§ 1312. Provisional remedies; generally. 1. The provisional remedies of attachment, injunction, receivership and notice of pendency provided for herein, shall be available in all actions to recover property under this article.

2. On a motion for a provisional remedy, the claiming authority shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the claiming authority to elect between those remedies to which it would otherwise be entitled.

3. A court may grant an application for a provisional remedy when it determines that: (a) there is a substantial probability that the claiming authority will be able to demonstrate at trial that the property is the proceeds, substituted proceeds, instrumentality of the crime or real property instrumentality of the crime, that the claiming authority will prevail on the issue of forfeiture, and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture; (b) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate; and (c) in an action relating to real property, that entry of the requested order will not substantially diminish, impair, or terminate the lawful property interest in such real property of any person or persons other than the defendant or defendants.

4. Upon motion of any party against whom a provisional remedy granted pursuant to this article is in effect, the court may issue an order modifying or vacating such provisional remedy if necessary to permit the moving party to obtain funds for the payment of reasonable living expenses, other costs or expenses related to the maintenance, operation, or preservation of property which is the subject of any such provisional remedy or reasonable and bona fide attorneys' fees and expenses for the representation of the defendant in the forfeiture proceeding or in a related criminal matter relating thereto, payment for which is not otherwise available from assets of the defendant which are not subject

to such provisional remedy. Any such motion shall be supported by an affidavit establishing the unavailability of other assets of the moving party which are not the subject of such provisional remedy for payment of such expenses or fees. That funds sought to be released under this subdivision are alleged to be the proceeds, substituted proceeds, instrumentality of a crime or real property instrumentality of a crime shall not be a factor for the court in considering and determining a motion made pursuant to this subdivision.