CHAPTER 570

ATTACHMENT

570.01	ALLOWANCE OF ATTACHMENT.	570.071	PUBLIC EMPLOYEES; ATTACHMENT OF WAGES.
570.011	DEFINITIONS.	570.08	JUDGMENT FOR CLAIMANT, HOW SATISFIED.
570.02	GROUNDS FOR ATTACHMENT.	570.094	ATTACHED PROPERTY RETAKEN; DAMAGES.
570.025	PRELIMINARY ATTACHMENT ORDER UPON EXTRAORDINARY CIRCUMSTANCES.	570.11	SATISFACTION AND DISCHARGE; REAL ESTATE.
570.026	ATTACHMENT AFTER NOTICE AND HEARING.	570.12	SATISFACTION AND DISCHARGE; PERSONAL PROPERTY.
570.041	BONDING REQUIREMENTS.	570.131	MODIFICATION OR EXPIRATION OF ATTACHMENT.
570.051	ATTACHMENT ORDER.	570.14	ATTACHMENTS AND RELEASES; RECORD AND INDEX.
570.061	EXECUTION OF ORDER OF ATTACHMENT.		

570.01 ALLOWANCE OF ATTACHMENT.

As a proceeding ancillary to a civil action for the recovery of money and to any action brought by the attorney general under the authority of section 8.31, subdivision 1, or any other law respecting unfair, discriminatory, or other unlawful practices in business, commerce, or trade, the claimant, at the time of commencement of the civil action or at any time afterward, may have the property of the respondent attached in the manner and in the circumstances prescribed in sections 570.01 to 570.14, as security for the satisfaction of any judgment that the claimant may recover. The order for attachment may be issued only by a judge of the court in the county in which the civil action is pending. All property not exempt from execution under the judgment demanded in the civil action is subject to attachment.

History: *(9342) RL s 4215; 1965 c 51 s 82; 1985 c 153 s 1; 1994 c 632 art 3 s 58*

570.011 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 570.01 to 570.14, the terms defined in this section have the meanings given them.

Subd. 2. **Claimant.** "Claimant" means a party requesting an order of attachment, whether that party is the plaintiff, defendant, or any other party in the civil action.

Subd. 3. **Respondent.** "Respondent" means a party against whom an order of attachment is requested.

Subd. 4. **Designation of parties.** Each pleading or other document presented for filing pertaining to the ancillary proceeding for attachment shall designate each party as claimant or respondent.

History: *1985 c 153 s 2*

570.013 MS 1984 [Repealed, 1985 c 153 s 16]

570.02 GROUNDS FOR ATTACHMENT.

Subdivision 1. **Grounds.** An order of attachment that is intended to provide security for the satisfaction of a judgment may be issued only in the following situations:

(1) when the respondent has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of the respondent's nonexempt property, with intent to delay or defraud the respondent's creditors;

(2) when the respondent has removed, or is about to remove, any of the respondent's nonexempt property from this state, with intent to delay or defraud the respondent's creditors;

(3) when the respondent has converted or is about to convert any of the respondent's nonexempt property into money or credits, for the purpose of placing the property beyond the reach of the respondent's creditors;

(4) when the respondent has committed an intentional fraud giving rise to the claim upon which the civil action is brought;

(5) when the respondent has committed any act or omission, for which the respondent has been convicted of a felony, giving rise to the claim upon which the civil action is brought; or

(6) when the respondent has violated the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade, including but not limited to any of the statutes specifically enumerated in section 8.31, subdivision 1.

Subd. 2. **Quasi-in-rem jurisdiction.** Attachment may be used to obtain quasi-in-rem jurisdiction over a party to the extent consistent with due process of law.

History: *(9343) RL s 4216; 1981 c 277 s 1; 1983 c 243 s 3; 1985 c 153 s 3; 1994 c 632 art 3 s 59*

570.025 PRELIMINARY ATTACHMENT ORDER UPON EXTRAORDINARY CIRCUMSTANCES.

Subdivision 1. **Application.** A claimant seeking a preliminary attachment order in extraordinary circumstances to secure property prior to the hearing specified in section 570.026 shall proceed by written application. The application shall be accompanied by affidavits or by oral testimony if allowed by the court, or both, setting forth in detail:

(1) the basis and the amount of the claim in the civil action;

(2) the facts which constitute the grounds for attachment as specified in subdivision 2; and

(3) a good faith estimate, based on facts known to the claimant, of any harm that would be suffered by the respondent if a preliminary attachment order is entered.

Subd. 2. **Conditions.** A preliminary attachment order may be issued before the hearing specified in section 570.026 only if the following conditions are met:

(1) the claimant has made a good faith effort to inform the respondent of the application for a preliminary attachment order or that informing the respondent would endanger the ability of the claimant to recover upon a judgment subsequently awarded;

(2) the claimant has demonstrated the probability of success on the merits;

(3) the claimant has demonstrated the existence of one or more of the grounds specified in section 570.02, subdivision 1, clause (1), (2), (3), or (6); and

(4) due to extraordinary circumstances, the claimant's interests cannot be protected pending a hearing by an appropriate order of the court, other than by directing a prehearing seizure of property.

Subd. 3. **Order.** All preliminary attachment orders shall:

(1) state the names and addresses of all affiants whose affidavits were submitted to the court and of all witnesses who gave oral testimony;

(2) contain specific findings of fact, based upon competent evidence presented either in the form of affidavits or oral testimony, if the court permits, supporting the conclusion that each of the conditions in subdivision 2 have been met;

(3) be narrowly drafted to minimize any harm to the respondent as a result of the seizure of the respondent's property; and

(4) to the extent possible, specify the property to be seized.

Subd. 4. **Subsequent hearing.** If the court issues a preliminary attachment order, the order must establish a date for a hearing at which the respondent may be heard. The subsequent hearing shall be conducted at the earliest practicable time. At the hearing, the burden of proof shall be on the claimant.

Subd. 5. **Standards at subsequent hearing.** The hearing held pursuant to subdivision 4 shall be conducted in accordance with the standards established in section 570.026. In addition, if the court finds that the motion for a prehearing attachment order was made in bad faith, the court shall award respondent the actual damages, including reasonable attorney's fees, suffered by reason of seizure of the property.

Subd. 6. **Notice.** The respondent shall be served with a copy of the preliminary attachment order issued pursuant to this section together with a copy of all pleadings and other documents not previously served, including any affidavits upon which the claimant intends to rely at the subsequent hearing and a transcript of any oral testimony given at the preliminary hearing upon which the claimant intends to rely and a notice of hearing. Service shall be in the manner prescribed for personal service of a summons unless that service is impracticable or would be ineffective and the court prescribes an alternative method of service calculated to provide actual notice to the respondent.

The notice of hearing served upon the respondent shall be signed by claimant or the attorney for claimant and shall provide, at a minimum, the following information in substantially the following language:

NOTICE OF HEARING

To: (the respondent)

The (insert name of court) Court has ordered the sheriff to seize some of your property. The court has directed the sheriff to seize the following specific property: (insert list of property). (List other action taken by the court). Some of your property may be exempt from seizure. See the exemption notice below.

The Court issued this Order based upon the claim of (insert name of claimant) that (insert name of claimant) is entitled to a court order for seizure of your property to secure your payment of any money judgment that (insert name of claimant) may later be obtained against you and that immediate action was necessary.

You have the legal right to challenge (insert name of claimant) claims at a court hearing before a judge. The hearing will be held at the (insert place) on (insert date) at (insert time). You may attend the court hearing alone or with an attorney. After you have presented your side of the matter, the court will decide what should be done with your property until the lawsuit against you is finally decided.

IF YOU DO NOT ATTEND THIS HEARING, THE COURT MAY ORDER THE SHERIFF TO KEEP PROPERTY THAT HAS BEEN SEIZED.

EXEMPTION NOTICE

An order of attachment is being served upon you. Some of your property is exempt and cannot be seized. The following is a list of some of the more common exemptions. It is not complete and is subject to section 550.37, and other state and federal laws. If you have questions about an exemption, you should obtain competent legal advice.

1. A homestead or the proceeds from the sale of a homestead.

2. Household furniture, appliances, phonographs, radios, and televisions up to a total current value of $4,500 at the time of attachment.

3. A manufactured (mobile) home used as your home.

4. One motor vehicle currently worth less than $2,000 after deducting any security interests.

5. Farm machinery used by someone principally engaged in farming, or tools, machines, or office furniture used in your business or trade. This exemption is limited to $5,000.

6. Relief based on need. This includes Minnesota Family Investment Program (MFIP), Emergency Assistance (EA), Work First Program, Supplemental Security Income, Minnesota Supplemental Assistance, and General Assistance.

7. Social Security benefits.

8. Unemployment benefits, workers' compensation, or veterans' benefits.

9. An accident disability or retirement pension or annuity.

10. Life insurance proceeds or the earnings of your minor child and any child support paid to you.

11. Money from a claim for damage or destruction of exempt property such as household goods, farm tools, business equipment, a manufactured mobile home, or a car.

History: *1985 c 153 s 4; 1993 c 156 s 13; 1994 c 488 s 8; 1994 c 632 art 3 s 60; 1999 c 107 s 66; 1999 c 159 s 146; 2000 c 343 s 4*

570.026 ATTACHMENT AFTER NOTICE AND HEARING.

Subdivision 1. **Motion.** A claimant seeking to obtain an order of attachment in other than extraordinary circumstances shall proceed by motion. The motion shall be accompanied by an affidavit setting forth in detail:

(1) the basis and amount of the claim in the civil action; and

(2) the facts which constitute one or more of the grounds for attachment as specified in section 570.02.

Subd. 2. **Service.** The claimant's motion to obtain an order of attachment together with the claimant's affidavit and notice of hearing shall be served in the manner prescribed for service of a summons in a civil action in district court unless that service is impracticable or would be ineffective and the court prescribes an alternative method of service calculated to provide actual notice to the respondent. If the respondent has already appeared in the action, the motion shall be served in the manner prescribed for service of pleadings subsequent to the summons. The date of hearing shall be fixed in accordance with rule 6 of the Minnesota Rules of Civil Procedure, unless a different date is fixed by order of the court.

The notice of hearing served upon the respondent shall be signed by the claimant or the attorney for the claimant and shall provide, at a minimum, the following information in substantially the following language:

NOTICE OF HEARING

TO: (the respondent)

A hearing will be held (insert place) on (insert date) at (insert time) to determine whether the sheriff shall seize nonexempt property belonging to you to secure a judgment that may be entered against you.

You may attend the court hearing alone or with an attorney. After you have presented your side of the matter, the court will decide what should be done with your property until the lawsuit which has been commenced against you is finally decided.

If the court directs the sheriff to seize and secure the property while the lawsuit is pending, you may still keep the property until the lawsuit is decided if you file a bond in an amount set by the court.

IF YOU DO NOT ATTEND THIS HEARING, THE COURT MAY ORDER YOUR NONEXEMPT PROPERTY TO BE SEIZED.

EXEMPTION NOTICE

Some of your property is exempt and cannot be attached. The following is a list of some of the more common exemptions. It is not complete and is subject to section 550.37, and other state and federal laws. If you have questions about an exemption you should obtain competent legal advice.

1. A homestead or the proceeds from the sale of a homestead.

2. Household furniture, appliances, phonographs, radios, and televisions up to a total current value of $4,500 at the time of attachment.

3. A manufactured (mobile) home used as your home.

4. One motor vehicle currently worth less than $2,000 after deducting any security interests.

5. Farm machinery used by someone principally engaged in farming, or tools, machines, or office furniture used in your business or trade. This exemption is limited to $5,000.

6. Relief based on need. This includes Minnesota Family Investment Program (MFIP), Emergency Assistance (EA), Work First Program, Supplemental Security Income, Minnesota Supplemental Assistance, and General Assistance.

7. Social Security benefits.

8. Unemployment Benefits, workers' compensation, or veterans' benefits.

9. An accident disability or retirement pension or annuity.

10. Life insurance proceeds or the earnings of your minor child and any child support paid to you.

11. Money from a claim for damage or destruction of exempt property (such as household goods, farm tools, business equipment, a manufactured (mobile) home, or a car).

Subd. 3. **Standards for order.** An order for attachment may be issued only if the claimant has demonstrated the probability of success on the merits, and the claimant has demonstrated facts that show the existence of at least one of the grounds stated in section 570.02. However, even if those standards are met, the order may not be issued if:

(1) the circumstances do not constitute a risk to collectibility of any judgment that may be entered; or

(2)(i) respondent has raised a defense to the merits of the claimant's claim or has raised a counterclaim in an amount equal to or greater than the claim and the defense or counterclaim is not frivolous; and

(ii) the interests of the respondent cannot be adequately protected by a bond filed by the claimant pursuant to section 570.041 if property is attached; and

(iii) the harm suffered by the respondent as a result of seizure would be greater than the harm which would be suffered by the claimant if property is not attached.

Subd. 4. **Protection of claimant.** If the claimant makes the showing prescribed by subdivision 3 but the court nevertheless determines that an order of attachment should not be issued for the reasons set forth in subdivision 3, clause (2), the court shall enter a further order protecting the rights of the claimant to the extent possible. The order may require that the respondent post a bond in an amount set by the court, that the respondent make the property available for inspection from time to time, that the respondent be restrained from certain activities, including, but not limited to, selling, disposing, or otherwise encumbering property, or any other provision the court may deem appropriate.

Subd. 5. **Stay of order.** An order requiring seizure of property may be stayed up to three days to allow the respondent time to post a bond.

History: *1985 c 153 s 5; 1993 c 156 s 14; 1994 c 488 s 8; 1999 c 107 s 66; 1999 c 159 s 147; 2000 c 343 s 4*

570.03 MS 1984 [Repealed, 1985 c 153 s 16]

570.04 MS 1984 [Repealed, 1985 c 153 s 16]

570.041 BONDING REQUIREMENTS.

Subdivision 1. **Amount and condition.** Before issuing any order of attachment, the court shall require the claimant to post a bond in the penal sum of at least $500, conditioned that if judgment be given for the respondent or if the order is vacated, the claimant will pay all costs that may be awarded against the claimant and all damages caused by the attachment. Damages may be awarded in a sum in excess of the bond only if, before issuance of the order establishing the amount of the bond, the respondent specifically notified the claimant and the court of the likelihood that the respondent would suffer the specific damages, or the court finds that the claimant acted in bad faith in bringing or pursuing the attachment proceeding. In establishing the amount of the bond, the court shall consider the value and nature of the property attached, the method of retention or storage of the property, the potential harm to the respondent or any party, and other factors that the court deems appropriate. Nothing in this section shall modify or restrict the application of section 549.20 or 549.211.

Subd. 2. **Modifications.** The court may at any time modify the amount of the bond upon its own motion or upon the motion of any party based on the value of the property attached, the nature of the property attached, the methods of retention or storage of the property, the potential harm to the respondent or any party, or other factor which the court deems appropriate.

Subd. 3. **Alternatives.** In lieu of filing a bond, either the claimant or the respondent may satisfy bonding requirements by depositing cash, a letter of credit, a cashier's check, or a certified check with the court.

History: *1985 c 153 s 6; 1997 c 213 art 2 s 3*

570.05 MS 1984 [Repealed, 1985 c 153 s 16]

570.051 ATTACHMENT ORDER.

Subdivision 1. **Requirements of order.** An order for attachment shall:

(1) contain the findings required by section 570.026;

(2) state with particularity the facts upon which the findings are made;

(3) state that any respondent who attended the hearing was offered an opportunity to identify exempt property, without waiver of the right to claim exemption in property not identified at the hearing;

(4) direct the sheriff of the county in which the court is located or of any other county to seize and safely keep all nonexempt property of the respondent or such specific property as the court may specify, or so much as is necessary to satisfy the amount claimed with expenses and costs using the full force of the county;

(5) authorize the sheriff to keep the property attached in any manner considered appropriate in the reasonable judgment of the sheriff, unless the order otherwise specifies the method of keeping; and

(6) specify the amount of the bond.

Subd. 2. **Other provisions of order.** An order for attachment may:

(1) describe the place or places which may be entered by the sheriff using the full force of the county subject to the limitations of clause (3);

(2) require the respondent, the respondent's agents or employees, or any other person having possession of the property subject to the order to deliver the property to the sheriff. The order may also require the respondent, its officers or managing agent, or any other person named in the order to disclose the location of any nonexempt property that was assigned, secreted, or disposed of, or removed or about to be removed from the state with intent to delay or hinder the respondent's creditors, or property that was converted or was about to be converted for the purpose of putting it beyond the reach of the respondent's creditors. The order may also provide that, if delivery is not made or the location is not disclosed, the respondent or any other person specified in the order appear in court at a specified time and place to give testimony as to the location of the property and to show cause why an order should not be entered finding the respondent or other person specified in this section in contempt of court for failure to deliver the property or to disclose its location; and

(3) provide that if the property, or any of it, is concealed in a building or elsewhere, and a public demand made by the sheriff for its delivery is refused or there is no response, the sheriff shall cause the building or enclosure to be broken open and shall take the property from it. The sheriff may not enter the residence of a person other than the respondent unless the order so specifies, identifying with particularity the residence or residences which may be entered, on the basis of a finding by the court that probable cause exists to believe that the property is at this residence.

History: *1985 c 153 s 7*

570.06 MS 1984 [Repealed, 1985 c 153 s 16]

570.061 EXECUTION OF ORDER OF ATTACHMENT.

Subdivision 1. **Time of execution.** The sheriff shall execute an attachment order without delay after receiving it. If the sheriff does not attach property within 90 days after the order is issued by the court, or

such further time as the court may order, the order shall automatically terminate. If property is attached within this time period, the attachment will remain effective until executed, satisfied, discharged, or vacated, as provided in this chapter.

Subd. 2. **Execution on real estate.** Real estate shall be attached by the recording of the sheriff's certified copy of the order and of a return of attachment containing a description of the real estate with the county recorder, or with the registrar of titles with respect to registered property, for the county in which the real estate is located, and serving a copy of the order and return upon the respondent in the manner provided for a service of a summons, if the respondent can be found in the county. If the respondent cannot be found in that county, the order and return shall be mailed by registered mail or certified mail to the respondent's last known address. The attachment shall be a lien on the interest of the respondent in the real estate from the time of recording with the recorder or registrar.

Subd. 3. **Execution on personal property.** Personal property shall be attached in the manner provided by law for levy of execution and, so far as practicable, the provisions relating to the levy shall govern the execution of the attachment order. When an attachment of personal property has been made, the sheriff shall affix to the order an inventory of the property attached, specifying any proposed sale of perishable property, and shall serve a copy of the order and inventory upon the respondent in the manner provided for the service of a summons if the respondent can be found in the county. If the respondent cannot be found in the county, the order and return shall be mailed by registered or certified mail to the respondent's last known address. Attachment of personal property shall be a lien on the interest of the respondent in the personal property from the time of seizure by the sheriff or subjection to the control of the sheriff.

Subd. 4. **Perishable property.** If any of the property attached is perishable, the sheriff shall sell the perishable property in the manner provided for the sale of personal property on execution. The sheriff shall also take such legal proceedings, either in the sheriff's own name or that of the respondent, as may be necessary for the recovery of credits and affects attached.

Subd. 5. **Record of execution of order.** When any attachment order is fully executed or discharged, the sheriff shall return the order to the court administrator, with an attached record of the sheriff's actions in executing or discharging the order of the court.

History: *1985 c 153 s 8; 1Sp1986 c 3 art 1 s 82; 2005 c 4 s 138*

570.07 MS 1984 [Repealed, 1985 c 153 s 16]

570.071 PUBLIC EMPLOYEES; ATTACHMENT OF WAGES.

The salary or wages of an officer or employee of a county, city, town, or school district, or of any department of the subdivision may be attached. Where the respondent is an officer, the order shall be served upon the auditor, treasurer, or clerk of the subdivision or department of which the respondent is an officer. Where the respondent is an employee other than an officer, the order shall be served upon the person in charge of the office or department in which the employee works.

When payment has been made pursuant to levy, a copy of the attachment with certificate of satisfaction shall be delivered to the treasurer as a voucher for payment.

History: *1985 c 153 s 9*

570.08 JUDGMENT FOR CLAIMANT, HOW SATISFIED.

If judgment is recovered by the claimant, the sheriff shall satisfy the judgment out of the property attached, if sufficient, first paying to claimant the proceeds of sales of perishable property and of all credits collected by the sheriff, or so much as may be required. If a balance remains due and an execution on the judgment is issued, the sheriff shall sell as much of the attached property as may be necessary to satisfy the balance. The fees and costs of the sheriff shall be deducted before any payment to the claimant.

History: *(9349) RL s 4222; 1985 c 153 s 10*

570.09 MS 1984 [Repealed, 1985 c 153 s 16]

570.093 MS 1984 [Repealed, 1985 c 153 s 16]

570.094 ATTACHED PROPERTY RETAKEN; DAMAGES.

If any of the attached property belonging to the respondent passes out of the sheriff's hands without being converted into money, the sheriff may retake the property, and for that purpose has all the powers originally conferred by the order; and any person who conceals or willfully withholds the property from the sheriff shall be liable for actual damages and punitive damages, in an appropriate case, at the suit of the party injured.

History: *1985 c 153 s 11*

570.10 MS 1984 [Repealed, 1985 c 153 s 16]

570.11 SATISFACTION AND DISCHARGE; REAL ESTATE.

An attachment of real estate may be released by recording with the county recorder or the registrar of titles for registered property:

(1) a certified copy of an order of the court vacating the attachment, or of a final judgment in the respondent's favor, or a satisfaction of judgment in the claimant's favor, rendered in the civil action;

(2) a certificate of satisfaction or discharge of the attachment, executed and acknowledged by the claimant or the claimant's attorney, as required for the satisfaction of a mortgage; or

(3) a deed of release of the attached premises, or of any part or interest therein, in which case the parts or interests not described in the deed shall remain subject to the attachment lien.

History: *(9352) RL s 4225; 1975 c 148 s 2; 1976 c 181 s 2; 1985 c 153 s 12; 2005 c 4 s 139*

570.12 SATISFACTION AND DISCHARGE; PERSONAL PROPERTY.

When an attachment of personal property has been made by filing a copy of the order with any public official, its discharge shall be effected by filing in the same office as any instrument mentioned in section 570.11.

History: *(9353) RL s 4226; 1985 c 153 s 13*

570.13 MS 1984 [Repealed, 1985 c 153 s 16]

570.131 MODIFICATION OR EXPIRATION OF ATTACHMENT.

Subdivision 1. **Modification.** Before the entry of judgment, any party may obtain vacation of the order of attachment, the release of any property, or the modification of any term or condition of the order upon a bond or other condition as the court orders.

Subd. 2. **Expiration.** The attachment shall expire upon the demand of the respondent or upon the discretion of the sheriff if:

(1) in cases in which the civil action was commenced by delivery of the summons and complaint to the sheriff, service of process in the civil action is not obtained on the respondent within 60 days after the order for attachment or such further time as the court specifies;

(2) judgment is entered in favor of the respondent;

(3) no judgment is entered against the respondent within three years after the date of the order of attachment or such further time as the court specifies; or

(4) the property subject to an attachment is not sold or otherwise applied to the judgment within six months after the date when the judgment becomes final and nonappealable.

If the order of attachment is vacated, the claimant shall be responsible for payment of any charges and expenses incurred by the sheriff. After the attachment is vacated, upon request of the respondent, the claimant or the claimant's attorney shall execute any satisfaction or other document that is necessary to clear title to the respondent's property. If the claimant fails to do so, the claimant is liable for the respondent's costs in obtaining a court order to clear title.

History: *1985 c 153 s 14*

570.14 ATTACHMENTS AND RELEASES; RECORD AND INDEX.

All copies of orders of attachment prescribed for recording, and all satisfactions or releases of attachments of real estate thereunder, shall be recorded by the county recorder in the current method of recording mortgages, and shall be indexed as if the respondent in the attachment were a mortgagor and the claimant a mortgagee.

History: *(9355) RL s 4228; 1976 c 181 s 2; 1985 c 153 s 15; 2005 c 4 s 140*