the property before judgment can be obtained;

- is or is about to remove the property from Florida, is absconding with the property, or is concealing the property;
- is concealing himself; or
- is or is about to remove himself from the jurisdiction. (§ 76.04, Fla. Stat.)

- **Not yet due** if a debtor is:

- moving the property out of Florida;
- fraudulently disposing of the property to avoid payment of their debts; or
- fraudulently secreting the property to avoid payment of their debts. (§ 76.05, Fla. Stat.)

A creditor may also bring a motion for attachment to aid in foreclosure of a mortgage (§§ 76.07 and 76.11, Fla. Stat.). Florida law prohibits prejudgment writs of attachment when the plaintiff seeks unliquidated damages (*Marshall-Shaw v. Ford*, 755 So. 2d 162, 165 (Fla. 4th DCA 2000)). However, this rule does not apply when the plaintiff both:

- Sues the defendant for wrongful conversion of property.
- Can approximate the property's value (for example, by providing evidence of the property's market value).

(*Marshall-Shaw*, 755 So. 2d at 165.)

For more on the nature and scope of prejudgment writs of attachment, see [Practice Note, Prejudgment Attachment \(FL\): Scope of Prejudgment Attachment](#).

### Prejudgment Replevin: §§ 78.01 and 78.068(1), Fla. Stat.

Replevin is a prejudgment remedy and independent statutory action for the recovery of personal property that has been wrongfully detained by another (Fla. Stat. Ann. § 78.01; Trawick, Fla. Prac. & Proc. § 34:1 (2019-20 ed.)).

Replevin is available only to recover tangible personal property that is subject to physical seizure (§ 78.01, Fla. Stat.; *Pain Care First of Orlando, LLC v. Edwards*, 84 So. 3d 351 (Fla. 5th DCA), review denied 104 So. 3d 1083 (Fla. 2012); *Williams Mgmt. Enters., Inc. v. Buonauro*, 489 So. 2d 160 (Fla. 5th DCA 1986)).

Replevin cannot be used to recover property:

- Taken under a warrant to collect any tax, assessment, or fine under any statute.
- Exempt from the execution or attachment.

- From a plaintiff holding the property after having taken it in replevin.
- Unless that person has a right to reduce the goods taken into their possession.

(Fla. Stat. Ann. § 78.02.)

As a provisional remedy, prejudgment replevin is obtained ex parte. Florida statutes also provide for ordinary replevin, which is beyond the scope of this Q&A. For more information on ordinary replevin and the distinction between ordinary replevin and prejudgment replevin, see *Land-Cellular Corp. v. Zokaites*, 463 F. Supp. 2d 1348, 1358-59 (S.D. Fla. 2006); *JB Int'l, Inc. v. Mega Flight, Inc.*, 840 So. 2d 1147, 1148-49 (Fla. 5th DCA 2003).

### Prejudgment Garnishment: §§ 77.01 to 77.28, Fla. Stat.

In certain cases, a plaintiff may seek a writ of garnishment before securing a final judgment against the defendant. The purpose of a prejudgment writ of garnishment is to freeze the defendant's assets by putting them in the hands of a third party because the plaintiff has a reasonable belief that the defendant may transfer those assets outside the reach of the court's jurisdiction and frustrate the plaintiff's ability to collect a potential money judgment.

A debt is only subject to garnishment if it is due without contingency or uncertainty. A debt that is not evidenced by a negotiable instrument must be a debt that becomes due by the passage of time to be eligible for garnishment (*Chaachou v. Kulhanjian*, 104 So. 2d 23, 24 (Fla. 1958)).

Prejudgment garnishment is not available:

- When the plaintiff seeks unliquidated damages (*BNP Paribas v. Wynne*, 944 So. 2d 1004, 1004 (Fla. 4th DCA 2005)).
- In tort actions, unless the plaintiff both:
  - alleges that the defendant wrongfully converted the plaintiff's property; and
  - can approximate the property's fair market value.

(§ 77.02, Fla. Stat.; *Marshall-Shaw*, 755 So. 2d at 164 and *Garel & Jacobs, P.A. v. Wick*, 683 So. 2d 184, 186-87 (Fla. 3d DCA 1996) (the court treated improper taking as an implied contractual obligation rather than a tort).)

An individual is exempt from garnishment if they both:

- Qualify as a head of family.
- Have disposable earnings (that is, earnings of remaining after the deductions required by law to be withheld) less than or equal to \$700 a week.

Garnishment of more than 25% of a person's disposable earnings is prohibited by federal law. (§ 222.11, Fla. Stat.; 15 U.S.C.A. § 1673(a).)

The defendant may claim various exemptions from a prejudgment writ of garnishment. Many exemptions are listed in Section 77.041, Florida Statutes, but other garnishment exemptions are scattered throughout the Florida Statutes. For example, the following property is not subject to garnishment:

- Personal property up to \$1000 (Fla. Const. Art. X, § 4(a)(2)).
- Real property (Fla. Const. Art. X, § 4(a)(2)).
- The cash surrender value of a life insurance policy (§ 222.14, Fla. Stat.).
- The proceeds from an annuity contract (§ 222.14, Fla. Stat.).
- Disability income benefits (§ 222.18, Fla. Stat.).
- Equitable interest as beneficiary of a trust (§ 222.21(2)(b), Fla. Stat.).
- Pension money and retirement or profit-sharing benefits (§ 222.21(2)(b), Fla. Stat.).
- Property held as tenants by the entirety is exempt from garnishment by the creditor of either tenant (*Buckeye Ret. Co., LLC v. Nassau Land & Trading Co.*, 943 So. 2d 223, 223-24 (Fla. 1st DCA 2006)).
- Compensation for labor or services to a "head of family" (§ 222.11, Fla. Stat.).

(§ 222.061, Fla. Stat.; 15 U.S.C. §§ 1672 and 1673.) For more on the types of actions in which prejudgment garnishment is allowed and property subject to prejudgment garnishment, see [Practice Note, Prejudgment Garnishment \(FL\): Scope of Prejudgment Garnishment](#).

Florida law also provides for ordinary garnishment. It is available only after a judgment has been rendered. Ordinary garnishment is beyond the scope of this resource.

### Receivership §§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620

Receivership is a process in which the court appoints disinterested persons to receive and preserve property or funds involved in litigation until the rights and interests of the parties are determined (*Ins. Mgt., Inc. v. McLeod*, 194 So. 2d 16 (Fla. 3d DCA 1966); *Carr v. Marion Mtg. Co.*, 128 So. 12 (Fla. 1930)).

A receiver has no authority to enter into contracts absent express court approval (*Am. Auto. Co. v. Harbour Towers Dev. Corp.*, 227 So. 2d 94, 95 (Fla. 3d DCA 1969)).

### Sequestration: § 68.03, Fla. Stat.

Sequestration is process by which property or funds are attached while litigation is pending. A writ of sequestration directs the sheriff to seize the defendant's property and remains in effect until the party complies with the judgment (Trawick, Fla. Prac. & Proc. § 37:4 (2019-2020 ed.)). It is available only in actions started in chancery as actions in equity (Trawick, Fla. Prac. & Proc. § 7:1 (2019-2020 ed.))

**3. For each remedy listed in Question 1, provide the legal standard used by the court when deciding to grant the remedy.**

### Temporary Injunction: Fla. R. Civ. P. 1.610

A Florida plaintiff seeking a temporary injunction must demonstrate:

- A substantial likelihood of irreparable harm.
- A substantial likelihood of success on the merits.
- An adequate remedy at law is unavailable.
- The injunction is in the public interest.

(*Gainesville Woman Care*, 210 So. 3d at 1258 and *Foreclosure Freesearch, Inc. v. Sullivan*, 12 So. 3d 771, 775 (Fla. 4th DCA 2009).)

Some courts also assess the equities between the parties should an injunction issue. Specifically, the Third District Court of Appeal adds a fifth element to the criteria for obtaining a temporary injunction that requires the plaintiff to show that the threatened injury outweighs any possible harm to the adverse party (*Sammie Invs., LLC*, 247 So. 3d at 599).

The Second District has also adopted this extra element in at least one case (see *Polk Cty. v. Mitchell*, 931 So. 2d 922, 926 (Fla. 2d DCA 2006)). The Florida Supreme Court, however, has not adopted this additional element in recent temporary injunction appeals (see *Planned Parenthood of Greater Orlando*, 211 So. 3d at 924). Counsel should therefore only consider applying this additional element when the case is before a trial court in the Second or Third District.

For more on the legal standard for obtaining a temporary injunction, see [Practice Note, Temporary Injunctions: Initial Considerations \(FL\): Standard for Obtaining a Temporary Injunction](#).

### Prejudgment Attachment: §§ 76.01 to 76.32, Fla. Stat.

In Florida, a court may issue a writ of attachment, if:

- **The debt is actually due**, the creditor must bring a motion and state, either in a verified complaint or separate affidavit, that the debtor:
  - is about to fraudulently dispose of the property before judgment can be obtained;
  - is or is about to remove the property from Florida, is absconding with the property, or is concealing the property;
  - is concealing himself; or
  - is or is about to remove himself from the jurisdiction.

(§ 76.04, Fla. Stat.)

- **The debt not yet due**, the creditor must bring a motion and state, either in a verified complaint or separate affidavit, that the debtor is:

- removing the property out of Florida;
- fraudulently disposing of the property to avoid payment of their debts; or
- fraudulently secreting the property to avoid payment of their debts.

(§ 76.05, Fla. Stat.)

A creditor may also bring a motion for attachment to aid in foreclosure of a mortgage (§§ 76.07, 76.11, Fla. Stat.).

### Prejudgment Replevin: §§ 78.01 and 78.068(1), Fla. Stat.

To obtain a writ of replevin, a plaintiff must file a complaint containing the following:

- A description of the property to adequately identify it and information on its value.
- Statements that:
  - plaintiff owns the property and is entitled to possession;
  - describe the source of the right to possession; and
  - include any documents in support of that right, if available.
- To the best of plaintiff's knowledge, information, and belief, a statement:

- that defendant is wrongfully detaining the property;
- the means the defendant used to come into possession of the property; and
- the cause of the detention.
- A statement that the property has not been taken as a tax, assessment, or fine under law or under an execution or attachment against the property of the plaintiff.
- A statement that the property is exempt from taking under attachment or execution with a citation to the relevant exemption.

(§ 78.055, Fla. Stat.)

If the court finds statutory requirements are sufficiently alleged in the complaint, then the court issues an order directed to the defendant to show cause why the claimed property should not be taken from the possession of the defendant and delivered to the plaintiff (§ 78.065(2), Fla. Stat.; *Prism Educ. Sys. v. Quest Achievement Corp.*, 51 So. 3d 1262, 1263 (Fla. 4th DCA 2011)).

### Prejudgment Garnishment: §§ 77.01 to 77.28, Fla. Stat.

To obtain a writ of garnishment, the plaintiff must file a verified motion containing:

- The nature of the cause of action.
- The amount of the debt with a statement that the debt is just, due, and unpaid.
- A statement that:
  - the garnishment is not brought to injure the defendant or the garnishee;
  - the plaintiff believes the defendant does not have property in the state and county to later satisfy a levy.

(§ 77.031(2), Fla. Stat.)

A party can secure a writ of garnishment against any debt due to the defendant by third persons, or any intangible personal property (§ 77.01, Fla. Stat.).

### Receivership §§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620

Receivership is available whenever necessary to preserve property or a party's rights if the grounds exist. There is no right to the appointment of a receiver. Appointment is at the discretion of the court (*Horizons A Far, LLC v. Plaza N 15, LLC*, 114 So. 3d 992 (Fla. 5th DCA July 27, 2012); *The Seasons P'ship I v. Kraus-Anderson, Inc.* 700 So. 2d

60 (Fla. 2d DCA 1997); *Akers v. Corbett*, 138 Fla. 730, 735 (1939)).

Guiding principles in exercising that discretion include:

- That the property is subject to a serious loss.
- That the movant has a clear legal right to the property.

(*U.S. Bank Nat'l Ass'n v. Cramer*, 113 So. 3d 1020, 1023 (Fla. Dist. Ct. App. 2013) (quoting *Apalachicola N.R. Co. v. Sommers*, 85 So. 361, 361 (Fla. 1920)).)

The party seeking a receivership must also show both:

- There is a strong likelihood it can succeed on the merits at trial.
- The remedy at law is inadequate.

(*Phillips v. Greene*, 994 So. 2d 371, 373 (Fla. 3d DCA 2008).)

### Sequestration: § 68.03, Fla. Stat.

Plaintiff must start the action in chancery court against defendant not living in Florida or cannot be sued in Florida and show that another defendant able to be served in Florida actually has the property or is indebted to the nonresident defendant. The party applying for a writ of sequestration must file an affidavit demonstrating that:

- The defendant is outside of Florida and has not appeared.
- After inquiry at the defendant's normal place of abode, defendant cannot be found to be served with process.

(§ 68.03(1), Fla. Stat.)

Plaintiff's motion should describe the property to be sequestered (§ 68.03(1), Fla. Stat.).

## Applying for State Provisional Remedies

**4. For each remedy listed in Question 1, what is the procedure for applying for that relief? Include any limits placed on the method of applying for that remedy (for example, whether the statute disallows applications for preliminary injunctions to be brought by orders to show cause).**

### Temporary Injunction: Fla. R. Civ. P. 1.610

To obtain a temporary injunction in Florida, a party can either:

- File a written motion with the court.
- Make a motion for a temporary injunction at a hearing or trial.

The motion for a temporary injunction must contain both:

- A specific request for the relief.
- A precise statement of the grounds supporting the relief.

(Fla. R. Civ. P. 1.100(b).)

### **Prejudgment Attachment: §§ 76.01 to 76.32, Fla. Stat.**

To apply for a writ of attachment, the creditor must have filed a primary complaint alleging an action at common law and:

- Make a motion for attachment supported by:
  - a separate affidavit; or
  - a verified complaint that alleges specific facts that demonstrate that attachment is available under one or more statutory grounds.
- Clearly indicate the amount of debt actually due and the statutory grounds for attachment.
- Provide proof of any special statutory grounds with a separate affidavit or verified complaint.

(§§ 76.04, 76.05, 76.08, and 76.09, Fla. Stat.)

If the application involves a debt that is not actually due, the applicant must also include:

- A statement that there is an existing debt.
- The amount of the debt.

(§§ 76.08 and 76.10, Fla. Stat.)

If the application for a writ of attachment involves a foreclosure of mortgage on personal property, the applicant must also include:

- A description of the mortgaged property.
- A statement that a complaint has been filed to foreclose the mortgage.

(§§ 76.08 and 76.11, Fla. Stat.)

Not every attachment needs to be accompanied by notice (*Hordis Bros., Inc. v. Sentinel Holdings, Inc.*, 562 So. 2d 715, 718 (Fla. 3d DCA 1990)).

### **Prejudgment Replevin: §§ 78.01 and 78.068(1), Fla. Stat.**

The plaintiff may obtain a prejudgment writ of replevin by filing a complaint (§ 78.055, Fla. Stat.).

The complaint must state all of the following regarding the property:

- Its identity.
- Its value and location.
- That plaintiff owns or is entitled to possession.
- That it has been wrongfully detained.
- That it is not taken for tax, assessment, or fine.
- That it has not been taken under an execution or attachment against the plaintiff's property.

(§ 78.055, Fla. Stat.)

Before instituting an action for replevin, plaintiff must first demand the return of its property (*Senfeld v. Bank of N.S. Tr. Co. (Cayman), Ltd.*, 450 So. 2d 1157 (Fla. 3d DCA 1984)).

If the court finds that the complaint sufficiently alleges the statutory replevin requirements, the court can issue an order directing the defendant to show cause why the claimed property should not be taken from the defendant and delivered to the plaintiff (§ 78.065(2), Fla. Stat. and *Prism Educ. Sys.*, 51 So. 3d at 1262).

### **Prejudgment Garnishment: §§ 77.01 to 77.28, Fla. Stat.**

In Florida, a creditor has a right to a writ of garnishment on bring a suit to recover a debt (§ 77.01, Fla. Stat.).

The plaintiff may only obtain a pre-judgment writ of garnishment by filing a verified motion or affidavit. The plaintiff's motion must state each of the following:

- The nature of the cause of action.
- The debt is just, due, and unpaid.
- The garnishment is not to injure either the defendant or garnishee.
- The property is not likely to be in defendant's possession at time of execution.
- The defendant is not likely to have enough tangible or intangible property to satisfy the claim when an execution on a levy can be made.

(§ 77.031(2), Fla. Stat.) For more on the legal standard for obtaining a prejudgment writ of garnishment, see [Practice Note, Prejudgment Garnishment \(FL\): Initiating a Prejudgment Garnishment Proceeding](#).

### Receivership §§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620

The plaintiff may apply for the appointment of a receiver either by:

- Including it in the original complaint as part of the prayer for relief.
- Filing a later motion requesting the appointment of a receiver.

(§ 56.29, Fla. Stat.; *Polycoat Corp. v. City Nat'l Bank*, 327 So. 2d 126, 127 (Fla. 4th DCA 1976).)

The motion must include verified allegations or the necessary pleading to show the movant is entitled to the appointment of a receiver (*Shops of Sunset, Ltd. v. Cohen*, 551 So. 2d 1272, 1273 (Fla. 3d DCA 1989); *Colley v. First Fed. Sav. & Loan Ass'n*, 516 So. 2d 344, 346 (Fla. 1st DCA 1987)).

To the extent that receivership property is located in more than one jurisdiction, an application for receivership must be made to the court in which the defendant resides or has its principal place of business (§ 47.031, Fla. Stat.).

### Sequestration: § 68.03, Fla. Stat.

The party applying for a writ of sequestration must file an affidavit demonstrating either that:

- The defendant is outside of Florida.
- After inquiry at the defendant's normal place of abode, defendant cannot be found to be served with process.

Plaintiff's motion should describe the property to be sequestered (§ 68.03(1), Fla. Stat.).

**5. For each remedy listed in Question 1, list any documents that are required as part of the application.**

### Temporary Injunction: Fla. R. Civ. P. 1.610

An application for a temporary injunction in Florida must include:

- The complaint.
- A motion for temporary injunction (Fla. R. Civ. P. 1.090(d)).

- An affidavit or verified complaint supporting the motion for a temporary injunction.
- A bond in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.
- If made ex parte, an affidavit or verified complaint supporting the ex parte application.

(Fla. R. Civ. P. 1.610.) The verified pleading or affidavit must allege specific facts showing immediate and irreparable harm (*Vargas v. Vargas*, 816 So. 2d 238 (Fla. 2d DCA 2002); *Doss v. Doss*, 643 So. 2d 1170 (Fla. 2d DCA 1994)). No evidence other than the affidavit or verified pleading may be used to support the application for temporary injunction unless the adverse party appears at the hearing or has received reasonable notice of the hearing (Fla. R. Civ. P. 1.610(a)(2)).

The requirement under Florida law that a verified pleading or affidavit accompany an ex parte application for injunctive relief does not expressly apply to applications for injunctive relief made **with notice** to the adverse party. However, a good practice is to have any application for injunctive relief verified, certified, or supported by affidavit whether notice is provided to the adverse party or not.

### Prejudgment Attachment: §§ 76.01 to 76.32, Fla. Stat.

An application for a writ of attachment typically includes:

- A complaint.
- A motion for writ of attachment.
- An affidavit or verified complaint by the plaintiff supporting the motion for a writ of attachment stating:
  - the amount of the debt if a debt is actually due; or
  - there is an existing debt and the amount of the debt if the debt is not actually due.
- A bond equal to double the amount of the debt.
- If made ex parte, an affidavit supporting the ex parte application.

(§ 76.08, Fla. Stat.)

When the plaintiff is suing to recover a debt that is due, its motion for prejudgment attachment must:

- Be supported by an affidavit or a verified complaint (§ 76.08, Fla. Stat.; *ITI Holdings, Inc. v. Prof's Scuba*

*Ass'n Int'l, LLC*, 2007 WL 914073, at \*2-3 (M.D. Fla. Mar. 22, 2007) (applying Florida law).

- State the amount of the debt that is due (§ 76.09, Fla. Stat.).
- Provide the specific facts, supported by an affidavit, establishing that the defendant is (or intends to be) engaged in one or more of the acts listed in the Florida Statutes § 76.04.

(§ 76.09, Fla. Stat.)

When the plaintiff sues to recover a debt that is not currently due, its motion for prejudgment attachment must:

- Be supported by an affidavit or a verified complaint (§ 76.08, Fla. Stat.).
- State the amount of the debt or demand (§ 76.10, Fla. Stat.).
- State that the debt is an existing debt and describe the debt (§ 76.10, Fla. Stat.).
- Provide specific facts, supported by an additional affidavit from someone other than the plaintiff, establishing that the defendant is engaged in one or more of the acts listed in the Florida Statutes § 76.05.

(§ 76.10, Fla. Stat.)

When the plaintiff seeks a prejudgment attachment in a lawsuit to foreclose a mortgage on personal property, its motion must:

- Be supported by an affidavit or a verified complaint (§ 76.08, Fla. Stat.).
- Describe the mortgaged personal property.
- State that the plaintiff filed a complaint to foreclose a mortgage.
- State the amount of the debt secured by the mortgage.
- State that the debt is due.
- Provide specific facts, supported by an affidavit, establishing that the mortgaged property satisfied one or more of the acts listed in the Florida Statutes § 76.07.

(§ 76.11, Fla. Stat.)

For more on the legal standard for prejudgment writs of attachment, see [Practice Note, Prejudgment Attachment \(FL\): Scope of Prejudgment Attachment](#).

### **Prejudgment Replevin: §§ 78.01 and 78.068(1), Fla. Stat.**

An application for a writ of replevin typically includes:

- The complaint.
- A motion for writ of replevin.
- An affidavit or verified complaint by the plaintiff supporting the motion for a writ of replevin stating:
  - the identity of the property;
  - the property's value and location;
  - that plaintiff owns or is entitled to possession of the property;
  - that the property has been wrongfully detained;
  - that the property was not taken for tax, assessment or fine; and
  - that the property has not been taken under an execution or attachment against the plaintiff's property.
- A bond equal to double the amount of the debt or value of the goods.

(§ 78.055(2), Fla. Stat.)

The plaintiff must attach a copy of any written instrument that demonstrates plaintiff's interest in the property (§ 78.055(2), Fla. Stat.).

### **Prejudgment Garnishment: §§ 77.01 to 77.28, Fla. Stat.**

An application for a writ of garnishment typically includes:

- The complaint.
- A verified motion or affidavit supporting the motion for a writ of garnishment alleging specific facts regarding:
  - the nature of the causes of action;
  - the amount of the debt;
  - that the debt is just, due, and unpaid;
  - that the garnishment is not to injure the defendant or the garnishee; and
  - that the plaintiff believes the defendant is not likely to have adequate tangible or intangible property at the time of execution in the Florida county where the action is pending on which a levy can be made to satisfy the claim.
- The party applying for a writ of garnishment must deposit into the court registry:
  - part payment of the garnishee's attorneys' fees; and
  - a statutory fee.
- A bond equal to at least double the amount of the debt.

- If made ex parte, an affidavit supporting the ex parte application.

(§ 77.031(2), Fla. Stat.)

### **Receivership § 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620**

An application for appointment of receiver typically includes either:

- The complaint.
- A motion for appointment of receiver supported by:
  - an affidavit by the plaintiff supporting the motion; and
  - if made ex parte, an affidavit or verified complaint supporting the ex parte application.

(*Phillips*, 994 So. 2d at 372.)

### **Sequestration: § 68.03, Fla. Stat.**

An application for a writ of sequestration typically includes:

- The complaint.
- A motion for writ of sequestration.
- An affidavit by the plaintiff supporting the motion for a writ of sequestration describing the property to be sequestered and stating that:
  - the defendant is outside Florida; or
  - after inquiry at the defendant's normal place of abode, the defendant cannot be found to be served with process.

(§ 68.03(1), Fla. Stat.)

- A bond with surety to abide the future orders made for restoring the estate or effects to the absent defendant on their appearance (§ 68.03(2), Fla. Stat.).
- If made ex parte, an affidavit supporting the ex parte application (§ 68.03, Fla. Stat.).

#### **6. For each remedy listed in Question 1, if the remedy is requested on notice, indicate:**

- What notice is required.
- Any time limits applicable to the notice.
- Whether the adverse party may submit opposition, and if so, when and how.
- Whether the adverse party is entitled to a hearing.

### **Temporary Injunction: Fla. R. Civ. P. 1.610**

#### **Notice**

For a request for a temporary injunction with notice to the defendant, Florida law requires a plaintiff to serve the motion and notice of hearing on a defendant (Fla. R. Civ. P. 1.610; Fla. R. Jud. Admin. 2.516(b); § 48.011 to 48.31, Fla. Stat.). A court may grant an order to show cause to be served in lieu of a notice of motion at a time and in a manner specified by the court unless the application is brought ex parte (§ 78.065, Fla. Stat.).

For more information on filing and serving a motion for temporary injunction, see [Practice Note, Temporary Injunctions: Procedure \(FL\): Temporary Injunctions with Notice](#).

#### **Time Limits**

Under Florida law, a plaintiff moving for a temporary injunction with notice must provide "reasonable notice" of the evidentiary hearing to the defendant that allows defense counsel a meaningful opportunity to:

- Prepare and defend against the motion.
- Present evidence.
- Preserve a record of the proceedings.

(Fla. R. Civ. P. 1.610(a)(2); *Cortina v. Staffing Source, Inc.*, 843 So. 2d 373, 374 (Fla. 2d DCA 2003).)

#### **Opposing an Application**

A party a temporary injunction has been granted against may move to dissolve or modify it at any time. If a party moves to dissolve or modify, the motion is to be heard within five days after the movant applies for a hearing on the motion. (Fla. R. Civ. P. 1.610(d).)

Florida statutes do not set out the process for opposing an application for a temporary injunction unless the request for a temporary injunction is brought ex parte.

A defendant may oppose a motion for temporary injunction with notice before, during, and after the evidentiary hearing on the motion.

Before the evidentiary hearing, defense counsel may:

- Seek to conduct expedited discovery to obtain evidence for the temporary injunction hearing (Fla. R. Civ. P. 1.340(a), 1.350(b), and 1.370(a)).
- File a responsive motion and affidavits opposing the opposition to the plaintiff's request for a temporary injunction.

At the temporary injunction evidentiary hearing, defense counsel may:

- Make opening and closing statements.
- Examine and cross-examine witnesses.
- Submit documentary or other physical evidence for the court's consideration.

After entry of a temporary injunction order, defense counsel may:

- Move to dissolve or modify the injunction in the circuit court at any time (Fla. R. Civ. P. 1.610(d)).
- Immediately appeal the order granting the temporary injunction to challenge the temporary injunction or the amount of the bond (Fla. R. App. P. 9.130(a)(3)(B); *Ralicki v. 998 SW 144 Court Rd, LLC*, 254 So. 3d 1155, 1157 (Fla. 5th DCA 2018) (affirming injunction, but remanding to conduct hearing on bond)).

For more on opposing a temporary injunction, see [Practice Note, Temporary Injunctions: Procedure \(FL\): Challenging a Temporary Injunction Order](#).

### Hearing

The plaintiff must schedule an evidentiary hearing before the court can grant a motion for temporary injunction with notice to the defendant (Fla. R. Civ. P. 1.610(a)(2); *Cortina*, 843 So. 2d at 374.).

After the court enters a temporary injunction, the defendant may move to dissolve the temporary injunction at any time (Fla. R. Civ. P. 1.610(d)). The court must hold a hearing on a motion to dissolve within five days of the defendant's request for a hearing (Fla. R. Civ. P. 1.610(d)).

The motion for a temporary injunction typically must be heard within five days from the movant's application for a hearing unless the application is brought ex parte (Fla. R. Civ. P. 1.610(d)).

Motions to dissolve are set for immediate hearing by the court (§ 76.24, Fla. Stat.).

For more on challenging a temporary injunction order, see [Practice Note, Temporary Injunctions: Procedure \(FL\): Challenging a Temporary Injunction Order](#).

## Prejudgment Attachment: §§ 76.01 to 76.32, Fla. Stat.

### Notice

Florida attachment statutes do not require a plaintiff give notice to the defendant when requesting an attachment.

The order of attachment operates as notice to the defendant.

In Florida, notice to the defendant is generally not required for prejudgment attachment. A plaintiff may seek a prejudgment writ of attachment ex parte when the plaintiff has a reasonable belief that, if it provides the defendant with notice, the defendant may conceal or dispose of the property before the plaintiff can obtain the writ (see *Hordis Bros., Inc.*, 562 So. 2d at 718).

Plaintiffs typically seek prejudgment writs of attachment ex parte at the start of a lawsuit before serving the defendant with the complaint, although there is no prohibition against seeking a prejudgment attachment later in the case. However, plaintiff's counsel should generally expect to serve defense counsel with the motion for prejudgment attachment and accompanying documents and for defense counsel to appear (and argue) at the hearing.

For more on ex parte prejudgment attachment proceedings, see [Practice Note, Prejudgment Attachment \(FL\): Initiating a Prejudgment Attachment Proceeding](#).

### Time Limits for Notice

Florida attachment statutes do not require a plaintiff give notice to the defendant when requesting an attachment. A plaintiff typically does not provide a defendant with notice of a prejudgment writ of attachment because the request is usually made ex parte before the defendant is served with the complaint.

### Opposing an Application

A defendant may bring a motion to dissolve a writ of attachment by:

- Filing a motion to dissolve the prejudgment writ of attachment, which is set for an evidentiary hearing or a trial (§§ 76.24 and 76.25, Fla. Stat.).
- Posting a bond to recover the attached property (§§ 76.18 and 76.19, Fla. Stat.).
- Filing a replevin action against the sheriff to recover its personal property if the property is exempt from attachment (§§ 76.20, 78.01, 78.02(2), and 78.055, Fla. Stat.).

For more on a defendant's opposition to a prejudgment writ of attachment, see [Practice Note, Prejudgment Attachment \(FL\): Defendant's Response to the Writ](#).

### Hearing

A motion to dissolve an application for attachment is to be set for an immediate hearing or jury trial, if a party

requested a jury trial, to resolve the issues raised in a motion to dissolve a prejudgment writ of attachment (§ 76.24(1), (2), and (4), Fla. Stat.).

### Prejudgment Replevin: §§ 78.01 and 78.068(1), Fla. Stat.

#### Notice

Florida statutes do not contain notice requirements for prejudgment applications for replevin.

#### Time Limits for Notice

Florida statutes do not prescribe separate time limits for notice in prejudgment applications for replevin.

#### Opposing an Application

The defendant may obtain release of the property seized under a prejudgment writ of replevin by posting bond within five days of service of the writ. The bond must be in an amount equal to 125% of the amount due and owing on the agreement for the satisfaction of any judgment which may be rendered against the defendant (§ 78.068(4), Fla. Stat.).

The defendant, by opposing motion filed with the court within ten days of service of the writ, may obtain dissolution of the writ of replevin unless the petitioner proves the grounds on which the writ was issued (§ 78.068(6), Fla. Stat.).

#### Hearing

The court must set the motion for an immediate hearing (§ 78.068(6), Fla. Stat.).

### Prejudgment Garnishment: §§ 77.01 to 77.28, Fla. Stat.

#### Notice

A writ of garnishment must contain a notice to the defendant of their right to an immediate hearing to dissolve the writ under § 77.07, Fla. Stat. The clerk of court can provide the notice to the defendant by mail. (§ 77.031, Fla. Stat.) The notice must be in the form provided in § 77.041(1) of the Florida Statutes (Fla. Stat. Ann. § 77.041(1)). For more on a prejudgment writ of garnishment's notice requirement, see [Practice Note, Prejudgment Garnishment \(FL\): Serve Verified Motion and Writ on the Defendant](#).

#### Time Limits for Notice

The plaintiff must serve the defendant with the verified motion for prejudgment writ of garnishment and the prejudgment writ of garnishment by first-class mail at the defendant's last known address within the later of:

- Five business days after the writ is issued.
- Three business days after the writ is served on the garnishee.

(§ 77.041(2), Fla. Stat.)

If the post office returns the documents as undeliverable or if the plaintiff cannot determine the defendant's address after a diligent search, the plaintiff must serve the defendant with the documents by first-class mail to the defendant's place of employment (§ 77.041(2), Fla. Stat.).

For more on the time limits for notice, see [Practice Note, Prejudgment Garnishment \(FL\): Serve Verified Motion and Writ on the Defendant](#).

#### Opposing an Application

The defendant may obtain the dissolution of a writ of garnishment by motion (§ 77.07(1), Fla. Stat.). The request to dissolve a writ of garnishment may be made:

- On motion of the debtor challenging the truth of the allegations in the creditor's petition for the writ.
- On an affidavit of a third party claiming the garnished property belongs to the third party and not the debtor.

(*Merriman Invs., LLC v. Ujowundu*, 123 So. 3d 1191 (Fla. 3d DCA 2013).)

The defendant and any other person having an ownership interest in the property noted in the garnishee's answer, must file and serve a motion to dissolve within 20 days after the date indicated in the certificate of service on the defendant and the other person. The motion must state that any allegation in plaintiff's motion for writ is untrue. (§ 77.07(2), Fla. Stat.) After the court enters the writ, the defendant has two potential, nonexclusive responses to contest the prejudgment writ of garnishment. The defendant can:

- If an individual, claim exemptions from garnishment, for example, head of family wages or disability income benefits. To claim an exemption, a defendant must file and serve a Notice to Defendant form within 20 days of receipt of the notice. (§ 77.041(1), Fla. Stat.)

- Move to dissolve the prejudgment writ. After being served with a copy of the garnishee's answer, the defendant has 20 days from the date on the certificate of service to file and serve a motion to dissolve the prejudgment writ of garnishment (§ 77.07(2), Fla. Stat.; *Windsor-Thomas Grp., Inc. v. Parker*, 782 So. 2d 478, 483-84 (Fla. 2d DCA 2001)).

For more on a defendant's objections to a prejudgment writ of garnishment, see [Practice Note, Prejudgment Garnishment \(FL\): Defendant's Response: Contesting the Garnishment](#).

The motion can be granted unless the petitioner proves both:

- The grounds on which the writ was issued.
- In the case of a prejudgment writ, there is a reasonable probability that the final judgment in the underlying action can be rendered in their favor.

(§ 77.07(1), Fla. Stat.)

A defendant may also obtain a complete or partial release of the garnished debt or property at any time before judgment (§ 77.24, Fla. Stat.). For more information on obtaining a discharge of the garnished property, see [Practice Note, Prejudgment Garnishment \(FL\): Defendant's Response: Obtaining Discharge of the Garnished Property](#).

A third party with an interest in the garnished property may also contest the writ (§§ 77.07(2) and 77.16(1), Fla. Stat.). For information on a third party's potential responses to a prejudgment writ of garnishment, see [Practice Note, Prejudgment Garnishment \(FL\): Third Person's Response](#).

### Hearing

The court resolves any issues raised in a motion to dissolve a prejudgment writ of garnishment, along with any other objections by the garnishee or third persons, at a single evidentiary hearing or trial (§§ 77.07(4), 77.08, and 77.16(1), Fla. Stat.; Fla. R. Civ. P. 1.430(b)). The court must set the motion for an immediate hearing (§ 77.07(1), Fla. Stat.).

For more on hearing or trial to resolve challenges to a prejudgment writ of garnishment, see [Practice Note, Prejudgment Garnishment \(FL\): Resolving Objections to Prejudgment Writ](#).

## Receivership §§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620

### Notice

Rule 1.620 requires compliance with the notice requirements of Florida Rule of Civil Procedure 1.610 for the appointment of a receiver (*Phillips*, 994 So. 2d at 373).

If the request is made in the original complaint and is properly served, then the defendant need only receive notice of the time and place of the hearing. If the motion is filed after the initial complaint, the plaintiff must provide the defendant with a copy of the motion and notice of hearing within a reasonable time (Fla. R. Civ. P. 1.090(d); *Polycoat Corp.*, 327 So. 2d 126).

### Time Limits for Notice

Rule 1.620 requires compliance with the time limits for notice under Florida Rule of Civil Procedure 1.610 for the appointment of a receiver (*Phillips*, 994 So. 2d at 373).

### Opposing an Application

A party may oppose an application for appointment of a receiver by challenging the legal sufficiency of the application and demonstrating that the applicant does not meet the legal requirements.

### Hearing

Ordinarily, a hearing is required before appointment of a receiver (*DeSilva v. First Cmty. Bank of Am.*, 42 So. 3d 285, 289 (Fla. 2nd DCA 2010)). However, a party may proceed on an ex parte basis as described in more detail below (see Question 7: Receivership §§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620).

## Sequestration: § 68.03, Fla. Stat.

### Notice

There are no specific notice requirements for sequestration.

### Time Limits for Notice

There are no specific time limit requirements for notice for sequestration.

### Opposing an Application

There are no specific requirements for opposing an application for sequestration.

### Hearing

There are no specific hearing requirements for sequestration.

#### 7. For each remedy listed in Question 1, please describe:

- Whether *ex parte* applications are allowed.
- The procedure for obtaining *ex parte* relief.
- Any additional standard that must be met if the remedy is sought *ex parte*.

### Temporary Injunction: Fla. R. Civ. P. 1.610

#### Ex Parte Applications

The Florida Rules of Civil Procedure permit *ex parte* applications for temporary injunction (Fla. R. Civ. P. 1.610(a)(1); *Thomas v. Osler Med., Inc.*, 963 So. 2d 896, 899 (Fla. 5th DCA 2007)). An *ex parte* temporary injunction is the functional equivalent of the federal temporary restraining order (Fla. R. Civ. P. 1.610(d)).

#### Procedure for Ex Parte Relief

To obtain an emergency *ex parte* temporary injunction, the plaintiff typically must:

- File an emergency *ex parte* motion for temporary injunction contemporaneously with the complaint and other case-initiating documents.
- Schedule and hold an *ex parte* hearing, which is limited to the evidence contained in the verified pleadings or affidavits (Fla. R. Civ. P. 1.610(a)(2)).

After the court enters the temporary injunction order, counsel must immediately serve the case initiating documents, the motion papers, and certified copy of the temporary injunction order on the defendant (Fla. R. Civ. P. 1.070(e), (f)).

For more on the procedure for obtaining an emergency *ex parte* temporary injunction in Florida, see:

- [Practice Note, Temporary Injunctions: Procedure \(FL\): Emergency Ex Parte Temporary Injunctions.](#)
- [Practice Note, Temporary Injunctions: Drafting the Application \(FL\): Drafting the Moving Papers.](#)

- [Ex Parte Temporary Injunction Checklist \(FL\).](#)
- [Standard Document, Ex Parte Motion for Temporary Injunction \(FL\).](#)

#### Additional Standards for Ex Parte Applications

In addition to satisfying the requirements for a temporary injunction with notice (see Question 6: Notice), when seeking an *ex parte* temporary injunction, a party must:

- Provide specific facts in the affidavit or verified pleading show that immediate and irreparable injury, loss, or damage is likely to occur before the opposing party can be heard in opposition.
- Certify in writing:
  - the efforts made to give notice; and
  - the reasons why notice should not be required.

(Fla. R. Civ. P. 1.610(a)(1).)

The order of injunction must:

- Be endorsed with the date and hour of entry.
- Be filed in the clerk's office.
- Define the injury.
- State findings by the court why the injury may be irreparable.
- State the reasons why the order was granted without notice if notice was not given.

(Fla. R. Civ. P. 1.610(a)(2).)

For more information on the requirements for obtaining an *ex parte* temporary injunction, see:

- [Practice Note, Temporary Injunctions: Initial Considerations \(FL\): Deciding Whether to Proceed Ex Parte.](#)
- [Ex Parte Temporary Injunction Checklist \(FL\).](#)
- [Standard Document, Ex Parte Motion for Temporary Injunction \(FL\).](#)

### Prejudgment Attachment §§ 76.01 to 76.32, Fla. Stat.

#### Ex Parte Applications

*Ex parte* applications for writs of attachment are permitted (*Hordis Bros., Inc.*, 562 So. 2d at 718).

#### Procedure for Ex Parte Relief

An *ex parte* application for a writ of attachment must:

- Contain an affidavit based on the plaintiff's personal knowledge of the defendant's actions.
- Identify the reason to believe the property may be concealed or removed before the writ can be procured.

(*Hordis Bros., Inc.*, 562 So. 2d at 718).

### Additional Standards for Ex Parte Applications

No additional standards apply when seeking writs of attachment ex parte.

## Prejudgment Replevin: §§ 78.01 and 78.068(1), Fla. Stat.

### Ex Parte Applications

**Ex parte applications for writs of replevin are permitted (§ 78.068(1), Fla. Stat.).**

### Procedure for Ex Parte Relief

An ex parte application for a writ of replevin must contain a verified petition or affidavit alleging specific facts showing the grounds being relied on for the issuance of a prejudgment writ (§ 78.068(1), Fla. Stat.).

### Additional Standards for Ex Parte Applications

The court can issue a prejudgment writ if it determines, based on the specific facts alleged in the verified petition, that the defendant both:

- Is engaging in or is about to engage in conduct that may place the claimed property in danger of destruction, concealment, waste, or removal from the state or jurisdiction.
- Has failed to make payment as agreed.

(§ 78.068(2), Fla. Stat.)

## Prejudgment Garnishment: §§ 77.01 to 77.28, Fla. Stat.

### Ex Parte Applications

Florida Statutes permit ex parte applications for garnishment (§ 77.031, Fla. Stat.).

### Procedure for Ex Parte Relief

If an ex parte application is made before the judgment has been obtained, the plaintiff must submit a verified motion or affidavit alleging specific facts, including:

- The nature of the cause of action.
- The amount of the debt and that the debt for which the plaintiff sues is:
  - just;
  - due; and
  - unpaid.
- That the garnishment is not sued out to injure either the defendant or the garnishee.
- That the plaintiff believes that the defendant is not likely to have, after execution is issued, tangible or intangible property in Florida and in the county in which the action is pending on which a levy can be made to satisfy the plaintiff's claim.

(§ 77.031(2), Fla. Stat.)

The writ of garnishment must include a notice to the defendant of the right to an immediate hearing for dissolution of the writ under § 77.07, Fla. Stat. The clerk of the court is to provide by mail a copy of the writ to the defendant on issuance of the writ. If the application is made after the judgment has been obtained, the amount of the judgment is to be reflected in the writ (§ 77.031(2), Fla. Stat.).

### Additional Standards for Ex Parte Applications

No additional standards apply when seeking writs of garnishment ex parte.

## Receivership §§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620

### Ex Parte Applications

A party requesting a receivership ex parte must set out in sworn form and with enough particularity, specific facts and circumstances establishing that:

- A delay in appointing a receiver results in irreparable injury to the property.
- Giving notice itself precipitates injury to the property.

Under those circumstances, a receivership may be appropriate without notice and a hearing if the property is at immediate risk of being:

- Diverted.
- Dissipated.
- Destroyed.

- Allowed to deteriorate.
- Wasted.

(*DeSilva*, 42 So. 3d at 285.)

### Procedure for Ex Parte Relief

An ex parte application is made by submitting:

- An affidavit or verified complaint that immediate and irreparable injury, loss, or damages is likely to result before a hearing can take place.
- Written certification by the movant's attorney of:
  - any efforts that have been made to give notice; and
  - the reasons why notice should not be required.

(*Phillips*, 994 So. 2d 371.)

### Additional Standards for Ex Parte Applications

A receiver may only be appointed without notice if:

- It appears from specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss, or damages is likely to result before a hearing can take place.
- The movant's attorney must certify in writing:
  - any efforts that have been made to give notice; and
  - the reasons why notice should not be required.
- The trial court states the reasons notice was not required, and how irreparable harm may result if immediate action is not taken.

(*Phillips*, 994 So. 2d at 373.)

### Sequestration: § 68.03, Fla. Stat.

#### Ex Parte Applications

Florida Rules of Civil Procedure permit an ex parte application for a writ of sequestration (§ 68.03, Fla. Stat.).

#### Procedure for Ex Parte Relief

If the application is made before judgment, an ex parte application is made by submitting an affidavit demonstrating either the defendant:

- Resides outside of Florida.
- Cannot be served with process after inquiry at the defendant's normal place of abode.

(§ 68.03(1), Fla. Stat.)

The action must be started in chancery court against a defendant not living in Florida or cannot be sued in Florida and show that another defendant subject to service in Florida actually has the property or is indebted to the nonresident defendant (§ 68.03(1), Fla. Stat.).

### Additional Standards for Ex Parte Applications

No additional standards apply when seeking writs of sequestration ex parte.

## Other Issues for Provisional Remedies

**8. For each remedy listed in Question 1, are any limits placed on the duration of the remedy (for example, whether a temporary restraining order is limited by statute to a certain number of days)?**

### Temporary Injunction: Fla. R. Civ. P. 1.610

In Florida, a temporary injunction remains in effect until ordered dissolved by the court (Fla. R. Civ. P. 1.610(a)(2)).

### Prejudgment Attachment: §§ 76.01 to 76.32, Fla. Stat.

As attachment is an ancillary proceeding, it is entirely dependent on the maintenance of an independent action or suit. If there is no basis for entering a judgment against the defendant, the attachment must be dissolved. (*Jansik v. Studstill & Hollenbeck*, 16 So. 2d 165, 166 (Fla. 1944).) The attachment may also be dissolved:

- If the defendant:
  - successfully dissolves the writ (§§ 76.24 and 76.25, Fla. Stat.);
  - posts a bond to release the property (§§ 76.18 and 76.19, Fla. Stat.);
  - prevails in a replevin action to recover property that is exempt from attachment (§§ 76.20, 78.01, 78.02(2), and 78.055, Fla. Stat.); or
  - prevails in the underlying lawsuit.

(See [Practice Note, Prejudgment Attachment \(FL\): Defendant's Response to the Writ](#) and [Practice Note, Prejudgment Attachment \(FL\): Judgment for Defendant in the Main Action.](#))

- A plaintiff prevails in the underlying lawsuit and sells the attached property at an execution sale (§ 76.22, Fla. Stat.; see [Practice Note, Prejudgment Attachment \(FL\): Judgment for Plaintiff in Main Action](#)).
- A third person regains possession of the property (see [Practice Note, Prejudgment Attachment \(FL\): Third Person's Claim to Attached Property](#)).

Writs of attachment are valid until:

- They are fully executed.
- The officer is convinced that no property can be found.
- Dissolved on motion by the defendant.

(§ 76.251, Fla. Stat.)

### **Prejudgment Replevin: §§ 78.01, 78.068(1), Fla. Stat.**

There are no time limits on the length of a writ of replevin.

### **Prejudgment Garnishment: §§ 77.01 to 77.28, Fla. Stat.**

If the plaintiff:

- Fails to file a dismissal or motion for final judgment within six months after filing the writ:
  - the writ is automatically dissolved; and
  - the garnishee is discharged from further liability under the writ.
- Exercises the right to extend the writ for an additional six months, the plaintiff must:
  - serve the garnishee and the defendant a notice of extension; and
  - file a certification of that service in the underlying proceeding.

(§ 77.07(5), Fla. Stat.)

### **Receivership §§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620**

There is no express time limit on the duration of a receivership, although the receiver does have certain reporting requirements related to the inventory, including to file:

- The initial inventory within 20 days of appointment.
- An updated inventory and account every three months.

(Fla. R. Civ. P. 1.620(b).)

### **Sequestration: § 68.03, Fla. Stat.**

Once a writ of sequestration has issued, the writ is not dissolved until the delinquent party has complied with the judgment (§ 68.03, Fla. Stat.).

**9. For each remedy listed in Question 1, state whether a bond or other form of security must be provided if the remedy is granted, and include any guidelines for the amount and form of the bond or security.**

### **Temporary Injunction: Fla. R. Civ. P. 1.610**

In Florida, before granting a temporary injunction, a bond must be given by the moving party in an amount the court deems proper to cover:

- Costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined (Fla. R. Civ. P. 1.610(b); *Victim Justice*, 198 So. 3d 822; *Meadows v. Med. Optics, Inc.*, 90 So. 3d 924, 926 (Fla. 4th DCA 2012); *Byrne v. Rec Ctrs., Inc.*, 309 So. 2d 177 (Fla. 4th DCA 1975)).
- Possible attorneys' fees and court costs (*S & T Builders v. Globe Props., Inc.*, 944 So. 2d 302, 305 (Fla. 2006)).

The plaintiff must then post the bond within five days of the court order setting the bond amount, unless the court orders otherwise (Fla. R. Civ. P. 1.610(b); *Victim Justice*, 198 So. 3d at 826). The court may dispense with a bond when:

- A temporary injunction is issued on the application of:
  - a municipality;
  - the state of Florida; or
  - any officer, agency, or political subdivision of Florida.
- Dispensing with the requirement is in the public interest.

(Fla. R. Civ. P. 1.610(b).) A bond is not required for a temporary injunction that is issued to prevent the physical injury or abuse of a natural person (Fla. R. Civ. P. 1.610(b)).

For more on a temporary injunction's bond requirement, see [Practice Note, Temporary Injunctions: Procedure \(FL\): Post-Hearing Issues](#).

### Prejudgment Attachment: §§ 76.01 to 76.32, Fla. Stat.

The applicant, the applicant's agent, or the applicant's attorney must post a bond with surety approved by the clerk, before an attachment may issue. The bond must be:

- Payable to defendant.
- In an amount:
  - at least double the debt demanded; and
  - conditioned to pay all costs and damages which defendant may incur if the plaintiff improperly sues out the attachment.

(§ 76.12, Fla. Stat. and *Cont'l Cas. Co. v. Hardin*, 2016 WL 9460003, at \*5 (M.D. Fla. Feb. 11, 2016) (applying Florida law).)

In foreclosure of a mortgage on personal property, if the motion states that the property or some part of it has been disposed of without the consent of the party holding the mortgage and that plaintiff does not know which party has the property, the bond is to be:

- Made payable to the state for the use and benefit of all interested parties.
- Used to pay costs and damages incurred as the result of the plaintiff improperly bringing the attachment.

(§ 76.12, Fla. Stat.)

Any party injured by the action may sue on the bond, but the state of Florida is not liable for any costs, damages, or expenses that are incurred (§ 76.12, Fla. Stat.).

A bond in an attachment is not void as against the obligors nor are they discharged from the attachment on account of any defect in the bond, even if the attachment is dissolved because of the defect (§ 76.12, Fla. Stat.).

For more on the bond requirement, see [Practice Note, Prejudgment Attachment \(FL\): Arrange for a Bond](#).

### Prejudgment Replevin: §§ 78.01 and 78.068(1), Fla. Stat.

The petitioner must post bond as security for the payment of any damages the defendant may incur if the writ is wrongfully obtained equal to the lesser of:

- Twice the value of the goods subject to the writ.
- Twice the balance remaining due and owing.

(§ 78.068(3), Fla. Stat.)

The plaintiff must release the seized property if the defendant posts its own bond:

- Within five days after the writ was served.
- In the amount of 1.25 times the amount due and owing on the agreement for the satisfaction of any judgment which may be rendered against the defendant.

(§ 78.068(4), Fla. Stat.)

### Prejudgment Garnishment: §§ 77.01 to 77.28, Fla. Stat.

A prejudgment writ of garnishment is only issued on bond from a surety approved by the clerk to cover damages sustained by the defendant if it is determined the plaintiff improperly obtained the writ of garnishment (§ 77.031(3), Fla. Stat.).

The bond must be:

- Payable to the defendant.
- In an amount at least double the amount of the debt demanded.
- Conditioned to pay all of defendant's:
  - costs;
  - damages; and
  - attorneys' fees.

(§ 77.031(3), Fla. Stat.)

This requirement is waived when the plaintiff has already had an attachment writ issued (§ 77.031(3), Fla. Stat.).

A garnishment bond is not void or voidable because of an "informality" or irregularity in it. The obligors are also not discharged because of the informality, even if the garnishment is dissolved because of the informality (§ 77.031(3), Fla. Stat.).

### Receivership §§ 56.10 and 56.29, Fla. Stat.; Fla. R. Civ. P. 1.620

In Florida, courts generally require that a bond be posted when a receiver is appointed unless there are exceptional circumstances precluding the need or ability to provide a bond (*Turtle Lake Assoc., Ltd. v. Third Fin. Servs., Inc.*, 518 So. 2d 959, 962 (Fla. 1st DCA 1988); *Belk's Dept. Store, Miami, Inc. v. Scherman*, 117 So. 2d 845 (Fla. 3rd DCA 1960)).

A court may grant leave to put the bond of the receiver in suit against the sureties without notice to the sureties of the application for the leave (Fla. R. Civ. P. 1.620(c)).

### Sequestration: § 68.03, Fla. Stat.

In sequestration, the plaintiff must post a bond with a surety approved by the clerk (§ 68.03(2), Fla. Stat.). If the plaintiff does not furnish the bond, the property sequestered remains either:

- Under the direction of the court.
- In the hands of a receiver or otherwise.

(§ 68.03(2), Fla. Stat.)

The property may be disposed of when and in the manner the court deems fit (§ 68.03(2), Fla. Stat.).

### Quasi-Provisional Remedies

**10. Are there any additional remedies available in your jurisdiction (such as *lis pendens* or seizure of chattel) that are not technically considered provisional remedies but function similarly?**

### *Lis pendens*: § 48.23, Fla. Stat

#### Legal Standard

In Florida, a notice of *lis pendens* is a document filed in the public records of the county where land is located. The notice serves to provide formal notice to anyone wanting to buy real estate in Florida, as well as anyone wanting to place a lien on the property, that a suit has been filed potentially affecting title to that property. (*Chiusolo v. Kennedy*, 614 So. 2d 491, 492 (Fla.1993).)

A notice of *lis pendens* does not require court approval or any type of hearing (§ 48.23, Fla. Stat.).

#### Applying for Relief

An application for *lis pendens*, called a Notice of Commencement, must:

- Be signed.
- Include:
  - the names of the parties;
  - the date the action was instituted;
  - the court in which the action is pending;
  - a description of the property to be affected;
  - the county in which the property is located; and
  - a statement of the relief sought regarding the property.

(§ 48.23(1)(c), Fla. Stat.)

#### Duration

A notice of *lis pendens* is effective for one year from the start of the action. It expires unless the relief sought is based on:

- A duly recorded instrument.
- A construction lien filed against the property involved.

The court may extend the time of expiration on reasonable notice and for good cause. It may also impose the terms for the extension as justice requires. (§ 48.23(2), Fla. Stat.; *Am. Legion Cmty. Club*, 561 So. 2d 268, 272 (Fla. 1990).)

A *lis pendens* can be dissolved by a court order in response to an application made by the defendant in the underlying action. The defendant does not, however, have the opportunity to oppose the application before the Notice of Commencement is filed. (§ 48.23(3), Fla. Stat.; *CITIBANK, N.A. v. Unknown Heirs*, 197 So. 3d 1214, 1215 (Fla. 1st DCA 2016).)

#### Bonds and Security

The trial court has the discretion to order a bond in the same manner as it does under a temporary injunction application (§ 48.23(3), Fla. Stat.; *Nobe Bay Holdings, LLC v. Gardia*, 140 So. 3d 693, 695 (Fla. 3d DCA 2014); and see Question 9: Temporary Injunction: Fla. R. Civ. P. 1.610). A person seeking bond must show that damages may result from the placement of the *lis pendens* (*Levin v. Lang*, 994 So. 2d 445, reh'g denied 13 So. 3d 468 (Fla. 3d DCA 2008)).

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