

#39.90

6/5/75

Memorandum 75-48

Subject: Study 39.90 - Claim and Delivery (Amendment)

Section 512.070 of the claim and delivery statute permits issuance of an order directing the defendant to turn over the property to the plaintiff. The section also provides that the order shall contain a notice to the defendant or the party in possession of the property that failure to obey the order may subject the defendant or person to contempt of court. A member of the panel at the course on creditors' remedies given by Continuing Education of the Bar in San Francisco on May 31 said that Section 512.070 "has to be amended to make sense." The staff proposes that the following amendments be made to cure this defect; in addition, the words "or arrest" should be deleted to be consistent with the amendments to Section 486.080 of the Attachment Law.

SECTION 1. Section 512.070 of the Code of Civil Procedure is amended to read:

512.070. If a writ of possession is issued, the court may also issue an order directing the defendant to transfer possession of the property to the plaintiff. Such order shall contain a notice to the defendant ~~or the party in possession of such property,~~ that failure to turn over possession of such property to plaintiff may subject the defendant ~~or person in possession of such property,~~ to being held in contempt of court ~~or arrest~~ .

Respectfully submitted,

Stan G. Ulrich
Legal Counsel